



RENT STABILIZATION BOARD

Regular Meeting and Public Hearing on Proposed Increase to Annual Registration Fees for Fiscal Year 2024-2025

Thursday, March 21, 2024 – 7:00 p.m.

School District Board Room – 1231 Addison Street, Berkeley

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION.

For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

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To join by phone: Dial 1-669-444-9171 and enter Webinar ID: 863 5182 3870 and Passcode: 662299. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

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RENT STABILIZATION BOARD
Regular Meeting and Public Hearing on Proposed Increase to Annual Registration Fees
for Fiscal Year 2024-2025
Thursday, March 21, 2024
7:00 p.m.
School District Board Room – 1231 Addison Street, Berkeley

AGENDA

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

1. **Roll call** – 1 min.*

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

3. **Approval of Agenda** – 1 min.*

4. **Public Comment** – 2 min.*

5. **SPECIAL PRESENTATION**: *Berkeley Unified Board Room Facility Report* by Max Eissler, Director of Technology, Berkeley Unified School District (BUSD), and David Flores, Executive Director, Berkeley Community Media (BCM) – 20 min.*

6. **CONSENT ITEMS** – 1 min.*
 - a. Approval of the February 15th regular meeting minutes

 - b. Request for stipend deduction reimbursement for Commissioner Marrero’s absence from the January 8th Outreach Committee meeting

7. **APPEAL** – 7:30 p.m.**

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

Case No. IRD-176 (1719 Carleton St., Unit C)

Appellant Tenant appeals the hearing decision granting Petitioner Landlord’s Petition for Determination of Eligibility to Set Initial Rent (“petition”) for the tenancy at 1719 Carleton Street Unit C Berkeley, CA (“premises”).

Appellant Tenant claims that the hearing examiner, by relying on false evidence, erred in his determination that Petitioner Landlord is entitled to establish an initial rent and reset the rent ceiling for the premises because the last remaining original occupant no longer permanently resided at the premises. However, a review of the record verifies reliable and sufficient evidence that Appellant Tenant was the last remaining original occupant and that Appellant Tenant no longer permanently resides at the premises. As such, Petitioner Landlord is entitled to establish an initial rent and reset the rent ceiling for the premises as authorized under Civil Code § 1954.53(d)(2) and Board Regulation 1013(O)(1).

Most importantly, Appellant Tenant’s appeal fails to provide any evidentiary support of a plan to return to the premises as her primary residence or any indication of presently occupying the premises as such. Appellant Tenant’s failure to provide objective indications of an intent to return (or that she has returned) to the premises, despite the hearing examiner providing multiple opportunities to do so, confirms that the decision of the hearing examiner should be affirmed.

8. **PUBLIC HEARING ON PROPOSED INCREASE TO THE ANNUAL REGISTRATION FEES FOR FISCAL YEAR (FY) 2024-2025**

- a. Staff presentation on the proposed increase to FY 2024-2025 Annual Registration Fees (Finance Director Shamika Cole and Senior Planner Lief Bursell)
- b. Public Comment
- c. Comments from the Board

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)

- (1) Demolition Ordinance Update – Status of City of Berkeley Demolition projects (Senior Planner Lief Bursell) – 5 min.*
 - (2) Joint report: “The Failure of For-Profit Affordable Housing and How Tenants are Organizing for Change” (East Bay Community Law Center and Urban Habitat) – 10 min.*
 - (3) Recommendation to send a letter to Assemblymember Bonta opposing Assembly Bill (AB) 846 unless amended – 3 min.*
- b. Recommendation to adopt Resolution 24-05 setting the FY 2024-2025 annual registration fee for fully-covered units (due July 1, 2024) at \$342 per unit (Budget & Personnel Committee and Executive Director) – 20 min.*
 - c. Recommendation to adopt Resolution 24-06 setting the FY 2024-2025 annual registration fee for partially-covered Measure MM units (due July 1, 2024) at \$212 per unit (Budget & Personnel Committee and Executive Director) – 15 min.*
 - d. Recommendation to adopt Resolution 24-07 setting the FY 2024-2025 annual registration fee for partially-covered Measure MM units in affordable housing projects (due July 1, 2024) at \$53 per unit (Budget & Personnel Committee and Executive Director) – 15 min.*
 - e. Recommendation to adopt Resolution 24-08 setting the Summer Rental Period registration fee for fraternities and sororities for FY 2024-2025 (due July 1, 2024) at \$96 per unit (Budget & Personnel Committee and Executive Director) – 10 min.*
 - f. Recommendation to adopt Resolution 24-09 authorizing the Executive Director to modify the scope of the contract with Kinnectics, LLC, and increase the contract by an amount not to exceed \$45,000 for the current fiscal year (Executive Director) – 5 min.*
 - g. Discussion and possible action to adopt Resolution 24-10 to express support for the proposed Demolition Ordinance amendments that Council will consider on March 26, 2024, and direct Chair to send a letter of support to Council (Chair Leah Simon-Weisberg) – 15 min.*

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. Updated 2024 Committee Assignments List (Board Secretary) – 1 min.*
- b. Update on the Rent Board office move to 2000 Center Street – *Verbal* (Executive Director/Board Secretary) – 5 min.*
- c. Update on the Rent Board File Scanning Project – *Verbal* (Project Manager Basil Lecky) – 5 min.*
- d. Deadline to submit agenda items/topics for April’s regular Rent Board meeting:
Friday, April 5th by 5:00 p.m. (Board Secretary)

11. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

- a. Budget & Personnel Committee (Commissioner Walker, Chair) – 5 min.*
Next regularly-scheduled meeting: Thursday, April 4th at 5:30 p.m.

March 7th agenda

February 23rd agenda

- b. Environmental Sustainability Committee (Commissioner Martinac, Chair) – 5 min.*
Next regularly-scheduled meeting date: Wednesday, April 3rd at 6:00 p.m.
- c. Eviction/Section 8/Foreclosure Committee (Commissioner Elstrand, Chair) – 5 min.*
Next regularly-scheduled meeting: Tuesday, April 23rd at 6:00 p.m.
- d. Legislation, IRA/AGA & Registration Committee (LIRA Committee)
(Commissioner Kelley, Chair) – 5 min.*
Next regularly-scheduled meeting: To Be Announced (TBA)
- e. Outreach Committee (Vice-Chair Alpert, Chair) – 5 min.*
Next regularly-scheduled meeting: Monday, April 8th at 6:00 p.m.
- f. 4 x 4 Joint Task Force Committee on Housing: City Council/Rent Board – 5 min.*
(Mayor Arreguín and Chair Simon-Weisberg, Co-Chairs)
Next regularly-scheduled meeting: TBA
- g. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District
(Commissioner Marrero) – 5 min.*
Next meeting date: TBA

March 11th agenda

- h. Ad Hoc Committee to Consider Rent Ordinance Amendments at the 2024 November General Election (Commissioner Johnson, Chair) – 5 min.*
Next meeting date: TBA
- i. Updates and Announcements – 5 min.*
- j. 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, February 15, 2024 – 7:00 p.m.
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RENT STABILIZATION BOARD

Regular Meeting

Thursday, February 15, 2024

7:00 p.m.

School District Board Room – 1231 Addison Street, Berkeley

Minutes – *Unapproved*

1. **Roll call** – Chair Simon-Weisberg called the meeting to order at 7:29 p.m.
Aimee Mueller called roll.
Commissioners present: Alpert, Elgstrand, Johnson (via Zoom), Kelley, Martinac, Mizell, Walker (via Zoom), Simon-Weisberg
Commissioners absent: Marrero
Staff present: Brown, Bursell, Dahl, Eberhart, Lecky, Mueller, Williams

2. **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: Executive Director

Upon conclusion of the closed session, the Chair announced that the Board took no reportable action.

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

The Land Acknowledgement Statement was played aloud.

4. **Approval of Agenda**

M/S/C (Alpert/Martinac) APPROVE THE AGENDA AS WRITTEN. Roll call vote.

YES: Alpert, Elgstrand, Johnson*, Kelley, Martinac, Mizell, Walker*, Simon-Weisberg;

NO: None; ABSTAIN: None; ABSENT: Marrero. Carried: 8-0-0-1.

*Due to technical issues, Commissioner Johnson's and Walker's votes were inaudible in the Board Room, but audible over the Zoom feed.

5. **Public Comment** – There was one speaker. Paola Laverde spoke about the Empty Homes Tax.
6. **SPECIAL PRESENTATION:** *Tenant Power Tool Kit* by Rene Moya, Debt Collective – Continued to the regular March meeting due to technical issues.
7. **SPECIAL PRESENTATION:** *Empty Homes Tax Ordinance* by Lief Bursell, Rent Board Senior Planner – Senior Planner Lief Bursell presented and took questions from the Board.
8. **CONSENT ITEMS**
 - a. Approval of the December 21, 2023 regular meeting minutes
 - b. Approval of the January 18, 2024 regular meeting minutes
 - c. Proposal to approve staff recommendations on the following requests for waivers of late registration penalties (Executive Director/Registration Unit Manager)

Ministerial Waivers

Property Address

40 HILL RD
1632 STUART
2205, 2207, AND 2209 CURTIS
1600 KAINS
2301 8TH ST
2706 TELEGRAPH
2709 MCGEE
1708 MLK #5
1105 KEITH
2447 DERBY
2012 GRANT
2919 HARPER
2304 DERBY
3216 BOISE

Discretionary Waivers

Waiver No. Property Address

W5110 2326 10TH ST

W5111 1636 MILVIA
W5114 2224 GRANT
W5116 2647 STUART

M/S/C (Kelley/Alpert) APPROVE ALL CONSENT ITEMS AS WRITTEN. Roll call vote. YES: Alpert, Elgstrand, Johnson, Kelley, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Marrero.
Carried: 8-0-0-1.

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 – There were no speakers.

a. Chair Update (Chair Simon-Weisberg)

(1) Recommendation to adopt 2024 Committee Assignments

M/S/C (Kelley/Alpert) ADOPT THE 2024 COMMITTEE ASSIGNMENTS AS WRITTEN. Roll call vote. YES: Alpert, Elgstrand, Johnson, Kelley, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Marrero. Carried: 8-0-0-1.

(2) Presentation on the Status of the City of Berkeley Demolition Ordinance (Lief Bursell, Senior Planner) – Senior Planner Lief Bursell presented and took questions from the Board. No action was taken.

b. Recommendation to adopt Resolution 24-03 amending the Rent Board Staffing Model (Executive Director)

M/S/C (Alpert/Walker) MOTION TO ADOPT RESOLUTION 24-03 AS WRITTEN PENDING THE EXECUTIVE DIRECTOR’S ENGAGEMENT WITH THE HUMAN RESOURCES DEPARTMENT AND RELEVANT LABOR UNION/S TO ADD THE ADMINISTRATIVE STAFF ASSISTANT CLASSIFICATION TO THE CIVIL SERVICE SYSTEM, AND ADDITIONAL MEET AND CONFER WITH THE RELEVANT LABOR UNION/S REGARDING CHANGES TO THE PUBLIC INFORMATION UNIT’S STAFFING MODEL. Roll call vote. YES: Alpert, Elgstrand, Johnson*, Kelley, Martinac, Mizell, Walker*, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Marrero. Carried: 8-0-0-1.

*Due to technical issues, Commissioner Johnson’s and Walker’s votes were inaudible. Once the issues were resolved, the Board voted as shown below to allow Commissioners Johnson and Walker to cast their votes.

M/S/C (Alpert/Martinac) ALLOW COMMISSIONERS JOHNSON AND WALKER TO CAST THEIR VOTES FOR ITEM 9.b. Roll call vote.
YES: Alpert, Elgstrand, Johnson, Kelley, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Marrero. Carried: 8-0-0-1.

- c. Recommendation to adopt Resolution 24-04 amending the Rent Board's Records Retention Schedule (Executive Director)

M/S/C (Kelley/Elgstrand) MOTION TO APPROVE RESOLUTION 24-04 AS WRITTEN. Roll call vote. YES: Alpert, Elgstrand, Johnson, Kelley, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Marrero. Carried: 8-0-0-1.

10. INFORMATION, ANNOUNCEMENTS AND ARTICLES/MEDIA

from Board Members, Committees, Executive Director or Staff

- a. Copy of January 19, 2024 letter to U.C. Berkeley Chancellor Christ and U.C. Berkeley Police Department Chief Pittman regarding People's Park police occupation (Commissioner Mizell)
- b. Eviction Moratorium update – *Verbal* (Public Information Unit Manager)
- c. Update on the Rent Board File Scanning Project – *Verbal* (Project Manager Basil Lecky)
- d. Update on the Rent Board office move to 2000 Center Street – *Verbal* (Executive Director/Board Secretary)
- e. Deadline to submit agenda items/topics for March's regular Rent Board meeting: **Monday, March 11th by 5:00 p.m.** (Board Secretary)

11. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

- a. Budget & Personnel Committee (Commissioner Walker, Chair)
Next regularly-scheduled meeting: Friday, February 23rd at 11:00 a.m.

February 8th agenda
- b. Environmental Sustainability Committee (Commissioner Martinac, Chair)
Next regularly-scheduled meeting date: Wednesday, April 3rd at 6:00 p.m.
- c. Eviction/Section 8/Foreclosure Committee (Commissioner Elgstrand, Chair) –
Committee Chair Elgstrand reported that the Committee received a presentation from the Executive Director of the Berkeley Housing Authority.
Next regularly-scheduled meeting: Tuesday, February 13th at 6:00 p.m.

February 13th agenda

- d. Legislation, IRA/AGA & Registration Committee (LIRA Committee)
(Commissioner Kelley, Chair) – Committee Chair Kelley announced that the Committee will be reconvening now that the Ad Hoc Committee to Consider Rent Ordinance Amendments has completed its work.
Next regularly-scheduled meeting: To Be Announced (TBA)
 - e. Outreach Committee (Vice-Chair Alpert, Chair)
Next regularly-scheduled meeting: Tuesday, February 20th at 6:00 p.m.
 - f. 4 x 4 Joint Task Force Committee on Housing: City Council/Rent Board –
(Mayor Arreguín and Chair Simon-Weisberg, Co-Chairs)
Next regularly-scheduled meeting: TBA
 - g. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District
(Commissioner Marrero) –
Next meeting date: Monday, March 11th at 5:30 p.m.
 - h. Ad Hoc Committee to Consider Rent Ordinance Amendments at the 2024 November General Election (Commissioner Johnson, Chair)
Next meeting date: TBA
 - i. Updates and Announcements – Vice-Chair Alpert raised an issue with non-native PDFs in agenda packets. The Board Secretary will look into whether the paperless agenda policy addresses the issue and report back to the LIRA Committee.
 - j. Discussion of items for possible placement on future agenda – The Board Secretary mentioned the possibility of Berkeley Community Media and the BUSD IT Director presenting on the ongoing Board Room technology issues to update the Board on measures taken to mitigate these disruptions.
- 12. ADJOURNMENT** – M/S/C (Simon-Weisberg/Alpert) ADJOURN THE MEETING.
Roll call vote. YES: Alpert, Elgstrand, Johnson, Kelley, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Marrero. Carried: 8-0-0-1.

The meeting adjourned at 11:38 p.m.



Rent Stabilization Board

DATE: March 21, 2024
TO: Honorable Members of the Berkeley Rent Stabilization Board
FROM: Commissioner Vanessa Marrero
SUBJECT: Request for stipend deduction reimbursement for missed committee meeting(s)

I was absent from the Outreach Committee meeting on January 8, 2024, due to admittance to hospital with no means to communicate. I am requesting that the Board authorize staff to restore the corresponding amount deducted from my stipend for this absence.

Thank you.



**FY 2025 Registration
Fee Discussion**

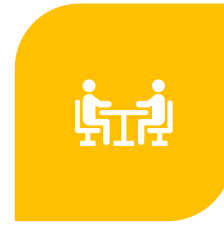
Core Rent Board Services



PUBLIC INFO
UNIT



LEGAL



HEARINGS &
MEDIATIONS



REGISTRATION &
RENT CEILING
RECORDS



FINANCE



PLANNING AND
ADMINISTRATION

FY 2024

Budget Deficit

- Adopted Revenues =
\$6,965,000
- Adopted Expenditures =
\$7,506,000
- Adopted FY24 Budget Deficit =
(\$541,000)

FY 2025 Baseline Revenue Requirements

- \$7,356,000 Registration Revenue Required to cover baseline expenditures
- **Approx. -\$331,000 budget deficit at current fee levels**
- \$310 Fully-Covered & \$190 Measure MM Fee required to cover baseline expenditures
- Targeting 16% Reserve as best practice
- Approx. 19,500 fully covered and 5,000 partially covered units

Rent Board Reserve Policy

- Target to maintain funds to cover 2 months of operations
- This equals 16% of expenditures
- Board's policy: Target 16%



Additional Unit Types



- Affordable Housing MM
586 Units @ \$53 unit = \$31,058 of Revenue
- Summer Fraternity & Sorority Rental
601 Units @ \$96 unit = \$57,696 of Revenue

Considerations for Setting the FY 2024/25 Fees

Closing Budget Deficit

Targeting the 16% Reserve Level

Returning to “Pay as you go” strategy

Anticipated Legal Costs

Increasing Capacity

BASELINE Expenditures

Expenditure	Projected Cost	Fully-Covered	MM	Total Fully Covered	Total MM
Baseline Expenditures	\$7,356,000	+\$20	+12	\$310 per unit	\$190 per unit
Reserve Options				Baseline	
Target 16% Reserve	\$1,168,000	+0	+0	\$310 per unit	\$190 per unit

Above Baseline – Fee Increase

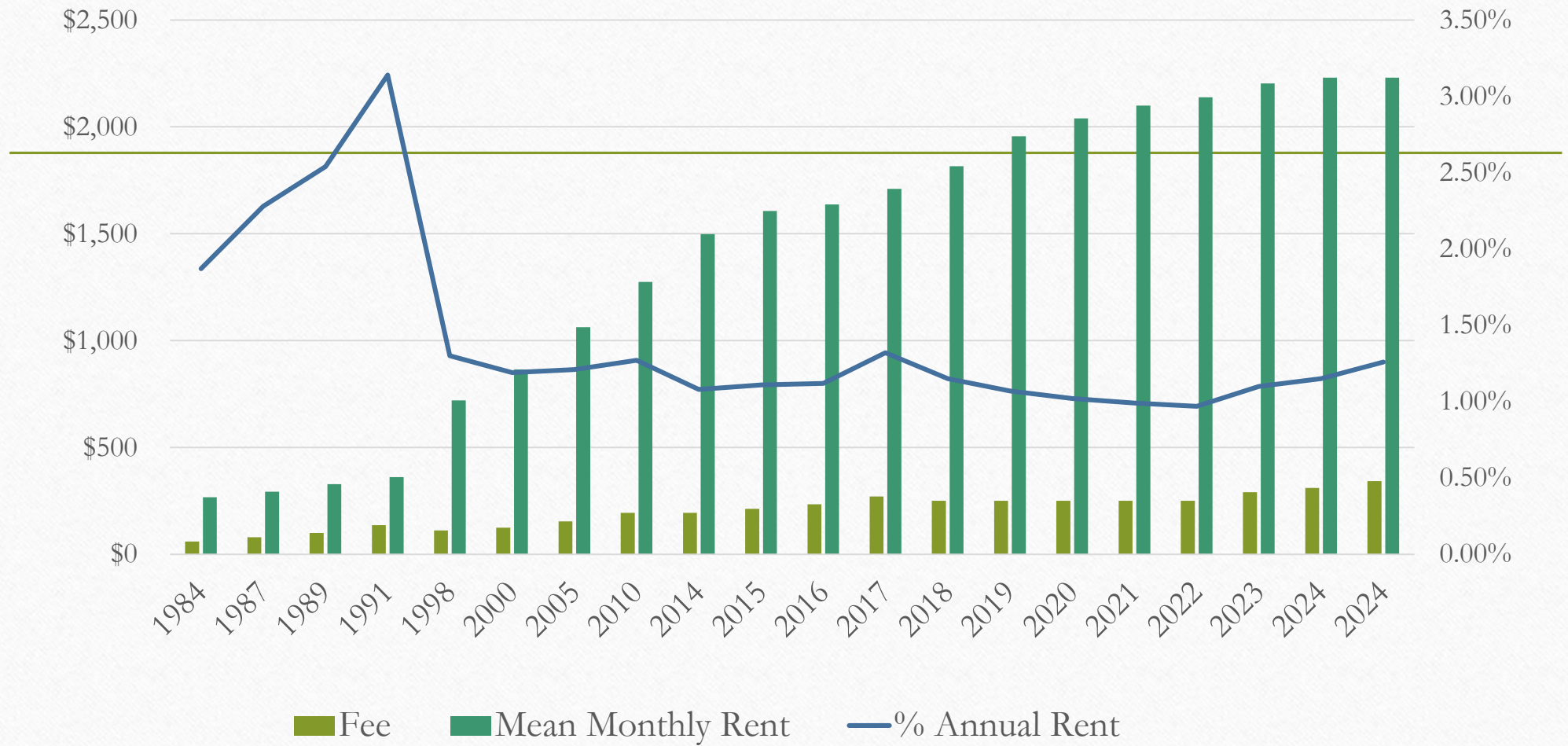
Adding Staff Capacity

Expenditure	Projected Cost	Fully-Covered	MM	Total Fully Covered	Total MM
Admin Support Staff (Baseline)	\$170,000	+\$7	+\$5	\$317 per unit	\$195 per unit
Policy Director (Baseline)	\$260,000	+\$11	+7	\$328 per unit	\$202 per unit
Digital Media Coord. (Baseline)	\$223,000	+10	+6	\$338 per unit	\$208 per unit

Planning For Additional Expenditures

Expenditure	Projected Cost	Fully-Covered	MM	Total Fully Covered	Total MM
Legal/Contingency Funding					
Anticipated Costs	\$100,000	+\$4	+\$3	\$342 per unit	\$211 per unit
OR					
Anticipated Costs	\$150,000	+\$6	+\$4	\$344 per unit	\$212 per unit

Fee as % of Annual Avg. (Mean) Rent



Registration Fee as Percentage of Annual Rental Since 1998

(Range of 0.97% to 1.32%)

Registration Year	Fully-Covered Unit Fee	Mean Monthly Rent (start of year)	% of Annual Rent
1998	\$112	\$720	1.30%
2000	\$124	\$865	1.19%
2005	\$154	\$1,062	1.21%
2010	\$194	\$1,274	1.27%
2014	\$194	\$1,498	1.08%
2015	\$213	\$1,606	1.11%
2016	\$234	\$1,637	1.12%
2017	\$270 (Incl. \$20 one-time Fee)	\$1,710	1.32%
2018	\$250	\$1,816	1.15%
2019	\$250	\$1,956	1.07%
2020	\$250	\$2,039	1.02%
2021	\$250	\$2,100	0.99%
2022	\$250	\$2,138	0.97%
2023	\$250	\$2,203	1.10%
2024	\$310	\$2,230	1.15%
2024	\$342	\$2,230	01.26%

Fee Range Using % of Annual Rent as a Guide

- \$2,230 average (mean) 2024 rent per month as of February 2024
- Reg. Fee in range of 0.97% and 1.32%* since 1998
- 0.97% to 1.32% = \$251 to \$341
- Post Costa Hawkins – Base Reg. Fee in range of 0.97% to 1.27%
- Reached 1.32% with one-time \$20 fee for RTS (Base fee was 1.22% & one-time RTS fee 0.10%)
- 1.15% to 1.27% = a fee range of \$310 to \$344

Measure MM

or Partially Covered Units

- January 2024 average MM unit rent = \$3,567 would be .49% at \$211 per unit
- Measure MM revenue is approx. 12-14% of Revenue
- MM = 18% of total units and 20% of registered units

Registration Year	Measure MM Unit Fee	Mean Monthly Rent (start of year)	% of Annual Rent
2021	\$100	\$3,461	0.24%
2022	\$150	\$3,229	0.39%
2023	\$178	\$3,392	0.43%
2024	\$211	\$3,567	0.49%

Timeline for Adopting the FY 2025 Fee



March 21, 2024

- Public Hearing on Fee Increase
- Board take action on setting the fee levels for FY 2025


April 15, 2024

- Adopted fees are implemented for the FY2025 Registration period

Budget & Personnel Committee Recommendation

- Set Fully-Covered Fee at \$342 for FY 2025
- Set Measure MM Fee at \$211 for FY 2025
- Maintain 16% reserve level
- Increase Staff Capacity

QUESTIONS/COMMENTS



Residential Dwelling Demolition Application Update

Projects involving demolition of
Rent-Controlled Dwellings

Updated for March 21, 2024



Demo Project Updates March 21, 2024

1330 Haskell Street (2 Units)

- Previous “Golden Duplex”, never under rent-control
- Not “Protected Units”
- No replacement BMR Units
- Approved by ZAB on 2/22/2024

2427-2433 San Pablo Ave. (8 Units)

- Two fourplexes on adjacent lots
- Two rent-controlled units, six in Section 8 Program
- All “Protected Units”
- All proposed with replacement BMR Units
- Application complete – ZAB in May or June

2022-2024 Development Applications Proposing Demolition of Residential Units

Project Status <i>(As of 12/15/23)</i>	# Projects	Existing Units	Tenant Occupied	# BMR Units	Net Gain/Loss
ZAB Approved	5	32	13	24	-8
App. Complete	3	24	22	21	-3
Under Review	2	18	0	63	+45
Pre-Application	2	9	7	14	+5
Total	12	83	42	122	+39

Questions





Rent Stabilization Board

DATE: March 21, 2024
 TO: Honorable Members of the Rent Stabilization Board
 FROM: Lief Bursell, Senior Planner
 SUBJECT: Status Update on Berkeley Demolition Ordinance Applications

Residential Dwelling Unit Demolition Application Update

At the request of Rent Board Chairperson Simon-Weisberg, staff has compiled an update on development applications proposing the demolition residential dwelling units with information on whether the projects are proposing one-to-one replacement of rent-controlled units with new below-market-rate (BMR) units.

Beginning in calendar year 2022, there have been twelve development applications that propose the demolition of existing buildings that contain residential units, ten of which have existing residential units that have been subject to rent control. These applications propose the removal of a total of eighty-three residential units, forty-two of which were occupied by tenants at the time Rent Board staff reviewed the application. The only application status change that the project at 1330 Haskell Street (involving the demolition of a former golden duplex with no tenant rental history) was approved by, and the project at 2427-33 San Pablo Avenue changed from “under review” to “complete”. As of March 15, 2024, there are no new demolition projects to report.

Project Status (As of 12/15/23)	# Projects	# Existing Units	Tenant Occupied	# BMR Units	Net Gain/Loss
ZAB Approved	5	32	13	24	-8
App. Complete	2	13	13	11	-2
Under Review	3	26	8	71	+45
Pre-Application	2	12	8	16	+4
Total	12	83	42	122	+39

Overall, if these projects all are approved and moved forward to construction, they would result in a net gain of thirty-nine BMR units (beyond the for-one replacement of a BMR unit for each existing residential unit).

Attachments:

1) Residential Demolition 3-21-2024 Project Information

Name and Telephone Number of Contact Person:

Lief Bursell, Senior Planner (510) 981-7368

Attachment 1.

Application Date	Project Address	Application Type	Application Status	Project Description	# Existing Residential Units Proposed for Demolition	# Tenant Occupied Units	# Replacement Units	One to One Replacement with BMR?	Total BMR Units	Council District
8/4/2023	1330 Haskell St.	Use Permit	Approved by ZAB (2/22/2024)	Construct two detached units in place of existing duplex.	2	0	0 BMR	No	0	2
6/22/2023	2733 San Pablo Ave	Use Permit	Application under review	Construct a new 8-story mixed-use building with 152 dwelling units	2	0	2 BMR	Yes	16	2
5/20/2023	1790 University Ave	Use Permit	Application Complete (12/6/2023)	Construct a five-story mixed-use building containing 17 dwelling units and ground floor commercial space.	1	1	1 BMR	Yes	2	4
4/26/2023	2127-59 Dwight Way	Use Permit	Approved by ZAB (11/30/2023)	Construct a six-story multi-family building, with 58 new dwelling units	8	5	7 BMR	No	7	4
2/10/2023	2300-10 Ellsworth St.	Use Permit	Application Complete (9/21/2023)	Construct a seven-story residential building with 69 units.	12	12	9 BMR	No	9	7
1/23/2023	2601 San Pablo Avenue (1110-12 Parker and 2609 San Pablo)	SB 330 Pre-App	SB 330 Preliminary Application Complete (12/5/2023)	Merge six parcels and construct an eight-story mixed-use residential development with 242 dwelling units	4	2	4 BMR	Yes	4	2
12/2/2022	3030 Telegraph (aka 2330-36 Webster)	Use Permit	Approved by ZAB on 6/08	Construct 5-Story mixed-use building with 144 dwellings	4	0	4 BMR	Yes	8	8
11/14/2022	2538 Durant	Use Permit	Approved on consent by ZAB on 4/27/2023	Demolish 12 dwelling units & develop an eight-story residential building with 83 units	12	8	6 BMR	No	6	7
10/20/2022	2138 Center Street (aka 2128 Oxford)	Use Permit	Application under review	Merge two lots to construct a 17 story mixed-used building with 485 dwelling	16	0	16 BMR	Yes	47	4
9/22/2022	2427-33 San Pablo Avenue	Use Permit	Application Complete (2/6/2024)	Construct a five-residential replacement apartment units and Group Living Accomodation (GLA) with 77 private rooms	8	8	8 BMR	Yes	8	2
5/10/2022	1827 & 1899 Oxford	SB 330 Pre-App	SB 330 Preliminary Application Under Review	Construct 118 new dwellings with 12 BMR	8	6	8 BMR	Yes	12	6
5/10/2022	1773 Oxford	Use Permit	Approved by ZAB on 1/12/2023	Demolish six units and develop a five-story residential building with 22 units	6	0	3 BMR	No	3	6

The Failure of For-Profit Affordable Housing and How Tenants are Organizing for Change

Michael Trujillo, Liren Ma, and Lily Braunstein
East Bay Community Law Center

Chris Schildt and Matt Renfro
Urban Habitat

March 2024



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Housing
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Human
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Photo credit: Matt Renfro

Executive Summary

Across the Bay Area, residents need abundant, affordable housing. But for decades, federal policymakers have stripped funding for affordable housing, leaving private market programs such as the Low-Income Housing Tax Credit (LIHTC) as one of the few options available. The consequences of relying on this market-driven approach to affordable housing are clear and concerning: scarce public resources going to investor profits; fewer dollars for capital-starved mission-driven organizations; and unaffordable, unstable, and unhealthy homes for our lowest income community members. As the state and the Bay Area are poised to commit billions in desperately-needed new funding for affordable housing, policymakers must act to rein in corporate profiteers by increasing accountability that ensures affordable housing with dignity for all.

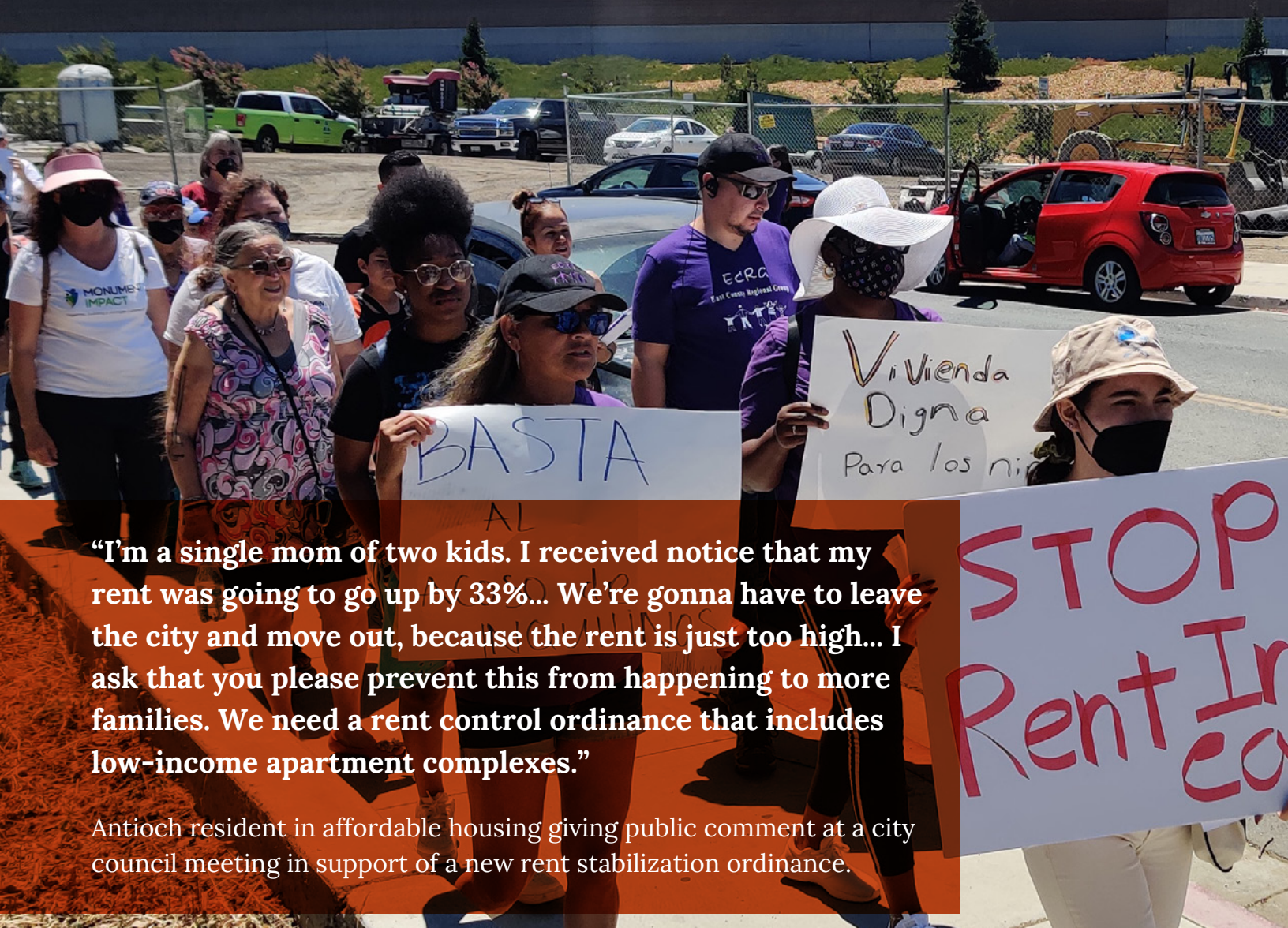
Report highlights

Many affordable housing residents have profit-seeking landlords. In the Bay Area, nearly half of homes that receive LIHTC allocations are owned by for-profit corporations or nonprofits with for-profit characteristics. Section One of this report describes how for-profit actors benefit from public programs to provide affordable housing, at the expense of the residents.

