



**RENT STABILIZATION BOARD**  
**Regular Meeting**  
**Thursday, February 16, 2023**  
**7:00 p.m.**

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

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

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/84493074093?pwd=czBleVhaekhOcllwZHo2cThBdGRGZz09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise Hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial 1-408-638-0968 and enter Meeting ID: 844 9307 4093 and Passcode: 791964. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.

To submit a written communication for the Board's consideration and inclusion in the public record, please email [amueller@cityofberkeley.info](mailto:amueller@cityofberkeley.info) with the Subject line in this format: "RENT BOARD MEETING PUBLIC COMMENT ITEM." Please observe a 150-word limit. **Email comments must be submitted to the email address above by 5:00 p.m. on the day of the meeting in order to be included.**

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

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

**RENT STABILIZATION BOARD**  
**Regular Meeting**  
**Thursday, February 16, 2023**  
**7:00 p.m.**

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

1. **Roll call** – 1 min.\*
  
2. **Land Acknowledgment Statement**: The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchün- (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.
  
3. **Approval of Agenda** – 1 min.\*
  
4. **Public Comment** – 2 min. per speaker for *non*-agendized items\*
  
5. **Public Comment** – 2 min. per speaker for items on the agenda\*
  
6. **SPECIAL ORDER OF BUSINESS** – 10 min.\*
  - a. Recommendation to adopt Resolution 23-02 In Honor and Recognition of Assembly Member William Byron Rumford for His Extraordinary Service and Leadership for Racial Justice for Tenants of Berkeley and Beyond, in Commemoration of Black History Month (Commissioner Mizell, Commissioner Marrero & Chair Simon-Weisberg)
  
  - b. Recommendation that the Board send a letter of support for the City of Berkeley's Proclamation to Honor William Byron Rumford on the 60<sup>th</sup> Anniversary of the Rumford Fair Housing Act of 1963 – *Verbal* (Commissioner Marrero & Chair Simon-Weisberg)

7. **CONSENT ITEMS** – 1 min.\*

- a. Approval of the January 19, 2023 regular meeting minutes
- b. Discussion and possible action to adopt Resolution 23-03 to allow the Board to continue to meet exclusively by teleconference throughout the remainder of the state of emergency associated with the COVID-19 pandemic (General Counsel)
- 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

2624 REGENT  
1278 DELAWARE  
1464 BANCROFT  
921 REGAL RD  
2020 PRINCE  
2223 BONAR  
940 FRESNO  
1645 CORNELL  
1235 CARRISON  
1923-1929 CURTIS  
2624 REGENT

**Discretionary Waivers**

Waiver No.    Property Address

W5071	2133 RUSSELL ST
W5072	1334 ORDWAY
W5074	1104/1106 EUCLID

8. **APPEAL** – 7:30 p.m.\*\*

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

**Case No. T-5991 (2705 Ridge Road, #14)**

Landlord filed an appeal of a hearing decision granting in part and denying in part Tenant’s Petition for Individual Rent Adjustment (“petition”), seeking a rent reduction due to certain claimed substandard conditions of the rental unit located at 2705 Ridge Road, Unit 14, Berkeley, CA (“premises”).

On appeal, Landlord claims that: (1) the decision was based on false information and false assumptions, and (2) the decision is not credible or acceptable because of the Rent Stabilization Board’s (“Rent Board”) bias against property owners. However, a review of the record shows that the hearing examiner’s decision is supported by

substantial evidence. Landlord fails to substantiate a claim of Rent Board bias against property owners. The decision of the hearing examiner should be affirmed.

## 9. ACTION ITEMS

*from Board Members, Committees, Executive Director or Staff*

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

- a. Chair Update (Chair Simon-Weisberg) – 5 min.\*
  - (1) Discussion and possible action regarding the California Department of Housing and Community Development's formal comments on the City of Berkeley's Revised Draft Housing Element
  - (2) February 1, 2023 *Berkeleyside* article by Nico Savidge titled, "The state rejected Berkeley's housing plans. What happens next?"  
<https://www.berkeleyside.org/2023/02/01/berkeley-housing-element-builders-remedy-hcd>
- b. Discussion and possible action to deliver official communication to Council recommending that it extend the Eviction Moratorium (BMC Chapter 13.110) beyond the expiration of the state of emergency (LIRA Committee) – 20 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. Update on providing mediation services and technical assistance to the Town of Fairfax – *Verbal* (Executive Director) – 2 min.\*
- b. Copy of January 26, 2023 letter to Chief Investment Officer Jagdeep Singh Bachher regarding the Board's vote to demand that the University of California Regents divest from the Blackstone Real Estate Income Trust (Chair Simon-Weisberg) – 1 min.\*
- c. Copy of January 20, 2023 letter to Assembly Member Haney conveying the Board's support for AB 12 (Chair Simon-Weisberg) – 1 min.\*
- d. Date to submit agenda topics/items for March's regular Rent Board meeting is **Monday, March 5<sup>th</sup> by 5:00 p.m.** (Board Secretary) – 1 min.\*

## **11. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS**

- a. Budget and Personnel Committee (Chair TBA) – 5 min.\*  
Next regularly-scheduled meeting: Thursday, Feb. 9<sup>th</sup> at 5:30 p.m.  
  