Low-income renters in affordable housing often have fewer rights and protections than renters who live in rent-regulated, unsubsidized housing, due to exemptions in local and state tenant protection laws, lack of regulations, and lax enforcement. Section Two of this report describes the experiences of tenants in terms of rents, evictions and management relations, maintenance and safety, and accessibility.

Tenants are organizing for change — and winning. Section Three of this report looks at three strategies tenants are using to take on their profit-seeking landlords: forming tenant unions, winning stronger tenant protections, and advancing community-controlled models of housing.

State and local policymakers can support tenants to ensure truly affordable housing with dignity. Section Four outlines policy recommendations at the state and local level to close loopholes in tenant protections, strengthen tenant organizing, and increase transparency. Additional recommendations include creating and enforcing stronger regulations, and redirecting scarce public dollars from greedy profiteers towards mission-driven affordable housing providers.



“I’m a single mom of two kids. I received notice that my rent was going to go up by 33%... We’re gonna have to leave the city and move out, because the rent is just too high... I ask that you please prevent this from happening to more families. We need a rent control ordinance that includes low-income apartment complexes.”

Antioch resident in affordable housing giving public comment at a city council meeting in support of a new rent stabilization ordinance.

Photo credit: Chris Schildt

Introduction

On August 25, 2022, over one hundred renters and supporters filled the Antioch city council chambers. Over the course of several hours, low-income renters living primarily in affordable housing complexes shared their stories of large rent increases, rodent infestations, mold and maintenance issues, harassment by management staff, and more. At the end of the evening, the city council narrowly approved a rent stabilization ordinance, on a 3-2 vote.¹ Affordable housing tenants finally had protections from exorbitant rent increases.

This victory was years in the making. In early 2021, the East County Regional Group (now Rising Juntos) launched *Antioch CHANGE: A Community Housing Assessment of Needs, Gaps, Equity* to uncover residents’ challenges and desires for

housing stability.² In just three months, community leaders interviewed over 1,000 Antioch residents to document their experiences and build power for housing stability. Their findings revealed extreme housing cost burden, instability, unhealthy conditions, and disparities among low-income Black and Latino families. Antioch residents needed tenant protections urgently. Led by residents most impacted by these housing insecurities, organizers with Rising Juntos, ACCE, Monument Impact, and Faith Alliance for a Moral Economy launched a campaign to pass citywide tenant protections, starting with rent stabilization.

Many of the resident leaders in the campaign lived in an affordable housing apartment complex called Casa Blanca. In early summer 2022, they received notices of rent increases of \$300-500 per month, to take effect in just 60 days. They quickly heard that many of their neighbors had received similar notices, as had residents in a second affordable housing apartment complex called Delta Pines. These two buildings had one thing in common — they were both owned by a Santa Monica-based, for-profit investor: Levy Affiliates.

Casa Blanca and Delta Pines apartment complexes are low-slung buildings built in the 1960s and 70s with a combined total of over 300 units. The apartments had been converted to

affordable housing in the late 1990s, when they were purchased using a federal program called Low-Income Housing Tax Credits, or LIHTC. In 2016, Levy Affiliates was awarded \$20 million in federal tax credits to purchase these properties and rehabilitate them. But the repairs never came. Tenants in both buildings have continued to experience mold, broken heaters, peeled floors, plumbing failures, and more.

In 2022, Levy Affiliates gave notice to raise rents by 30% or more to about 150 tenants across these two buildings.³ Because the new rents were below the maximum rents for LIHTC buildings, the increases were allowable according to the California Tax Credit Allocation Committee, which regulates LIHTC buildings in California.⁴ And because these are affordable housing units, they were exempt from the state rent cap law, AB 1482, which limits how much landlords can raise rents. Ironically, Levy Affiliates could raise the rent so dramatically in part because the tenants were living in affordable housing.

The tenants were able to beat back the rent increases through powerful organizing: tenant meetings, street rallies and protests, testimonies at city council, and telling their story to the media. But without a city-wide rent stabilization ordinance that applied to affordable housing, residents knew it

was just a matter of time before Levy Affiliates tried to raise their rents again. So they took their struggle to the city council and won city-wide rent control in the Fall of 2022.

The experience of these Antioch tenants raises two concerns that should be alarming for all who care about affordable housing in California. First, it reveals the reality that many low-income residents who live in affordable housing have landlords who are driven by profits and not by a social mission. Nearly half of Bay Area affordable housing units that receive LIHTC allocations — 48% — are owned by entities that do not meet criteria established by the California Housing Partnership for being stable and mission driven. This includes for-profit controlled entities and nonprofits without dedicated professional housing staff capacity to adequately maintain their portfolios or for whom providing affordable housing is not their primary mission.⁵

Profit-seeking actors use public programs such as LIHTC to generate profit for themselves and their investors at the expense of the tenants forced to live in poor housing conditions. A growing body of evidence shows that for-profit landlords use predatory practices to squeeze profits out of buildings

by underinvesting in maintenance, skimping on management, maximizing rents, and finding ways to charge new fees and penalties.⁶ In addition to Levy Affiliates, other for-profit corporations such as Blackstone Inc. and KDF Communities have received recent attention for rent increases, evictions, and maintenance complaints in their affordable housing developments.⁷

Profit-seeking entities are also much more likely to convert affordable housing to market rate at the end of their rent affordability terms.⁸

The second concern is that under California state law, low-income tenants living in subsidized housing often have fewer rights and protections than renters living in rent-regulated, unsubsidized housing. This is because many state and local governments exempt affordable housing from their regulations and ordinances, falsely assuming that existing federal regulations provide stronger protections for these tenants. But federal affordable housing laws protecting tenants are often vague, poorly understood, and inadequately enforced. The impact of this is that low-income tenants are under-protected, allowing predatory landlords to exploit these loopholes to maximize their profits at these tenants' expense.



Photo credit: Chris Schildt

This urgent issue impacts more than a million low-income residents across California, especially people of color, disabled people, and seniors. There are over 500,000 affordable housing units across the state, 80% of which have received LIHTC allocations.⁹ The median income for households living in LIHTC units is \$22,000, barely above the federal poverty line for a 2-person household. More than 11 percent of residents have a disability and 30 percent are over the age of 62. Nearly 20 percent of residents are Black, in a state where less than 6 percent of the population is Black.¹⁰

As the tenants in Antioch have demonstrated, tenants are organizing for change — and winning. This report centers the experiences of low-income renters living in affordable housing and their leadership in building a movement for housing justice. We hope this report will address the failures of profit-seeking actors and chart a path forward to provide affordable, dignified, accessible housing for all.



Photo credit: Chris Schildt

Section 1

Corporate Exploitation: How Corporations Profit from Public Affordable Housing Funds

Since 1974, the federal government has shifted away from directly funding public housing that is owned and operated by a Public Housing Authority, towards market-based affordable housing, owned and operated by private companies, both nonprofit and for-profit.¹¹ The LIHTC program is now the largest source of funding for affordable housing today, costing the government an average of \$13.5 billion each year in tax credits for acquisition, rehabilitation, and new construction of affordable rental housing.¹² LIHTC provides private companies with public subsidies in the form of a reduced tax burden in exchange for capital for rental housing where the rents are set below market rate (though oftentimes still far higher than what the renters can afford, as explained below).

In the Bay Area, 85% of all state and federally-subsidized affordable rental properties use LIHTC — over 105,000 homes in total.¹³

Proponents of low-income housing tax credits say they are premised on the idea of a win-win-win for investors, affordable housing developers, and low-income tenants alike. But recent trends in the sector have increasingly turned the tables against tenants.

Too often, the LIHTC program has allowed profit-seeking investors to enrich themselves at the expense of low-income tenants.¹⁴ Because LIHTC is premised on generating funds for housing development through the

sale of tax credits, investing in LIHTC properties has turned into a lucrative business. These tax credits, which investors use to offset their liabilities, coupled with a dearth of monitoring mechanisms, have effectively made the LIHTC program a corporate tax shelter that attracts exorbitantly wealthy and powerful corporations as partners.¹⁵ The primary goal of these for-profit developers, syndicators, and investors is to maximize their profit while limiting their costs.¹⁶ Consequently, tenants' rights and interests — including affordability, habitability, and accessibility — are subordinated and neglected.

How LIHTC works: a brief primer

Established in 1986, the Low-Income Housing Tax Credit program (LIHTC) offers tax benefits in exchange for capital to construct or rehabilitate affordable housing.¹⁷ These benefits include tax credits and other tax deductions for private investors. Unlike other subsidized housing programs, LIHTC is administered by the Internal Revenue Service, not by the Department of Housing and Urban Development (HUD). As such, the LIHTC program differs from HUD programs like Section 8, where rent is based on the tenant's income.¹⁸

Instead, the LIHTC program sets rents according to formulas based on specified percentages of the area median income (AMI), which is the average family income in a geographic area.¹⁹ Consequently, LIHTC housing may not be affordable to some low-income tenants, because their actual incomes may be less than the target income for their unit. For example, a unit with rents set to be affordable to those earning 50% of AMI will be relatively less affordable to a tenant who only earns 40% of AMI because the rent will be a larger share of their

actual household income. Using a formula that sets rents based on AMI also means that, unless supplemented with project-based Section 8 or other rent or operating subsidies, LIHTC alone does not provide enough subsidy to support more than a few extremely low income units in a property.

In California, the federal and state LIHTC programs are administered by The California Tax Credit Allocation Committee (CTCAC). CTCAC awards tax credits to private developers and oversees a project during the entire time the project must remain in the program, i.e., the “extended use period,” which is 55 years in California.²⁰ The private developers who receive the tax credits subsequently obtain funding to build or rehabilitate housing by selling these tax credits to private investors. The investors can then claim the tax credits over a ten year period. Credits claimed are then subject to recapture for another five years. This 15-year period is known as the “compliance period.”

Federal law requires state administering agencies to create a Qualified Allocation Plan (QAP) that

establishes eligibility criteria, priorities, and policies and procedures for awarding tax credits and monitoring/evaluating compliance during the extended use period.²¹ The QAP in California is the code of state regulations that CTCAC maintains and enforces.²² The QAP must set preferences for projects that serve the lowest income tenants for the longest period and those in certain priority areas, which is intended to create competition among prospective developers based on how well projects will perform on these characteristics.²³ This is why it is in developers’ best interest to structure projects and how they are financed to target the lowest income tenants possible.

Because the QAP also must set selection criteria based on local conditions and create procedures for monitoring noncompliance, CTCAC and other state administering agencies have broad discretion to set policies impacting LIHTC tenants.²⁴ The 55-year extended use period is one example of how CTCAC has used its authority to set policy in the QAP — under federal law, this period is only 30 years.²⁵



Photo credit: Matt Renfro

How developers profit from LIHTC

Nationally, roughly 80% of LIHTC developers are for-profit institutions.²⁶ In the Bay Area, roughly half of LIHTC homes are owned by profit-seeking actors, including for-profit corporations and nonprofits that demonstrate for-profit characteristics.²⁷

LIHTC investors benefit by receiving not only the tax credits themselves, but also depreciation deductions and other tax benefits that result from investing in low-income housing projects.²⁸ Although any accredited investor can purchase low-income housing tax credits, the share of individual investors who participate in LIHTC has been declining overall, as certain deductions for this passive investment

activity are limited for individuals.²⁹ Thus, corporations constitute a growing majority of investors. In particular, banks and other financial institutions are increasingly purchasing low-income housing tax credits, since they gain an additional benefit: investing in LIHTC contributes to their community investment and lending requirements under the Community Reinvestment Act.³⁰ As a result, LIHTC-related investments are competing with investments in other community needs targeted by the Community Reinvestment Act, such as countering redlining and addressing the credit needs of low-income communities.³¹

In recent years the number of low-income housing units in production

has decreased, despite an increase in the number of tax credits awarded.³² The inflation of hard costs such as construction, operating expenses, and resident services have contributed to this trend, but structural features of the LIHTC program have also created inefficiencies. For example, recent federal tax cuts have made LIHTC credits less valuable as a means to offset corporate tax liabilities, which means that each credit raises relatively less revenue than it could have under previous rates.³³

Additionally, tax credits are usually not enough to finance the entirety of a LIHTC project, so developers must seek funding from multiple sources, making projects more expensive, longer, and more unpredictable to complete due to increased soft costs. These “soft costs” (costs that are outside of land and construction) generally range from 25-33% and include developer fees.³⁴ There is a concern that these fees are ballooning, contributing to the growing inefficiency of the LIHTC program.³⁵

Some researchers and commentators have emphasized the role of profit-seeking actors in driving up these costs.³⁶ For example, several for-profit LIHTC developers have been convicted of fraudulently increasing soft costs, and at least one state Housing Finance Authority has been

accused of supporting these schemes.³⁷ These incidents have contributed to the increasing skepticism regarding program oversight and curtailing profit-seeking behavior.

There are additional for-profit actors in the LIHTC industry that may contribute to escalating costs. Syndicators act as middlemen in the LIHTC sector, earning a profit by marketing, packaging, and in some cases, buying and reselling tax credits from affordable housing developers to institutional investors.³⁸ Although many states have set limits on syndicator fees, a 2018 audit of the LIHTC program by the Government Accountability Office found that syndication expenses are not adequately tracked.³⁹

Aggregators are for-profit actors that acquire a financial interest in — or otherwise gain leverage over — a LIHTC partnership to either force the developer to buy them out at a much higher price or to force the developer out altogether so that they can sell the property.⁴⁰ In California, CTCAC has limited the opportunity for aggregators to disrupt LIHTC buildings by effectively prohibiting the types of contracts that they use to assume control of the buildings — an example of the powerful impact CTCAC can have through its regulatory authority.⁴¹



Photo credit: Matt Renfro

These problems faced by LIHTC tenants are the result of gaps in existing LIHTC law, disparities between policy and practice, and general confusion arising from the complexity of the program. Profit-seeking actors have exploited these issues to enrich themselves and their investors, often at the expense of residents' best interests.

This section of the report sheds light on tenants' experiences living in LIHTC affordable housing, with a focus on four main areas: unaffordable rents and fees, lack of eviction protections and poor management relations, underfunded maintenance and security, and unmet accessibility needs.

Unaffordable rents and fees

“I moved in in 2016 paying a monthly rent of \$1,211 for a one bedroom. In the seven years I have lived [here] our rent has increased five times... I now pay nearly \$19,500 in annual rent compared to \$14,500 when I first moved in. For perspective, my gross annual income is approximately \$40,000. I recognize [this] is still below market rate for which I am grateful. Nevertheless, it is hard for seniors living on a fixed income to absorb these kinds of rent increases. Bottom line, affordable housing for seniors needs to remain affordable, but these types of rent increases are having the opposite effect.”

Resident, senior housing, Marin County

“It took me six and a half months of dealing with [this manager] to get them to put my rent back to where it was because they miscalculated... there was an abusive response telling me to go away to mind my own business when I was right.”

Resident, multifamily housing, Sonoma County

“There were all sorts of fees that we were charged... if you had a pet... if you wanted parking. We get charged a fee to pay rent, whether we paid it electronically. And then if you were late a day with the rent, you got hit with a \$200 fee... Most of those fees we’ve been able to get rolled back as a result of pushing back.”

Resident, senior housing, Marin County

“My rent was just changed by \$200. And I said, are you kidding me, is that illegal? That’s a big chunk out of my social security.”

Resident, multifamily housing, Sonoma County

Rents

Because the central purpose of the LIHTC program is to provide low-income housing, rent affordability is meant to be the main benefit for LIHTC tenants. The way that the LIHTC program tries to create affordability is by setting limits on how much rent can be charged for any given unit. This number, sometimes referred to as the “maximum gross rent limit,” depends on several factors, including the level of prosperity in the area (measured in terms of median income of households living in the region and referred to as Area Median Income or AMI), the size of the unit (measured in terms of number of bedrooms), and the affordability targets chosen by the LIHTC owner when applying for the program (which may depend on the availability of other forms of subsidy to further reduce rent limits).⁴³

This means that in general, tenants will pay less rent for a LIHTC unit than for a comparable non-LIHTC, market-rate unit in the same area. However, because LIHTC rents are based on the overall market and not on a tenant’s specific income, LIHTC units can still be unaffordable for many low-income tenants without additional subsidies, especially those with the lowest incomes in the region.⁴⁴

Table 1. LIHTC rents, by county

County	Rent for a 2-bedroom apartment at 60% AMI, 2023 (for projects placed into service after 2009)
Alameda	\$1,998
Contra Costa	\$1,998
Marin	\$2,517
Napa	\$1,803
San Francisco	\$2,517
San Mateo	\$2,517
Santa Clara	\$2,409
Solano	\$1,545
Sonoma	\$1,699

Rents are set based on a presumed household size that is calculated as the number of bedrooms times 1.5, but qualifying income limits are based on the household’s actual size.⁴⁵ For example, a 2-bedroom apartment targeted to a household of two at 50% of AMI will have its rent set at a rate that is approximately 30% of the income of a household earning 50% of AMI for a household of 3 persons (calculated as 2 bedrooms times 1.5 people per bedroom). A 4-person household that qualifies for this unit (whose actual income is higher than that of the presumed household size

because AMI increases with larger household size) will therefore pay less than 30% of their income for this unit, while a 2-person household with income at 50% AMI will pay more than 30% of their income.

In addition to rent, many residents in affordable housing are charged fees for parking, pets, access to facilities, and more. Sometimes these fees are illegal, but tenants are often unaware of the regulations and will pay them in order to keep their home.

The story of residents like those above – who are paying more for rent than they can afford – is not unique. Across California, 40% of LIHTC residents are housing cost-burdened, meaning they pay more than one-third of their income on rent.⁴⁶ This is possible because of the gap between incomes and maximum gross rent limits.

LIHTC rents are based on the overall AMI for a region, rather than the incomes of the low-income tenants actually occupying these units, which means that LIHTC rents tend to be significantly higher than what renters can afford. For example, in California, LIHTC residents' median household income was \$22,000 in 2021⁴⁷ – less than a third of the state-wide median household income of \$84,907.⁴⁸ In the Marin County building where the residents quoted above live, the



Photo credit: Chris Schildt

maximum rent limit for a 2-bedroom unit was as high as \$2,500 per month – totaling \$30,000 per year – in 2023.⁴⁹ Clearly there is a mismatch between the financial means of LIHTC tenants and how rents are set in LIHTC buildings.

Many tenants in LIHTC buildings rely on subsidies from other programs to make their rents truly affordable. Roughly 40% of all residents in LIHTC buildings receive additional rental assistance such as Section 8 Housing Choice Vouchers; for residents with extremely low-incomes (less than 30% AMI or roughly \$23,000 a year), nearly 70% rely on additional rental

assistance.⁵⁰ While these subsidies do reduce rent burdens for LIHTC tenants, conflicting policies can result in further confusion regarding tenants' rights and management compliance.⁵¹ Furthermore, many of these programs have long waiting lists and eligibility criteria that create additional hurdles for tenants in accessing truly affordable housing.

The layering of subsidies, which is often necessary to achieve deep

affordability in high-cost areas, is not a problem in itself – the issue is that the scarcity of these additional resources contributes to the unaffordability of LIHTC buildings. The consistent need for layered subsidies in LIHTC buildings also underscores the inefficiency of the program's current structure: LIHTC cannot achieve its primary goal of producing affordable housing without being propped up by significant additional resources.

Rent increases

California's Tenant Protection Act of 2019 (TPA) created a statewide rent cap that bars landlords from raising the rent by more than 10% total or 5% plus inflation – whichever is lower – over a 12-month period.⁵² However, the TPA specifically exempts all affordable housing, including LIHTC buildings.⁵³ This means that as long as the rent stays below the maximum gross rent limit, owners can raise it by as much as they want.⁵⁴ This can be especially problematic in situations where an area's median income skyrockets, such as in Marin County where the median income rose over 35% from 2017 to 2022,⁵⁵ since the gross rent limit is tied to AMI.

CTCAC's Section 42 LIHTC Lease Rider, which LIHTC owners are required to attach to all leases, even enshrines the

right of owners to increase the rent in accordance with increases to the LIHTC program's maximum gross rent limits.⁵⁶ LIHTC landlords can issue rent increases as frequently as they want (even multiple times per year), as long as they follow the proper rules for notifying tenants ahead of time.

Although local jurisdictions can legally pass rent control laws that cover LIHTC buildings, the reality is that most follow the lead of state law and categorically exempt all affordable housing.⁵⁷ A notable exception is Antioch's rent stabilization ordinance, described in this report's introduction, which was passed due to a major community-wide mobilization.



Photo credit: Gloria Matuszewski

Fighting Back Against Unaffordable Rents in Novato, California

The Villas at Hamilton Senior Apartments is a 128-unit community for residents 55 years and older that has been experiencing steep rent increases. Over the span of 19 years, from 2003 to 2022, residents experienced 14 rent increases.

Adam, a spokesperson for the Hamilton Tenants Association, shares that a new tenant today would pay upwards of \$1,750 per month for a studio apartment. This unaffordable rent poses a significant threat for low-income seniors who rely on a fixed income. Adam explains how “the problem is that the rents keep going up. And people on a fixed income have to keep cutting back on the basics. In a lot of cases people

are paying 50% of their income on rent, easily, in some cases higher. Housing becomes unaffordable, it becomes a hardship, and people are driven out... they have to start giving up very basic things. Transportation, medical appointments, grocery buying – it’s the fundamental things that start to go.”

Adam points to the LIHTC rent calculation formula as a point for major reform: “because the LIHTC formula is based on the median county income, and Marin is one of the most expensive median incomes in the country... that ends up making the formula and the rent increase prohibitively expensive.” Adam sympathizes with LIHTC’s goal of producing affordable housing.

“What they’re doing is they’re trying to incentivize developers to build affordable housing. Okay, great. I’m all for that.” However, Adam notes that the program does not guarantee long-term affordability. “They’re addressing half the problem — if affordable housing becomes unaffordable, then it doesn’t work to anybody’s advantage. And in this case, I think the benefit is going to end in 2032. So then what happens to us? Do we immediately go back to market rate? Well, then we’ll all be out of here.”

In 2016, tenants connected with Legal Aid of Marin, a local legal services organization. Together, they reviewed 2014 and 2015 rent increases, took the landlord to court, and won rent rollbacks for those increases. The court found that the landlord violated rent calculation policies and illegally raised rents. This was a major victory for tenants and organizers who would later start the building’s tenant association.

In 2019, the Hamilton Tenants Association, Marin Legal Aid, and the Marin Organizing Committee organized protests against another series of drastic rent increases. Tenants held demonstrations outside of Novato City Hall and secured meetings with elected officials in efforts to push the city to adopt substantive rent stabilization that covers LIHTC properties. While Novato

did not pass a strong rent stabilization ordinance that includes LIHTC properties, the Hamilton Tenants Association was successful in securing monthly meetings with building owner AHA and property manager VPM management. However, these meetings ceased once the pandemic hit.

Tenants in the Villas at Hamilton continue to fight the steep rent increases. However, Adam mentions how this has become increasingly difficult because he and other tenants must work multiple jobs to keep up with the rent increases, leaving little time for organizing.

In addition to the rent increases, Adam says that residents living in “affordable housing” for seniors have unique needs. “What we really need is a Geriatric Care Manager on staff who can help steer services to our residents, many of whom are disabled, cognitively impaired, shut-ins due to their medical condition, or too frail to care for themselves. But that’s not how the building is managed. It’s managed like any normal rental property — which clearly it isn’t. When our residents need help, they go to the property manager. But the property manager’s job description does not include providing this kind of care to tenants. As a result, many of our residents don’t know what to do or who to go to for help and are left floundering.”

Lack of eviction protections and poor management relations

“[all the notices] amount to harassment. It almost amounts to intimidation, something to bug you every day. And if you don’t do this, you might get put out – you know, evicted.”

Resident, senior housing, Alameda County

“I think everybody should be treated fairly. Because of the fact that it is mostly Black people in here, it seems like they just didn’t care.”

Resident, multifamily housing, Solano County

“They were trying to evict me, they were saying there was back rent that was over a year old, past due. This was during the pandemic... they don’t know what they’re doing. It’s so stressful living here. It’s a blessing, but it’s also just a high stress situation to always be on edge, to always have people in that office that never know what they’re doing completely and having to go back to their manager when my life is completely falling apart. This is further adding to my trauma.”

Resident, senior housing, Alameda County

“Being an elder these days is not an easy thing. When you get treated badly, it’s distressing. Their actions are punitive. There’s no recourse. I tried to follow their grievance procedure. Nothing.”

Resident, senior housing, Sonoma County

Evictions

Evictions are devastating for families and communities, causing worsening health outcomes, interrupted employment, and more. Evictions are not just caused by poverty, but are a primary driver of poverty.⁵⁸ For these reasons and many more, it would seem affordable housing programs would strive to reduce evictions for their residents. However, several national studies have found that residents in LIHTC buildings do not necessarily experience lower eviction rates, suggesting that existing protections are not sufficiently effective at preventing evictions.⁵⁹

Landlords of LIHTC units are required by the IRS to have “good cause” to evict a tenant.⁶⁰ “Good cause” for eviction means that landlords must provide a reason if they are attempting to evict a tenant.⁶¹ However, the specific reasons that are considered “good cause” are not well defined by the IRS. Instead, the agency has passed the buck, stating that “good cause” is defined by state and local laws.⁶²

In California, CTCAC’s Qualified Allocation Plan also fails to provide a clear definition of “good cause.” The state agency’s Compliance Manual, which is non-binding, defines good cause as “serious or repeated violations of a material term of the lease, as

that definition is applied with respect to federal public housing.”⁶³ Based on this definition, good cause will generally exist for: nonpayment of rent, serious violations of the lease or rental agreement, interference with other tenants, use of the property for unlawful purposes, and destruction or damage to the property.⁶⁴ However, CTCAC will generally not intervene in landlord/tenant disputes or eviction proceedings unless the landlord improperly notified the tenant by not providing a reason for the eviction. In these situations, CTCAC may require the landlord to reissue the eviction notice with a reason.⁶⁵

Since 2005, CTCAC has required that LIHTC owners attach a “good cause eviction rider” to leases so that LIHTC tenants are aware of their rights.⁶⁶ Failure to attach the eviction rider to leases can result in property owners receiving a finding of noncompliance with LIHTC program requirements.⁶⁷ However, our review of public documents revealed several instances in which the Good Cause Eviction Lease Rider was not provided to tenants. The report from one inspection details how a large number of tenant files reviewed were marked as non-compliant because they were missing, the Good Cause Eviction Lease Rider, among other documents.

Management relations

There are few specific requirements for how LIHTC properties are managed with respect to tenant engagement and communications. Federal regulations and the CTCAC Compliance Manual generally require that a property manager be available on-site and that they be properly trained to comply with all LIHTC-related regulations.⁶⁸

In addition to these LIHTC-specific requirements, all California tenants have a right to “quiet enjoyment” under the California Civil Code⁶⁹ and the implied covenant of quiet enjoyment.⁷⁰ This right prohibits landlords from taking actions that cause substantial interference to the tenant’s use and enjoyment of the rental unit for residential purposes.⁷¹ The interference must be more than a minor inconvenience or annoyance to be actionable, and harassment that includes threats or use of force that create apprehension of harm may carry a penalty of up to \$2,000

per violation.⁷² Other examples of actions that are considered tenant harassment under state law include forcing a tenant to leave through threats or menacing conduct, threatening to call immigration authorities or disclosing immigration information about the tenant, unlawfully entering the tenant’s unit without their consent, and removing the tenant’s property from the rental unit without their permission.⁷³

These rules and tenant protections, while important, leave a lot of discretion to management. As the interviews in this report illustrate, the dearth of specific obligations around tenant-management relations has a big impact on residents’ abilities to address concerns about the property or engage in productive dialogue with management. Too often, tenants’ voices are ignored or they are retaliated against by managers who face little to no consequences.

Underfunded maintenance and security

“Those children right there were playing at the basketball court, and somebody came by and started shooting. So you got a violent place, and you have security walking around wanting to tag people, cars and stuff. But they’re not taking care of the tenant’s safety”

Resident, multifamily housing, Solano County

“It’s false advertising talking about newly renovated, ain’t nothing newly renovated about these apartments because if it was you wouldn’t have all these cockroaches, beetle bugs, and fly roaches. You just wouldn’t have that.”

Resident, multifamily housing, Contra Costa County

“There was a toxic chemical leak in [my apartment]. I have six members of the fire department and two members from PG&E who came out with their gauges. The fire department said themselves, if it had not been for me having an air purifier in my bedroom, I probably would’ve been dead.”

Resident, senior housing, Alameda County

“Now we’re having trouble having coverage at night with maintenance emergencies. There was an instance when I heard water running from a hot water heater, in a room next to mine. It was about 10 o’clock at night. I called maintenance, he came around seven or eight in the morning. The guy that lives below me was really mad because it flooded down there and made a big mess because they wouldn’t come out.”

Resident, multifamily housing, Sonoma County

Habitability standards

Landlords are legally required to keep their rental units “habitable,” meaning that the units must be safe, sanitary, and generally fit to live in.⁷⁴ Habitability standards are essential for good health outcomes for residents by ensuring their homes are free of pests, rodents, mold, and other hazards. However, proper maintenance costs money. As for-profit actors buy up LIHTC properties, tenants we spoke with have experienced an increase in pests, flooding, and other hazardous conditions.

California has statewide laws that describe habitability requirements, and

many cities and towns within California have their own local ordinances that also regulate habitability. Federal LIHTC law allows each state agency to impose its own set of habitability standards for LIHTC buildings in that state.⁷⁵ For California, CTCAC has chosen to use HUD’s Uniform Physical Condition Standards (UPCS).⁷⁶ Although tenants have reported that property managers have some confusion around this issue, LIHTC buildings are required to follow both the habitability standards established by the state agency and the habitability laws of state and local governments.⁷⁷

Compliance monitoring

As part of its general duties to monitor compliance of LIHTC projects, CTCAC does periodic physical inspections of each LIHTC building.⁷⁸

Currently, CTCAC is supposed to inspect a portion of LIHTC units every three years.⁷⁹ In practice, only 10–20% of the units are inspected, depending on overall project size.⁸⁰ For new projects, inspections must be held by the end of the second calendar year following the year the last building in the project is placed in service. Inspections cover common areas,

grounds, and building exteriors in addition to the selected units.

Inspection results are sent to owners in a findings letter by CTCAC within 30 days of the inspection. Findings letters include an itemized list of noncompliance issues, as well as the date by which the owner must correct these issues. The owners must submit a response letter to CTCAC detailing how any instances of noncompliance will be resolved and set a timeframe to remedy issues — typically 30 days. Tenants are supposed to sign off on

documentation attesting that the issue has been corrected. There have been a few high-profile cases across the country of LIHTC owners being prosecuted for falsifying compliance.⁸¹

In addition, LIHTC property owners submit an annual owner certification to CTCAC. This documentation includes financial data and information determining if buildings and units are suitable for occupancy. If any violations or notices were issued, the owner must attach a statement summarizing the violation and state whether the issues have been corrected.

There are many reasons to doubt that CTCAC's compliance program effectively ensures LIHTC units are habitable. To start, one physical inspection of a LIHTC project every three years is far too infrequent. Furthermore, during these inspections, CTCAC inspects too few of the units (10-20% depending on building size, as explained above). For the units that go uninspected, CTCAC relies on the LIHTC owner to self-report housing code violations for CTCAC to even be aware of habitability issues.⁸²

In general, housing and habitability code violations are only filed in the most egregious cases; even if owners are accurately self-reporting, these reports are unlikely to capture the full extent of subpar habitability in a building.⁸³ Our review of CTCAC

inspection records throughout the Bay Area found that six of the nine buildings surveyed had not had an on-site inspection in the past four years.

Once CTCAC finds evidence of noncompliance, the agency gives LIHTC owners the opportunity to cure the noncompliance before issuing any consequences.⁸⁴ However, CTCAC has accepted statements from LIHTC owners that habitability issues were cured without verifying them via physical inspection. Additionally, during the first nine months of the COVID-19 pandemic, CTCAC exempted LIHTC properties from physical inspections monitoring habitability compliance, which threatened to further exacerbate pandemic-era conditions that made low-income communities especially vulnerable to poor living standards.

CTCAC's inspection program is even more suspect for buildings that have exited the initial 15-year compliance period. For buildings in the 40-year extended use period, CTCAC will only inspect projects once every five years, and it is only required to inspect 10% of the units in each.⁸⁵ Not only are LIHTC projects in the extended use period subject to less compliance monitoring, but also the owners have less incentive to care about compliance because the threat of withdrawing tax credits is gone, although TCAC still maintains the ability to fine owners for non-compliance.



Photo credit: Chris Schildt

Living with Flooding and Pests in Antioch, California

Before moving to Delta View apartments in Antioch, Celeste had been living in a homeless shelter while recovering from a car crash from which she was told she would never walk again. Celeste has been living in her current apartment for the past six years. For a majority of that time, she

has been forced to live in an apartment with severe habitability issues. When Celeste first moved into Delta View her bedroom flooded after a rainstorm that impacted all of her belongings in the room. However, management did little to repair the problem and prevent future damage. The next time it rained,

it flooded even more, drenching her entire apartment and impacting everything inside. In response, maintenance put down sandbags, which did little to prevent a third flood from damaging Celeste's apartment all over again.

But Celeste's apartment was not the only one to be flooded repeatedly. Last year, rains filled half of April's front room and her entire bedroom with water. When management finally decided to examine plumbing and drainage in the buildings, they did little to assist residents. Residents were forced to stay days in their flooded apartments as maintenance ripped out pipes, or seek refuge in a hotel paid for out of their own pockets. When April reported the damage to her renter's insurance company, management falsely claimed they repaired the damage within 24 hours, and the insurance company denied her any reimbursement.

Although April employs a strict cleaning regime, cockroaches, beetles, and other types of bugs infest the apartment complex and infiltrate her home. She does the best she can to prevent insects from coming into her home. She uses bleach to clean her cabinets and uses putty to plug up any crevices. She currently does not use her cabinets, keeping her dishes and

utensils in sealed crates. April stores paper plates and plastic utensils in the refrigerator to prevent them from being contaminated by insects. She describes how Delta View's grounds are poorly maintained, leaving them ripe for insects and other pests.

When Celeste and April have reached out to management to find a solution to the flooding and pest issues, they have been ignored, talked over, and dismissed. Celeste explains how most residents do not want to speak out, for fear of retaliation. However, both Celeste and April have been vocal advocates for tenants at Delta View and joined the community-based organization, Monument Impact, to fight for rent stabilization and anti-harassment policies.

April explains how Monument Impact helped create spaces where residents could share and discuss their issues. This organizing effort prompted April and other residents to write letters to the property management company FPI Management. April joined with other Delta View tenants and Monument Impact to speak in favor of a rent stabilization ordinance in the fall of 2022 that covered LIHTC properties. The ordinance passed, marking a major victory, due to the leadership of tenants such as April and Celeste.

Unmet accessibility needs

“Since the renovation, I can’t get into the bathroom. Because I am a disabled person, I feel that I’m just totally being neglected... any time if I misjudge using my hands as a lever of which I’m transferring, I’ve got another major fall on my hands.”

Resident, senior housing, Alameda County

“If the property’s going to be advertised to people 55 plus and bring in a lot of people of that age or much older, or even Section 8 people who could have disabilities, then you got to do more than just warehouse them. Got to be some kind of understanding or monitoring. We had a blackout here a couple years ago. We had people on the third floor, no elevators, second floor, no elevators, couldn’t get out, none of the doors could lock because the electronic system was off...I think the building needs to be managed to reflect the type of tenants it’s attracting rather than ignoring that aspect and just collecting the rent.”

Resident, senior housing, Marin County

“They made up all these rules about us doing certain things. Like they took the handicap ramps off... then, when something happened, a man was having a heart attack and the fire department couldn’t get in there because of that. I have friends who are on walkers, they can’t get in and out of this place.”

Resident, multifamily housing, Solano County

Many people with a disability qualify for LIHTC housing. Supplemental Security Income for seniors and people living with a disability is extremely low – a maximum of \$1,100 per month – keeping many people who rely on this assistance in desperate poverty. More than 11% of LIHTC households report at least one household member

with a disability. Additionally, roughly 30% of all LIHTC residents are older than 62. However, even though people with a disability and seniors make up a significant number of LIHTC residents, many struggle to have basic accommodation needs met in order to live independent, dignified lives.

A reasonable accommodation is a change to the building's rules, policies, services, or procedures that is necessary for someone with a disabling condition to enjoy equal opportunity to use and enjoy their housing.⁸⁶ A reasonable modification is a physical change to the building, grounds, or unit that is likewise necessary.⁸⁷ Reasonable accommodation and modification requests may be requested orally or in writing at any time before, during, and sometimes even after the tenancy.

A housing provider has a duty to respond to all requests for an accommodation and/or modification (even if the tenant does not explicitly identify their request as a reasonable accommodation or modification), and must engage in a good faith interactive process to meet the tenant's needs. However, as shown by the tenants' experiences quoted above, requests are not always honored in this way.

Under the Fair Employment and Housing Act, a housing provider who receives a request for a reasonable accommodation must determine whether granting the accommodation would result in an undue financial and administrative burden, a fundamental alteration of the housing provider's services, or a direct threat to the safety of others. If it does not, the landlord must grant the request. If it does, the landlord must engage in an interactive

process (a back-and-forth dialogue) with the tenant to find an alternative accommodation that would work for both parties. Failure to adequately address a reasonable accommodation request may subject the landlord to legal action and liability.

Many people with disabilities also need reasonable modifications to make their homes accessible, but the cost of those modifications can be cost-prohibitive. In public housing and most other forms of subsidized housing, the owner must cover the cost of reasonable modifications.⁸⁸ But LIHTC owners do not have to pay for physical modifications unless the building also receives certain other sources of federal funding. CTCAC has the authority to require all LIHTC owners to pay for those modifications, but it does not exercise that authority.

As a result, many people with disabilities cannot live in LIHTC properties because they cannot afford to pay for the modifications they would need to make the housing accessible. This contributes to a larger housing affordability crisis for people with disabilities in California that is also fueled by the fact that new buildings, which are most likely to have accessible units, are also exempt from the statewide rent cap in the Tenant Protection Act.⁸⁹

Taking on Corporate Management in Vallejo, California

Before moving to Longshore Cove Apartments, Betty had been a hairstylist for over 40 years and owned her own salon in Richmond before passing the business to her sons. She went to New York and upon returning to California, had difficulty finding a place that fit her income. She initially felt very fortunate to get an apartment in Longshore Cove, then known as Marina Vista. However, after she moved in, Betty quickly realized that there were severe security issues at the apartment complex, managed by John Stewart Company. Betty describes how the old brick walls that stretched around apartment buildings were riddled with bullet holes.

Gun violence has been a prevalent issue at Longshore Cove throughout Betty's stay at her apartment. A few years ago, her boyfriend at the time was walking back to their apartment from the grocery store when he was shot across the street from their home. When Betty asked the manager to enhance security at the apartment complex, "she told me, well, there's nothing we could do because it was outside of the apartment," even though there's evidence of bullet holes inside the complex.

Betty mentions that their experience was not unique — there have been many violent shootings on and off the property. She specifically points to the apartment's entrance gates as areas for improvement which the management clearly does control, explaining "If those gates weren't open, people wouldn't be able to drive through because this is the main entrance on this gate. People wouldn't be able to drive through and do drive-through shootings and killings. I mean, what about the safety of our community and these children?"

In addition to gun violence, residents faced a painful renovation process a few years ago in which many residents' personal items went missing. Tenants said they were given about 30 minutes to pack their entire apartment, and then turn over their belongings to San Francisco-based Pedro's Moving Company. When residents returned to their apartments, many found their personal belongings missing or broken. While the moving company was able to locate and return some items, residents were ignored and dismissed when they tried to address these issues further with management. As the residents have shared, this type of

neglect is a common problem with the John Stewart Company.

When management does act, it does so to harass tenants. Residents share how management removed ramps from several units, leaving those tenants without proper accommodations, raising concerns that “if something happens, and I have friends that are on walkers and so forth, they can’t get in and out of this place.” The fire department also noted that the building lacked required emergency access points.

Angela, another longtime resident, explains how a few years ago, the manager turned a curb for emergency services access into a parking area and removed several entrance gates. Taken altogether, these changes proved deadly: Angela shares how a man who relied on his wheelchair died because the fire department and emergency services could not access his unit and transport him to an ambulance quickly enough.

Angela also shares how there used to be significantly more services provided at the apartment complex. They previously had a computer room, a community garden for residents, a playground, and an afterschool program for children. The playground has since been replaced with a smaller structure for toddlers, with

nothing for the older children, and the afterschool program has also been cut. Additionally, Angela shares how mismanagement of the parking areas has made it unclear who is assigned to each parking spot, causing confusion and frustration amongst residents.

Betty adds that management has been harassing tenants with threatening lease violation letters: “they said I did a violation and I wasn’t even here that time.” These notices, left on residents’ doors, often include detailed personal information. Shirley, another resident at Longshore Cove, explains that this can be particularly dangerous for domestic violence survivors. “I can have a DV case, and guess what? You leave my name, my address on that door. Somebody can go right to my door and can see a verification saying I live there. You just put my life in danger.” She places blame on the corporate nature of John Stewart Company, explaining how management is “just the messenger.”

Shirley shares how she wants to organize with other tenants living in buildings managed by John Stewart to shed light on the mismanagement, harassment, and security issues: “That needs to be a conversation because this is not something (new) that just happened. This has been going on with John Stewart for many, many, many years.”

When discussing her next steps, Betty explains that she feels trapped, “I have a real concern because I am on a limited income, I’m kind of forced to stay here. Where can you find an apartment with my income?” She points to the anti-Black racism that perpetuates the mistreatment,

exploitation, and dangerous living conditions for tenants. “I think everybody should be treated fairly. Because of the fact that it is mostly Black people in here, it seems like they just don’t care.”



In California, tenants have a legal right to organize and form tenant associations, and landlords cannot retaliate against them for forming an association.

Photo credit: Matt Renfro

Section 3

Tenant Power: How Tenants Are Organizing for Change

In the interviews conducted for this report, tenants shared their stories of both the terrible housing conditions they face when profit trumps renters' well-being, and also the ways in which they have come together to organize and win material improvements for themselves and their neighbors. Ultimately, change comes from the strength and courage of residents who stand together in pursuit of housing that is affordable and dignified. This section outlines three tenant power strategies that have generated real change through tenant unions, changing local policies, and creating community-controlled land and housing.



Photo credit: Chris Schildt

Tenant unions and associations

Tenant unions and associations are important spaces for tenants to come together to discuss common issues, develop solutions, and bring these concerns to management. When tenants come together to form a union or association, they can collectively apply pressure on their landlord to make needed repairs, provide services, and stop harassing behavior. They can write letters, request a meeting with management, demand documentation and accountability for promises made, and file complaints with public agencies. Tenants can apply increasing pressure, up to and including rent strikes, to make sure their needs are met.

In California, tenants have a legal right to organize and form tenant associations, and landlords cannot retaliate against them for forming

an association.⁹⁰ In the Bay Area, the Regional Tenant Organizing Network has provided support and training for tenants across the region to form unions and associations, including in LIHTC buildings. In San Jose, the KDF Tenants Association represents over 1,000 renters living in LIHTC apartments across four properties owned by the real estate development and investment company KDF Communities. In 2022, tenants successfully organized against an attempt by KDF to raise rents by as much as 20% in one property, Valley Palms. The tenants association continues to organize rallies and protests against additional rent increases, as well as pushing for necessary repairs, a formal complaint policy, and improved security.



Photo credit: Lina Blanco Ogden/North Bay Organizing Project

Forming a Tenants Union in Sebastopol, California

In early 2023, residents of Burbank Heights and Burbank Orchards came together to form the Burbank Heights and Orchards Tenants Union (BHOTU) with help from the North Bay Organizing Project and the Sonoma County Tenants Union (SCTU). Residents created the union in response to the property management company's removal of residents' private gardens. Tenants felt it was important

to separate community organizing duties amongst different groups; thus the new Burbank Heights and Orchards Tenants Union focuses on ongoing issues that take a lot of research and time, while the Residents Forum focuses on day-to-day activities and social events.

When the management company began removing exit stairs from

residents' porches, the union was successful in reversing this policy and reinstating the stairs. They educated and organized residents about their right to live in housing that meets their access needs. Currently, the union is advocating for exercise equipment that is appropriate to residents' sizes and ages.

Mildred explained how management staff have been harassing residents with warning notices. The management company has a written grievance procedure that outlines how management is to respond to a potential violation, starting with an informal meeting to discuss the grievance. However, staff have not been following their own policy.

Earlier this year, Christine requested that the maintenance staff not trim the bush in front of her house, and soon after she received a lease violation warning letter on her doorstep. Christine explains: there was "no discussion. No, 'come into the office, let's talk about this.' And the lease violation is written up really scary, it's got red letters, red warning, and of course it goes into your file." She tried reaching out to the property management company to learn more about the warning letter and their

grievance policies, however, her inquiries have been ignored. Now, Christine, Mildred, and fellow residents are hoping the new tenants union will be successful in ensuring management adheres to the stated grievance policies – policies that the company wrote themselves.

Mildred explains how the tenants union has become a collaborative space where "we have genuinely listened to one another and can work together." She commends the Sonoma County Tenants Union (SCTU) for helping them start their tenants union. Mildred explains how representatives from the SCTU meet with residents before union meetings to prepare agendas, discuss logistical concerns, and ensure folks are on the same page. North Bay Organizing Project representatives then meet with residents before the official tenant union meeting to help facilitate productive meetings.

Ava explains how forming the tenants union has helped alleviate pressure for community leaders by creating a space where residents feel comfortable speaking out. She explains how "Finally, we feel that some of the residents are willing to 'step up' and help with expressing and obtaining our rights."



Photo credit: Chris Schildt

Campaigns for better tenant protections and enforcement

Heightened tenant organizing over the last several years has contributed to a surge in new tenant protections at the state and local level. The passage of California's Tenant Protection Act in 2019 and over a dozen local ordinances have created or strengthened rent stabilization, just cause for eviction, tenant anti-harassment policies, and other tenant protections. However, exemptions of affordable housing from these laws and lax enforcement has left many low-income renters vulnerable. In response, tenants in

LIHTC buildings and housing justice advocates across the region have organized to end these exemptions and create new protections for vulnerable, low-income renters. In recent years, Antioch, Concord, and Petaluma have all passed ordinances that include renters in affordable housing. In Berkeley, tenants at Harriet Tubman Terrace won city funding to hire a tenant advocate to represent them in addressing concerns related to recent building renovations, safety and security, and other critical issues.



Photo credit: Matt Renfro

Organizing for Dignified Housing in Berkeley, California

In fall of 2021, Foundation Housing and FPI Management began renovations on Harriet Tubman Terrace, a low-income senior housing apartment complex with 90 units. Renovations were extensive, including flooring, bathrooms, bedrooms, kitchens, and living rooms. However, one resident describes how “they were thinking about the budget more than us.” Tenants blame poor design and the low quality of the renovations for causing a host of problems including plumbing issues, drafts, accessibility issues, and poor living conditions.

Heating concerns are a central issue for many tenants. One resident

explains how “the heater doesn’t work hardly at all. And they say they’ve fixed it and they haven’t. And they say they replaced it and they only put a new covering on it.” Some residents resorted to opening their electric ovens to warm their homes. The new kitchens were dangerously designed for seniors and residents with accessibility needs: microwaves were placed on top of refrigerators and the low-quality flooring has already begun to bubble up, creating trip hazards.

On top of a botched renovation, many residents suffered through a grueling relocation process. For one tenant, what was supposed to be an eight day

relocation turned into six months. John explained how he refused to return to his original apartment after a toxic chemical leak was found inside. The Berkeley Fire Department told him he would have probably died if he had not had an air purifier in the room.

Once John returned to Harriet Tubman, Foundation Housing and FPI failed to provide the accessibility features he relies on. He submitted the proper paperwork to request accessibility features, however, his requests have been partially met or ignored completely. John explains “because I am a disabled person, I feel that I’m just totally being neglected, especially when they have been given all that they asked for.”

John had to pay out of his own pocket to install features to make his shower accessible, including a swivel chair and accessible shower head. FPI did install a raised toilet seat in the apartment, however, it is not wheelchair accessible and he cannot bring his wheelchair into the bathroom. John must slide himself from his wheelchair to the sink to reach other parts of the bathroom. He explains how these risky maneuvers “means that at any time, if I misjudge using my hands as a leverage, I’ve got another major fall on my hands.”

Security concerns are also top of mind for many residents. For instance,

when one tenant’s husband parked his car in front of the building, it was stolen within an hour. Other residents shared how they do not feel safe at night due to a string of burglaries and violent crimes that have plagued the surrounding area.

When residents bring their concerns to management, they have been consistently ignored, harassed, and stymied with bureaucracy. One resident notes how “they treat us like we are animals. They don’t respect senior people.” Another resident explains how “we get too much paperwork from the management that doesn’t mean anything.” This bombardment of frivolous noticing “amounts to harassment. It almost amounts to just, you know, intimidation - something to bug you everyday. And if you don’t do this, you might get evicted.”

Other residents place blame squarely on the owners of Harriet Tubman Terrace, Foundation Housing. One resident notes that “It’s easy [for them] to push [you] away by saying, you got a manager, deal with your manager. They’re giving [them] no support. So they set up a confrontation right away. And that’s no way to live because the manager can only do what she or he is allowed to do. They give them no power.” Another resident also sympathizes with management staff:

“they need more consistent help with things because I could see where she would get overwhelmed. Especially when the turnover rate with the workers and how it seems like there’s only one person with her at the office at any given time, if that. I can see how it’d be overwhelming.”

Taken all together, renovation-related issues, security concerns, and a strained relationship with management, have combined to take a toll on residents. One resident mentions how “a lot of days I don’t feel well. All during this renovation, a lot of the neighbors don’t feel well. It’s taking a toll on me.”

Despite these obstacles, tenants at Harriet Tubman Terrace have achieved several wins through their organizing. Tenants worked with the grassroots community group Friends of Adeline to create a video that showcased the conditions tenants were forced to live in. The video revealed the terrible living conditions a tenant endured when he returned to his unit upon the completion of the renovation. While recovering from a stroke, the tenant returned to his unit to find his belongings scattered and piled throughout the space. Transfer bars that were critical accessibility elements were removed and thrown on top of the piles of his belongings. Replacement transfer bars were not

installed. His unit had no overhead lighting and his lamp was taken, leaving the tenant in the dark.

This video, along with strong tenant organizing, pushed Berkeley’s city council to address the issue. Community members recommended creating the Harriet Tubman Terrace Tenant Advocate — a position that would be paid for by the city. Tenant organizing efforts successfully compelled the City of Berkeley to approve the contract and formally establish the position of Harriet Tubman Terrace Tenant Advocate. The advocate serves as a liaison between the tenants, property management company FPI Management, and investment owners led by Foundation Housing. The tenant advocate will monitor living conditions at the apartment building and is responsible for addressing tenant concerns.

This position is a major victory for tenants and is a testament to the multiyear organizing efforts led by low-income seniors of Harriet Tubman Terrace and Friends of Adeline. In a press release about the victory, Darinxoso Oyamasela from the Harriet Tubman Terrace Tenant Counsel explains how “we have won round one, but the struggle continues.”

Community-controlled affordable housing

Tenant organizing and stronger protections are critical mechanisms to build tenant power and address immediate harms and needs that tenants face. Ultimately, however, tenants in these properties are still dependent on the behavior and priorities of profit-seeking investors, their designated management personnel, and understaffed public agencies.

Community-controlled housing ownership models provide much more robust support for residents' dignity, safety, and self-determination. These models include community land trusts, housing co-operatives, mission-driven community development organizations, and other similar models. They share several important characteristics: homes are permanently affordable and there is a significant degree of democratic decision-making and co-governance for the residents who live in the homes. These models view housing as a human right, not as a commodity for speculation and profit; many also center environmental sustainability, indigenous sovereignty,

and stewardship of the land.

Statewide, over 3,500 residents live in community land trusts; 60% of the residents are low-income (earning less than \$40,000 a year), and 80% are people of color.⁹¹ There are nearly a dozen community land trusts in the Bay Area working with tenants to buy their homes and convert them into permanently affordable, community-controlled housing.

Practically speaking, LIHTC is not well-suited for community-ownership models, since IRS regulations require LIHTC investors to own a sizable stake in the projects. There are a few examples of community land trusts creating joint partnerships and using LIHTC tax credits to develop new, affordable homes, but most community land trusts use a combination of bank loans and local subsidy programs to fund their projects.⁹² Public investment in community-controlled models of housing will require investment in and expansion of affordable housing programs beyond LIHTC.



Photo credit: Chris Schildt

Section 4

Policy Recommendations: Towards Affordable, Accessible, and Dignified Housing

As the largest source of funds for affordable housing in the United States, the Low-Income Housing Tax Credit program warrants scrutiny to ensure it promotes the stated goals of facilitating accessible and dignified housing. The following sections outline policy recommendations for state and local governments. Recommendations include policy changes to prioritize tenant protections in affordable housing, reforms to the LIHTC program itself, and other policy opportunities to promote affordable and dignified housing.

State action

While LIHTC is a federal program, California has substantial opportunities to enact reforms that can benefit tenants living in LIHTC properties. The state can take action through the legislative process and administratively through CTCAC.

1) Close state loopholes on renter protections

In 2019, California passed AB 1482, a landmark piece of legislation that caps annual rent increases at 5% plus the rate of inflation or 10%, whichever is less. The law also includes just cause for eviction protections for renters. However, AB 1482 does not apply to units with restrictions limiting the affordability to low or moderate-income households, such as units under the LIHTC program. The California legislature can close this loophole to extend these renter protections to include tenants living in affordable housing, or pass independent legislation limiting rent increases in affordable housing.

CTCAC can also play a role in expanding protections to tenants living in LIHTC properties. They can impose limits on annual rent increases as a condition of providing tax credits, to avoid the kinds of massive rent increases some renters have experienced (e.g. Antioch). Additionally, though the LIHTC

program rules state that owners cannot evict a tenant without a good cause, this is poorly defined and leaves interpretation up to local judges and courts. CTCAC should clarify and strengthen the definition of good cause and update the lease rider for tenants to include this information.⁹³

2) Strengthen tenants' right to organize and anti-retaliation provisions

Renter organizing and tenant unions are a proven, effective strategy to improve housing conditions for residents. California legislators can do more to empower tenants to pass stronger local protections, stop illegal and unscrupulous behavior by profit-driven landlords, and create good communications and relationships for renters and management to work together to solve common problems.

Currently, tenants have the legal right to organize under California law. They can form tenant unions or associations that allow tenants to collectively bargain or sue a landlord. California law also prohibits landlords from retaliation against tenants for legal organizing.⁹⁴ However, the state can improve significantly upon its legal protections for tenants.

In 2022, San Francisco passed an ordinance to enhance tenants' rights to

organize.⁹⁵ The state should establish similar protections:

- Require landlords to meet and confer with tenant unions/ associations upon request.
- Create a framework for forming a tenants association.⁹⁶
- Explicitly allow tenants to canvass other tenants and hold meetings on the property in common spaces.
- Provide broad protections against retaliation and specify the range of retaliatory actions barred, including filing or threatening to file for eviction, decreasing services, threatening lease non-renewals, and increasing the tenant's rent.
- Allow third party organizers to canvas without invitation

An improved state law should include strong enforcement mechanisms and outline penalties for landlords that violate legal protections. A “Tenant Bill of Rights” should be attached to rental agreements and posted prominently onsite, outlining tenants protections and their recourse for violations.

3) Move LIHTC properties into mission-driven ownership and permanent affordability

California places 55-year affordability restrictions on all housing that receives state assistance; at the end of that period, however, there is a

risk that those homes could lose their affordability. Research shows that profit-seeking actors are more than twice as likely to convert their housing to market rate at the end of the regulatory period compared to stable, mission-driven nonprofits.⁹⁷

State policymakers can take action to ensure affordable homes stay permanently affordable. For existing properties, the state can strengthen the Preservation Notice Law. Currently, the law requires owners seeking to convert affordable housing to market rate to first give notice of the opportunity to purchase to potential buyers interested in preserving affordability. This law could be strengthened to require the owners to either accept an offer or re-restrict the units as affordable housing.

For new housing, the state can ensure permanent affordability on projects that receive state assistance by requiring the underlying land to be placed in public ownership. A public entity, likely either the local government or the state, would own the land, and guarantee permanent affordability on the site through lease agreements with the affordable housing developer or owner.

4) Provide tenants with clear information on rents

There is a need for greater transparency on key information

regarding rent and affordability for each LIHTC unit. Each year the California Tax Credit Allocation Committee updates income and rent limits by unit size, Area Median Income (AMI), the year the building went into service, and other factors. Tenants in LIHTC properties also receive utility allowances in the form of rent deductions. These utility allowances are set by cities and counties and vary by household size and types of appliances. When developers apply for tax credits, they must show CTCAC the rent breakdown (including utility allowances) of their project by unit size and income threshold. However, there is no requirement to make this information – or the annual changes – available to the tenants.

CTCAC should provide residents a way to look up their maximum allowable rent each year, which would provide greater transparency for tenants. Information about each unit’s maximum gross rent limit and how it’s calculated should be readily available on each lease. A LIHTC building’s regulatory agreement should be given to tenants, who should also have the right to view their own files upon request and make corrections or additions if they disagree with what is in the file. Greater transparency will allow tenants, advocates, and tenant unions to play a more active role in keeping LIHTC owners in compliance.

5) Strengthen CTCAC compliance monitoring and publish building inspection records online

In order to address the issue of subpar habitability in LIHTC buildings, CTCAC must make the compliance monitoring program much stricter by inspecting more units and inspecting them more often. CTCAC must also enact policies that allow LIHTC tenants to play a more active role in monitoring and ensuring compliance. The improvements should start with making tenants aware of their rights: although the mandatory Section 42 LIHTC Lease Rider is supposed to describe “the rights and obligations of the parties,”⁹⁸ it makes no mention of required habitability standards. CTCAC should establish a formal and streamlined process for LIHTC tenants to report habitability violations directly to CTCAC, and it should increase data accessibility and transparency of all LIHTC records.⁹⁹

Inspection reports, owners’ responses, and annual certification documentation relating to violations and corrections should be published and made available both onsite and online in an accessible manner to all tenants and stakeholders. CTCAC should publish information determining Uniform Physical Condition Standards noncompliance in an accessible manner, which would empower tenants to monitor potential violations that affect habitability, report potential violations, and request

inspections. Providing this information would allow tenants and community organizations to monitor corrections and help enforce compliance.

Currently, noncompliance is reported to the IRS, who then determines whether to recapture credits. This is a very drawn out process with little accountability or transparency. The state's housing agencies can and should fill this gap in enforcement by imposing higher fees and stronger penalties, both during and after the compliance period. They should develop a transparent, coordinated, and effective process of compliance monitoring that ensures all projects meet all applicable requirements and that tenants know how to hold housing providers accountable for not meeting those requirements.

6) Strengthen tenants' relationship with CTCAC

Currently, CTCAC does not maintain a strong tenant connection role. It states that its monitoring responsibilities are limited to "audit[ing] the owner's records, which include - the tenant files for income eligibility, verifying that the correct rents are being charged for the units as determined by the Regulatory Agreement on the property, and to making sure the units are safe, sanitary and in good repair."¹⁰⁰ CTCAC also asserts that it does not have any monitoring authority over day-to-day operations,

construction, or rehabilitation work. This lack of authority excludes tenants from LIHTC program information and leaves tenants' voices out of LIHTC implementation. The annual monitoring reports should include a summary of any tenant complaints and how they were resolved.

Building off of the successful programs in Washington, D.C. and Berkeley, California, CTCAC could establish an advocate's office that serves as a single point of contact for tenants and community organizations. This office can provide a range of tenant services, including responding to questions about regulations, providing documentation relating to their building, and assisting tenants in reporting any issues regarding habitability, accessibility, maintenance, and harassment.

7) Support tenants in obtaining reasonable accommodations and modifications

People with disabilities make up a significant proportion of LIHTC tenants; in 2021, 12% of LIHTC households in California reported that at least one tenant in their home identified as disabled.¹⁰¹ Consequently, LIHTC tenants must be made aware of their rights to reasonable accommodations and modifications. The Section 42 Lease Addendum, for instance, is supposed to inform all LIHTC tenants of their rights,

but it makes no mention of the right to reasonable accommodations or modifications.¹⁰² CTCAC must therefore require property management companies to affirmatively communicate tenants' rights in regard to reasonable accommodation/modification requests. LIHTC properties must adopt and follow fair housing-compliant policies for providing applicants and residents with reasonable accommodations, reasonable modifications, and auxiliary aids and services. Additionally, LIHTC applicants and residents must have clear and effective avenues for redress if property management does not fulfill their legal duties.

8) Empower local jurisdictions to enforce federal accessibility standards

California Attorney General Opinion 92-203 states that “local building departments are not responsible for enforcing the access requirements of the Americans with Disabilities Act.”¹⁰³ The opinion also states that local building departments “are required to enforce state and local building codes which have incorporated the federal requirements” but that “local building departments are not authorized to elect to enforce the federal access requirements.”

The state should revise and clarify the opinion to ensure that local building departments can (and should) enforce

access requirements of the American with Disabilities Act, and emphasize that local building departments can enforce state and local building codes that incorporate the federal requirements. The state should also provide clear guidance that local governments have jurisdiction over LIHTC buildings and can enforce local codes and habitability standards at these properties, and that CTCAC is responsible for ensuring compliance with those requirements.

9) Increase funding for mission-driven developers and community-controlled models

To support the growth of mission-driven developers, the state should adopt new rules and regulations in the LIHTC allocation process and provide them a competitive advantage over profit-driven actors. CTCAC's Qualified Allocation Plan (QAP) sets the guidelines for how projects are scored in competing for tax credits in the LIHTC program. The QAP currently has a 10% set-aside for nonprofits.¹⁰⁴ The nonprofit set-aside could be increased to promote mission-driven actors in the LIHTC allocation process, along with a clear and strong definition of what constitutes a mission-driven nonprofit. CTCAC can also favor projects that provide prevailing wages and other important community benefits.

LIHTC's tax credit programs are not suitably structured as funding sources

for community land trusts or other community-controlled models. New funding streams are needed from the state that are compatible with

community ownership structures, democratic governance, tenants' rights, and permanent affordability.

Local action

Local jurisdictions do not have to wait to begin implementing equitable tenant protections. Here are actions cities and counties can take now.

1) **Ensure local tenant protection laws cover low-income housing**

Local jurisdictions can and should pass local tenant protections that respond to local needs and conditions, beyond what is covered in state laws such as AB 1482. Local ordinances can ensure low-income renters have the same level of protection as renters who can afford to pay market rate by including LIHTC units and other affordable housing. Examples of strong local protections that cover affordable housing units, include:

- Anti-harassment — Richmond's anti-harassment ordinance covers all rental units including LIHTC properties, single family homes, and condominiums.¹⁰⁵ The ordinance includes protections from management failing or threatening to fail to perform repairs and maintenance. It also includes protections against intimidation, retaliation, refusal to accept or acknowledge receipt

of a tenant's lawful rent payment, refusal to cash a rent check or money order for more than 30 days, and interference with a tenant's right to privacy.