February 9<sup>th</sup> agenda
- b. Eviction/Section 8/Foreclosure Committee (Chair TBA) – 5 min.\*  
Next regularly-scheduled meeting: TBA
- c. Legislation, IRA/AGA & Registration Committee (LIRA Committee)  
(Commissioner Kelley, Chair) – 5 min.\*  
Next regularly-scheduled meeting: Monday, Mar. 6<sup>th</sup> at 5:30 p.m.  
  
February 6<sup>th</sup> agenda
- d. Outreach Committee (Chair TBA) – 5 min.\*  
Next regularly-scheduled meeting: Wednesday, Feb. 15<sup>th</sup> at 5:30 p.m.  
  
January 31<sup>st</sup> agenda  
  
February 15<sup>th</sup> agenda
- e. 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: Wednesday, Feb. 15<sup>th</sup> at 3:00 p.m.  
  
February 1<sup>st</sup> agenda packet (revised)  
  
February 15<sup>th</sup> agenda packet
- f. Ad Hoc Committee on Environmental Sustainability (Chair TBA) – 3 min.\*  
Next meeting date: TBA
- g. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District  
(Chair TBA) – 1 min.\*  
Regularly-scheduled meeting date: TBA
- h. Updates and Announcements – 3 min.\*
- i. Discussion of items for possible placement on future agenda – 5 min.\*

- 12. CLOSED SESSION** – Pursuant to California Government Code Section 54956.9(a), the Board will convene in closed session for an update on litigation:

*Andrew Marowitz v. Berkeley Rent Stabilization Board* (Alameda County Superior Court Case # RG19042977)

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

### **13. 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.

**RESOLUTION 23-02**

**IN HONOR AND RECOGNITION OF ASSEMBLY MEMBER WILLIAM BYRON RUMFORD FOR HIS EXTRAORDINARY SERVICE AND LEADERSHIP FOR RACIAL JUSTICE FOR TENANTS OF BERKELEY AND BEYOND IN COMMEMORATION OF BLACK HISTORY MONTH**

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

**WHEREAS**, William Byron Rumford was an Assembly Member, Pharmacist, and longtime member of the South Berkeley Community, and

**WHEREAS**, Rumford overcame racism in the hiring and certification process to become the first Black person at Highland Hospital pharmacy department; and

**WHEREAS**, Rumford later opened, Rumford's pharmacy in South Berkeley which served as a place of service, community, and organizing for South Berkeley's Black Community for several decades; and

**WHEREAS**, Rumford contributed to the Berkeley interracial Committee, a committee that worked to welcome new Berkeleyans from the South; and

**WHEREAS**, in 1944 Rumford was appointed by Governor Warren to Serve on the Rent Control Board as part of a federal effort to stabilize rents during World War II; and

**WHEREAS** In 1948, Rumford became the first African-American from Northern California elected to the California State Assembly with significant support from Berkeley's Black Community; and

**WHEREAS**, upon entering the legislature, Assembly Member Rumford quickly worked to combat racial discrimination by sponsoring legislation to end segregation of the California national guard; and

**WHEREAS**, Rumford sponsored the 1959 Fair Employment Practices Act making it illegal for employers to discriminate based on race, creed, color, national origin, or ancestry; and

**RESOLUTION 23-02**

**IN HONOR AND RECOGNITION OF ASSEMBLY MEMBER WILLIAM BYRON  
RUMFORD FOR HIS EXTRAORDINARY SERVICE AND LEADERSHIP FOR  
RACIAL JUSTICE FOR TENANTS OF BERKELEY AND BEYOND  
IN COMMEMORATION OF BLACK HISTORY MONTH**

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**WHEREAS**, despite great challenges in the legislature, Rumford introduced and passed the landmark 1963 Rumford Fair Housing Act which banned discrimination in housing across the state; and

**WHEREAS**, backlash to the Rumford Act ultimately failed to nullify the act as Proposition 14, a direct challenge to the Act, was ruled unconstitutional by the California Supreme Court, a decision that was affirmed by the United States Supreme Court in *Reitman v. Mulkey*; and

**WHEREAS**, the Rumford Act served as a model for the National Fair Housing Act of 1968 which prohibited housing discrimination on the basis of ethnicity, religion, or national origin; and

**WHEREAS**, William Byron Rumford said “There is no meaningful compromise with racial justice; either we have a constitution which protects the civil and personal liberties of all people, or we do not”.

**NOW, THEREFORE, BE IT RESOLVED**, in commemoration of Black History Month, the Berkeley Rent Stabilization Board expresses its deepest appreciation for the many outstanding contributions made by William Byron Rumford through his tremendous work and advocacy for civil rights in Berkeley and throughout the nation.



**RESOLUTION 23-02**

**IN HONOR AND RECOGNITION OF ASSEMBLY MEMBER WILLIAM BYRON  
RUMFORD FOR HIS EXTRAORDINARY SERVICE AND LEADERSHIP FOR  
RACIAL JUSTICE FOR TENANTS OF BERKELEY AND BEYOND  
IN COMMEMORATION OF BLACK HISTORY MONTH**

(Page 3)

Dated: February 16, 2023

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



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**RENT STABILIZATION BOARD**  
**Regular Meeting**  
**Thursday, January 19, 2023**  
**7:00 p.m.**

**Minutes - *Unapproved***

1. **Roll call** – Chair Simon-Weisberg called the meeting to order at 7:02 p.m.  
Aimee Mueller called roll.  
Commissioners present: Alpert, Elgstrand, Johnson, Kelley, Marrero, Martinac, Mizell, Walker, Simon-Weisberg  
Staff present: Brown, Dahl, Eberhart, Law, Mueller, Williams
  
2. **Land Acknowledgment Statement**: The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878 and since the Rent Stabilization Board’s creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.  
  