- Just Cause for Eviction — In 2023, Petaluma's Residential Tenancy Protections ordinance came into effect.¹⁰⁶ This ordinance prohibits evictions without a just cause, including affordable housing properties, and requires landlords to provide tenants notices of their rights. Just causes are enumerated in the ordinance and organized by at-fault just causes and no-fault just causes. At-fault just causes include failure to pay rent, breach of rental agreement, tenant illegal activity, and other similar activities. No-fault just causes include permanent withdrawal from the rental market, owner or relative move-in to the unit, intent to demolish or substantially remodel, and government order. Landlords that terminate tenancies for no-fault just causes are required to provide relocation assistance to tenants. Importantly, the ordinance includes penalties for landlords that fail to comply

with the ordinance. The ordinance also affirms the City's authority and right to enforce the protections through injunctive relief, administrative fines, and citations.

- Rent Stabilization — In 2022, Antioch's city council passed a rent stabilization ordinance.¹⁰⁷ This ordinance was a crucial victory for tenants and includes LIHTC properties and other affordable housing in its protections. The ordinance allows one rent increase in 12 months and caps increases at 3% of current rent or 60% of consumer price index for the San Francisco-Oakland-Hayward area, whichever is less.

It is important to note that inadequate public investment in affordable housing operations has forced many nonprofit affordable housing developers to rely on rent increases to cover increases in operating costs. Governmental rent subsidies such as vouchers, rental assistance, and shallow subsidies are critical to ensure nonprofit operators are able to continue to provide quality homes without relying on unaffordable rent increases.

Just as important as passing local ordinances is ensuring strong enforcement. Rent boards are tasked with overseeing a local jurisdiction's rental housing market and serve as an important point of community oversight. They can regulate rents and oversee programs to implement

various ordinances such as rent stabilization and just cause for eviction ordinances. Importantly, rent boards must be invested with adequate authority and enforcement capabilities.

2) Support tenant associations and tenant organizing

Cities can enact their own policies that affirm and expand tenants' rights to organize and anti-harassment protections. San Francisco's 2022 Tenant Right-To-Organize ordinance serves as an example of strong legislation that expands tenant organizing protections.¹⁰⁸ Provisions in the ordinance:

- Create a framework for forming a tenants association.¹⁰⁹
- Require landlords to meet and confer with tenant unions/associations upon request.
- Explicitly allow tenants to canvass other tenants and hold meetings on the property in common spaces.
- Provide broad protection against retaliation and specify the range of retaliatory actions barred, including filing or threatening to file for eviction, decreasing services, threatening lease non-renewals, and increasing the tenant's rent.
- Provide tenants with the right to invite third party organizers to assist with organizing activities.

In 2023, Antioch passed an ordinance that protects tenants from retaliation by housing providers. The ordinance includes protections from verbal and psychological abuse, requires landlords to provide materials in a tenant’s spoken language, and raises penalties for landlords who violate these protections. The ordinance also includes specific protections from retaliation and threats of rent increases or eviction when tenants request repairs. The ordinance also expands protections for tenant organizing by categorizing as harassment any acts that “Prohibit, interfere with, retaliate against, or threaten retaliation against tenant organizing activities or engaging in other political activities.” Importantly, the ordinance also includes enforcement mechanisms such as fines, penalties, and injunctive relief for violations.¹¹⁰

3) Establish tenant advocate positions with enforcement capabilities

A tenant advocate provides a one-stop resource for tenants. Washington D.C.’s Office of the Tenant Advocate (OTA) is an independent agency that was established in 2006 that provides renters with legal, policy advocacy, emergency housing, educational, and outreach services.¹¹¹ The OTA offers legal services and, in some cases, provides representation for tenants. The legal branch also provides a hotline where tenants can address issues relating to evictions, rent

increases, leases, habitability and housing code violations, security deposits, and tenants’ rights. The OTA’s education and outreach team provides accessible information, including how to create tenant unions and associations, and how tenants can file a complaint to enforce the housing code. The overall success of tenant advocate positions depends on the availability of long-term funding and tools to ensure compliance.

After years of organizing, tenants at Berkeley’s Harriet Tubman Terrace recently won a tenant advocate position funded by the city. The tenant advocate serves as a liaison between Harriet Tubman Terrace tenants, the property management company, and building owners. The tenant advocate will monitor living conditions at the apartment building and is responsible for addressing tenant concerns.

4) Ensure local code enforcement personnel understand their authority to regulate low-income buildings

Local code enforcement and building inspectors often do not know or act on their authority to enforce local building codes and health and safety standards on federally-funded projects such as LIHTC. Local jurisdictions should issue clear guidance that local building inspectors can inspect LIHTC properties and enforce local and state codes. Tenants should

also have direct access to request inspections. Richmond’s residential inspection program allows tenants to request inspections, however, the program exempts rental housing units subsidized by federal, state, or local government, as well as newly constructed residential rental units for a period of five (5) years from the date of construction.¹¹² These kinds of exemptions should be rescinded in order to empower all renters to request inspections to ensure safety and habitability.

5) Require landlord licensing, and enforce it

Cities and counties can require landlord rental licensing and make the data publicly available to increase accountability with housing laws.¹¹³ These processes are crucial to monitoring changes in tenancy and rents, and can provide better transparency about who actually owns rental properties. In Minneapolis’ rental licensing program, properties owned by a corporation or LLC are required to list “an associated natural person” and a copy of the Articles of Organization listing the shareholders of the corporation or LLC must be submitted with the application.¹¹⁴

Minneapolis’ rental licensing program also collects data regarding:

- Owner information (including name, address, and contact

information)

- Number and kind of units within the dwelling
- Unit’s status as a short-term rental

Importantly, these data are made publicly available via an accessible online portal, which tenants can use to search their address and retrieve license information.

Landlord licensing also provides a key leverage point for cities and organizers in oversight and enforcement. Tenants in five buildings in Minneapolis’ Corcoran neighborhood successfully used rental licensing data to document their landlord Steven Frenz’s illegal behavior and pressure him to sell the properties to them.¹¹⁵ One of the main strategies the tenants used to push Frenz to the bargaining table was to call for the city to revoke his landlord license, which Minneapolis did in 2017, removing his legal ability to collect rent. This policy lever opened organizing opportunities for the tenants, such as a successful rent strike, which ultimately convinced Frenz to sell the properties in 2020.

Financial support was provided to the tenants from the city and nonprofits Local Initiatives Support Center and Land Bank Twin Cities (LBTC).¹¹⁶ LBTC is the current noteholder as it resells the buildings to tenants with zero interest. The buildings are now known as the Sky Without Limits Cooperative,

with plans to operate as a tenant-owned cooperative once the transition is completed.

6) Prioritize public dollars for mission-driven developers

Cities and counties can optimize existing funding sources to prioritize community land trusts (CLTs) and other forms of mission-driven, permanently affordable housing. Programs such as local affordable housing preservation funds can use permanent affordability as a heavily weighted scoring criteria to uplift CLTs in the competitive allocation processes. Under its Acquisition and Conversion to Affordable Housing Program, the city of Oakland offers an application pool dedicated to CLTs and limited equity coops known as the Permanent Affordability Program for Community Land Trusts/Limited Equity Housing Cooperatives.¹¹⁷ The program is designed to provide loans to eligible borrowers to acquire and rehabilitate

market rate rental properties, and then convert the properties to permanently affordable housing. By providing a specific application pool for CLTs and limited equity co-ops, Oakland is able to prioritize community-controlled uses of these funds. The city also uses the scoring process to prioritize projects that include anti-displacement provisions.

Cities and counties can also make use of emergency funding to support CLTs. To provide funding for the Eden Community Land Trust, Alameda County used local funding streams along with emergency funding through the American Rescue Plan Act of 2021, also known as the COVID-19 Stimulus Package.

Local governments can also generate new revenue streams for affordable housing, such as anti-speculation taxes, vacancy taxes, and landlord gross receipts tax.



Photo credit: Lina Blanco Ogden/North Bay Organizing Project

Conclusion

For decades, federal policymakers have stripped funding for affordable housing, leaving private market programs such as the Low-Income Housing Tax Credit as one of the few resources available.

Our research documents the clear and concerning consequences of relying on a market-driven approach: scarce public resources going to investor profits; fewer dollars for capital-starved mission-driven organizations; and unaffordable, unstable, and unhealthy homes for our lowest income community members.

Ultimately, our housing system must be transformed in order to provide truly affordable housing with dignity for all.

Local, state, and federal policymakers need to commit to new forms of stable, predictable, and abundant funding for community-controlled, permanently affordable housing. In the long run, this will require creating new funding sources that are not reliant on private, for-profit investors. In the near term, existing affordable housing projects financed with investor-driven programs such as LIHTC must better center tenants' needs.

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Note: All errors, omissions, and opinions expressed in this report are solely those of the authors.

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March 15, 2024

Assemblymember Mia Bona
1021 O Street, Suite 5620
Sacramento, CA 95814

Re: Tenant Rights Groups Oppose AB 846 Unless Amended

Dear Assemblymember Bonta:

We write with concern about Assembly Bill 846 (Low income housing credit: rent increases). As community organizations, tenant rights advocates, and attorneys who represent low-income tenants, we appreciate your attempt to protect tenants but believe there are misconceptions about what this bill would accomplish. Instead of limiting rent increases to no more than 30 percent of household income, it would grant private investors permission to impose abusively high rent increases that they would otherwise not consider.

The bill provides a framework by which high rent increases can be imposed on low income tenants in housing subject to the Low Income Housing Tax Credit (LIHTC). It does not fix the main issue currently facing LIHTC tenants, which is corporate investor-driven increases designed to force low-income tenants into paying far more than 30 percent of their income in rent. This bill can easily be amended to create a rent limit of 30 percent of income--at which point it would have our support.

I. Background

The Low Income Housing Tax Credit, or LIHTC, has been the main government program for affordable housing units in the United States since the 1980s—replacing public housing and other federal subsidized programs. LIHTC is less government-regulated than other programs and the buildings are often run by for-profit companies. LIHTC landlords in California receive millions in federal tax credits intended to allow them to provide affordable housing to tenants.

However, LIHTC rents do not depend on an individual tenant's household income. A tenant household must income qualify for the housing, but unlike other models of affordable housing, like public housing, rents do not depend on individual household income. Rather, in LIHTC housing there is a maximum rent for each unit size, referred to as the maximum gross rent limit. This maximum rent comes from the AMI calculated by the federal Department of Housing and Urban Development and can increase from year to year. This limit is often high relative to market rents. The maximum rent limit is not a percent limit for yearly rent increases—it is solely a rent maximum.

As LIHTC properties are currently exempt from the Tenant Protection Act's rent gouging protections, tenants whose rents were previously below the maximum limit sometimes receive 30 or even 40 percent rent increases. These increases also result in many LIHTC tenants paying significantly more than 30 percent of their income in rent. Tenants who are unable to pay their rent are often evicted or otherwise forced to leave their homes.

There is currently no statewide percent increase limit for LIHTC units, which are exempt from the Tenant Protection Act. The reason that LIHTC units are not covered under the Tenant Protection Act rent cap limits is because of the assumption that affordable housing landlords would never increase rents that high. While many mission-driven nonprofits do ensure that rents are not raised higher than 30 percent of a tenant household's income, they are an increasingly smaller portion of LIHTC landlords: now roughly 20 percent statewide. The other 80 percent are corporate actors who own the majority of "affordable" housing in California.

In some cases, tenants in comparable rent-controlled units in the same city are paying rents below those of LIHTC tenants, without the accompanying federal tax credits to private investors. To ensure tenants are not worse off in "affordable" housing, some local jurisdictions have applied their rent control laws to LIHTC buildings to limit yearly rent increases.

II. What California Tenants are Doing About LIHTC Rent Increases

Many California tenants have chosen to oppose large LIHTC rent increases driven by investors. In some situations, tenants have been able to force their landlords to rescind high rent increases or have passed local rent control ordinances that apply to LIHTC properties. This organizing has been successful at preventing abusive rent increases from taking effect. For example, tenants in the city of Antioch, California passed a rent control ordinance in 2022 that limits rent increases, including at LIHTC properties, to 60% CPI or 3%, whichever is lower.

Even where tenants are not winning these statutory protections, they are often protected by the shared belief that tenants in subsidized housing should not be paying more than 30 percent of their income in rent. In the face of high rent increases, many elected officials and housing departments around the state have stepped in to convince or even force the landlords rescind the increases.

Codifying the framework in AB 846 undermines these efforts and suggests that rent increases that bring rent to a level above 30 percent of a tenant's household income is not predatory behavior, but rather legally sanctioned.

III. Issues with the Proposed Solution

AB 846 will not solve the problem of high LIHTC rent increases.

While AB 846 sets some rent increase limits, it also provides a way for landlords to circumvent them. In doing so, it codifies a framework that allows landlords to legally increase rents far beyond what low income tenants can afford, leaving them with little recourse.

AB 846 lets landlords choose which type of rent increase they want to give a tenant: either the same limits from the Tenant Protection Act (CPI + 5 percent, up to 10 percent) or up to 30 percent of the household income. This means that landlords are explicitly permitted to increase the rent up to ten percent in one year, even if a tenant is already paying more than 30% of their income. It also means that if the rent is already more affordable to the tenant household (less than 30 percent of income), the landlord can choose the other option and raise the rent above 10%. The landlord would get this choice every year, allowing them to increase rents up to the maximum amount possible. Either way, the tenant loses.

This means that a landlord could choose to raise the rent thirty percent one year, on grounds that the rent was below 30 percent of the household income. The next year, the rent could be increased a further 10 percent without even considering the tenant's income. Low income tenants, many of whom live paycheck to paycheck or are on fixed incomes, cannot afford these amounts.

IV. How to Amend the Bill

A better option would be a bill that limited rent increases to no more than a percent increase and also did not allow any tenant household to pay more than 30% of their income in rent. We believe that this is what some current supporters of the bill erroneously believe AB 846 provides.

We would support AB 846 if it included this amendment. Attached is a redline version which would include this change.

V. Conclusion

Bad policy begets bad policy. The AB 846 language has now been mirrored in a proposed rule change by the California Tax Credit Allocation Committee (CTCAC) that would apply its language specifically to projects seeking approval for ownership or tax credit transfers. Although CTCAC is charged with overseeing a program intended to create affordable housing for low-income California tenants, the proposed rule would instead codify abusive practices by bad actors that result in unaffordable housing.

We write not as organizations who believe that every housing bill will provide a perfect solution to the housing affordability crisis. Rather, we feel that we cannot afford to codify solutions into law that would grant permission to bad actors to raise the rents by amounts that the State of California otherwise considers “rent gouging.” (Cal. Civ. Code, § 1947.12 subd. (m).) Low income tenants in affordable housing should never be paying more than 30 percent of their income in rent. We cannot support a bill that codifies corporations’ right to “rent gouge” these tenants at the taxpayers’ expense.

Sincerely,

SECTION 1. Section 50199.24 is added to the Health and Safety Code, immediately following Section 50199.23, to read:

50199.24. (a) For the purposes of this section, “percentage change in the cost of living” means the same as in paragraph (3) of subdivision (g) of Section 1947.12 of the Civil Code.

(b) An owner of a project that received an allocation of housing credit pursuant to this chapter or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code and that is subject to a regulatory agreement shall not, over the course of any 12-month period, increase rent for a unit more than the lesser of the following:

(1) The amount permitted by this chapter as a result of an increase in the area median gross income.

(2) Five percent plus the percentage change in the cost of living.

(3) Ten percent of the lowest rental rate charged for that unit at any time during the 12 months prior to the effective date of the increase.

(c) Notwithstanding subdivision (b), an owner of a project may not increase the rent up to or require a household to pay a rent amount greater than 30 percent of the monthly income of the household occupying the unit.

(d) This section shall not apply when the committee or the department allows for a rent increase ~~due to the termination or exhaustion of project-based rental assistance or operating subsidy or~~ to ensure financial stability, as determined by the committee, or fiscal integrity, as determined by the department.

~~(e)~~(d) Nothing in this section authorizes a local government to establish limitations on any rental rate increases not otherwise permissible under Chapter 2.7 (commencing with Section 1954.50) of Title 5 of Part 4 of Division 3 of the Civil Code, or affects the existing authority of a local government to adopt or maintain rent controls or price controls consistent with that chapter.



DATE: March 21, 2024
TO: Honorable Members of the Rent Stabilization Board
FROM: DéSeana Williams, Executive Director
Shamika Cole, Finance Director
SUBJECT: Recommendation to set the Fiscal Year 2024/25 Annual Registration Fees

Recommendation

That the Board adopts the following resolutions concerning the Fiscal Year (FY) 2024/25 annual registration fees:

Proposed Resolution 24-05 – adopting the annual registration fee, due July 1, 2024, at \$342 per unit for fully-covered units. This fee is calculated based on the revenue necessary to cover recurring operational and capital expenses for the program's services to fully controlled rental units.

Proposed Resolution 24-06 – adopting the annual registration fee, due July 1, 2024, at \$211 per unit for partially-covered Measure MM units. This fee is calculated based on the revenue necessary to cover the expenses associated with registering and providing services for Measure MM units.

Proposed Resolution 24-07 – adopting a \$53 per unit annual registration fee, due July 1, 2024, for Measure MM units in affordable housing projects. This fee is calculated based on the revenue necessary to cover the expenses to register and provide services for Measure MM units associated with affordable housing projects managed by a non-profit and have an operative regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

Proposed Resolution 24-08 – adopting a \$96 per unit annual registration fee, due July 1, 2024, for Summer Fraternity and Sorority units. This fee is calculated based on the revenue necessary to cover program expenses associated with registering and providing services for Summer Fraternity and Sorority Units.

Background and Need for Rent Stabilization Board Action

Legally, the Board has until the end of June to adopt a line-item budget and expenditure authorization level for FY 2024/25. At its March 7, 2024 meeting the Budget & Personnel Committee passed a motion to recommend the Board increase the registration fee and set a public hearing to consider the fee increase at its March 21, 2024 meeting. State law requires the Board to set a Public Hearing to garner public input before considering any

increase to the existing fee level.¹

The Budget & Personnel Committee has met two (2) times thus far in calendar year 2024 to review various aspects of the agency's budget and staffing model and agree upon the appropriate recommendation for the FY 2024/25 registration fee levels. At their March 7, 2024 meeting, the Budget & Personnel Committee voted to recommend the Board increase the fully-covered registration fee from \$290 to \$342 per unit and the partially-covered Measure MM unit fee from \$178 to \$211 per unit. The Committee also recommends that the Board increase the Measure MM fee for specific affordable housing projects funded by the City of Berkeley Housing Trust Fund from \$37 to \$53 per unit and the Summer Fraternity and Sorority fee from \$70 to \$96.

To consider an increase in the registration fee, the Board must adhere to California Government Code Section 66016, which stipulates holding a public hearing regarding the proposed fee increase. Additionally, the Board must, at least 14 days prior to the meeting, furnish the public with information regarding the actual or estimated costs necessary to deliver the services for which the fee or service charge is imposed, along with the expected revenue sources for covering these services. This report contains the data mandated by Gov. Code Section 66016.

Fiscal Year 2023/24 Budget Update

The Board's adopted budget anticipated the agency collecting \$6,965,000 in revenue for the current fiscal year. As of December 31, 2023, the agency has collected \$6,198,879 and is on pace to exceed this amount. As of December 31, 2023, there were 222 fully-covered properties and 3,009 partially-covered or Measure MM properties that still owed a total of \$193,748 and \$630,055, respectively, a total of \$823,803 for the current registration year. Assuming the agency collects fees owed during the remainder of this fiscal year, it projects to collect most of its projected revenue for FY 2023/24.

As of December 31, 2023, the Board has expended \$3,321,869. Actual mid-year expenditures are slightly less than anticipated in the Board's adopted budget. Personnel expenditures were below what was projected in the 1st half of the year due to the turnover of an Office Specialist position, two vacant Community Services Specialist II positions, an Accounting Office Specialist III position, and an Assistant Management Analyst position. When adjusting for these savings, staff project that total FY 2023/24 expenditures will be around \$400,000 **less** than the Board authorized in the adopted budget.

Despite the anticipated salary savings, Staff and the Budget & Personnel Committee project to end the year with a budget deficit.

Staff will prepare the 3rd quarter budget update for review by the Budget & Personnel Committee in May. It will be provided to the Board at its June 20, 2024, meeting as an attachment to the Budget & Personnel Committee's FY 2024/25 budget recommendation.

Board members and Committees are encouraged to submit any requests or suggestions for next year's budget over the next month to be reviewed by staff and the Budget and Personnel Committee in time for inclusion in the final FY 2024/25 budget recommendation.

¹ See California Government Code Section 66016.

Considerations for Setting the FY 2024/25 Registration Fees

The Board should consider the following information when reviewing the Budget & Personnel Committee's recommendations and determining the appropriate levels for the FY 2024/25 registration fees.

Closing Budget Deficit

The Board has elected a deficit spending strategy for the past five fiscal years to avoid increasing registration fees while landlords and tenants struggled with economic hardships stemming from the COVID-19 pandemic. A combination of higher-than-anticipated revenues and salary savings due to both increased staff turnover and vacant positions resulted in a much lower rate of deficit spending in FY 2020/21.

The table below compares the Board’s adopted budget with actual revenues and expenditures for the last five fiscal years.

Historical Budget Surplus/Deficit Comparison					
FY Surplus/Deficit	2019/20	2020/21	2021/22	2022/23	2023/24
Adopted	\$ (810,000)	\$ (1,246,209)	\$(759,685)	\$ (1,010,755)	\$ (541,285)
Actual	\$ (75,593)	\$ (58,252)	\$ 361,929	\$ (277,106)	\$ (330,819)*

*projected

The Board's adopted FY 2023/24 budget authorized deficit spending of up to \$541,285. Staff and the Budget & Personnel Committee are projecting a budget deficit of \$331,000 for FY 2024/25 if registration fee levels remain the same. The Board's uncommitted reserve does not have sufficient funding to absorb over \$300,000 of deficit spending, maintain its current recurring expenditures, and remain within the targeted 16% reserve level.

After reviewing the mid-fiscal year budget update, Staff and the Budget & Personnel Committee have focused the majority of their time on understanding the Board’s current year budget deficit, projected budget deficit, discussing the best path forward to close the budget deficit, and exploring strategies that can put the agency on a path where it can both increase capacity and maintain a balanced budget into the future.

Recommended Fee Increase for FY 2024/25

The Board established the fully-covered registration fee at \$290 per unit for the FY 2023/24 registration period. However, there have been significant changes in the economic landscape since that decision. Inflation rates have surged, and the average rent in Berkeley has increased by 4.5% since December 31, 2022.

During recommendation discussions with the Budget and Personnel Committee, staff informed that an increase in the fee, ranging from \$310* to \$344, would result in just 1.15% to 1.27% of

* A fully covered fee increase to \$310 is necessary to cover existing recurring expenditures the current average rent in Berkeley. Furthermore, increasing the fee would help the Board's revenue keep pace with the rising program costs and ensure that we stay within the targeted 16%

reserve level. In FY 2024/25, the Board must increase the fee by at least \$310 to ensure we can adequately cover recurring expenditures. As such, the Budget & Personnel Committee recommends raising the fee to \$342 to address the rise in recurring expenditures, the need to increase the agency's staffing capacity, and provide contingency funding for unanticipated costs. This fiscal responsibility is of paramount importance for the long-term sustainability of programs and services.

Expanding Staff Capacity

In previous years, payroll, finance, and budgetary functions were inefficiently divided among multiple work units. A significant result of the FY2023/24 fee increase has been the successful creation of the Finance Unit, a dedicated unit responsible for overseeing all facets of the agency's financial operations. The establishment of the Finance Unit has played a vital role in simplifying our fiscal processes. It now serves as the central hub for finance, budgetary, payroll, and contract functions, consolidating these crucial elements under a unified and specialized team.

Digital Education and Social Media Coordinator

For years, the Board has expressed an interest in increasing the agency's social media presence and adapting our outreach program to include popular applications such as Twitter and LinkedIn. Additionally, as the Rent Board aligns with the City of Berkeley's new website platform, there will be an increased need to centralize the management of our print, web, and digital outreach to ensure clear, consistent, and accurate messaging. The Digital Education and Social Media Coordinator will also be responsible for increasing our digital education presence which will update the community more broadly on important affordable housing matters, legislation, and resources that inform and benefit those we serve.

Policy Director

The Board has expressed a historical interest dating back to previous years in augmenting the staffing model to include a Policy Director. Most of the policy issues the Board has raised recently are in housing and land use planning. These discussions have illuminated the need for a staff member with a specialized background and education who can provide nuanced direction on the diverse and intricate policy initiatives under consideration. The proposed addition of a Policy Director is an essential step towards fortifying our organizational capacity and ensuring the successful adoption and implementation of policies that resonate with the Board's mission and goals.

Administrative Staff Support

The Executive Director has operated without dedicated administrative support for the past two years. Increasing the capacity of the Rent Board by adding an Administrative Staff Assistant will be instrumental in enhancing operational effectiveness, improving communication, and ensuring compliance within the agency. The Administrative Staff Assistant will support the Executive Director with efforts to streamline daily operations by managing schedules, organizing meetings, handling correspondence, and organizing logistics to track key project milestones for the agency. The new position will allow executive staff to focus on strategic decision-making

and programmatic priorities, ultimately increasing efficiency.

Anticipated Legal Costs

Beginning April 2020, the Board's Legal Unit experienced significant staff shortages and higher than usual demand for litigation support. The Board's long-time Executive Director retired, and the Board's Senior Staff Attorney filled in as his interim replacement from April 2020 until early November 2021. Additionally, at that time one of the Staff Attorneys resigned to accept another position at the City Attorney's Office. Lastly, another Staff Attorney resigned near the end of 2021. As such, the agency was left with less than a full complement of attorneys in the Legal Unit.

Throughout that period, the Board experienced significant salary savings during a time when there was an increased need for legal services due to two significant factors – 1. The need to reimagine services while complying with various open government laws due to the challenges of operating during COVID while communicating all of this with staff, the elected Commissioners, and the public; and 2. Several court cases were filed against the Board that required more litigation support than the unit was able to handle.

The Legal Unit was largely able to pivot and provide all necessary support to address almost every concern and challenge presented by operating a government agency during the COVID restrictions. As such, the agency was able to use some of the salary savings from the prolonged staffing shortages in order to hire outside counsel to respond to several important challenges initiated by Berkeley landlords. These cases were costly to defend as the litigants utilized various tactics to ensure that the Board would have to expend maximum resources to properly defend itself. For example, the landlord in one of the cases sought review at the California Supreme Court (which review was ultimately denied) after losing at both the trial and appellate court level. To be clear, the agency's legal unit would have been able to absorb this litigation and handle it in house had it been fully staffed even during a time of increased need associated with responding to numerous issues associated with the COVID pandemic. This case was costly, but ultimately the Board secured a tremendous result as the appellate court's decision became published law and meaningfully protects Berkeley tenants even after property owners obtain a new certificate of occupancy when they substantially rehabilitate their rental units. Not only does this protect affordable housing in this community going forward, but it can also be used throughout California to clarify cities' abilities to continue to attach rent controls to older housing stock when it is significantly rehabilitated. In short, this was money well spent, particularly when you consider that the landlord in this case has several other rental units that have been similarly rehabilitated.

The Board found it necessary to increase outside counsel funding for these various cases several times over the course of litigation given that the landlords who initiated them took them farther than anyone (including outside counsel) anticipated. Nevertheless, again, the amount used to support outside counsel services still represented a net savings over the long term, because the unit was understaffed during that time.

The current fiscal year brings new hurdles. The Board has been served with a rather important class action lawsuit that challenges the Measure MM fee adopted in November 2020 to allow the Board to register and provide services to various partially covered Berkeley rental units. Board

legal staff anticipate spending about \$75,000 to hire outside counsel to assist with this litigation. There is much work to be done, and legal staff believes it crucial to have the expertise of outside counsel to take the lead on litigation that has never been filed against the Board. It is common and best practice to engage with outside counsel in these types of cases even in situations where a municipal legal unit is fully staffed. For example, the City Attorney's Office maintains a robust fund to hire outside counsel when in house staff require assistance with matters that require unique expertise.

Moreover, the legal unit has stepped up compliance efforts over the last couple years and has been able to secure several large payments from landlords who failed to pay fees and penalties over the years. For example, over the last fiscal year, the Legal Unit has settled four large superior court cases for delinquent fees and penalties for \$124,403. Legal staff will continue to focus on these compliance cases to ensure that property owners pay fees and penalties when they are legally due.

The Budget & Personnel Committee's fee recommendation ensures there is sufficient funding in FY 2024/25 to fund the Digital Education and Social Media Coordinator, the Policy Director, the Administrative Staff Support position, and any anticipated legal costs.

Targeting a 16% Reserve

In past years, the Board has elected to adopt annual budgets that authorize a high level of deficit spending that relies on reducing the Board's uncommitted reserve to avoid registration fee increases. In recent years, the Board has approved a reduction of the uncommitted reserve to a low level of 4%-6%, well below the Board's historical 8% to 16% reserve target. Last year, the Budget & Personnel Committee recommended targeting a 16% reserve level but authorized a decrease to below 12% to cover expenses related to the office move and other costs. Looking ahead to the FY 2024/25 fiscal year, Staff and the Budget & Personnel Committee anticipate the Board will start with over \$1,100,000 in uncommitted reserves, representing the targeted 16% level, which is considered best practice. However, this may not be sufficient to boost organizational capacity and cover anticipated legal costs. Currently, Staff projects that the Board will end the year at the target 16% reserve level, partially due to unexpected salary savings.

Returning to a "Pay as you go" Budget Strategy

The Board had historically committed to a budget strategy of increasing the registration fee in a "pay as you go" manner, raising it enough to meet budget commitments outlined for the upcoming fiscal year while at the same time attempting to maintain an uncommitted reserve within the Board's targeted range. This adopted strategy responded to property owners' desire to accommodate operational inflation in smaller, real-time adjustments and avoid substantial registration fee increases in any given year. While the Board veered away from this strategy in recent years to avoid fee increases, the imperative to maintain a balanced budget, adhere to best practice reserve levels, and enhance organizational capacity to improve operations has led to the necessity of considering required fee adjustments.

A "pay as you go" strategy produces a balanced budget because it necessitates that annual revenues are set at a level sufficient to cover recurring costs. If the Board believes its recurring costs will increase by \$100,000, then additional "new" revenue of \$100,000 should be identified.

Under this strategy, the prior year's savings and a drawing down of the reserves would only be used for one-time or short-term expenses. Staff recommends the Board resume the "pay as you go" strategy to address the current anticipated budget deficit and ensure a healthy uncommitted reserve at the Board's target level while also addressing capacity and program needs.

Fully-Covered Registration Fee as Percentage of Average (Mean) Rent

The following table shows the registration fee as a percentage of the rent, which is the most relevant measure of the impact of any fee.

Fully Covered Registration Fee as a percentage of rent			
Year	Fee	Mean Monthly Rent	% Annual Rent
1984	\$60	\$267	1.87%
1987	\$80	\$293	2.28%
1989	\$100	\$328	2.54%
1991	\$136	\$361	3.14%
1998	\$112	\$720	1.30%
2000	\$124	\$865	1.19%
2005	\$154	\$1,062	1.21%
2010	\$194	\$1,274	1.27%
2014	\$194	\$1,498	1.08%
2015	\$213	\$1,606	1.11%
2016	\$234	\$1,637	1.12%
2017	\$270	\$1,710	1.32%
2018	\$250	\$1,816	1.15%
2019	\$250	\$1,956	1.07%
2020	\$250	\$2,039	1.02%
2021	\$250	\$2,100	0.99%
2022	\$250	\$2,138	0.97%
2023	\$290	\$2,154	1.12%
2024	\$310*	\$2,230	1.15%
2024	\$342 **	\$2,230	1.26%
2024	\$344`	\$2,230	1.27%

* A fully covered fee increase to \$310 is necessary to cover existing recurring expenditures

** Budget & Personnel Committee recommended fully covered fee level

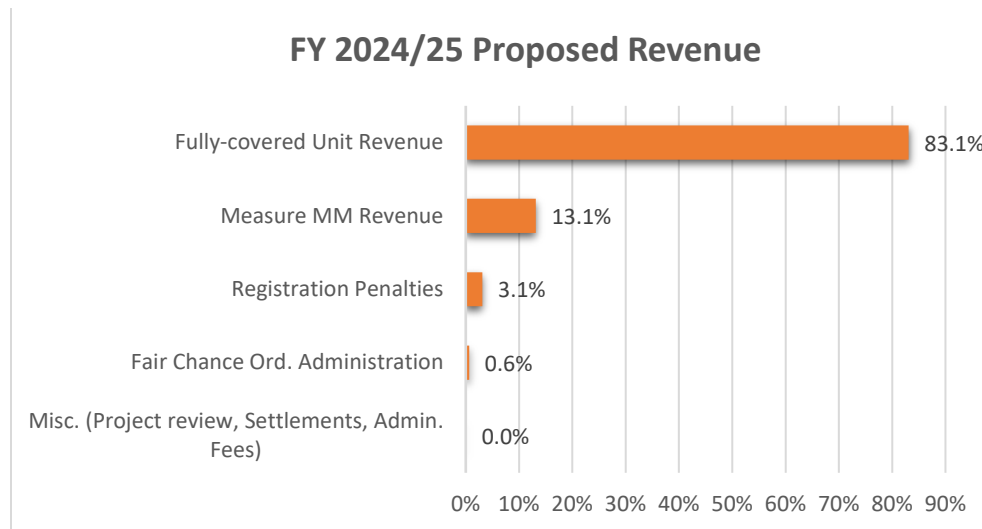
The shaded area reflects a pre-vacancy decontrol program, while 1998 transitioned from full rent control to decontrol. Mean monthly rent is calculated from the preceding calendar year, meaning the 2023 registration fee compares the fee with the average (mean) monthly rent in 2022. The 2024 (mean) monthly rent data is the average (mean) monthly rent from January – March 2024.

If the Board increases the fully covered fee to \$342 as recommended, the fee will be 1.26% of the average (mean) annual rent for controlled rental units in Berkeley. As the chart above notes, increasing the fully covered fee to \$344 will be 1.27% of the average (mean) annual rent. Since 1998, the beginning of vacancy decontrol, the registration fees have primarily been in a range of 1%-1.32%, and the proposed fee increases, \$342 or \$344, will result in up to 1.27%, which would fall well within the range of being historically proportionate to the average annual rent.

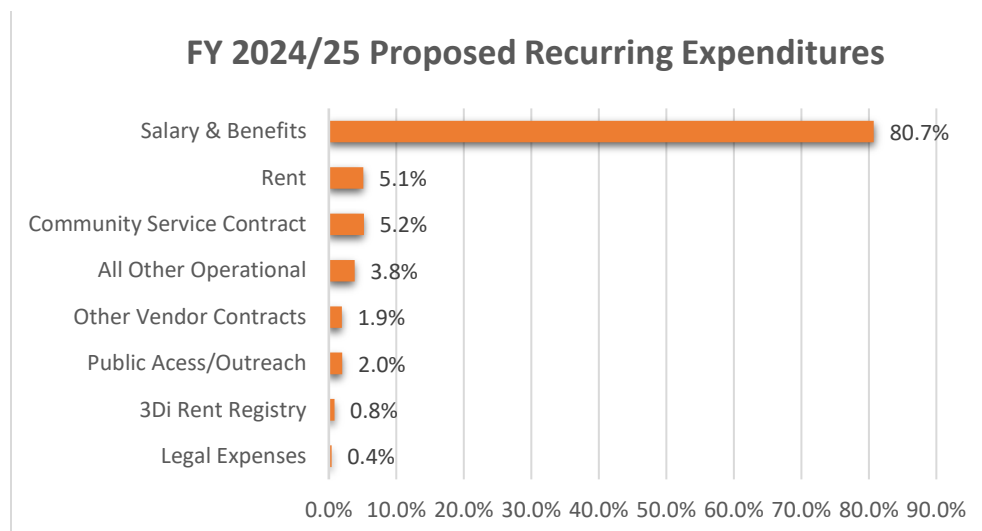
Moreover, raising the fees would not only assist the Board in aligning its revenue with the escalating program costs but also guarantee compliance with the targeted 16% reserve level. For the FY 2024/25 period, the Board must raise the fully covered registration fee by a minimum of \$310 to ensure adequate funding to account for recurring expenditures. Accordingly, the Budget & Personnel Committee proposes increasing the fully covered fee to \$342 for staffing needs, adequate funding for anticipated program expenses, and unforeseen costs.

Strategies for Resolving the Structural Deficit in FY 2023/2024

When considering how best to bridge the \$330,000 gap between revenues and projected baseline expenses, the Committee analyzed the revenue and expenditure patterns of both the current year's adopted budget. Over 96% of revenue comes from the registration fee, with the remaining balance coming from penalties and fees for services to other departments in the City of Berkeley.



Expenditures are apportioned as follows:



This adjustment aims to address the surge in recurring expenditures, the necessity to enhance the agency's staffing capacity, and to provide contingency funding for both anticipated legal and

unforeseen costs. Such fiscal prudence is essential for the sustained viability of programs and services in the long run.

Conclusion

Staff and the Budget & Personnel Committee recommend that the Board adopt resolutions to set the fee for fully covered units at \$342 and for partially covered units subject to Measure MM at \$211 per unit. The Committee also recommends that the Board set a \$96 fee for Summer Fraternity and Sorority and a \$53 fee for partially covered units subject to Measure MM in affordable housing projects managed by a non-profit and established in a regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

Name and Telephone Number of Contact Person

DéSeana Williams, Executive Director (510) 981-6903

Attachments:

1. Proposed FY25 Expenditure Worksheet

Rent Stabilization Program FUND 440 FY 2025 Proposed Budget Update		
Code	Description	Projected FY 2025
11-01	Monthly Employees	3,515,000
11-03	Hourly Employees	0
13-01	Overtime	1,000
27-20	Benefits	2,380,000
30-12	Stipends	167,000
30-12b	Technology Stipend	15,000
30-23	Misc. Legal Expenses	30,000
30-36	Temp. Agency Employees	10,000
30-38	Misc. Professional Services	456,000
30-42	Office Equip. Mtc. Svcs. / Furniture	25,000
30-43	Bldg. & Structures Mtc. Svc.	500
30-51	Bank Credit Card Charges	20,000
40-10	Professional Dues & Intern Fees	2,000
40-31	Telephones	9,000
40-50	Printing and Binding	30,000
40-62	Meals & Lodging	10,000
40-63	Registration Fees/Training	13,000
40-61/64	Transportation & Commercial Travel	5,000
40-70	Advertising/public access	99,100
40-80	Books & Publications	20,000
50-10	Rental of Land / Buildings	374,000
51-10	Postage	40,000
51-20	Messenger / Delivery	500
55-11	Office Supplies	13,500
55-50	Food and Water	5,000
644110	Supplies - Clothing	3,000
70-43	Office Equipment and Furniture	5,000
70-44	Computers, Printers, Software	15,000
75-25	PC Replacement/City Software Licences	74,305
75-35	Mail Services	3,600
75-50	City Vehicle / Fuel & Maint.	15,000
	Displacement Reimbursement Offset	0
	Unallocated	
	Expenditure Subtotal**	7,356,505
		Projected FY 2025
	Total Projected Fund Expenditures*	7,356,505

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

RESOLUTION 24-05

SETTING THE FISCAL YEAR 2024/2025 ANNUAL REGISTRATION FEE FOR FULLY-COVERED UNITS; DUE JULY 1, 2024

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

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

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

WHEREAS, the Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$7,400,000 in FY 2025 will be necessary to meet the Program's operating needs; and

WHEREAS, because of the ongoing housing crisis, demand for Rent Stabilization Program services has increased dramatically in recent years, including an estimated 40% to 60% increase over the past 9 years; and

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

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

WHEREAS, inflation has increased by approximately 50% and average rents of controlled units have increased by approximately 60% since 2009; and

WHEREAS, since 2009, the base annual registration fee has only been increased four times; and

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

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

WHEREAS, in FY 2021, FY 2022, and FY 2023 the Board adopted a fee of \$250 to cover only necessary operational costs; and

RESOLUTION 24-05

SETTING THE FISCAL YEAR 2024/2025 ANNUAL REGISTRATION FEE FOR FULLY-COVERED UNITS; DUE JULY 1, 2024 (Page 2)

WHEREAS, in FY 2023/24 to reach the revenue targets, an annual registration fee of \$290 per unit fee for fully covered units was necessary; and

WHEREAS, because of salary-related savings and higher-than-expected revenue in FY 2023/24, the Board had an operational reserve balance of approximately 12% of annual operational expenditures; and

WHEREAS, the Board is targeting a higher operational reserve balance of 16% of annual operational expenditures for FY 2024/25; and

WHEREAS, in FY 2024/25 to reach the recurring revenue target, address increased staffing needs and anticipated legal costs, an annual registration fee of \$342 per unit fee for fully covered units is required; and

WHEREAS, the proposed fee of \$342 represents 1.26% of the average (mean) monthly rent for rental units regulated by the Berkeley Rent Stabilization Program; and

WHEREAS, on March 7, 2024, the Budget & Personnel Committee recommended the fully covered rental fee be increased to \$342 per unit for the 2024/25 registration year; and

WHEREAS, the Board will meet to consider and adopt a final budget document detailing the revenues, line-item expenditures, and staffing model in June 2024; and

WHEREAS, in accordance with California Government Code section 66016, on March 21, 2024, the Board provided notice to the public that the Board would hold a public hearing to consider increasing registration fees for the 2024/25 fiscal year and that data indicating the estimated cost required to provide the services for which the registration fee is levied and the revenue sources anticipated to provide the services was available to the public; and

WHEREAS, in accordance with California Government Code section 66016, at its March 21, 2024, Regular Meeting, the Board held a public hearing, in which the public was able to make oral or written comments, to consider raising registration fees; and

THEREFORE, BE IT RESOLVED that the annual FY 2024/25 registration fee for fully covered rental units, due July 1, 2024, is hereby set at \$342 per unit; and

BE IT FURTHER RESOLVED that Rent Stabilization Program staff will continue to collect information on the impacts and expenses associated with registering and providing services for fully covered units in FY 2025.

RESOLUTION 24-05

SETTING THE FISCAL YEAR 2024/25 ANNUAL REGISTRATION FEE FOR FULLY-COVERED UNITS; DUE JULY 1, 2024 (Page 3)

Dated: March 21, 2024

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

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 24-06

SETTING THE FISCAL YEAR 2024/25 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2024

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

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

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

WHEREAS, the Acting Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$7,400,000 in FY 2024/25 will be necessary to meet the Program's operating needs; and

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

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

WHEREAS, Resolution 20-17 established that the Rent Stabilization Board will not charge a Registration Fee for partially covered Measure MM units for the remainder of the FY 2020/21; and

WHEREAS, Resolution 20-17 further resolved that any additional expenses associated with registering or providing services for partially covered units during the remainder of the current fiscal year shall be considered and potentially increase the Registration Fee for partially covered units for the 2021/22 Fiscal Year; and

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

RESOLUTION 24-06

SETTING THE FISCAL YEAR 2024/25 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2024 (Page 2)

WHEREAS, in FY 2021/22 the Board adopted a total fee of \$150, \$100 to cover the additional expenses associated with registering and providing services for partially covered Measure MM units during FY 2022, and \$50 to cover expenses associated with registering and providing services in FY 2021; and

WHEREAS, in FY 2022/23 the Board adopted a fee of \$150 to cover the expenses associated with registering and providing services for partially covered Measure MM units during FY 2022/23; and

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

WHEREAS, in FY 2023/24 the Board adopted a fee of \$178 per unit fee for partially covered Measure MM units to cover program expenses; and

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

WHEREAS, the Executive Director and Rent Stabilization Board believe that \$1,055,000 in annual revenue will be necessary to register and provide services to Measure MM units in FY 2024/25; and

WHEREAS, in FY 2024/25 to account for an increase in recurring expenditures, organizational capacity, and anticipated legal costs, a \$211 per unit fee for partially covered Measure MM units is required; and

WHEREAS, on March 7, 2024, the Budget & Personnel Committee recommended the partially covered rental fee be increased to \$211 per unit for the 2024/25 registration year; and

WHEREAS, the Board will meet to consider and adopt a final budget document detailing the revenues, line-item expenditures, and staffing model in June 2024; and

WHEREAS, in accordance with California Government Code section 66016, on March 21, 2024, the Board provided notice to the public that the Board would hold a public hearing to consider increasing registration fees for the 2024/25 fiscal year and that data indicating the

RESOLUTION 24-06

SETTING THE FISCAL YEAR 2024/25 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2024 (Page 3)

estimated cost required to provide the services for which the registration fee is levied and the revenue sources anticipated to provide the services was available to the public; and

WHEREAS, in accordance with California Government Code section 66016, at its March 21, 2024, Regular Meeting, the Board held a public hearing, in which the public was able to make oral or written comments, to consider raising registration fees; and

NOW THEREFORE, BE IT RESOLVED that the annual FY 2024/25 registration fee for partially covered Measure MM units, due July 1, 2024, is hereby set at \$211 per unit; and

BE IT FURTHER RESOLVED that Rent Stabilization Program staff will continue to collect information on the impacts and expenses associated with registering and providing services for partially covered Measure MM units in FY 2024/25.

Dated: March 21, 2024

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

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 24-07

SETTING THE FISCAL YEAR 2024/25 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2024

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

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

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

WHEREAS, the Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$7,400,000 in FY 2024/25 will be necessary to meet the Program's operating needs; and

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

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

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

WHEREAS, Resolution 20-17 further resolved that any additional expenses associated with registering or providing services for partially covered units during the remainder of that fiscal year were considered and potentially increased the Registration Fee for partially covered units for the FY 2022; and

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

RESOLUTION 24-07

SETTING THE FISCAL YEAR 2024/2025 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2024 (Page 2)

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

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

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

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

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

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

WHEREAS, in FY 2022 the Board adopted a total fee of \$37, \$25 to cover the expenses associated with registering and providing services for these partially covered Measure MM units during FY 2022, and \$12 to cover expenses associated with registering and providing these services in FY 2021; and

WHEREAS, in FY 2023 the Board adopted the same fee of \$37 per unit to cover the expenses associated with registering and providing services for these partially covered Measure MM units during FY 2023; and

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

WHEREAS, the approximately 600 units in affordable housing projects have been registered under Measure MM affordable housing units thus far in FY 2024; and

RESOLUTION 24-07

SETTING THE FISCAL YEAR 2024/2025 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2024 (Page 3)

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

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

WHEREAS, to reach the revenue target, a \$37 per unit fee for partially covered Measure MM units in affordable housing projects was required for FY 2024; and

WHEREAS, in FY 2024/25 to account for an increase in recurring expenditures, staffing needs, and anticipated legal costs, a \$56 per unit fee for partially covered Measure MM units in affordable housing projects is required; and

WHEREAS, on March 7, 2024, the Budget & Personnel Committee recommended the partially covered Measure MM units in affordable housing projects fee be increased to \$56 per unit for the 2024/25 registration year; and

WHEREAS, the Board will meet to consider and adopt a final budget document detailing the revenues, line-item expenditures, and staffing model in June 2024; and

WHEREAS, in accordance with California Government Code section 66016, on March 21, 2024, the Board provided notice to the public that the Board would hold a public hearing to consider increasing registration fees for the 2024/25 fiscal year and that data indicating the estimated cost required to provide the services for which the registration fee is levied and the revenue sources anticipated to provide the services was available to the public; and

WHEREAS, in accordance with California Government Code section 66016, at its March 21, 2024, Regular Meeting, the Board held a public hearing, in which the public was able to make oral or written comments, to consider raising registration fees; and

NOW THEREFORE, BE IT RESOLVED that the annual FY 2024/25 registration fee for partially covered Measure MM affordable housing units, due July 1, 2024, is hereby set at \$56 per unit, due July 1, 2024, for partially covered Measure MM affordable housing units owned by a limited partnership and having a managing general partner that qualifies as a 501(c)(3) non-profit

RESOLUTION 24-07

SETTING THE FISCAL YEAR 2024/2025 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2024 (Page 4)

organization that is in a housing project within the regulatory period established by a regulatory agreement with the City of Berkeley through its Housing Trust Fund program; and

BE IT FURTHER RESOLVED that Rent Stabilization Program staff will continue to collect information on the impacts and expenses associated with registering and providing services for partially covered Measure MM affordable housing units in FY 2024/25.

Dated: March 21, 2024

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

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/25 FISCAL YEAR

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

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

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

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

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

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

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

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

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 2)

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

WHEREAS, the Board adopted similar resolutions in from 2014 through 2023 which made clear that the Board wishes to continue to charge a reduced fee for summer rentals in fraternities and wishes to extend the same option to sororities should they decide to provide housing to non-member summer tenants; and,

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

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

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

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 3)

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

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

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

WHEREAS, on April 30, 2020 the Board set the summer rental fee at \$70 per unit; and

WHEREAS, on May 6, 2021 the Board set the summer rental fee at \$70 per unit; and

WHEREAS on April 21, 2022, the Board set the summer rental fee at \$70 per unit for the 2022/2023 registration year; and

WHEREAS on March 16, 2023 the Board set the summer rental fee at \$70 per unit for the current 2023/2024 registration year; and

WHEREAS, on March 7, 2024 the Budget & Personnel Committee recommended the summer rental fee be increased to \$96.00 per unit for the 2024/2025 registration year to match any increase in the fees for fully-covered units;

WHEREAS, in accordance with California Government Code section 66016, on March 21, 2024, the Board provided notice to the public that the Board would hold a public hearing to consider increasing registration fees for the 2024/2025 fiscal year and that data indicating the estimated cost required to provide the services for which the registration fee is levied and the revenue sources anticipated to provide the services was available to the public; and

WHEREAS, in accordance with California Government Code section 66016, at its March 21, 2024 Regular Meeting, the Board held a public hearing, in which the public was able to make oral or written comments, to consider raising registration fees.

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 4)

NOW, THEREFORE, BE IT RESOLVED that for the 2024/2025 registration year, the reduced registration fee for authorized seasonal rentals for qualifying fraternities and sororities shall be set at \$96 per unit for summer rentals to non-members in order to meet the anticipated costs for implementing services related to this discreet group of summer fraternity/sorority rentals; and,

BE IT FURTHER RESOLVED that for purposes of this Resolution, the “Summer Rental Period” shall be May 12, 2024, through August 16, 2024; and,

BE IT FURTHER RESOLVED that if a non-fraternity/non-sorority member remains a tenant during any time outside of the Summer Rental Period, the fraternity/sorority shall be required to pay a full registration fee as defined by Resolution 24-05 for the rental unit; and,

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

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

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

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 5)

BE IT FURTHER RESOLVED that, this Resolution incorporates by reference the fraternities listed in Board Resolutions 12-07,13-04, 14-04, 15-03, 16-03, 17-06, 18-07, 19-10, 20-06, 21-08 and the sororities listed in Board Resolution 17-06, 18-07, 19-10, 20-08, 21-08, 22-09; and 23-09; and

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

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

BE IT FURTHER RESOLVED that in no case shall a fraternity or sorority be permitted to participate in this program to pay a reduced registration fee for the Summer Rental Period for the 2024/2025 fiscal year unless that fraternity/sorority has fully resolved any past due Board registration fees and is otherwise in compliance with the Rent Ordinance registration requirements; and,

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

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

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 6)

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

Dated: March 21, 2024

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

- YES:
- NO:
- ABSTAIN:
- ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director



Rent Stabilization Board
Legal Unit

DATE: March 21, 2024
TO: Honorable Members of the Rent Stabilization Board
FROM: Oliver Ehlinger, Staff Attorney
SUBJECT: Adopting a Summer Rental Period Registration Fee for Sororities and Fraternities for the 2024/25 Registration Year

Recommendation

That the Board adopt Resolution 24-08 to authorize a Summer Rental Period registration fee of \$96.00 as well as procedures for sororities and fraternities for the upcoming 2024/25 registration year. Under the proposed resolution, qualifying sororities and fraternities shall be eligible to participate in a revised registration process which shall include a prorated registration fee for summer rentals provided that the following conditions are met: 1) A contact person/liaison must be provided for all future Board-related matters; 2) Any participating sorority or fraternity must be in good standing with the registration requirements of the ordinance; 3) All qualifying sororities and fraternities must meet the requirements for sorority or fraternity status as determined by the Rent Board; and 4) Participating sororities and fraternities must comply with registration procedures developed by the Agency.

At its March 7, 2024 committee meeting, the Budget & Personnel Committee approved consideration of raising the summer registration fee to up to \$96.00, to match any possible increase in the registration fee for Fully Covered Units. The attached Resolution, which has been continually re-adopted since 2010 is attached.

Background

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

Because the Board believed that most fraternities were unaware of their obligation to register these seasonal/summer units, the Board authorized an Amnesty Program in November 2010 for

chapters that had been renting out rooms to non-members on a seasonal or summer basis. The Amnesty Program was successful in its goal of resolving prior years registration fees owed the agency as the Board collected \$49,583 in past due registration fees from twenty-two (22) chapters. In addition, through the Amnesty Program, staff was able to make positive contacts with various members of the fraternity community including property owners, property managers, student representatives and UC Berkeley staff.

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

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

Measure AA

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

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

Summer Registration Process

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

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

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

For the 2012/13 year, the agency collected \$9,520.00 in registration fees from the various fraternities representing the registration of one hundred seventy six (176) units. As part of the registration process, staff conducted unannounced inspections of four chapters to ensure that Fraternity Summer Registration Forms were placed in the room as mandated by the Board's prior resolution. Forms were in place for these chapters.

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

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

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

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

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

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

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

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

For the 2020/21 registration year, the seasonal fee remained at \$70 per room. The agency collected \$7,490 in registration fees from twenty (20) chapters registering one hundred seven

(107) rooms. Four chapters paid full registration fees for either the entire property or some of the units on the property for fifty-four (54) units totaling \$13,440. Nine chapters claimed no summer rentals and two chapters failed to provide registration fees or forms. In total, the agency collected \$20,930 for the 2020/21 Summer Fraternity Registration.

For the 2021/22 registration year, the seasonal fee remained at \$70 per room. The agency collected \$7,280 in registration fees from eighteen (18) chapters registering one hundred four (104) rooms. Six chapters registered a total of twenty-seven (27) rooms as fully rent-controlled and paid \$6,750 in registration fees. In total, the agency collected \$18,280 in registration fees. Thirteen (13) chapters claimed all rooms were exempt.

For the 2022/23 registration year, the seasonal fee remained at \$70 per room. The agency collected \$9870 in summer registration fees from seventeen (17) chapters registering one hundred forty-one (141) rooms. Four chapters registered a total of 48 rooms as fully rent-controlled and paid \$12,000 in registration fees. In total, the agency collected \$21,870 in registration fees.

For the current 2023/2024 registration year, the seasonal fee remained at \$70 per room. The agency collected \$7,840.00 in summer registration fees from 14 chapters registering 112 rooms. 5 chapters registered a total of 81 fully-rent-controlled, year-round rentals and paid \$23490.00 in fees. In total, the agency collected \$35,440.00 from fraternity chapters in the current fiscal year, which includes payment of penalties and delinquent fees from prior years.

Registration for Sororities

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

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

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

Conclusion

For the most part, chapters have paid registration fees and filed Unit Status and/or Registration Forms. While staff has provided a moderate level of assistance to the various chapter representatives, a vast majority of chapters have been able to register their houses with little or

no assistance. A discreet minority of chapters however have provided more of a challenge with late payment and/or failure to timely file the required forms. While staff is engaged in compliance efforts with these chapters, the reduced fee assessed has covered the costs of operating the summer rental program. As allowed by law, the attached resolution continues the program initially started in 2012 and staff proposes setting the seasonal registration fee at \$96.00.

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

Name and Telephone Number of Contact Person:

Oliver Ehlinger, Staff Attorney (510) 981-4930

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/25 FISCAL YEAR

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

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

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

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

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

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

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

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

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 2)

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

WHEREAS, the Board adopted similar resolutions in from 2014 through 2023 which made clear that the Board wishes to continue to charge a reduced fee for summer rentals in fraternities and wishes to extend the same option to sororities should they decide to provide housing to non-member summer tenants; and,

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

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

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

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 3)

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

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

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

WHEREAS, on April 30, 2020 the Board set the summer rental fee at \$70 per unit; and

WHEREAS, on May 6, 2021 the Board set the summer rental fee at \$70 per unit; and

WHEREAS on April 21, 2022, the Board set the summer rental fee at \$70 per unit for the 2022/2023 registration year; and

WHEREAS on March 16, 2023 the Board set the summer rental fee at \$70 per unit for the current 2023/2024 registration year; and

WHEREAS, on March 7, 2024 the Budget & Personnel Committee recommended the summer rental fee be increased to \$96.00 per unit for the 2024/2025 registration year to match any increase in the fees for fully-covered units;

WHEREAS, in accordance with California Government Code section 66016, on March 21, 2024, the Board provided notice to the public that the Board would hold a public hearing to consider increasing registration fees for the 2024/2025 fiscal year and that data indicating the estimated cost required to provide the services for which the registration fee is levied and the revenue sources anticipated to provide the services was available to the public; and

WHEREAS, in accordance with California Government Code section 66016, at its March 21, 2024 Regular Meeting, the Board held a public hearing, in which the public was able to make oral or written comments, to consider raising registration fees.

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 4)

NOW, THEREFORE, BE IT RESOLVED that for the 2024/2025 registration year, the reduced registration fee for authorized seasonal rentals for qualifying fraternities and sororities shall be set at \$96 per unit for summer rentals to non-members in order to meet the anticipated costs for implementing services related to this discreet group of summer fraternity/sorority rentals; and,

BE IT FURTHER RESOLVED that for purposes of this Resolution, the “Summer Rental Period” shall be May 12, 2024, through August 16, 2024; and,

BE IT FURTHER RESOLVED that if a non-fraternity/non-sorority member remains a tenant during any time outside of the Summer Rental Period, the fraternity/sorority shall be required to pay a full registration fee as defined by Resolution 24-05 for the rental unit; and,

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

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

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

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 5)

BE IT FURTHER RESOLVED that, this Resolution incorporates by reference the fraternities listed in Board Resolutions 12-07,13-04, 14-04, 15-03, 16-03, 17-06, 18-07, 19-10, 20-06, 21-08 and the sororities listed in Board Resolution 17-06, 18-07, 19-10, 20-08, 21-08, 22-09; and 23-09; and

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

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

BE IT FURTHER RESOLVED that in no case shall a fraternity or sorority be permitted to participate in this program to pay a reduced registration fee for the Summer Rental Period for the 2024/2025 fiscal year unless that fraternity/sorority has fully resolved any past due Board registration fees and is otherwise in compliance with the Rent Ordinance registration requirements; and,

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

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

RESOLUTION 24-08

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2024/2025 FISCAL YEAR (Page 6)

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

Dated: March 21, 2024

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

- YES:
- NO:
- ABSTAIN:
- ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director



Rent Stabilization Board
Office of the Executive Director

DATE: March 21, 2024
 TO: Honorable Members of the Rent Stabilization Board
 FROM: Honorable Members of the Budget & Personnel Committee
 By: DéSeana Williams, Executive Director
 SUBJECT: Recommendation to adopt Resolution 24-09 authorizing the Executive Director to modify the scope of the existing contract with Kinnectics, LLC, and to add an additional \$45,000 to the contract for fiscal year 2023-24

Recommendation

That the Board adopt Resolution 24-09. It authorizes the Executive Director to execute a contract modification with Kinnectics, LLC. The modification permits an additional amount not to exceed \$45,000, which will bring the total not to exceed amount of the contract to \$120,000. The contract scope will also be amended to include new service delivery of coaching and strategic thinking partnership to all members of the Senior Leadership Team. These new services will be available to work with managers to help them navigate challenging situations, develop critical leadership skills, and deal with complex leadership issues. The services will include tools, frameworks, and assessments as needed. The contract will also provide continued services, which will support the use of consistent leadership approaches, facilitate the Board's annual evaluations of the Executive Director and General Counsel positions, provide yearly commissioner training for Board members, and support the Executive Director and Senior Staff in the agency's ongoing organizational change effort.

Background and Need for Rent Stabilization Board Action

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

Ms. Stashower needed more time to complete and present the assessment, so the Board added \$5,000 in payment to account for these extra hours. The Board thereafter contracted directly with Ms. Stashower's business, Kinnectics, LLC, to provide additional support to the agency.

On December 16, 2021, the Board authorized an additional contract modification with Ms. Stashower's business, Kinnectics, LLC, so she could continue to support the agency as it looks to build on its current strengths and work on the areas for growth identified in the executive transition assessment.

Staff and the Board have been pleased with Ms. Stashower's work and have requested her consultation and assistance with developing the Board's evaluation process for the Executive Director and General Counsel positions, the first annual Commissioners retreat and staff workplace culture training.

Finally, the Executive Director recommends the Board add additional money to Ms. Stashower's contract so she can continue to support the Executive Director and Senior Staff with the agency's ongoing organizational change effort, as well as to consult with staff as it continues to address growth areas identified in the executive transition assessment and workplace culture retreats.

A more detailed breakdown of the cost proposal for these items included as the second attachment to this report.

Financial Impact

The Board has sufficient funds in its FY 2023/24 budget to allocate an additional \$45,000 for a contract modification with Kinnectics, LLC.

Name and Telephone Number of Contact Person

DéSeana Williams, Executive Director (510) 981-7368

Attachments:

1. Current Personal Services Contract with Kinnectics, LLC
2. Detailed Cost Proposal
3. Proposed Resolution 24-09

AMENDMENT TO CONTRACT

THIS CONTRACT AMENDMENT is entered into on **December 1, 2022**, between the **CITY OF BERKELEY RENT STABILIZATION BOARD** ("Board"), an agency in a Charter City organized and existing under the laws of the State of California, and **Kinnectics, LLC** ("Contractor"), a corporation doing business at 10293 Rue Cannes, San Diego, CA 92131.

WHEREAS, Board and Contractor previously entered into **Contract Number 32200060** ("Contract") on June 15, 2021, which Contract was authorized by the City of Berkeley Rent Stabilization Board Resolution No. 21-10 for a total contract amount not to exceed \$25,000; and

WHEREAS, on December 16, 2021, by Resolution No. 21-31, the Board voted to fund Contractor an additional \$20,000 for the 2021-2022 fiscal year, a total amount not to exceed \$45,000; and

WHEREAS, on October 20, 2022, by Resolution 22-25, the Board authorized amendment of said Contract as set forth below.

THEREFORE, Board and Contractor mutually agree to amend said Contract as follows:

1. The second paragraph of Exhibit A of the original Contract is amended to read as follows:

SCOPE OF SERVICES

In order to support this process, Contractor will guide the Board through an organizational assessment and culture planning process that will inform the executive search and formal transition that will include the following outcomes:

1. Support and advise Interim Executive Director and Senior Staff on leadership efforts and approaches to organizational change
2. Guide the agency through design and implementation of culture change efforts
3. Support the Board President and Commissioners through change governance and the hiring process as needed

The **Contractor** will provide regular updates on progress and activities. Planning for each phase occur collaboratively with client input and direction.

For fiscal year 2022-23, the Contractor will assist or work on the following tasks:

1. **Support of the Board’s annual evaluation of the Executive Director and General Counsel positions**
2. **Provide two commissioner trainings for Board members**
3. **Provide continued support for the Executive Director and Senior Staff with the agency’s ongoing organizational change effort, including a leadership training**

The Contractor will provide regular updates on progress and activities. Planning for each of the FY 2022-23 scope of services will occur collaboratively with the input and direction of the Executive Director and/or Board.

2. Exhibit B of the original Contract is amended to read as follows:

PAYMENT

This project shall be billed and paid for on the payment schedule below. Any charges in addition to those outlined in this scope that result from Client requests will be billed on the first subsequent installment. Support requested by the Board that extends beyond the scope of this proposal will be billed at an hourly rate of \$320. Additional materials and expenses, if any, will be billed at cost.

Executive Transition Contract Scope

Payment Schedule		
Installment	Date	Amount
1 of 6	June 15, 2021	\$15,000
2 of 6	September 1, 2021	\$5,000
3 of 6	October 1, 2021	\$5,000
4 of 6	December 17, 2021	\$10,000
5 of 6	March 1, 2022	\$5,000
6 of 6	Upon Completion of Work	\$5,000

Fiscal Year 2022-23 Contract Scope

Item	Tasks	Projected Costs
Executive Director and General Counsel evaluations for 2022 and 2023	Process support (updating evaluation items and competencies, survey, results analysis, facilitation, and support to Board Chair/Board)	\$15,000
Board Training	Training discussions with Chair, other trainers and ED, design, and preparation	\$5,000

	Delivery x2	
Leadership thought partnership, planning and facilitation	Related to culture development workshop and implementation over 12 months	\$10,000

Items from the FY 2022-23 contract scope shall be billed upon completion of the associated tasks.

The amount paid to Contractor for services provided shall not exceed **\$75,000**.

In all other respects, the contract dated June 15, 2021 shall remain in full force and effect.

IN WITNESS WHEREOF, Board and Contractor have executed this Contract Amendment as of the date written on the first paragraph of this Contract Amendment.

CITY OF BERKELEY
RENT STABILIZATION BOARD

DéSeana Williams, Executive Director

THIS CONTRACT HAS BEEN
APPROVED AS TO FORM BY
BOARD'S LEGAL STAFF:

Registered on behalf of the City Auditor by:

Matt Brown, General Counsel

Finance Department

Attest:

Deputy City Clerk

CONTRACTOR:

Name and Title

Signature

**EXHIBIT A
(Amended)**

SCOPE OF SERVICES

Kinnectics, LLC (“Contractor”) shall provide consulting services to facilitate strategic support in relation to an executive transition process at the Berkeley Rent Stabilization Board (Board) and provide support and guidance for an agency wide strategic planning effort, the identification and prioritization of organizational trainings, and the creation of processes to improve portfolio and project management.