The Land Acknowledgement Statement was played aloud.
  
3. **Approval of Agenda** – M/S/C (Kelley/Alpert) APPROVE THE AGENDA WITH THE FOLLOWING CHANGE: MOVE ACTION ITEM 7.a.(2) TO CONSENT. Roll call vote. YES: Alpert, Elgstrand, Johnson, Kelley, Marrero, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: None. Carried: 9-0-0-0.
  
4. **Public Comment** – *non*-agendized items. There were no speakers.
  
5. **Public Comment** – items on the agenda. Moni Law spoke about the City’s Draft Housing Element and the Tenant Opportunity to Purchase Act. Elana spoke about the University of California’s agreement with Blackstone’s Real Estate Income Trust Inc. Fund (REIT). Negeene Mosaed spoke about University of California’s agreement with Blackstone’s REIT. Jonah Gottlieb spoke about University of California’s agreement with Blackstone’s REIT. Paola Laverde spoke about University of California’s agreement with Blackstone’s REIT and the rights of student workers.

**6. CONSENT ITEMS**

*Item 7.a.(2) was moved to consent by a prior vote of the Board.*

- a. Approval of the December 15, 2022 regular meeting minutes
- b. Recommendation to adopt 2023 Committee Assignments and establish a Sustainability Committee (Chair Simon-Weisberg)
- 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

1630 ASHBY  
1609 DERBY  
1426 SPRUCE  
2425 EUNICE  
2437 8<sup>TH</sup>  
2629 PIEDMONT  
2217 9<sup>TH</sup>  
2140 WOOLSEY  
1442 6TH ST  
2429 SAN PABLO  
2433 SAN PABLO  
2747 SAN PABLO  
1430 GRIZZLY  
905 CRESTON  
800 EUCLID  
1312 CARELTON  
1354 LINCOLN ST  
2010 10TH STREET

**Discretionary Waivers**

Waiver No.    Property Address

W5069            2016 A GRANT ST  
W5070            3251 IDAHO

M/S/C (Johnson/Kelley) MOTION TO APPROVE ALL CONSENT ITEMS AS WRITTEN, INCLUDING ITEM 7.a.(2). Roll call vote. YES: Alpert, Elgstrand, Johnson, Kelley, Marrero, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: None. Carried: 9-0-0-0.

7. **ACTION ITEMS**

*from Board Members, Committees, Executive Director or Staff*

Public comment will be heard prior to the Board's vote on each action item listed below –  
No speakers.

***Action item 7.a.(2) was moved to Consent by a prior vote of the Board.***

a. Chair Update (Chair Simon-Weisberg)

- (1) Discussion and possible action to send a letter to the University of California regarding its property agreement with Blackstone's Real Estate Income Trust Inc. Fund (REIT)

<https://www.reuters.com/business/finance/university-california-invest-4-bln-blackstones-reit-2023-01-03/>

<https://www.swfinstitute.org/news/95291/university-of-california-endowment-and-pension-money-to-invest-4-billion-in-blackstone-real-estate-income-trust>

M/S/C (Simon-Weisberg/Walker) SEND A LETTER TO THE UNIVERSITY OF CALIFORNIA REGARDING ITS PROPERTY AGREEMENT WITH BLACKSTONE'S REAL ESTATE INCOME TRUST INC. FUND (REIT). Roll call vote. YES: Alpert, Elgstrand, Johnson, Kelley, Marrero, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: None. Carried: 9-0-0-0.

- (2) Recommendation to disband the Ad Hoc Committee on Rent Board Technology Issues – MOVED TO CONSENT BY A PRIOR VOTE OF THE BOARD.

- b. Discussion and possible action to adopt Resolution 23-01 to allow the Board to continue to meet exclusively by teleconference throughout the remainder of the state of emergency associated with the COVID-19 pandemic (General Counsel)

M/S/C (Kelley/Johnson) APPROVE RESOLUTION 23-01 AS WRITTEN. Roll call vote. YES: Alpert, Elgstrand, Johnson, Kelley, Marrero, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: None. Carried: 9-0-0-0.