In order to support this process, Contractor will guide the Board through an organizational assessment and culture planning process that will inform the executive search and formal transition that will include the following outcomes:

1. Support and advise Interim Executive Director and Senior Staff on leadership efforts and approaches to organizational change
2. Guide the agency through design and implementation of culture change efforts
3. Support the Board President and Commissioners through change governance and the hiring process as needed

The Contractor will provide regular updates on progress and activities. Planning for each phase occur collaboratively with client input and direction.

For fiscal year 2022-23, the Contractor will assist or work on the following tasks:

1. Support of the Board’s annual evaluation of the Executive Director and General Counsel positions
2. Provide two commissioner training for Board members
3. Provide continued support for the Executive Director and Senior Staff with the agency’s ongoing organizational change effort, including a leadership training

The Contractor will provide regular updates on progress and activities. Planning for each of the FY 2022-23 scope of services will occur collaboratively with the input and direction of the Executive Director and/or Board.

CONSULTANT

KEREN STASHOWER, M.S.W., BCC, Ph.D.

Keren specializes in strategic organizational assessment and design of large-scale planning and change efforts. She works with clients at all organizational levels to support effective organizational growth. She has provided executive coaching, designed and conducted leadership and management competency and development programs and other strategic change efforts. Keren’s current business specializations include development of customer service cultures and practices, transformational learning, collaboration across business units, leadership development and systems thinking. She manages The Centre for Organization Effectiveness’s Certified Public Manager (CPM) program, a national certification program for leaders in the public sector.

Keren has held several executive level positions. She served as Vice President/Director for Sharp Rees Stealy Medical Group, and provided quality and organization development services throughout the large multi-site, multi-specialty group. She designed and implemented a large-scale change effort aimed at improving service delivery, with measurable results. As a member

of the executive leadership team, she was responsible for design of organizational systems and structures that supported collection, dissemination and use of quality data to improve overall performance. She managed a diverse staff of 33 healthcare professionals. She also served as Director of Organization Effectiveness for Sharp HealthCare. She provided services to 5 hospitals and 3 medical groups, including design of a customer service enhancement program, physician/executive leadership development program, a supervisory training program and redesign of several key departments.

**EXHIBIT B
(Amended)**

PAYMENT

This project shall be billed and paid for on the payment schedule below. Any charges in addition to those outlined in this scope that result from Client requests will be billed on the first subsequent installment. Support requested by the Board that extends beyond the scope of this proposal will be billed at an hourly rate of \$320. Additional materials and expenses, if any, will be billed at cost.

Executive Transition Contract Scope

Payment Schedule		
Installment	Date	Amount
1 of 6	June 15, 2021	\$15,000
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6 of 6	Upon Completion of Work	\$5,000

Fiscal Year 2022-23 Contract Scope

Item	Tasks	Projected Costs
Executive Director and General Counsel evaluations for 2022 and 2023	Process support (updating evaluation items and competencies, survey, results analysis, facilitation, and support to Board Chair/Board)	\$15,000
Board Training	Training discussions with Chair, other trainers and ED, design, and preparation Delivery x2	\$5,000
Leadership thought partnership, planning and facilitation	Related to culture development workshop and implementation over 12 months	\$10,000

Items from the FY 2022-23 contract scope shall be billed upon completion of the associated tasks.

The amount paid to Contractor for services provided shall not exceed \$75,000.



KINNECTICS WORK PLAN
September 2023 – June 2024

1. Executive Evaluation Process: Design, oversight, and facilitation (15k)
 - a. For ED and GC
 - b. Underway
2. Board Training (10k)
 - a. Development of presentations
 - b. Engagement strategy
 - c. On site attendance for training day
3. Continued design, development, and support for the Operating Roadmap (5k)
 - a. Finalizing plan
 - b. Methods for tracking
 - c. Communication plan
 - d. Support for presentations
4. Management Team Development (5k)
 - a. Conflict
 - b. Management strategy for reducing chaos
 - c. Trainings as needed
5. Strategic Thinking Partnership (5k)
 - a. With Executive Director
 - b. With management team members
 - c. With Board member as needed per Chair/ED
 - d. Consulting Support to training and employee development initiatives (aka project management)

All other costs, including travel reimbursement will allowed under terms of the contract agreement.

RESOLUTION 24-09

AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT MODIFICATION WITH KINNECTICS, LLC, TO AMEND THE CONTRACT SCOPE AND INCREASE THE CONTRACT BY AN AMOUNT NOT TO EXCEED \$45,000 (TOTAL CONTRACT AMOUNT NOT TO EXCEED \$120,000)

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

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

WHEREAS, the Rent Stabilization Board has engaged Kinnectics LLC ("Contractor") to provide specialized services that support the Board's and staff's organizational development and capacity building; and

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

WHEREAS, Keren Stashower ("Contractor") has provided training and support services for a number of City and Board staff for many years; and

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

WHEREAS, the Board engaged in a process with the Contractor to assess key components of the executive transition to ensure that the new executive director possessed the competencies and attributes necessary to lead the agency into the future; and

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

RESOLUTION 24-09

AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT MODIFICATION WITH KINNECTICS, LLC, TO AMEND THE CONTRACT SCOPE AND INCREASE THE CONTRACT BY AN AMOUNT NOT TO EXCEED \$45,000 (TOTAL CONTRACT AMOUNT NOT TO EXCEED \$120,000) (Page 2)

WHEREAS, the Rent Stabilization Board has engaged Kinnectics LLC ("Contractor") to provide specialized services that support the Board's and staff's organizational development and capacity building; and

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

WHEREAS, the Rent Stabilization Board further contracted with Kinnectics, LLC for an additional \$20,000 to assist the agency with additional organizational improvement efforts, strategic planning, and addressing growth opportunities identified in the executive transition assessment through Fiscal Year (FY) 2021/22; and

WHEREAS, the Board, on December 16, 2021, authorized the Executive Director to execute a contract modification with Kinnectics, LLC for an additional \$20,000 to provide further consultation and support of the agency's ongoing change initiatives; and

WHEREAS, the Executive Director has recommended that the Board further engage Kinnectics, LLC to aid with the development of the Board's evaluation process for the Executive Director and General Counsel positions, to assist in organizing commissioner training for elected Board members, and to continue support of the Executive Director and Senior Staff related to the agency's ongoing organizational change effort, as well as to consult with staff as it continues to address growth areas identified in the executive transition assessment; and

RESOLUTION 24-09

AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT MODIFICATION WITH KINNECTICS, LLC, TO AMEND THE CONTRACT SCOPE AND INCREASE THE CONTRACT BY AN AMOUNT NOT TO EXCEED \$45,000 (TOTAL CONTRACT AMOUNT NOT TO EXCEED \$120,000) (Page 3)

NOW, THEREFORE, BE IT RESOLVED that the City of Berkeley Rent Stabilization Board hereby authorizes the executive director to execute a contract modification with Kinnectics, LLC, to amend the contract scope and increase the contract by an amount not to exceed \$45,000 (total contract amount not to exceed \$120,000).

Dated: March 21, 2024

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

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 24-10

AUTHORIZING RENT BOARD CHAIR TO DRAFT LETTER ON BEHALF OF ALL ELECTED RENT BOARD COMMISSIONERS IN SUPPORT OF ADOPTION OF THE PROPOSED DEMOLITION ORDINANCE AMENDMENTS CURRENTLY BEING CONSIDERED BY THE BERKELEY CITY COUNCIL

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

WHEREAS, the elected Commissioners have long been concerned that the City do everything within its authority to ensure that existing housing be protected from demolition except when absolutely necessary to ensure the safety of its occupants; and

WHEREAS, the elected Commissioners recognize that old stock housing remains an important source of affordable housing for the community; and

WHEREAS, the elected Commissioners have made clear that they believe any amendments to the existing Demolition Ordinance (Berkeley Municipal Code Chapter 23.326) should preserve affordability to the greatest extent possible under both local and state law; and

WHEREAS, through the efforts of the 4 x 4 Joint Committee on Housing, the Berkeley City Council and Rent Board Commissioners have been working for well over a year to propose amendments to the current Demolition Ordinance that seek to allow for demolition while preserving as much affordability of rental housing as possible; and

WHEREAS, Planning, Rent Board, and City Attorney staff have worked diligently to draft language that reflects the policy goals articulated by the various elected officials who have participated in this process; and

WHEREAS, these amendments have been reviewed several times by the Berkeley Planning Commission and approved as to form; and

WHEREAS, Council will be considering adopting these Demolition Ordinance amendments at its regularly-scheduled March 26, 2024 meeting; and

WHEREAS, the elected Commissioners believe this to be very important legislation that will allow Berkeley to protect rental housing affordability moving forward and wish to express their support for the adoption of the proposed Demolition Ordinance amendments as they currently exist.

NOW THEREFORE, BE IT RESOLVED by the City of Berkeley Rent Stabilization Board that it encourages Council to adopt the current version of the Demolition Ordinance amendments at its March 26, 2024 meeting or whenever it may thereafter be heard; and

RESOLUTION 24-10

AUTHORIZING RENT BOARD CHAIR TO DRAFT LETTER ON BEHALF OF ALL ELECTED RENT BOARD COMMISSIONERS IN SUPPORT OF ADOPTION OF THE PROPOSED DEMOLITION ORDINANCE AMENDMENTS CURRENTLY BEING CONSIDERED BY THE BERKELEY CITY COUNCIL (page 2)

BE IT FURTHER RESOLVED that the elected Commissioners authorize Board Chair Leah Simon-Weisberg to write a letter of support urging Council to adopt the Demolition Ordinance amendments.

Dated: March 21, 2024

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

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director



Rent Stabilization Board
Rent Board Chair

DATE: March 21, 2024

TO: Honorable Mayor and Members of the City Council

FROM: Leah Simon-Weisberg, Chair, Berkeley Rent Stabilization Board

SUBJECT: Proposed revisions to Berkeley Chapter 23.326: Demolition and Dwelling Unit Controls

The Rent Stabilization Board (“Board”) urges the City Council to approve the proposed revisions to Berkeley Municipal Code Chapter 23.326 (“Demolition Ordinance”). On March 21, 2024, the Board adopted Resolution 24-10 to express support for the revisions as currently set forth. The proposed Demolition Ordinance reflects a thorough, deliberate, and public process, wherein the Planning Department solicited extensive feedback from various stakeholders, including the Planning Commission, a working sub-group of the Planning Commission, and the 4x4 Joint Committee on Housing. As a result, the proposed Demolition Ordinance strikes an appropriate balance between encouraging residential construction and maintaining sources of affordable housing already in the community by explicitly requiring the replacement of each rental unit subject to rent-control prior to demolition with new rental units affordable to lower-income families.

The purpose of the Rent Stabilization Ordinance includes advancing housing policies of the City with regards to low- and fixed- income residents. Therefore, the members of the Rent Stabilization Board engaged with Planning staff to ensure the Demolition Ordinance addressed the needs of renters in Berkeley, who generally have lower income than homeowners in Berkeley and include some of Berkeley’s most vulnerable residents. The Board believes the proposed Demolition Ordinance reflects these interests.

First, the proposed Demolition Ordinance defines the scope of residential rental units subject to demolition controls in a manner which reflects the reality of how people rent in Berkeley. Section 23.326.020.A(2) includes unpermitted rental units in the definition of residential units. This ensures that all sources of housing in the City are replaced at demolition and that the owner of an unpermitted unit may not seek to avoid the costs of coming into compliance with zoning codes simply by applying to demolish the unit.

Second, the proposed Demolition Ordinance provides protections to tenants residing in units that an owner seeks to demolish. Just as in the current Ordinance, the proposed Demolition Ordinance requires that an applicant for a demolition permit provide a sitting tenant with moving assistance, a replacement rental unit during the construction of the new units, and the right to return to the new units. The proposed Demolition Ordinance expands on these protections by allowing a sitting tenant who does not income-qualify for an affordable unit to return to a new

unit at their prior rent, adjusted annually in the same way the rents in units subject to the Rent Stabilization Ordinance rise. The result of these provisions is that a tenant in a demolished unit is less likely to leave the City as a result of a demolition. Avoiding displacement as an outcome of demolition is all the more vital when viewed against the fact that Berkeley residents of color and Berkeley residents with a disability are more likely to be renters.

Third, the proposed Demolition Ordinance explicitly requires that each demolished deed-restricted affordable unit or unit subject to rent-control is replaced by a deed-restricted affordable unit. The current Demolition Ordinance, does not require replacement of such units. Therefore, right now, Planning staff and the Zoning Adjustment Board are approving Use Permits for large projects that demolish rent controlled residential units and replace them with market rate units. The result is a loss of affordable housing through demolition. The proposed Demolition Ordinance fixes this issue through the specific definition of “protected unit” in Section 23.326.020.A(5) and the explicit requirement that any “protected unit” be replaced with a deed-restricted affordable unit in Section 23.326.030.D.

Throughout the public hearings on the Demolition Ordinance, members of the public raised concerns with the applicability of the Demolition Ordinance to smaller properties, most notably single-family homes with accessory dwelling units. The majority of these concerns appear to arise from a misunderstanding of the applicability of the Rent Stabilization Ordinance. Fully-permitted accessory dwelling units on properties with owner-occupied single-family homes are exempt from the Rent Stabilization Ordinance. Therefore, under both state law and the proposed Demolition Ordinance, these properties are not protected units. A homeowner applying to demolish the accessory dwelling unit in their backyard would not be required to replace that unit with a deed-restricted affordable unit or to provide replacement housing for a sitting tenant.

The proposed Demolition Ordinance is a necessary component of ensuring Berkeley growth in an equitable way, creating sufficient housing for new residents while protecting long-term residents and maintaining housing options for a variety of incomes. The Rent Stabilization Board appreciates the opportunity to help shape the proposed Demolition Ordinance and supports its passage.



Office of the City Manager

PUBLIC HEARING

March 26, 2024

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Director, Planning and Development
 Subject: Zoning Ordinance Amendments to Berkeley Municipal Code Chapter 23.326 Demolition and Dwelling Unit Controls

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance regarding amendments to Berkeley Municipal Code Chapter 23.326 *Demolition and Dwelling Unit Control Ordinance*.

SUMMARY

State law SB 330 (Housing Crisis Act of 2019) established new provisions related to demolition of residential units, including the rights of sitting tenants and affordability requirements for demolished units. The law provides different options to comply with these requirements.

The proposed ordinance (***Attachment 1 (redlined) and Attachment 2 (clean)***) includes provisions to bring the current Demolition Ordinance (***Attachment 4***) into conformance with SB 330, clarify replacement unit requirements, maximize tenant protections, and preserve the existing affordable housing stock. The proposed ordinance includes a number of new Berkeley-specific provisions as recommended by the 4x4 Joint Task Force Committee on Housing and the Planning Commission, and includes a number of text edits, including grammatical corrections and renumbering.

FISCAL IMPACTS OF RECOMMENDATION

The proposed ordinance is not anticipated to have a noticeable impact on staffing needs or workload, and any fiscal impacts would be minimal.

The proposed ordinance includes the removal of an option to pay a fee for affordable housing in lieu of replacing new units, as State law requires the replacement of demolished units.

CURRENT SITUATION AND ITS EFFECTS

Revising Berkeley Municipal Code Chapter 23.326 *Demolition and Dwelling Unit Controls* (“the Demolition Ordinance”) supports the City’s Strategic Plan Goal to create affordable housing and housing support services for its most vulnerable community members.

The existing Demolition Ordinance (***Attachment 4***) requires a Use Permit for the demolition or elimination of one or more dwelling units in Berkeley. The Zoning Adjustments Board (ZAB) may issue a Use Permit for the demolition of a dwelling unit for specific listed reasons:

- A building is “hazardous or unusable and is infeasible to repair.”
- “Demolition is necessary to permit construction... of at least the same number of dwelling units.”
- “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.”

The existing Demolition Ordinance includes provisions for unit replacement and the rights of sitting tenants, as well as additional situations such as:

- When housing units are demolished and no new housing units are proposed to be developed at the site (e.g., commercial development);
- When tenants have been unlawfully evicted, such as forcing a tenant out of a unit without a court order; and
- When units are being merged or converted within an existing building rather than physically demolished.

The existing Demolition Ordinance includes a provision whereby applicants may pay a fee rather than provide below-market-rate replacement units. However, the amount of that fee has never been established.

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

The existing ordinance also includes provisions related to the demolition of non-residential buildings, accessory buildings and building relocations. Changes to these provisions are not proposed.

Proposed Demolition Ordinance Provisions

The proposed ordinance includes provisions to bring the Demolition Ordinance into conformance with State law and includes a number of new Berkeley-specific provisions as recommended by the 4x4 Joint Task Force Committee on Housing. The proposed ordinance also includes a number of text edits, including grammatical corrections and renumbering.

The most significant changes are summarized in Table 1 and discussed in detail below. The primary rationales for the proposed changes include clarifying the applicability of the ordinance, expanding tenant protections, bringing the ordinance into conformance with State law, and assigning the Rent Stabilization Board (Rent Board) to administer some aspects of the ordinance rather than the ZAB.

Applicable Unit

The existing ordinance indicates that it applies to a “dwelling unit or units.” The proposed ordinance includes clarifications that it applies to dwelling units, group living accommodations, residential hotel rooms, certain ADUs and units constructed without a building permit.

Regarding Accessory Dwelling Units (ADUs), the 4x4 Committee proposed incorporating ADUs into the ordinance, subject only to the tenant notice and relocation requirements. This means an ADU wouldn't be obligated to meet replacement or affordability requirements. The Planning Commission expressed concern that applying these requirements to ADUs would discourage their production, specifically in cases where there was one single-family home and one ADU on a lot. However, Planning Commission also determined that ADUs within larger, multi-unit rental properties should be subject to replacement requirements. As a result, the Planning Commission recommended exempting an ADU entirely on lots which include only one single-family dwelling and one ADU. All other ADUs would be treated similarly to other units.

Protected Unit

SB 330 includes a no net loss provision that requires that a residential development project that includes the demolition of existing units must result in at least as many units as are demolished. In addition, certain types of units—“protected units”—are subject to specific replacement and affordability provisions. The proposed ordinance includes a definition of protected unit consistent with SB 330, and includes units that have been:

- Subject to a low-income deed restriction for any of the previous five years;
- Subject to rent control per Berkeley Municipal Code 13.76; or
- Rented by a household at 50% Area Median Income or lower.

Comparable Unit

The existing ordinance refers to a “comparable unit” when referring to replacement units, but does not define “comparable unit.” The proposed ordinance includes an explicit definition of “comparable unit,” indicating that it should be of a comparable size, include similar amenities, and be located in a similar area of the city as the demolished unit.

Units Built Without Proper Permits

The proposed ordinance applies to Dwelling Units, ADUs and JADUs that were created without proper zoning approvals or building permits (i.e. “illegal units”). These units, and the tenants residing in them, would be treated as properly permitted units for the purposes of the proposed ordinance, with the following distinctions:

- For a unit built without proper permits to qualify as a residential unit, it would have to be registered with the Rent Stabilization, or the Rent Stabilization Board must determine that a tenant-landlord relationship existed during the previous five years.
- The proposed ordinance includes a provision that allows the Building Officer, Zoning Officer or Fire Marshal to determine that the replacement of such a unit is not required when the replacement of the unit would be infeasible given existing Zoning, Building or Fire Code requirements.

Prohibited Demolitions

The existing ordinance prohibits demolition for units that have been removed from the rental stock through the Ellis Act within the past five years, or in cases where there has been substantial evidence of tenant harassment by a rental property owner, or an attempted or actual illegal eviction, within the past three years. In the latter case, the determination of whether harassment has occurred is made by the ZAB.

The proposed ordinance expands tenant protections to include any no fault eviction within the past five years, not just removal of a rental unit from the market through the Ellis Act. A “no fault eviction” is when the property owner or landlord wants to evict a tenant at no fault of the tenant, for example, when the property owner wants to move into the property.

The Rent Stabilization Board is proposed to be the deciding body for questions regarding harassment and illegal eviction, instead of the ZAB.

Mitigation Fee

The existing ordinance includes a requirement to pay an in-lieu mitigation fee for every unit demolished, or the option to replace a comparable affordable unit on-site.

State law (SB330) 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 on-site, and requires that the City condition approval on the provision of replacement units. Therefore, an option to “fee out” of the replacement requirement is a violation of State law, because it would not provide replacement units at the sizes and affordability levels required by SB 330. Accordingly, the proposed ordinance removes the mitigation fee section.

Landmarks and Structures of Merit

While the provisions of BMC Chapter 3.24 (Landmarks Preservation Commission) apply to units proposed for demolition, the existing ordinance does not explicitly refer to this chapter. Accordingly, the proposed ordinance includes specific language referring to Chapter 3.24.

Affordability of Replacement Units

The existing ordinance includes a requirement that any replacement units must be affordable units, and that the income levels of the qualifying households, and rents for the replacement units, shall be set by a resolution of the City Council. The existing ordinance also includes a requirement that the project applicant enter into a regulatory agreement with the City to provide these units.

The proposed ordinance includes more detailed provisions addressing the affordability levels of replacement units that are in concert with the requirements under State law:

- The proposed ordinance requires that any demolished protected unit shall be replaced with equivalent units and comply with the applicable affordability requirements for Affordable Units included in BMC 23.328 (Affordable Housing Requirements) and BMC 23.330 (Density Bonus). Referencing these sections clarifies the appropriate affordability levels for replacement units,¹ and

¹ BMC Section 23.328.030 requires that development projects subject to Inclusionary Zoning requirement include at least 20% of the units as Affordable Units. At least 50% of required Affordable Units must be offered at a rent that is affordable to Very Low Income Households (50% AMI or lower); the balance of units can be offered at rents affordable to Low Income Households (80% AMI).

establishes consistent requirements across a number of affordable housing-related provisions in the BMC.

- The proposed ordinance includes a provision that if a displaced household has an income below 50% AMI, a comparable replacement unit shall be offered at a rent that is affordable to households at 30% of AMI.
- The proposed ordinance also includes a provision that in cases where the household income of a displaced tenant(s) is unknown, households would be presumed to be low income in proportion to households throughout the city, as calculated using the US Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) database.

Attachment 3 includes illustrations of how these provisions could be applied.

Sitting Tenants' Rights

The existing ordinance establishes certain rights for sitting tenants. Sitting tenants in demolished units are entitled to a right of first refusal to move into the new building, have a right of first refusal for any BMR units, and retain those rights even if they have incomes that do not qualify for BMR units.

The proposed ordinance clarifies that tenants who do not qualify for BMR replacement units due to income limits above the area median income must still be provided a market-rate replacement unit at their prior rent. Additionally, the rent for the duration of that tenancy would be subject to Berkeley's rent control regulations. This section was added by the 4x4 Committee to provide additional rights to sitting tenants who may not qualify for BMR units.

The proposed ordinance includes additional provisions related to sitting tenants' rights. The revisions clarify that a sitting tenant's right of first refusal extends to a *comparable* unit (not just any unit) in the building, and includes provisions which set the rent levels for those units. These provisions go beyond what is required under State law. The proposed ordinance also includes a specific timeline by which a displaced tenant must indicate interest in returning to a replacement unit.

Elimination of Units through Combination with Other Units

The existing ordinance includes provisions regulating the elimination of dwelling units through physical combination with other units. This usually occurs in cases where two units are combined to make a single larger unit. The existing ordinance requires a Use Permit, with specific findings, to move forward with such an elimination. It also prohibits

such an elimination if the building was removed from the rental market through the Ellis Act in the past five years, or if there is evidence of tenant harassment or illegal eviction within the past three years, as determined by the ZAB.

The proposed ordinance permits combined units through an Administrative Use Permit (AUP) approval, if such a combination would return the building to, or move it closer towards, its permitted density. This is a provision to make it easier for units in owner-occupied buildings to be combined. The AUP requirement still includes discretionary review, the ability to set conditions, and an appeal option to the ZAB.

Elimination of a unit for a combination would not be approved if the building was vacated through any no-fault eviction, not just due to the Ellis Act, or if the tenant was subject to landlord harassment or an illegal eviction. The determination of whether landlord harassment or a real or attempted illegal eviction occurred would be made by the Rent Board Hearing Examiner, with an appeal option to the Rent Stabilization Board, instead of by the ZAB.

Demolition of Single-Family Homes

The existing ordinance requires a Use Permit to demolish a single-family home. The adopted Housing Element Update, Program 19—Middle Housing—includes a requirement that the City Council consider permitting the demolition of single-family homes with a Zoning Certificate (ZC) if the demolition is part of a middle housing project that results in a net increase in density.

The proposed ordinance includes a provision to allow the demolition of a single-family home without sitting tenants with an AUP if it is part of a project that results in a net increase in density. While the Planning Commission understood the rationale for streamlining review of projects that increase density, it concluded an AUP was the more appropriate level of discretion, and that the ordinance should specifically indicate that a single-family home with sitting tenants would not be permitted to be demolished with an AUP. The Planning Commission also acknowledged its intent to reconsider this issue later in 2024 as part of the Middle Housing legislative package.

Demolition of Accessory Buildings

The existing ordinance includes a provision that permits the demolition of an accessory building that does not contain a dwelling unit, such as garages, carports, and sheds, with a ZC. The proposed ordinance includes additional clarifying language that an accessory building that is occupied by a residential tenant shall be considered a residential unit for the purposes of this chapter.

Residential Hotel Rooms

The existing ordinance includes a section regulating the elimination of Residential Hotel Rooms. These provisions include requirements related to monthly and weekly charges, and permit Residential Hotel Rooms to be removed for the purpose of providing common use facilities (such as a kitchen, lounge, or recreation room) for remaining residents or to undertake seismic upgrades or meet the requirements of the Americans with Disabilities Act. They also include a provision allowing an owner to meet the replacement requirements through a payment to the Housing Trust Fund, which, as noted above, is not permitted under State law.

The proposed ordinance removes the Residential Hotel Rooms section entirely. Residential Hotel Rooms would therefore receive the same treatment under the proposed ordinance as other residential units

Technical Edits, Reorganization and Renumbering

The proposed ordinance also includes a variety of purely technical edits, and reorganization, retitling, and renumbering of some sections and subsections.

Table 1. Summary of Revisions to Demolition Ordinance

Policy Area	Current Ordinance	Proposed Ordinance	Rationale
Applicable Unit	“Dwelling unit or units.”	Dwelling Unit, GLA, ADU, JADU, and units built without permits	Clarification of the types of units covered.
Protected Unit	No definition.	BMR unit, rent controlled unit, or unit occupied by household at 50% AMI.	State Law: protected units are subject to specific replacement requirements.
Comparable Unit	No definition.	“Similar size, amenities and location within the city.”	Clarification by providing a definition.
Units Built Without Proper Permits	Not mentioned.	Includes units built without proper permits if registered with Rent Board or	Clarification of the types of units covered.

Policy Area	Current Ordinance	Proposed Ordinance	Rationale
		landlord-tenant relationship has existed in past five years.	
Demolition Prohibition: Ellis Act	Prohibition applies to any unit removed via Ellis Act within the past 5 years	Prohibition applies to any “no-fault” eviction.	Expansion of tenant protections beyond just one type of no-fault eviction (Ellis Act).
Demolition Prohibition: Tenant Harassment	Determination made by ZAB.	Determination made by Rent Board.	For tenant-landlord issues, the Rent Board is the subject-expert body.
Mitigation Fee	Includes mitigation fee option.	Removes mitigation fee option.	State Law: Demolished units must be replaced (SB 330).
Landmarks and Structures of Merit	No reference to Landmarks Preservation Commission (LPC) procedures.	Includes reference to LPC procedures.	Clarification that LPC procedures apply.
Replacement Units -- Affordability	<ul style="list-style-type: none"> • Replacement unit must be affordable in perpetuity; • Affordability level to be set by Council resolution; • Regulatory agreement with the City required. 	<ul style="list-style-type: none"> • Replacement unit must comply with Chapter 23.328 (Affordability Requirements) and 23.330 (Density Bonus); • For demolished unit with household at 50% AMI or below, replacement unit 	State Law: Existing tenant income levels impact type/affordability of replacement units (SB 330).

Policy Area	Current Ordinance	Proposed Ordinance	Rationale
		must be set at 30% AMI; and <ul style="list-style-type: none"> • Allows Zoning Officer and Fire Marshall to waive replacement of illegal units for health and safety 	
Sitting Tenants Rights	<ul style="list-style-type: none"> • Right of first refusal to move into the building • Right of first refusal for BMR units • Income restrictions do not apply 	<ul style="list-style-type: none"> • Right of first refusal for a comparable unit • For displaced tenants who rent a comparable unit, rent is controlled for duration of tenancy • For households ineligible for BMR units, a replacement unit shall be offered at prior rent, with increases limited equivalent to rent control. 	State Law: Tenant income levels impact type/affordability of replacement units (SB 330). Additional local requirement: Income restrictions do not apply to displaced households upon their return to the property after completion of the project.
Elimination of Units through Combination with other Units	Use Permit required in all cases, with findings.	AUP to combine units when the combination would return the building to, or move it closer towards, its original density.	Simplification: Allow conversion of owner-occupied buildings with a lesser standard.

Policy Area	Current Ordinance	Proposed Ordinance	Rationale
	Combination not allowed if the building was removed via Ellis Act within the past 5 years	Combination not allowed if vacated through no fault eviction within the past 5 years.	Expansion of tenant protections beyond just one type of no-fault eviction (Ellis Act).
	Combination not allowed if tenant harassment. Determination made by ZAB	Determination made by Rent Board Hearing Examiner, with appeal to Rent Board.	For tenant-landlord issues, the Rent Board is the subject-expert body.
Demolition of Single Family Homes	Requires a Use Permit.	Would be permitted with an AUP if the single family home were not tenant-occupied and the demolition was part of a project that increased density.	Provide streamlined process to encourage middle housing projects.
Demolition of Accessory Buildings	Can be demolished by right.	Added language to clarify that Accessory Buildings that are occupied by residential tenants are considered Residential Units. <i>23.326.050</i>	Expansion of demolition controls and tenant protections.
Elimination of Residential Hotel Rooms	Section 23.326.060 provides specific procedures for removal of residential hotel rooms	Section removed.	Residential Hotel Rooms are considered Residential Units for purpose of ordinance. <i>23.326.010(A)(1)</i>

BACKGROUND

The impetus for these revisions is recent changes in State law that provide additional requirements for new housing development projects that involve the demolition of existing residential units. These provisions of SB 330 (Housing Crisis Act of 2019), which modified Government Code sections relating to zoning and density bonus, require all new housing development projects to provide replacement units of equivalent size, defined as having the same number of bedrooms as the demolished units.

In early 2022, Planning & Development staff, in consultation with the City Attorney's Office, drafted revisions to the Demolition Ordinance to reflect these changes to State law. The 4x4 Joint Task Force Committee on Housing considered the draft at its meetings in April 2022 and December 2022, and made recommendations pertaining primarily to replacement unit requirements and expanded tenant protections. Staff revised the draft ordinance to incorporate that feedback and advanced the ordinance to Planning Commission for review.

At its meeting of February 1, 2023, the Planning Commission scheduled a public hearing to adopt a recommendation for the City Council of changes to the Demo Ordinance. The Planning Commission deferred a final recommendation pending recommendations from the 4x4 Joint Task Force Committee on Housing. Staff returned to the 4x4 Joint Task Force Committee in September and October 2023 for discussion and recommendations. The Planning Commission conducted a public hearing at its December 6, 2023 meeting and moved to create a Subcommittee to review the proposed ordinance in detail, and to consider suggestions and recommendations made by Commissioners at that meeting. The Subcommittee met on December 20, 2023 and recommended a number of changes to the ordinance. At its meeting of January 17, 2024, the Planning Commission held a public hearing and made a recommendation to the City Council.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

California Public Resource Code Section 21065 defines a "project" under CEQA as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed ordinance amendments relate only to the requirements to demolish existing structures, and would not result in any physical changes to the environment. The proposed ordinance does not consist of a discretionary action that would permit or cause any direct or indirect change in the environment. The proposed ordinance is therefore not a project under CEQA.

RATIONALE FOR RECOMMENDATION

The proposed ordinance includes changes required by state law, as well as policy changes recommended by the 4x4 Joint Committee Task Force on Housing and the Planning Commission.

ALTERNATIVE ACTIONS CONSIDERED

The December 9, 2023 and January 17, 2024 Planning Commission agenda reports include rationales for the provisions included in the proposed ordinance, and note some of the alternative policies considered. Most notable among these alternative suggestions were the treatment of ADUs similarly to any other residential unit, and permitting the demolition of single-family dwellings with a ZC.

A notable difference between the recommendations from the 4x4 Committee and the Planning Commission was the definition of Comparable Unit. The 4x4 Committee had recommended a definition which included a unit of similar size, in a similar location within the city, with similar amenities, notably private open space. The Planning Commission opted for a slightly different recommendation that included similar shared *indoor* amenities and did not include private open space. The Planning Commission felt that offering comparable private open space after the demolition of, for example, an existing single-family dwelling with a large back yard, could limit the redevelopment potential of single-family parcels.