8. **INFORMATION, ANNOUNCEMENTS AND ARTICLES/MEDIA**

*from Board Members, Committees, Executive Director or Staff*

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

- a. Updated Regulation 1266 [Self Labor] with current Consumer Price Index (CPI) information (General Counsel)
- b. Updated Commissioner attendance at Board and Committee meetings through the 4<sup>th</sup> quarter of 2022 (Board Secretary)
- c. Date to submit agenda topics/items for February's regular Rent Board meeting is **Monday, February 6<sup>th</sup> by 5:00 p.m.** (Board Secretary)

## 9. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

- a. Budget and Personnel Committee (Chair TBA)  
Next regularly-scheduled meeting: TBA
- b. Eviction/Section 8/Foreclosure Committee (Chair TBA)  
Next regularly-scheduled meeting: TBA
- c. Legislation, IRA/AGA & Registration Committee (LIRA Committee)  
(Commissioner Kelley, Chair)  
Next regularly-scheduled meeting: TBA
- d. Outreach Committee (Chair TBA)  
Next regularly-scheduled meeting: TBA
- e. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District  
(Chair TBA)  
Regularly-scheduled meeting date: TBA
- f. 4 x 4 Joint Task Force Committee on Housing: City Council/Rent Board  
(Mayor Arreguín and Chair Simon-Weisberg, Co-Chairs)  
Next regularly-scheduled meeting: TBA

December 14, 2022 agenda packet

- g. Ad Hoc Committee on Rent Board Technology Issues (Chair TBA)  
Next meeting date: TBA
- h. Updates and Announcements: Executive Director Williams announced a change in how information related to waivers is presented. Board Secretary Mueller explained why commissioners had only received invitations for the January and February Regular Board meetings, and when they can expect invitations for the rest of the year's meetings. Chair Simon-Weisberg announced that the Alameda County Board of Supervisors would be considering the eviction moratorium, good cause for unincorporated areas, and a fair chance ordinance. Commissioner Kelley and Rent Board staff member Moni Law talked about the deadline for the tenant

survey.

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

**10. ADJOURNMENT** – M/S/C (Alpert/Kelley) ADJOURN THE MEETING. Roll call vote.  
YES: Alpert, Elgstrand, Johnson, Kelley, Marrero, Martinac, Mizell, Walker, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: None. Carried: 9-0-0-0.

The meeting adjourned at 8:01 p.m.

**RESOLUTION 23-03**

**RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(e)(3) PERMITTING THE BOARD TO CONTINUE TO CONDUCT ITS PUBLIC MEETINGS EXCLUSIVELY VIA VIDEOCONFERENCE AND TELECONFERENCE**

**WHEREAS**, the City Manager, on March 3, 2020, proclaimed the existence of a local emergency caused by the epidemic in the form of global spread of COVID-19; and

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency with the passage of Resolution 69-312; and

**WHEREAS**, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution 69-312; and

**WHEREAS**, on March 17, 2020, Governor Newsom signed Executive Order N-29-20 which suspended provisions of California Government Code Section 54950 et seq. (“Brown Act”) that required that each location from which a public official accesses a teleconferenced meeting be accessible to the public and suspended the requirements for in-person legislative meetings; and

**WHEREAS**, Executive Order N-29-20 expired on September 30, 2021; and

**WHEREAS**, on September 16, 2021, Governor Newsom signed into law Assembly Bill 361, which amended the Brown Act to authorize legislative bodies such as City Councils and the Rent Board, during the state of emergency, to determine that due to the continued spread of COVID-19, public meetings may still be held exclusively via video and teleconference; and

**WHEREAS**, the Board does find that the aforesaid conditions and harm caused by the continued spread of COVID-19 continue to exist, and now include over 22,000 confirmed cases of COVID-19 and at least 73 deaths in the City of Berkeley; and

**WHEREAS**, as a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination; and

**WHEREAS**, holding public meetings in person would present imminent risks to the health and safety of the public and members of the Board, and therefore public meetings cannot be safely held in person at this time; and

**WHEREAS**, on October 21, 2021, the Board passed Resolution 21-29, making the above findings in accordance with Government Code section 54953(e)(3) and opting to follow the direction of the City Council with regards to continuing to hold public meetings via videoconference and teleconference; and



**RESOLUTION 23-03**

**RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(e)(3) PERMITTING THE BOARD TO CONTINUE TO CONDUCT ITS PUBLIC MEETINGS EXCLUSIVELY VIA VIDEOCONFERENCE AND TELECONFERENCE (Page 2)**

**WHEREAS**, the Board retains discretion independent of City Council to make such findings and to direct the Board to hold public meetings via video conference and teleconference; and

**WHEREAS**, the Board adopted Resolution 23-01 which authorized that all Board meetings were to continue to be held via videoconference and teleconference at its January 19, 2023 meeting; and

**WHEREAS**, AB 361 requires that legislative bodies review the need for the continuing necessity of holding legislative meetings via video and teleconferencing every thirty days.

**NOW THEREFORE, BE IT RESOLVED** by the City of Berkeley Rent Stabilization Board that, pursuant to California Government Code Section 54953, the Board has reviewed the circumstances of the continued state of emergency posed by the spread of COVID-19, and finds that the state of emergency continues to directly impact the ability of the public and members of the Board to meet safely in person, that holding public meetings in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination; and

**BE IT FURTHER RESOLVED** that the Berkeley Rent Stabilization Board shall continue to hold public meetings exclusively via videoconference and teleconference; and

**BE IT FURTHER RESOLVED** that the Board shall comply with the requirements of California Government Code section 54953(e)(2) and all applicable laws, regulations, and rules when conducting public meetings pursuant to this resolution.

Dated: February 16, 2023

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 STABILIZATION BOARD

DATE: February 16, 2023

TO: Honorable Members of the Rent Stabilization Board

FROM: DéSeana Williams, Executive Director

BY: Amanda Eberhart, Registration Unit Manager

SUBJECT: Request for waiver of late registration penalties

### **Recommendation:**

That the Board approves the attached recommendations.