CONTACT PERSON

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Attachments:

- 1: Proposed Ordinance, redlined version.
- 2: Proposed Ordinance, clean version.
- 3: Replacement Unit Provisions, Examples
- 4: Existing Demolition Ordinance (BMC 23.326)
- 5: Planning Commission Reports: December 9, 2023 and January 17, 2024.
- 6: Public Hearing Notice

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:

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 of Residential Units.

23.326.040– Eliminating Dwelling Units through Combination with Other Units.

~~Conversion and Change of Use~~

23.326.050—Demolition of Accessory Buildings.

23.326.0560 – 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.

23.326.100—Severability.

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.

23.326.020 – General Requirements

A. **Applicability.** No ~~dwelling unit Residential Unit(s) 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, or any lawfully-permitted Accessory Dwelling Unit (“ADU”) of Junior Accessory Dwelling Unit (“JADU”).

2. “Residential Unit” includes Dwelling Units, ADUs, or JADUs created without proper zoning approvals or Building Permit(s) if they have been registered

with the Rent Stabilization Board, or the Rent Stabilization Board has otherwise determined that a tenant-landlord relationship existed during the preceding five years.

3. “Residential Unit” does not include a lawfully-permitted ADU or JADU on a residential property containing only a Single-Family Dwelling and one lawfully established and fully permitted ADU or JADU, as defined in BMC Chapter 23.306, where the landlord also occupies a unit in the same property as their principal residence. This shall only apply to properties containing a single ADU or JADU, shall only apply to units compliant with all applicable requirements of BMC Chapter 23.306 (“Accessory Dwelling Units”), and shall only apply to tenancies created after November 7, 2018.
4. “Comparable Unit” means a Residential Unit of similar size (square footage and number of bedrooms), common interior amenities, and location within the city (neighborhood and school attendance area). In the case of a Single-Family Dwelling being replaced, a Comparable Unit is not required to have the same or similar square footage or the same number of total rooms, but must provide the same number of bedrooms if the Single-Family Dwelling includes three or fewer bedrooms, or three bedrooms if the Single-Family Dwelling contains four or more bedrooms.
5. “Protected Unit” includes a Residential Unit:
 - a. Subject to a low-income deed restriction for any of the previous five years;
 - b. Subject to rent or price control under BMC Chapter 13.76; or
Rented by a household at 50% Area Median Income or lower within the previous five years.

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

23.326.030 – Eliminating Dwelling Units through Demolition of Residential Units

~~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) **A.** Demolition is not allowed if:~~

1. The ~~building~~ Residential Unit(s) was removed from the rental market under the Ellis Act through a no-fault eviction during the preceding five years; or
2. There ~~have been verified cases~~ is substantial 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, whose determination may be appealed to the Rent Stabilization Board.

~~(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.~~

3B. Procedure and Findings.

~~1. The ZAB may approve a~~ A Use Permit is required to eliminate or demolish one or more Residential Units, except where otherwise provided by the Zoning Ordinance. a building constructed before June 1980 on a property containing two or more dwelling units ~~The ZAB shall only approve the Use Permit if any one of the following are~~ is true:

- (a) The building containing the ~~units~~ Residential Unit(s) is hazardous or unusable and is infeasible to repair.
- (b) The building containing the ~~units~~ Residential Units(s) will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the unit(s).
- ~~(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)~~ (c) The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

2. A Single-Family Dwelling without sitting tenants can be demolished with an AUP, if the demolition is part of a development project that would result in a net increase in residential density.

3. In the event of a demolition of a Protected Unit created without proper Use Permit(s) or Building Permit(s), as defined in 23.326.020(A)(2), the Building Official, Zoning Officer or Fire Marshal may determine that the replacement of such a unit is infeasible and not required under this Chapter. Such a

determination shall include a finding that the replacement of the unit could not occur in compliance with Zoning Code, Building Code, Fire Code or other regulations related to public health and safety

C. Landmarks and Structures of Merit. Demolition of a designated landmark or structure of merit, or of a structure in a designated historical district, must be approved by the Landmarks Preservation Commission, pursuant to Chapter 3.24.

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.~~

~~1. 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.~~

~~2. 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.~~

~~3. The applicant shall enter into a regulatory agreement with the City of Berkeley to provide the in lieu units.~~

D. Conditions of Approval. Any Protected Unit that is demolished shall be replaced with a Comparable Unit that shall comply with the affordability requirements in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

1. In the event that a displaced household has an income below 50% AMI, a Comparable Unit shall be offered at a rent that is affordable to households at 30% of AMI, and the displaced household shall have the first right of refusal for that unit. Such a Comparable Unit shall be counted as a Very Low-Income unit for applicable affordability requirements in Chapter 23.328.

2. In the event that a demolished Residential Unit is not a Protected Unit and the income of the displaced household is unknown, the Residential Unit shall be presumed to have been occupied by Low- or Lower-Income households in the same proportion as Residential Units throughout the City. The City shall rely upon US Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) data to determine the number of such Residential Units that must be replaced with Affordable Units as defined in Chapter 23.328.

3. In the event that a Protected Unit was subject to rent or price controls under BMC Chapter 13.76, and the income level of the displaced household is unknown, the unit shall be replaced with an Affordable Unit as defined in Chapter 23.328.

E. Requirements for Occupied Units.

~~(a)1. **Applicability.** 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.~~

~~1. The requirements in this subsection apply if units to be demolished are occupied.~~

~~2. 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)2. **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), Chapter 13.77 (Requirements, Procedures, Restrictions and Mitigations Concerning the Withdrawal of Residential Rental Accommodations from Rent or Lease), 13.79 (Tenant Protections: Automatically Renewing Leases and Buyout Agreements) and 13.84 (Relocation Services and Payments for Residential Tenant Households).~~

~~(c)3. **General Requirements.** The applicant shall provide moving and relocation assistance equivalent to the requirements set forth in Municipal Code Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households) or Government Code section 66300.6(b)(4)(A), 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. Within five days of the issuance of the Certificate of Occupancy, tenants shall be notified in writing that the units will be ready for move-in on a date specified. Tenants shall confirm in writing their intent to lease the available unit at any time before 20 days after the issuance of the Certificate of Occupancy. Funding for the rent differential shall be guaranteed in a manner approved by City Council 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).

~~The applicant shall provide assistance with moving expenses equivalent to in Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households).~~

~~3. 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.~~

~~3.(a) *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.).~~

~~(b) *Exception for Tenants in ADUs and Unpermitted Units that Cannot Be Replaced.* Applicants are required to provide moving and relocation assistance, in an amount provided in BMC Section 13.76.130(A)(9)(g), to the following groups of tenants: (i) tenants who occupy a lawfully-permitted ADU or JADU on a residential property containing only a Single-Family Dwelling and one lawfully established and fully permitted ADU or JADU, where the landlord also occupies a unit in the same property as his/her principal residence; and (ii) tenants who occupy a unit created without proper zoning approvals that cannot be replaced for public health or safety reasons, pursuant to BMC Section 23.326.030(B)(3). However, applicants are not required to (i) provide such tenants with a temporary replacement unit while a new unit is being constructed, (ii) notify such tenants when a new unit is ready for occupancy; or (iii) provide such tenants with a right for first refusal for the new unit.~~

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

~~(a) Sitting Any tenants of a Protected Unit that is permitted to be demolished under this section who are displaced as a result of demolition shall be provided have the right of first refusal to move interest a Comparable Unit in the new building project.~~

~~(b) In the event that a displaced household is ineligible for below-market rate replacement units, a market rate Comparable Unit shall be made available to that household at the same rent as had been previously charged, or a lesser rent if that is the market rate. 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.~~

~~(c) Where a displaced tenant exercises the right to rent a Comparable Unit, any increase in rent for the Comparable Unit for the duration of their tenancy shall be no greater than the lesser of 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) or 65% of the corresponding increase in Area Median Income (AMI) for the same calendar year. Income restrictions do not apply to displaced tenants.~~

~~(d) Exceptions.~~

- ~~i. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with 23.326.030.A.4.a, b, and c, 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 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.~~

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*~~ **General.** ~~The ZAB may approve a A Use Permit is required to eliminate one or more Residential Units by combing with another unit when the existing development exceeds currently-allowable density. for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household. The ZAB shall approve a Use Permit for the elimination of one or more Residential Units by combining with another unit only if it finds that:~~

1. The existing number of ~~dwelling units~~Residential Units exceeds ~~the current~~ maximum allowed 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 owner-occupied ~~by the applicant's household~~ as it's a 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~~Residential 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.* ~~Demolition-Combination~~ is not allowed if:

1. The building was removed from the rental market ~~under the Ellis Act~~through a no-fault eviction during the preceding five years; or
2. There ~~have been verified cases~~ is substantial 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, whose determination may be appealed to the Rent Stabilization Board. ~~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~~ Occupancy Requirement Following Elimination.

1. ~~In a unit eliminated under Subsection A (General)~~ If a Residential Unit that is eliminated through combination is not owner-occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected ~~unit~~ Residential 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~~ Residential Unit is not owner-occupied 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~~ Residential Unit reduces the number of units in a building to four or fewer, 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~~ Residential 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.* 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, or other elements required by funding sources or programmatic needs to single-

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

- ~~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.~~~~

23.326.050 – Private Right of Action Demolition of Accessory Buildings.

A. 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. Such Accessory Buildings are considered Residential Units for the purposes of this Chapter.

23.326.060 – ~~Elimination of Residential Hotel Rooms~~ Private Right of Action

A. 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.

~~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.
 - ~~1. 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.~~
 - ~~2. 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.~~

23.326.070 – Demolitions 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 Permittion any lot.~~
- 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 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 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.~~

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:

5. 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
6. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.

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~~ 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).

23.326.100 Severability.

A. If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Section 2. 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.

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 Demolitions of Non-Residential Buildings.
- 23.326.080 Building Relocations.
- 23.326.090 Limitations.
- 23.326.100 Severability

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(s) 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, any bedroom of a Group Living Accommodation (GLA), except a GLA in a University-

recognized fraternity, sorority or co-op, or any lawfully-permitted Accessory Dwelling Unit (“ADU”) or Junior Accessory Dwelling Unit (“JADU”).

2. “Residential Unit” includes Dwelling Units, ADUs, or JADUs created without proper zoning approvals or Building Permit(s) if they have been registered with the Rent Stabilization Board, or the Rent Stabilization Board has otherwise determined that a tenant-landlord relationship existed during the preceding five years.
3. “Residential Unit” does not include a lawfully-permitted ADU or JADU on a residential property containing only a Single-Family Dwelling and one lawfully established and fully permitted ADU or JADU, as defined in BMC Chapter 23.306, where the landlord also occupies a unit in the same property as their principal residence. This shall only apply to properties containing a single ADU or JADU, shall only apply to units compliant with all applicable requirements of BMC Chapter 23.306 (“Accessory Dwelling Units”), and shall only apply to tenancies created after November 7, 2018.
4. “Comparable Unit” means a Residential Unit of similar size (square footage and number of bedrooms), common interior amenities, and location within the city (neighborhood and school attendance area). In the case of a Single-Family Dwelling being replaced, a Comparable Unit is not required to have the same or similar square footage or the same number of total rooms, but must provide the same number of bedrooms if the Single-Family Dwelling includes three or fewer bedrooms, or at least three bedrooms if the Single-Family Dwelling contains four or more bedrooms.
5. “Protected Unit” includes a Residential Unit:
 - a. Subject to a low-income deed restriction for any of the previous five years;
 - b. Subject to rent or price control under BMC Chapter 13.76; or
 - c. Rented by a household at 50% Area Median Income or lower within the previous five years.

23.326.030 Demolition of Residential Units.

A. Demolition is not allowed if:

1. The Residential Unit(s) was removed from the rental market through a no-fault eviction during the preceding five years; or
2. There is substantial 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, whose determination may be appealed to the Rent Stabilization Board.

B. Procedure and Findings.

1. A Use Permit is required to eliminate or demolish one or more Residential Units, except where otherwise provided by the Zoning Ordinance. The ZAB shall only approve the Use Permit if one of the following is true:
 - (a) The building containing the Residential Unit(s) is hazardous or unusable and is infeasible to repair.
 - (b) The building containing the Residential 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).
 - (c) The demolition is necessary to permit construction approved pursuant to this Chapter of at least the same number of Dwelling Units.
2. A Single-Family Dwelling without sitting tenants can be demolished with an AUP, if the demolition is part of a development project that would result in a net increase in residential density.
3. In the event of a demolition of a Residential Unit created without proper zoning approvals or Building Permit(s), as defined in 23.326.020(A)(2), the Building Official, Zoning Officer or Fire Marshal may determine that the replacement of such a unit is infeasible and not required under this Chapter. Such a determination shall include a finding that the replacement of the unit could not

occur in compliance with Zoning Code, Building Code, Fire Code or other regulations related to public health and safety.

C. *Landmarks and Structures of Merit.* Demolition of a designated landmark or structure of merit, or of a structure in a designated historic district, must be approved by the Landmarks Preservation Commission, pursuant to Chapter 3.24.

D. *Conditions of Approval.* Any Protected Unit that is demolished shall be replaced with a Comparable Unit that shall comply with the maximum allowable rent requirements for Affordable Units in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

1. In the event that a displaced household has an income below 50% AMI, a Comparable Unit shall be offered at a rent that is affordable to households at 30% of AMI, and the displaced household shall have the first right of refusal for that unit. Such a Comparable Unit shall be counted as a Very Low-Income unit for applicable affordability requirements in Chapter 23.328.
2. In the event that a demolished Residential Unit is not a Protected Unit and the income of the displaced household is unknown, the Residential Unit shall be presumed to have been occupied by Low- or Lower-Income households in the same proportion as Residential Units throughout the City. The City shall rely upon US Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) data to determine the number of such Residential Units that must be replaced with Affordable Units as defined in Chapter 23.328.
3. In the event that a Protected Unit was subject to rent or price controls under BMC Chapter 13.76, and the income level of the displaced household is unknown, the unit shall be replaced with an Affordable Unit as defined in Chapter 23.328.

E. *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 and the Rent Stabilization Board notice of the application to demolish the Residential 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), Chapter 13.77 (Requirements, Procedures, Restrictions and Mitigations Concerning the Withdrawal of Residential Rental Accommodations from Rent or Lease), 13.79 (Tenant Protections: Automatically Renewing Leases and Buyout Agreements) and 13.84 (Relocation Services and Payments for Residential Tenant Households).
3. *General Requirements.* The applicant shall provide moving and relocation assistance equivalent to the requirements set forth in Municipal Code Chapter 13.84 (Relocation Services and Payments for Residential Tenant Households) or Government Code section 66300.6(b)(4)(A), 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. Within five days of the issuance of the Certificate of Occupancy, tenants shall be notified in writing that the units will be ready for move-in on a date specified. Tenants shall confirm in writing their intent to lease the available unit at any time before 20 days after the issuance of the Certificate of Occupancy. Funding for the rent differential shall be guaranteed in a manner approved by City Council 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).

(a) *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.).

(b) *Exception for Tenants in ADUs and Unpermitted Units that Cannot Be Replaced.* Applicants are required to provide moving and relocation assistance, in an amount provided in BMC Section 13.76.130(A)(9)(g), to the following groups of tenants: (i) tenants who occupy a lawfully-permitted ADU or JADU on a residential property containing only a Single-Family Dwelling and one lawfully established and fully permitted ADU or JADU, where the landlord also occupies a unit in the same property as his/her principal residence; and (ii) tenants who occupy a unit created without proper zoning approvals that cannot be replaced for public health or safety reasons, pursuant to BMC Section 23.326.030(B)(3). However, applicants are not required to (i) provide such tenants with a temporary replacement unit while a new unit is being constructed, (ii) notify such tenants when a new unit is ready for occupancy; or (iii) provide such tenants with a right for first refusal for the new unit.

4. *Sitting Tenants Rights.*

(a) Any tenant of a Protected Unit that is permitted to be demolished under this section shall have the right of first refusal to rent a Comparable Unit in the new project.

(b) In the event that a displaced household is ineligible for below-market rate replacement units, a market rate Comparable Unit shall be made available to that household at the same rent as had been previously charged, or a lesser rent if that is the market rate.

(c) Where a displaced tenant exercises the right to rent a Comparable Unit, any increase in rent for the Comparable Unit for the duration of their tenancy shall be no greater than the lesser of 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) or 65% of the corresponding increase in Area Median Income (AMI) for the same calendar year.

(d) *Exceptions.*

- 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 unit when the existing 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 unit only if it finds that:

1. The existing number of Residential 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 Residential Units has been owner-occupied as a 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 Residential Units are being sold by an estate and the decedent occupied the Residential Units as their principal

residence for no less than two years before the date of their death.

B. *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 is substantial 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, whose determination may be appealed to the Rent Stabilization Board.

C. *Two-Year Occupancy Requirement Following Elimination*

1. If a Residential Unit that is eliminated through combination is not owner-occupied for at least two consecutive years from the date of elimination, the affected Residential 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 of approval and notice will provide that if the Residential Unit is not owner-occupied for at least two years from the date of elimination then the affected Residential Unit(s) must either be restored as separate Residential Unit(s) and the vacant Residential 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.

D. *Effect of Eliminating a Residential Unit.*

1. If eliminating a Residential Unit reduces the number of Residential Units in a building to four or fewer, 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 Residential Units are added or restored such that the building contains at least five Residential Units.
2. The Zoning Officer may issue an AUP for a building conversion which eliminates a Residential Unit upon finding that the conversion will restore or bring the building closer to the original number of Residential Units that was present at the time it was first constructed, provided the conversion meets the requirements of 23.326.040.A.1 and 2 and 23.326.040.B and C.

E. *Exception.* The ZAB may approve a Use Permit to eliminate a Residential Unit through combination with another Residential Unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades, or other elements required by funding sources or programmatic needs to single resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

23.326.050 Demolition of Accessory Buildings.

A. 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. Such Accessory Buildings are considered Residential Units for the purposes of this Chapter.

23.326.060 Private Right of Action.

A. 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 Demolitions 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 that 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 by the applicant that it would be infeasible to obtain prior or concurrent approval for the new construction or new use.

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 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.
- 4. Nothing in this subsection shall exempt Residential Units relocated to the receiving lot from the provisions of BMC Section 13.76 after a building relocation if the Residential Units located within a building were otherwise subject to BMC Chapter 13.76 in the source 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).

23.326.100 Severability.

A. If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Section 2. 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.

Demolition of SFH for Fourplex

Household
Above 50% AMI



Market
Rate

Market
Rate

Market
Rate

Market
Rate

Right of first refusal
Rent at prior rent
Rent controlled for
sitting tenancy

Household
50% AMI or Below



Market
Rate

**30%
AMI
BMR**

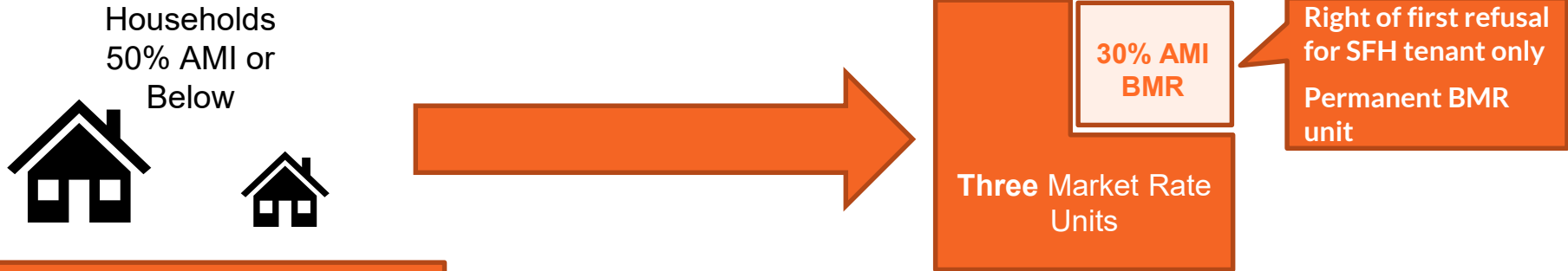
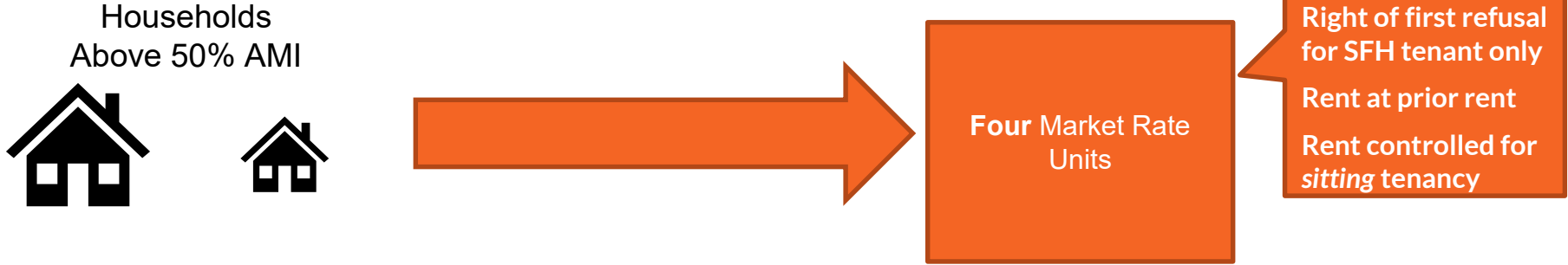
Market
Rate

Market
Rate

Right of first refusal
Permanent BMR unit

- Affordability Requirement
- 30% AMI for each protected unit with 50% AMI household
 - Permanently Affordable

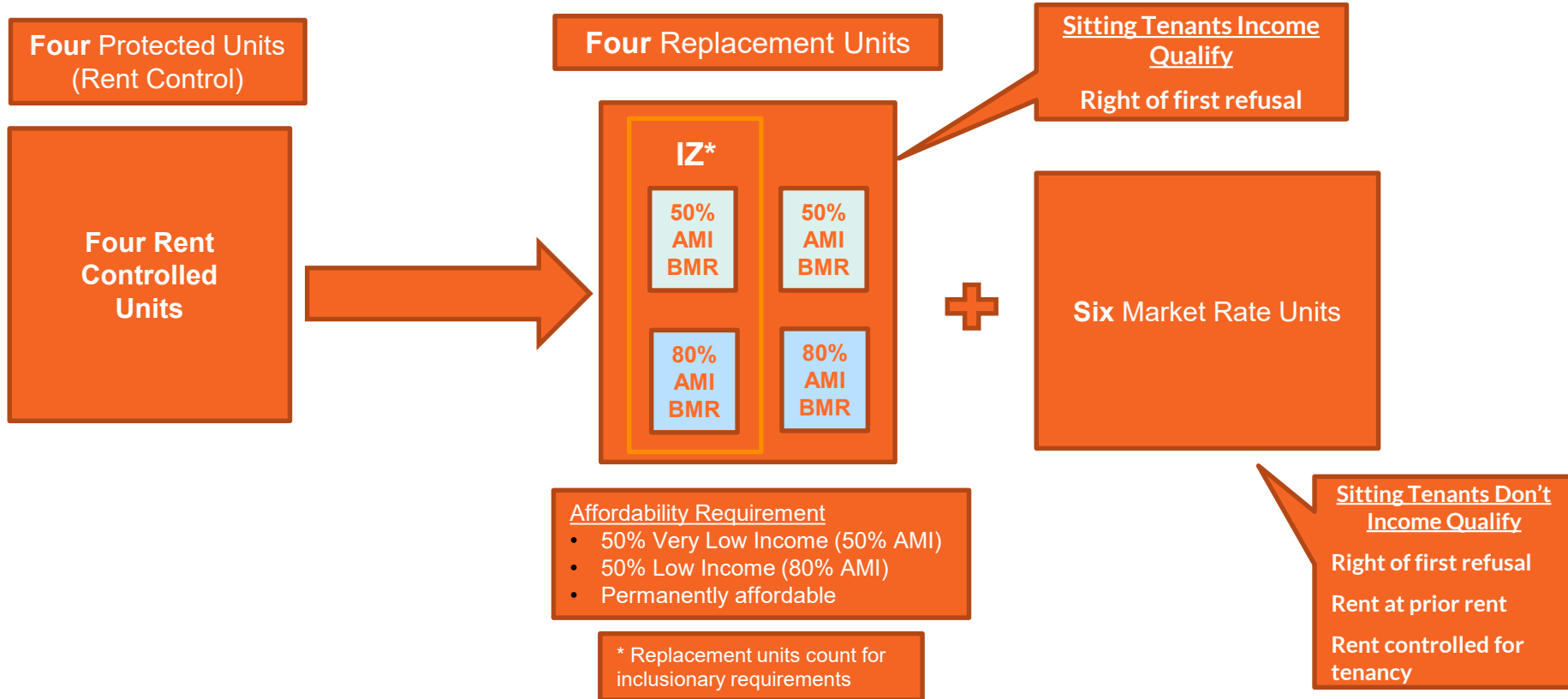
Demolition of SFH + ADU for Fourplex



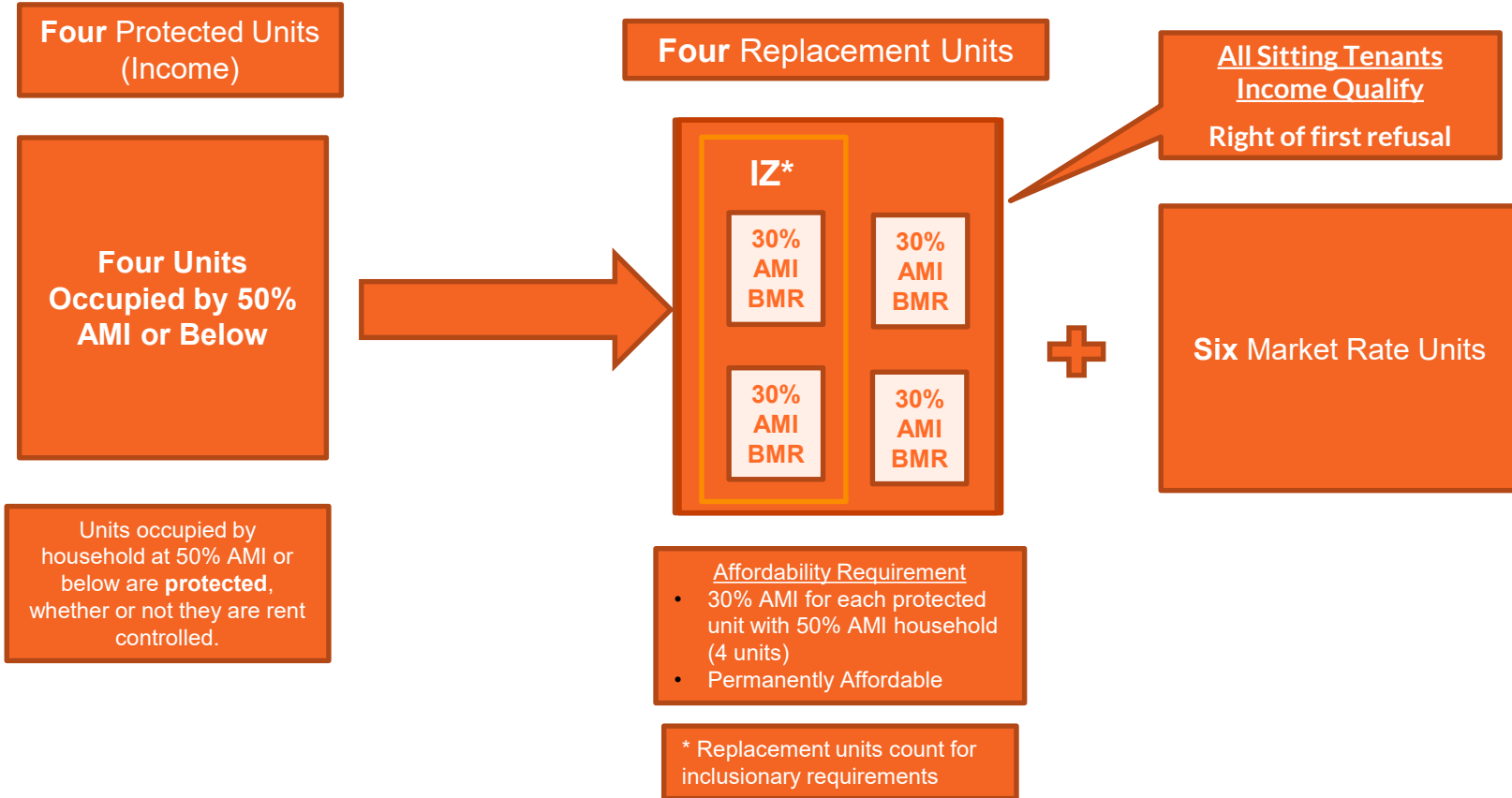
ADUs are not replaced when there is one SFH and one ADU on a lot

- Affordability Requirement
- 30% AMI for each protected unit with 50% AMI household
 - Permanently Affordable

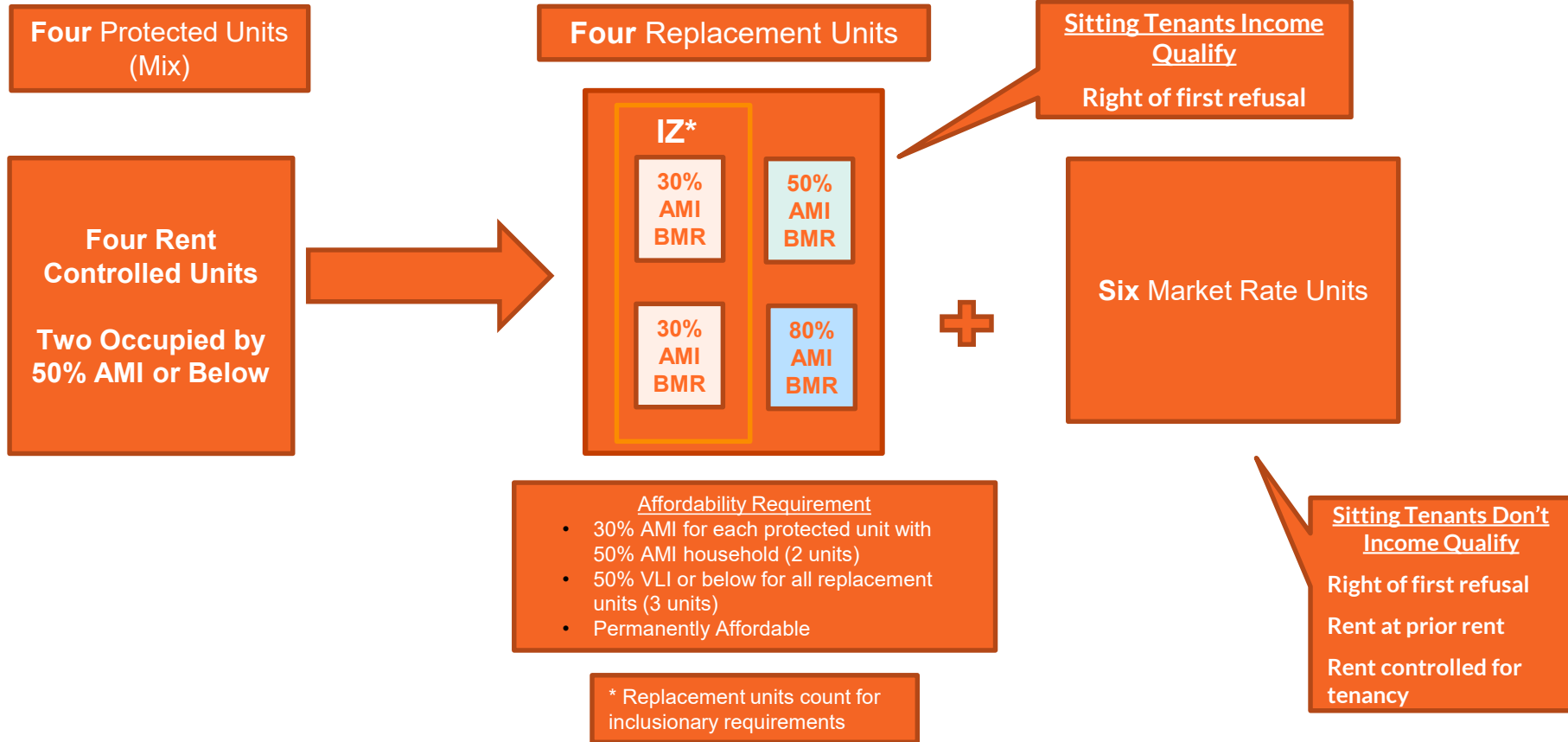
Demolition of Fourplex for Ten Units



Demolition of Rent-Controlled Fourplex for Ten Units



Demolition of Fourplex for Ten Units



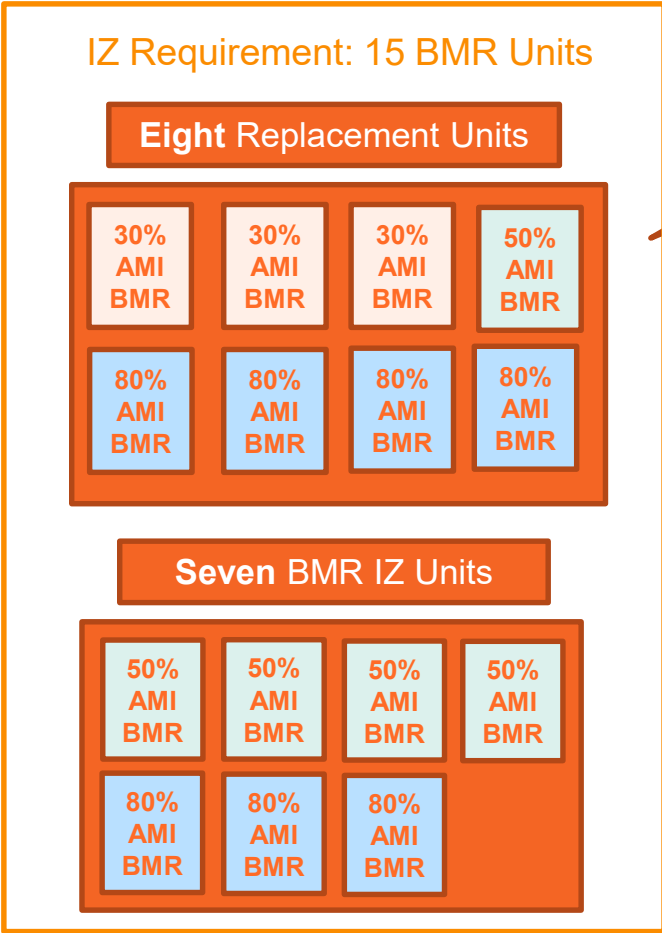
Demolition of 8 Unit Building for 75 Unit Building

Eight Protected Units

Eight Rent Controlled Units
Three Occupied by 50% AMI or Below



- Affordability Requirement
- 30% AMI for each protected unit with 50% AMI household (3 units)
 - 50% AMI or lower for half of all IZ units (8 units)
 - Permanently Affordable



Sitting Tenants Income Qualify
Right of first refusal



60 Market Rate Units

Sitting Tenants Don't Income Qualify
Right of first refusal
Rent at prior rent
Rent controlled for tenancy

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.