### **Background and Need For Rent Stabilization Board Action:**

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

**Ministerial Waivers**

In accordance with Regulation 884, the Executive Director reviews waiver requests that do not meet the criteria enumerated in Regulation 883. The following waiver request will be decided ministerially unless the Board has reason to believe the underlying basis of the recommended assessment is inappropriate. Please see the attached Ministerial Waiver Analysis and Recommendation for additional details.

Waiver	Property Address	Owner	Penalty Assessed	Penalty Waived	Penalty Imposed
	2624 REGENT	EFFEFAGH PROPERTIES PTSHP LP	120.00	120.00	
	1278 DELAWARE	TAYLOR BENNETT	300.00	-	300.00
	1464 BANCROFT	CARYN STEWART	500.00	500.00	
	921 REGAL RD.	ROBERT KROLL	36.00		36.00
	2020 PRINCE	HARRY HUANG	500.00	500.00	
	2223 BONAR	MARC GUZMAN	500.00	500.00	
	940 FRESNO	JOHN LEE	300.00	150.00	150.00
	1645 CORNELL	HOPE AMADOR	450.00	450.00	
	1235 CARRISON	HUIE C K LIM 1999 FAM TRUST	500.00		500.00
	1923-1929 CURTIS	NICK PAPPAS	846.00	846.00	
	2624 REGENT	EFFEFAGH PROPERTIES PTSHP LP	120.00	120.00	
<b>TOTAL</b>			4,052.00	3,066.00	986.00

**Financial Impact: Ministerial Waivers**

Approval of Executive Director’s recommendations will decrease the Board’s current accounts receivable by **\$3,066.00**.

**Discretionary Waivers**

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

Waiver	Property Address	Owner	Penalty Assessed	Penalty Waived	Penalty Imposed
W5071	2133 RUSSELL ST	PATRICK MCWHORTER	1,500.00	1,500.00	
W5072	1334 ORDWAY	MARION THOMAS SKIDMORE	600.00	600.00	
W5074	1104/1106 EUCLID	LAURIE ZOLOTH	2,000.00	2,000.00	
<b>TOTAL</b>			4,100.00	4,100.00	-

**Financial Impact: Discretionary Waivers**

Approval of Executive Director’s recommendations will decrease the Board’s current accounts receivable by **\$4,100.00**.

**Name and Telephone Number of Contact Person:**

DéSeana Williams, Executive Director  
 Rent Stabilization Board  
 2125 Milvia Street, Berkeley, CA 94704  
 (510) 981-7368

## Ministerial Waiver Analysis and Recommendation

Address	Details
2624 Regent	The Property located at 2624 Regent Street is a single-family home partially covered under Measure MM. The property has been owned by the current owner since 2018. The property owner states in their waiver that they were unaware of the Measure MM passing. A search of Rent Records will show this property was added to the Rent Registry database in January 2023. Per Rent Board regulation 883 G, this property qualifies to have 100% of their penalties waived. Staff recommends waving 100% of the penalties per the regulation.
1278 Delaware	The Property located at 1278 Delaware Street is a single-family home partially covered under Measure MM. The property was transferred to the current owner in August 2010. The property owner states in their waiver that, “the owner lives in England and the envelopes for the Berkeley Rent Board fee were not received by the property manager timely to make the annual payments”. A search of Rent Records will show this property was added to the Rent Registry database on October 19, 2021. The records will also show at that time the property manager contact information was also added to the Rent Registry Platform. As of February 2023, this information has not changed. Rent Board Records will also show that in October 2021 the property manager informed the Rent Board that the unit had been rented since 2019. Rent Board Records will show the property was sent a bill October 19, 2021 for current fees and penalties. Only the registration fees were paid in November 2021. Rent Board Records will also show in May 2022 the 22/23 registration statements were sent to the property manager as well. In October 2022, the property paid the remaining penalties bring the property into compliance with the registration requirement of the ordinance. Staff recommends denying the penalty waiver.
1464 Bancroft	The duplex located at 1464 Bancroft, has been owned by the current owner since January 2022. Rent Board Records will show that one unit is owner occupied and one unit is fully covered. Unfortunately the data migration from our previous Rent Registry system to our new Rent Registry platform missed the payment that was made during the 21/22 registration cycle. This action resulted in \$500 dollars in penalties being added to the account. Per Rent Board Regulation 883 G, this property qualifies to have 100% of the penalties waived. Staff recommends waiving 100% of the penalty.