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.

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.*

Attachment 4 – Existing Demolition Ordinance

(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.*

Attachment 4 – Existing Demolition Ordinance

- 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.

Attachment 4 – Existing Demolition Ordinance

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

Attachment 4 – Existing Demolition Ordinance

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.

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:

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(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:

Attachment 4 – Existing Demolition Ordinance

- (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.

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.

Attachment 4 – Existing Demolition Ordinance

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;

Attachment 4 – Existing Demolition Ordinance

- (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.

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.*

Attachment 4 – Existing Demolition Ordinance

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.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

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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.

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).



Planning and Development Department
Land Use Planning Division

STAFF REPORT
December 6, 2023

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

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

RECOMMENDATION

Make a recommendation to the City Council regarding amendments to Berkeley Municipal Code Chapter 23.326 (Demo Ordinance). The existing and proposed redlined ordinances are presented in **Attachments 1** and **2**, respectively.

SUMMARY

State law SB 330 (Housing Crisis Act of 2019) includes new provisions related to demolition of residential units. SB 330 provides optional ways to comply with these requirements, based on whether the units are occupied or vacant, whether existing tenants are low income, whether the units are subject to local rent control (in Berkeley, this would be most properties with more than two units built before 1980), or whether the units were removed from the rental market pursuant to the Ellis Act.¹ In particular, replacement units required by SB 330 may be deed restricted to low income households or they may be subject to local rent control. The law also addresses the rights of existing tenants that would be displaced by demolition, including relocation benefits and a right of first refusal to return to the new units at below market rate (BMR) rent. Density bonus law now mirrors these requirements.

The proposed ordinance (**Attachment 2**) includes provisions to bring the Demo Ordinance into conformance with State law, and includes a number of new Berkeley-specific provisions as recommended by the 4x4 Joint Task Force Committee on

¹ Under a state law called the Ellis Act (CA Gov. Code Sec. 7060 et seq.), an owner can evict tenants in order to withdraw a rental property from the rental housing market. A local ordinance, Berkeley Municipal Code Chapter 13.77, establishes specific procedures under the state law.

Housing. The proposed ordinance also includes a number of text edits, including grammatical corrections and renumbering.

CURRENT SITUATION AND ITS EFFECTS

The existing Demo Ordinance (Attachment 1) requires a Use Permit for the demolition or elimination of one or more dwelling units in Berkeley. The Zoning Adjustments Board (ZAB) may issue a Use Permit for the demolition of a dwelling unit for specific enumerated reasons:

- A building is “hazardous or unusable and is infeasible to repair”;
- “Demolition is necessary to permit construction... of at least the same number of dwelling units.”
- “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.”

The existing ordinance includes provisions for unit replacement and the rights of sitting tenants, as well as additional situations such as:

- When housing units are demolished and no new housing units are being developed at the site (e.g., commercial development);
- When tenants have been unlawfully evicted, such as forcing a tenant out of a unit without a court order; and
- When units are being merged or converted within an existing building rather than physically demolished.

The existing ordinance includes a provision whereby applicants may pay a fee rather than provide below-market-rate replacement units, however the amount of the fee has never been established.

Demolition of dwelling units is prohibited where a building has been removed from the rental market under the Ellis Act 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 after the lot has been redeveloped.

Proposed Demolition Ordinance Provisions

The proposed ordinance (**Attachment 2**) includes provisions to bring the Demo Ordinance into conformance with State law, and includes a number of new Berkeley-specific provisions as recommended by the 4x4 Joint Task Force Committee on Housing. The proposed ordinance also includes a number of text edits, including grammatical corrections and renumbering.

The most significant changes are summarized below in Table 1, and discussed in more detail below. The primary rationales for the proposed changes include clarifying the applicability of the ordinance, expanding tenant protections, bringing the ordinance into conformance with State law, and assigning the Rent Stabilization Board (Rent Board) to administer some aspects of the ordinance rather than the ZAB.

Applicable Unit.

The existing ordinance indicates that it applies to a “dwelling unit or units.” The proposed ordinance includes clarifications that it applies to dwelling units, group living accommodations, residential hotel rooms, accessory dwelling units (ADUs), junior accessory dwelling (JADUs) units, and units built without permits.

Comparable Unit.

The existing ordinance refers to a “comparable unit” when referring to replacement units, but does not define “comparable unit.” The proposed ordinance includes an explicit definition of “comparable unit”, indicating that it should be of a comparable size, include similar amenities, and be located in a similar area of the city as the demolished unit.

Prohibited Demolitions.

The existing ordinance indicates that demolition is prohibited for units that have been removed from the rental stock through the Ellis Act within the past five years, or in cases where there has been substantial evidence of tenant harassment by a rental property owner, or an attempted or actual illegal eviction, within the past three years. In the latter case, the determination of whether harassment has occurred is made by the ZAB.

The proposed ordinance expands tenant protections to include any no fault eviction within the past five years, not just removal of a rental unit from the market through the Ellis Act. A “no fault eviction” is when the property owner or landlord wants to evict a tenant at no fault of the tenant, for example, when the property owner wants to move into the property.

The Rent Stabilization Board is proposed to be the deciding body for questions regarding harassment and illegal eviction, instead of the ZAB.

Mitigation Fee.

The existing ordinance includes a requirement to pay an in-lieu mitigation fee for every unit demolished, or the option to replace a comparable BMR unit on-site.

State law (SB330) 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 on-site, and requires that the City condition

approval on the provision of replacement units. Therefore, an option to “fee out” of the replacement requirement is a violation of State law, because it would not provide replacement units at the sizes and affordability levels required by SB 330. Accordingly, the proposed ordinance removes the mitigation fee section.

Landmarks and Structures of Merit.

While the provisions of BMC Chapter 3.24 (Landmarks Preservation Commission) apply to units proposed for demolition, the existing ordinance does not explicitly refer to this chapter. Accordingly, the proposed ordinance includes specific language referring to Chapter 3.24.

Affordability of Replacement Units.

The existing ordinance includes a requirement that any replacement units must be BMR units, and that the income levels of the qualifying households, and rents for the replacement units, shall be set by a resolution of the City Council. The existing ordinance also includes a requirement that the project applicant enter into a regulatory agreement with the city to provide these units.

The proposed ordinance includes more detailed provisions addressing the affordability levels of replacement units:

- The proposed ordinance requires that any demolished unit shall be replaced with equivalent units and comply with the applicable affordability requirements included in BMC 23.328 (Affordable Housing Requirements) and BMC 23.330 (Density Bonus). Referencing these sections clarifies the appropriate affordability levels for replacement units, and establishes consistent requirements across a number of affordable housing-related provisions in the BMC.
- The proposed ordinance also includes a provision that if a displaced household has an income below 50% AMI, a comparable replacement unit shall be offered at a rent that is affordable to households at 30% of AMI.

Sitting Tenants' Rights.

The existing ordinance establishes certain rights for sitting tenants. Sitting tenants in demolished units are entitled to a right of first refusal to move into the new building, have a right of first refusal for any BMR units, and retain those rights even if they have incomes that do not qualify for BMR units.

The proposed ordinance clarifies that tenants who do not qualify for BMR replacement units due to income limits above the area median income must still be provided a market-rate replacement unit at their prior rent. Additionally, the rent for the duration of that tenancy would be subject to Berkeley's rent control regulations. This section was added by the 4x4 Committee to provide additional rights to sitting tenants who may not qualify for BMR units.

The proposed ordinance includes additional provisions related to sitting tenants' rights. The revisions clarify that a sitting tenant's right of first refusal extends to a *comparable* unit (not just any unit) in the building, and sets the initial rent and subsequent rents for sitting tenant households that are ineligible for BMR units. These provisions go beyond what is required under State law.

Elimination of Units through Combination with Other Units.

The existing ordinance includes provisions regulating the elimination of dwelling units through physical combination with other units. This is usually done in cases where two units are combined to make a single larger unit. The existing ordinance requires a Use Permit, with specific findings, to move forward with such an elimination. It also prohibits such an elimination if the building was removed from the rental market through the Ellis Act in the past five years, or if there is evidence of tenant harassment or illegal eviction within the past three years, as determined by the ZAB.

The proposed ordinance permits combined units through an AUP approval if such a combination would return the building to, or move it closer towards, its permitted density. This is a provision to make it easier for units in owner-occupied buildings to be combined. The AUP requirement still includes discretionary review, the ability to set conditions, and an appeal option to the ZAB.

Elimination of a unit for a combination would not be approved if the building was vacated through any no-fault eviction, not just due to the Ellis Act, or if the tenant was subject to landlord harassment or an illegal eviction. The determination of whether landlord harassment or a real or attempted illegal eviction occurred would be made by the Rent Board Hearing Examiner, with an appeal option to the Rent Stabilization Board, instead of by the ZAB.

Demolition of ADUs that are not Controlled.

The existing ordinance includes a provision that allows the demolition, with a Zoning Certificate (ZC), of ADUs that are not rent controlled. The proposed ordinance removes this section, and clarifies that ADUs and JADUs are considered residential units for the purposes of the ordinance, and therefore require a Use Permit for demolition or elimination.

Demolition of Accessory Buildings

The existing ordinance includes a provision that permits the demolition of an accessory building that does not contain a dwelling unit, such as garages, carports, and sheds, with a ZC. The proposed ordinance includes additional clarifying language that an accessory building that is occupied by a residential tenant shall be considered a residential unit for the purposes of this chapter.

Residential Hotel Rooms

The existing ordinance includes a section specifically regulating the elimination of residential hotel rooms. These provisions include specific requirements related to monthly and weekly charges, and permit residential hotel rooms to be removed for the purpose of providing common use facilities (such as a kitchen, lounge, or recreation room) for remaining residents or to undertake seismic upgrades or meet the requirements of the Americans with Disabilities Act. They also include a provision allowing an owner to meet the replacement requirements through a payment to the Housing Trust Fund, which, as noted above, is not permitted under State law. The proposed ordinance removes this section, and includes language indicating that residential hotel rooms are treated as residential units for the purpose of this ordinance.

Technical Edits, Reorganization and Renumbering

The proposed ordinance also includes a variety of purely technical edits, and reorganization, retitling, and renumbering of some sections and subsections.

Table 1. Summary of Revisions to Demolition Ordinance

Policy Area	Current Ordinance	Proposed Ordinance	Rationale
Applicable unit	"Dwelling unit or units."	Dwelling Unit, GLA, ADU, JADU, and units built without permits 23.326.010(A)(1) – (3)	Clarification of the types of units covered.
Comparable unit	No definition.	"Similar size, amenities and location within the city." 23.326.010(A)(4)	Clarification by providing a definition.
Demolition Prohibition: Ellis Act	Prohibition applies to any unit removed via Ellis Act within the past 5 years	Prohibition applies to any "no-fault" eviction. 23.326.030(A)	Expansion of tenant protections beyond just one type of no-fault eviction (Ellis Act).
Demolition Prohibition: Tenant Harassment	Determination made by ZAB.	Determination made by Rent Board. 23.326.030(A)(2)	For tenant-landlord issues, the Rent Board is the subject-expert body.
Mitigation Fee	Includes mitigation fee option.	Removes mitigation fee option.	State Law: Demolished units must be replaced (SB 330).
Landmarks and Structures of Merit	No reference to Landmarks Preservation Commission (LPC) procedures.	Includes reference to LPC procedures. 23.326.030(C)	Clarification that LPC procedures apply.
Replacement Units -- Affordability	<ul style="list-style-type: none"> Replacement unit must be "BMR" in perpetuity; 	<ul style="list-style-type: none"> Replacement unit must comply with Chapter 23.328 (Affordability Requirements) and 	State Law: Existing tenant income levels impact type/affordability of replacement units (SB 330).

Policy Area	Current Ordinance	Proposed Ordinance	Rationale
	<ul style="list-style-type: none"> Affordability level to be set by Council resolution; Regulatory agreement with the City required. 	23.330 (Density Bonus); <ul style="list-style-type: none"> For demolished unit with household at 50% AMI or below, replacement unit must be set at 30% AMI; and Allows Zoning Officer and Fire Marshall to waive replacement for health and safety 23.326.030(C)	
Sitting Tenants Rights	<ul style="list-style-type: none"> Right of first refusal to move into the building Right of first refusal for BMR units Income restrictions do not apply 	<ul style="list-style-type: none"> Right of first refusal for a comparable unit For displaced tenants who rent a comparable unit, rent is controlled for duration of tenancy For households ineligible for BMR units, a replacement unit shall be offered at prior rent 23.326.030(E)(4)	State Law: Tenant income levels impact type/affordability of replacement units (SB 330). Additional local requirement: Income restrictions do not apply to displaced households upon their return to the property after completion of the project.
Elimination of Units through Combination with other Units	Use Permit required in all cases, with findings.	AUP to combine units when the combination would return the building to, or move it closer towards, its original density 23.326.040(B)	Simplification: Allow conversion of owner-occupied buildings with a lesser standard.
	Combination not allowed if the building was removed via Ellis Act within the past 5 years	Combination not allowed if vacated through no fault eviction within the past 5 years 23.326.040(C)	Expansion of tenant protections beyond just one type of no-fault eviction (Ellis Act).
	Combination not allowed if tenant harassment. Determination made by ZAB	Determination made by Rent Board Hearing Examiner, with appeal to Rent Board 23.326.040(C)	For tenant-landlord issues, the Rent Board is the subject-expert body.

Policy Area	Current Ordinance	Proposed Ordinance	Rationale
Demolition of ADUs	Provides path to demolition with ZC for ADUs that are not rent controlled.	Section removed. All ADUs and JADUs, regardless of rent control status, are regulated as a residential unit.	ADUs and JADUs are considered Residential Units for purpose of ordinance. <i>23.326.010(A)(2)</i>
Demolition of Accessory Buildings	Can be demolished by right.	Added language to clarify that Accessory Buildings that are occupied by residential tenants are considered Residential Units. <i>23.326.050</i>	Expansion of demolition controls and tenant protections.
Elimination of Residential Hotel Rooms	Section 23.326.060 provides specific procedures for removal of residential hotel rooms	Section removed.	Residential Hotel Rooms are considered Residential Units for purpose of ordinance. <i>23.326.010(A)(1)</i>

BACKGROUND

The impetus for these revisions is recent changes in State law that provide additional requirements for new housing development projects that involve the demolition of existing residential units. These provisions of SB 330 (Housing Crisis Act of 2019), which modified Government Code sections relating to zoning and density bonus, require all new housing development projects to provide replacement units of equivalent size, defined as having the same number of bedrooms as the demolished units.

At its meeting of February 1, 2023, the Planning Commission scheduled a public hearing to adopt a recommendation for the City Council of changes to the Demo Ordinance (**Attachment 3**). The Planning Commission deferred a final recommendation pending recommendations from the 4x4 Joint Task Force Committee on Housing. Staff returned to the 4x4 Joint Task Force Committee in September and October of 2023 for discussion and recommendations, which are reflected in **Attachment 2**. The proposed amendments do not include changes in permit requirement for by-right demolition of single-family homes, which will be considered in the future as part of a larger package of 'middle housing' zoning amendments.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

California Public Resource Code Section 21065 defines a "project" under CEQA as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed ordinance amendments relate only to the requirements to demolish existing structures, and would not result in any physical changes to the environment. The proposed ordinance does not consist of a discretionary action that would permit or cause any

direct or indirect change in the environment. The proposed ordinance is therefore not a project under CEQA.

RATIONALE FOR RECOMMENDATION

The proposed ordinance includes changes required by state law, as well as policy changes recommended by the 4x4 Joint Committee Task Force on Housing.

NEXT STEPS

After the Planning Commission holds a public hearing and makes a recommendation to the City Council, the City Council shall hold a public hearing and vote to adopt the proposed ordinance amendments

CONTACT PERSON

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Attachments:

1. Existing Demolition Ordinance (BMC Chapter 23.326)
2. Proposed Demolition Ordinance – Redlined (BMC Chapter 23.326)
3. Planning Commission Staff Report – Feb 1, 2023.
4. Public Hearing Notice



Planning and Development Department
Land Use Planning Division

STAFF REPORT
January 17, 2024

TO: Members of the Planning Commission

FROM: Justin Horner, Associate Planner

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

RECOMMENDATION

Conduct a public hearing and make a recommendation to the City Council regarding amendments to Berkeley Municipal Code Chapter 23.326 (Demolition and Dwelling Unit Control Ordinance). The existing and proposed redlined ordinances are presented in **Attachments 1** and **2**, respectively.

SUMMARY

State law SB 330 (Housing Crisis Act of 2019) established new provisions related to demolition of residential units. SB 330 provides optional ways to comply with these requirements. These include unit occupancy or vacancy, existing tenant income status (ex. low income), local rent control applicability (in Berkeley, this would be most properties with more than two units built before 1980), or if units were removed from the rental market pursuant to the Ellis Act.¹ In particular, replacement units required by SB 330 may be deed restricted to low income households or subject to local rent control. The law also addresses the rights of existing tenants that would be displaced by demolition, including relocation benefits and a right of first refusal to return to the new units at below market rate (BMR) rent. Density bonus law now reflects these requirements.

The proposed ordinance (**Attachment 2**) includes provisions to bring the Demolition Ordinance into conformance with State law, and includes a number of new Berkeley-specific provisions as recommended by the 4x4 Joint Task Force Committee on Housing and the Planning Commission's Subcommittee meeting of December 20, 2023. The proposed ordinance also includes a number of text edits, including grammatical corrections and renumbering.

¹ Under a state law called the Ellis Act (CA Gov. Code Sec. 7060 et seq.), an owner can evict tenants in order to withdraw a rental property from the rental housing market. A local ordinance, Berkeley Municipal Code Chapter 13.77, establishes specific procedures under the State law.

REVISIONS TO DECEMBER 6, 2023 PROPOSED ORDINANCE

The proposed ordinance presented to the Planning Commission at its December 2, 2023 meeting was prepared based on multiple Planning Commission meetings and meetings of the 4x4 Joint Task Force Committee on Housing. The staff report for the December 6th 2023 Planning Commission meeting (**Attachment 3**) includes detailed discussion of those meetings, as well as the rationale for the development of the proposed ordinance.

At its December 6, 2023 meeting, the Planning Commission moved to create a Subcommittee to review the proposed ordinance in detail, and to consider suggestions and recommendations made by Commissioners at that meeting. The Subcommittee met on December 20, 2023 and recommended a number of changes to the ordinance presented to the Planning Commission at the December 6, 2023 meeting. These changes are detailed below.

- **Demolition of Single-Family Dwellings with a Zoning Certificate.** The ordinance presented on December 6, 2023 included a provision that requires a Use Permit (UP) to demolish any dwelling unit. *Program 29-Middle Housing* of the recently-adopted Housing Element includes a provision requiring the City Council to consider by-right demolition of single-family homes to encourage the development of middle housing.

Proposed Modification: The proposed ordinance includes a provision to allow the demolition of a single-family dwelling with a Zoning Certificate if the demolition is part of a development project that would result in a net increase in residential density. This provision changes the required permit for the demolition from a Use Permit to a Zoning Certificate. All other aspects of the ordinance, including tenant notice, tenant protections, unit replacement requirements and other provisions, would continue to apply to the demolition of single-family dwellings.

- **Demolition of Residential Units for Non-Residential Projects.** The ordinance presented on December 6, 2023 included a provision which would allow the Zoning Adjustments Board (ZAB) to approve the demolition of residential units with a finding that the demolition is necessary to permit construction of “economically beneficial uses;” that is, projects that are non-residential. Residential units demolished under this finding would not have been required to be replaced.

Proposed Modification: The Subcommittee recommended removal of this provision. AB 1218,² recently signed into law, applies SB 330 residential unit replacement requirements to proposed projects that do not include residential units.

- **“Equivalent” vs. “Comparable” Units.** The ordinance presented to the Planning Commission on December 6, 2023 included a requirement that residential units that are demolished shall be replaced with “equivalent” units.

² <https://legiscan.com/CA/text/AB1218/id/2845253>

Proposed Modification: Neither the ordinance, nor Title 23, includes a definition of “equivalent,” for this context. The Subcommittee therefore replaced “equivalent” with “comparable,” which is defined in the proposed ordinance.

- **Tenants’ Intent to Return.** The ordinance presented to the Planning Commission on December 6, 2023 included a provision 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.” [emphasis added]

Proposed Modification: The Subcommittee recommended more precise language to indicate the timeline by which a tenant should inform an owner of their intent to return to a unit. The proposed ordinance includes new provisions that:

- a) an owner must inform a tenant within five days of the issuance of a Certificate of Occupancy that a new unit will be ready for move in on a specific date; and
- b) tenants are to confirm in writing their intent to lease a replacement unit at any time between learning of a demolition and twenty days after the issuance of a Certificate of Occupancy for a new unit.

- **Combination of Units, Findings.** The ordinance presented to the Planning Commission on December 6, 2023 included a provision that allows the ZAB to approve a UP to eliminate a unit within a single-resident occupancy residential development undergoing a publicly-funded rehabilitation through combination with another unit, for the purposes of providing private bathrooms, kitchenettes, accessibility upgrades, or seismic safety upgrades.

Proposed Modification: The Subcommittee recommended additional language to broaden the acceptable purposes to include “other elements required by funding sources or programmatic needs.”

- **Combination of Units, Applicant Requirements.** The ordinance presented to the Planning Commission on December 6, 2023 includes two requirements relating to applicants intending to demolish units through combination. One requirement is that the ZAB must find that the applicant’s household has occupied the affected unit for no less than two years, and the other is that an applicant’s household must occupy the combined unit for at least two years after its completion.

Proposed Modification: The proposed ordinance changes this requirement from applying to the “applicant,” to applying to an “owner.” This revision would still require owner-occupancy, maintaining prohibitions on evicting tenants to combine units or immediately renting combined units, but would permit an owner-to-owner sale of a property.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

California Public Resource Code Section 21065 defines a “project” under CEQA as “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” The proposed ordinance amendments relate only to the requirements to demolish existing structures, and would not result in any physical changes to the environment. The proposed ordinance does not consist of a discretionary action that would permit or cause any direct or indirect change in the environment. The proposed ordinance is therefore not a project under CEQA.

RATIONALE FOR RECOMMENDATION

The proposed ordinance includes changes required by state law, as well as policy changes recommended by the 4x4 Joint Committee Task Force on Housing and the Planning Commission’s Subcommittee.

NEXT STEPS

After the Planning Commission holds a public hearing and makes a recommendation to the City Council, the City Council shall hold a public hearing and vote to adopt the proposed ordinance amendments.

CONTACT PERSON

Justin Horner, Associate Planner, Planning and Development, jhorner@berkeleyca.gov; 510-981-7476

Attachments:

1. Existing Demolition Ordinance (BMC Chapter 23.326)
2. Proposed Demolition Ordinance – Redlined (BMC Chapter 23.326)
3. Planning Commission Staff Report – December 6, 2023.
4. Public Hearing Notice

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

**Zoning Ordinance Amendments to Berkeley Municipal Code
Section 23.326 (Demolition and Dwelling Unit Controls)**

The public may participate in this hearing by remote video or in-person.

The Department of Planning and Development is proposing amendments to the Demolition Ordinance, Berkeley Municipal Code Chapter 23.326, that are required or permitted pursuant to recent changes in State law that provide additional requirements for new housing development projects that involve the demolition of existing residential units. The proposed amendments would also detail additional tenant protections and affordability requirements for replacement of demolished units.

The hearing will be held on, **March 26, 2024 at 6:00 p.m.** in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City’s website at <https://berkeleyca.gov/> as of March 14, 2024. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Justin Horner, Associate Planner at 510-981-7476. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 or in person to the City Clerk. 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 City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Published: March 15, 2024

Public Hearing required by BMC 23.412.050 and Govt Code 65853; notice provided according to Govt Code 65090 and BMC 23.404.040.



I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on March 14, 2026.

Mark Numainville, City Clerk

BERKELEY RENT STABILIZATION BOARD**2024 Committee Assignments***As of 3/21/2024*

COMMITTEES	COMMISSIONERS	STAFF CONTACT(S)
BUDGET & PERSONNEL	Walker (Chair) Alpert Mizell Simon-Weisberg	DéSeana Williams, Executive Director Shamika Cole, Finance Director
ENVIRONMENTAL SUSTAINABILITY	Martinac (Chair) Elgstrand Johnson Kelley	Nathan Dahl, Public Information Unit Manager
EVICITION / SECTION 8 / FORECLOSURE	Elgstrand (Chair) Johnson Martinac Mizell	Ollie Ehlinger, Staff Attorney
LIRA COMMITTEE (LEGISLATION, IRA/AGA & REGISTRATION)	Kelley (Chair) Alpert Martinac Mizell	Matt Brown, General Counsel
OUTREACH	Alpert (Chair) Elgstrand Kelley Marrero	Nathan Dahl, Public Information Unit Manager
4 x 4 JOINT COMMITTEE ON HOUSING: CITY COUNCIL / RSB	Simon-Weisberg (Co-Chair) Johnson Marrero Walker	TBA
2 x 2 COMMITTEE ON HOUSING: RSB / BUSD	Marrero (Co-Chair) Simon-Weisberg	Shamika Cole, Finance Director DéSeana Williams, Executive Director
AD HOC COMMITTEE TO CONSIDER RENT ORDINANCE AMENDMENTS AT THE 2024 NOVEMBER GENERAL ELECTION	Johnson (Chair) Alpert Kelley Simon-Weisberg	Matt Brown, General Counsel



Rent Stabilization Board

**RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING**

Thursday, March 7, 2024 – 5:30 p.m.

**Rent Stabilization Board Law Library – 2001 Center Street, 2nd floor, Berkeley
Teleconference location: **3655 South Grand Avenue, Suite 250, Los Angeles, California 90007****

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION.

For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

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/82446621261?pwd=iQ8Y9F1EJNJPYVdM1fYfhVf2LTrz90.1>. If you do not wish your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself as anonymous. To request to speak, use the "Raise Hand" icon by rolling over the bottom of the screen.

To join by phone: Dial 1-669-900-6833 and enter Webinar ID: 824 4662 1261 and Passcode: 048388. 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 email comment for the Committee's consideration and inclusion in the public record, email DeWilliams@berkeleyca.gov with the Subject line in this format: "PUBLIC COMMENT ITEM FOR BUDGET & PERSONNEL COMMITTEE." Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 3:30 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 apply for both in-person attendees and those participating 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 at the posted location(s). 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.



COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at (510) 981-6418 (voice) or (510) 981-6347 (TDD) at least three (3) business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Rent Stabilization Board

RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING

Thursday, March 7, 2024 – 5:30 p.m.

Rent Stabilization Board Law Library – 2001 Center Street, 2nd floor, Berkeley
Teleconference location: 3655 South Grand Avenue, Suite 250, Los Angeles, California 90007

AGENDA

1. Roll Call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-Chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors, and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of agenda
4. Public Comment
5. Approval of February 23, 2024, meeting minutes (attached to agenda)
6. Discussion and Possible Action regarding Mid-Fiscal Year Budget Update (See attached report)
7. Discussion and Possible Action on the Process to Adopt the FY 2024/25 Registration Fee for Fully Covered and Measure MM units (Staff presentation)
8. 3Di Enhancements- Paperless Billing and Update to the 3Di Homepage (Staff presentation)
9. Office Relocation process (verbal report only)
10. Rent Board File Scanning Project Update (verbal report only)
11. Future agenda items
12. Discussion and possible action to set the next meeting

13. **CLOSED SESSION:** Public Employee Evaluation of Performance pursuant to California Government Code Section 54957 (b)(1).

Title: Executive Director

14. Adjournment

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

COMMITTEE: Soli Alpert, Nathan Mizell, Leah Simon-Weisberg, Dominique Walker (Chair)



**RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING**

Friday, February 23, 2024 – 11:00 a.m.

Rent Stabilization Board Law Library – 2001 Center Street, 2nd floor, Berkeley

****REVISED AGENDA****

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Rent Stabilization Board

RENT STABILIZATION BOARD
BUDGET & PERSONNEL COMMITTEE MEETING

Friday, February 23, 2024 – 11:00 a.m.

Rent Stabilization Board Law Library – 2001 Center Street, 2nd floor, Berkeley

****REVISED AGENDA****

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3. Approval of agenda
4. Public Comment
5. Approval of February 8, 2024, meeting minutes (attached to agenda)
6. Discussion and Possible Action on the Process to Adopt the FY 2024/25 Registration Fee for Fully Covered and Measure MM units (Staff presentation)
7. Discussion and Possible Action regarding Mid-Fiscal Year Budget Review, including an Update on Recent Changes to the Staffing Model (To be delivered)
8. Office Relocation process (verbal report only)
9. Rent Board File Scanning Project Update (verbal report only)
10. Future agenda items
11. Discussion and possible action to set the next meeting
12. Adjournment

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

COMMITTEE: Soli Alpert, Nathan Mizell, Leah Simon-Weisberg, Dominique Walker (Chair)



2 X 2 JOINT COMMITTEE ON HOUSING
RENT STABILIZATION BOARD (RSB)/BERKELEY UNIFIED SCHOOL DISTRICT (BUSD)

Monday, March 11, 2024 – 5:30 p.m.

Berkeley Unified School District – 2020 Bonar St., Room 126, Berkeley, CA

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To join by phone: Dial 1-669-444-9171 and enter Webinar ID: 880 3197 8435 and Passcode: 252478. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

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2 X 2 JOINT COMMITTEE ON HOUSING
RENT STABILIZATION BOARD (RSB)/BERKELEY UNIFIED SCHOOL DISTRICT (BUSD)

Monday, March 11, 2024 – 5:30 p.m.

Berkeley Unified School District – 2020 Bonar St., Room 126, Berkeley, CA

AGENDA

1. Roll Call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-Chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors, and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of agenda
4. Public Comment
5. Approval of December 18, 2023, meeting minutes (attached to agenda)
6. Presentation from BUSD Director Mathew Espinosa – Office of Family Engagement, Berkeley Unified School District (discussion only)
7. Presentation from Chair Marrero - Regional Advisory Committee-West Needs Assessment Report (discussion only)
8. Future agenda items
9. Discussion and possible action to set the next meeting
10. Adjournment

STAFF CONTACT: Shamika Cole, Finance Director (510) 981-4903

COMMITTEE: Vanessa Marrero (Chair), Leah Simon-Weisberg (RSB), Mike Chang (BUSD), Jennifer Shanoski (BUSD)