## Ministerial Waiver Analysis and Recommendation

921 Regal	<p>The Property located at 921 Regal Rd is a single-family home partially covered under Measure MM. The property has been owned by the current owners since 1976. The property owner states in their waiver that, “the notification of the new requirement was mailed to the wrong address” The property owner then goes on to state that, “their address is ‘known’ throughout the City of Berkeley as they have a current Business License”. Unfortunately, business license addresses are not shared amongst departments and per the Rent Board Ordinance, it is the responsibility of the property owner to update Rent Board records. A search of Rent Records will show this property was added to the Rent Registry database on October 21, 2022. The records will also show at that time the property manager contact information was also added to the Rent Registry Platform. Also, the waiver form submitted to the Rent Board has the same address as the Rent Registry Platform. As of February 2023, this information has not changed. Rent Board Records will also show the property was sent a bill October 21, 2022 for prorated fees and penalties. Only the registration fees were paid in November 2022. At that time the property also was granted to an administrative correction. The property owner would like the Rent Board to waive the prorated penalty for failure to register the April 2022 tenancy within the 60 day registration requirement per the ordinance. The Staff recommends denying the penalty waiver.</p>
2020 Prince	<p>The 3 unit property located at 2020 Prince was bought by the current owner on 8/31/21. Unfortunately, due to the owners timing of the purchase they would have most likely missed the notifications regarding registering the property during the 21/22 Registration cycle. When the 22/23 billing statements were sent in May 2022, we did receive communication from the owner and the Rent Board was fully able to update the property records and bring the account current. Also, the current owner has owned this property less than one year and qualifies to have their penalties removed by the Executive Director under regulation 804(A). The property owner has already paid all outstanding penalties. For these reasons, staff recommends waiving the penalties in full.</p>
2223 Bonar	<p>The multi-residential property located at 2223 Bonar Street has been owned by the current owner since May 2022. A search of record records will show the property manager entered a New Owner Amendment through the Rent Registry Portal in June 2022. Unfortunately due to Rent Board Staff error, the New Owner Amendment was not processed or approved which reflected inaccurate information at the time the 22/23 registration fees were due. Staff recommends waiving the penalties and full.</p>
940 Fresno	<p>The Property located at 921 Regal Rd is a single-family home partially covered under Measure MM. The property has been owned by the current owners since 1976. The property owner states in their waiver that, “In 2014 the owner began renting the unit when they moved to Oregon which remains their primary residence”. A search of Rent Board Records will show the tenant that occupied this property reached out to the Rent Board for a Mediation Hearing in August 2022. At that time the property owner was notified that this property should have been registered under Measure MM. The owner is asking the Rent Board to, “waive the penalties because they were uninformed of the requirements”. Staff Recommends waiving 50% of the penalties.</p>

## Ministerial Waiver Analysis and Recommendation

1645 Cornell	<p>The single family home located at 1645 Cornell Ave has been owned by the current owner since 2021. This is a partially covered property covered under measure MM. The property originally belonged to the owner’s late mother. The owner states in their waiver that, “the property was supposed to transfer to her in March 2021, unfortunately the transfer did not take place until June 2021. Due to the timing of the property transfer, the current owner would have most likely missed the notifications regarding registering the property during the 21/22 Registration cycle. When the 22/23 penalty documents were sent in September 2022, we did receive communication from the owner and the Rent Board was fully able to update the property records and bring the account current. Per Regulation 883, staff recommends the penalty be waived in full.</p>
1235 Carrison	<p>The 4-Plex located at <u>1235 Carrison</u> has been owned by the current owner since <u>2020</u>. The owner believes they were incorrectly charged twice for the 2022-2023 registration season. Unfortunately that is not the case. A search of rent board records will show that on June 7, 2022 the property was only charged for three units and the owner paid for three units. On June 16th 2022, Unit C which had previously been not available for rent since 2020 was now available for rent. The property owner was charged prorated fees and penalties for unit C whose tenancy started in February 2022 but was registered with the rent board in June 2022. At that time the July 1st deadline for the prorated fees and penalties for Unit C still applied. The property owner failed to submit payment by the July 1st deadline and a 100% penalty was applied to the account. Regrettably the registration fee for Unit C was paid in January 2023 so a second penalty was charged to the account January 3, 2023. Staff recommends denying the waiver.</p>
1923-1929 Curtis	<p>The 4-Plex located at <u>1923 Curtis St</u> has been owned by the current owner since <u>1983</u>. In the packet provided by the property owner they submitted minutes from the July 13th 1983 board meeting that proved their property was considered new construction under Section 4.1 of the report ordinance. Unfortunately Rent Board Staff did not update their property records in time for this property to have gotten the Measure MM Notifications. Per Regulation 883, staff recommends the penalty be waived in full.</p>

**City Of Berkeley  
Rent Stabilization Board**

**Recommendation on Requested Waiver of Registration Penalties**

<b>Waiver No:</b> W5071	<b>Property address:</b> 2133 RUSSELL ST BERKELEY	<b>Transferred:</b> 01/01/1900
<b>Exempt units (as of February 2021):</b> Unit # 3 - OOC - Owner		
<b>Owner(s):</b> PATRICK MCWHORTER	<b>Waiver filed by:</b> TRUSTEE	<b># of Units:</b> 3
<b>Other Berkeley rental property owned:</b> None		

**Late payment/penalty history:** In the last five fiscal years the property owner has made five late registration payments in the 17/18, 18/19, 19/20, 20/21 and 21/22 registration cycles. In each of these registration cycles the property owner was granted Administrative Waivers under Regulation 883 H.

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

**Penalties Currently Under Consideration**

<b>Reason for Penalties:</b> Death						
Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
FY 2022-23	3	-	-	\$500.00	-	\$500.00
FY2021-22	3	\$0.00	-	\$1,000.00	\$0.00	\$1,000.00
<b>Totals</b>				<b>\$1,500.00</b>	<b>\$0.00</b>	<b>\$1,500.00</b>

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

**Good cause claimed by owner:** The Property Owner passed from COPD in 2022

**Recommendation:** Staff recommends waiving 100% of the penalty fee.

**Staff Analysis:** The property at 2133 Russell Street, was owned by the current owner since 1981. In the last five fiscal years the property owner has made five late registration payments in the 17/18, 18/19, 19/20, 20/21 and 21/22 registration cycles. During the 21/22 registration cycle, the owner passed away. The property trustee is asking the Board to wavier their penalty fees. Staff recommends waiving 100% of the penalty fee.



late payments

17/18

18/19

19/20

20/21

21/22

RECEIVED

FEB 02 2022

Initial: AB  
Berkeley Rent Board

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

**Request for Waiver of Late Registration Penalties**

Please Read Important Information on Page 2

Property Address: 2133 RUSSELL ST BERKELEY, CA 94705

Owner: PATRICK McWHORTER

Date of acquisition, if new owner: TRANSFER 11/21/22 PRIOR OWNER 3/5/1981

Name & relationship of person filing request, if not owner: BRIAN KIPPEN, TRUSTEE

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

PATRICK HAD COPD SINCE 2001. IN 2013 HE BECAME  
HOUSE BOUND AND IN MAY 2022 BED BOUND PASSING AWAY  
OCTOBER 13, 2022. I HELPED PATRICK WITH MUCH OF HIS DAILY  
RESPONSIBILITIES. DUE TO HIS WISHES AND HEALTH NEEDS MONEY BILL  
NOT BEING SO HE COULD DIE WHERE WANTED... AT HOME  
I WOULD APPRECIATE A WAIVER AS I AM TRYING TO BRING  
ALL ACCOUNTS CURRENT AS WELL AS REPAIRING THE HOME. BRIAN KIPPEN

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

Date: 1/7/2022 Signature: BK

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

Email Address: BKIPPEN@GMAIL.COM

Mailing Address: 2133 RUSSELL ST BERKELEY, CA 94705

Phone Number: 510-229-8764 Fax Number: \_\_\_\_\_

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

**STATE OF CALIFORNIA**  
**CERTIFICATION OF VITAL RECORD**

**CITY OF BERKELEY**

DEPARTMENT OF HEALTH, HOUSING & COMMUNITY SERVICES

3052022239873

CERTIFICATE OF DEATH

3202261000486

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1. NAME OF DECEDENT - FIRST (Given) <b>PATRICK</b>		3. LAST (Family) <b>MCWHORTER</b>	
MIDDLE <b>BANNON</b>		4. DATE OF BIRTH mm/dd/yyyy <b>10/30/1942</b>	
AKA ALSO KNOWN AS - Include (if AKA, FIRST, MIDDLE, LAST)		5. AGE Yrs. Mths. Ds. <b>79</b>	
9. BIRTH STATE/FOREIGN COUNTRY <b>OH</b>		11. EVER IN U.S. ARMED FORCES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK	
10. SOCIAL SECURITY NUMBER		12. MARITAL STATUS/SROP* (at time of death) <b>NEVER MARRIED</b>	
13. EDUCATION - Highest Level (Degree) (See worksheet on back) <b>BACHELOR</b>		7. DATE OF DEATH mm/dd/yyyy <b>10/13/2022</b>	
14. H.S. WAS DECEDENT HISPANIC/LATINO/SPANISH? (If yes, see worksheet on back) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		8. HOUR (24-hour) <b>1230</b>	
17. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED <b>MODEL MAKER</b>		18. DECEDENT'S RACE - (Up to 3 races may be listed (see worksheet on back)) <b>WHITE</b>	
20. DECEDENT'S RESIDENCE (Street and number, or location) <b>2133 RUSSELL STREET APT. #3</b>		19. YEARS IN OCCUPATION <b>45</b>	
21. CITY <b>BERKELEY</b>		22. COUNTY/PROVINCE <b>ALAMEDA</b>	
23. ZIP CODE <b>94705</b>		24. YEARS IN COUNTY <b>53</b>	
25. STATE/FOREIGN COUNTRY <b>CA</b>		26. INFORMANT'S NAME, RELATIONSHIP <b>BRIAN KIPPEN, DPOA</b>	
27. INFORMANT'S MAILING ADDRESS (Street and number, or rural route number, city or town, state and zip) <b>2133 RUSSELL STREET APT. #2, BERKELEY, CA 94705</b>		28. NAME OF SURVIVING SPOUSE/SROP - FIRST	
29. MIDDLE		30. LAST (BIRTH) NAME	
31. NAME OF FATHER/PARENT - FIRST <b>WILLIAM</b>		32. MIDDLE <b>EDWIN</b>	
33. LAST <b>MCWHORTER</b>		34. BIRTH STATE <b>KY</b>	
35. NAME OF MOTHER/PARENT - FIRST <b>KATHLEEN</b>		36. MIDDLE	
37. LAST (BIRTH) NAME <b>BANNON</b>		38. BIRTH STATE <b>KY</b>	
39. DISPOSITION DATE mm/dd/yyyy <b>10/18/2022</b>		40. PLACE OF FINAL DISPOSITION <b>RESIDENCE OF BRIAN KIPPEN 2133 RUSSELL STREET APT. #2, BERKELEY, CA 94705</b>	
41. TYPE OF DISPOSITION <b>CREMATE/RESIDENCE</b>		42. SIGNATURE OF EMBALMER <b>NOT EMBALMED</b>	
43. LICENSE NUMBER		44. NAME OF FUNERAL ESTABLISHMENT <b>GRANT MILLER-JOHN COX</b>	
45. LICENSE NUMBER <b>FD171</b>		46. SIGNATURE OF LOCAL REGISTRAR <b>LISA HERNANDEZ, MD</b>	
47. DATE mm/dd/yyyy <b>10/18/2022</b>		102. IF HOSPITAL, SPECIFY ONE: <input type="checkbox"/> P <input type="checkbox"/> E <input type="checkbox"/> G <input type="checkbox"/> D <input type="checkbox"/> A	
103. IF OTHER THAN HOSPITAL, SPECIFY ONE: <input type="checkbox"/> Home <input checked="" type="checkbox"/> Hospice <input type="checkbox"/> Nursing Home/LTC <input type="checkbox"/> Other		104. COUNTY <b>ALAMEDA</b>	
105. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number, or location) <b>2133 RUSSELL STREET APT. #3</b>		106. CITY <b>BERKELEY</b>	
107. CAUSE OF DEATH Enter the chain of events - diseases, injuries, or complications - that directly caused death. DO NOT enter terminal phrase such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. IMMEDIATE CAUSE (Final disease or condition resulting in death) <b>ACUTE RESPIRATORY FAILURE</b>		108. DEATH REPORTED TO CORONER? (AT) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
UNDERLYING CAUSE (Disease or injury that initiated the events resulting in death) LAST <b>CHRONIC OBSTRUCTIVE PULMONARY DISEASE</b>		109. BODYSY PERFORMED? (BT) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
110. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 107 <b>NO</b>		111. AUTOPSY PERFORMED? (BT) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
112. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 107 OR 110? (If yes, list type of operation and date) <b>NO</b>		113. USED IN DETERMINING CAUSE? (BT) YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
114. I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED. Decedent: Abundant Since Decedent Last Exam: Aft (A) mm/dd/yyyy (B) mm/dd/yyyy <b>09/29/2022 10/12/2022</b>		116. SIGNATURE AND TITLE OF CERTIFIER <b>ABDELSALAM M. MOGASBE, MD</b>	
117. TYPE ATTENDING PHYSICIAN'S NAME, MAILING ADDRESS, ZIP CODE <b>ABDELSALAM M. MOGASBE, MD 85 MORAGA WAY STE. 100B, ORINDA, CA 94563</b>		118. LICENSE NUMBER <b>A87753</b>	
119. I CERTIFY THAT IN MY OPINION DEATH OCCURRED AT THE HOUR, DATE, AND PLACE STATED FROM THE CAUSES STATED. MANNER OF DEATH: <input type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Homicide <input type="checkbox"/> Suicide <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined		119. DATE mm/dd/yyyy <b>10/18/2022</b>	
120. INJURED AT WORK? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		121. INJURY DATE mm/dd/yyyy	
122. PLACE OF INJURY (e.g., home, construction site, wooded area, etc.)		122. HOUR (24-hour)	
123. DESCRIBE HOW INJURY OCCURRED (Events which resulted in injury)		123. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER	
124. LOCATION OF INJURY (Street and number, or location, and city, and zip)		124. DATE mm/dd/yyyy	
125. SIGNATURE OF CORONER / DEPUTY CORONER		125. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER	
126. DATE mm/dd/yyyy		126. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER	
127. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		127. DATE mm/dd/yyyy	
128. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		128. DATE mm/dd/yyyy	
129. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		129. DATE mm/dd/yyyy	
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185. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		185. DATE mm/dd/yyyy	
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194. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		194. DATE mm/dd/yyyy	
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198. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		198. DATE mm/dd/yyyy	
199. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		199. DATE mm/dd/yyyy	
200. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER		200. DATE mm/dd/yyyy	

This is to certify that this document is a true copy of the official record filed with the City of Berkeley.

by:   
**LISA B. HERNANDEZ, MD, MPH**  
 LOCAL REGISTRAR AND HEALTH OFFICER



DATE ISSUED **OCT 24 2022**

This copy not valid unless prepared on engraved border displaying seal and signature of Registrar.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE



**City Of Berkeley  
Rent Stabilization Board**

**Recommendation on Requested Waiver of Registration Penalties**

<b>Waiver No:</b> W5072	<b>Property address:</b> 1334 ORDWAY ST,	<b>Transferred:</b> 01/04/2000
<b>Exempt units (as of February 2021):</b> None		
<b>Owner(s):</b> MARION THOMAS SKIDMORE	<b>Waiver filed by:</b> OWNER	<b># of Units:</b> 1
<b>Other Berkeley rental property owned:</b> None		

**Late payment/penalty history:** This is a Measure MM property.

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

**Penalties Currently Under Consideration**

<b>Reason for Penalties:</b> Justice						
Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
FY2022-23	1	-	-	\$150.00	-	-
FY2021-22	1	\$0.00	-	\$450.00	\$0.00	\$0.00
<b>Totals</b>				<b>\$600.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

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

**Good cause claimed by owner:** The owner was facing a possible eviction from her personal unit at the time of registration.

**Recommendation:** Staff recommends waiving 100% of the penalty fee.

**Staff Analysis:** The single-family home located at 1334 Ordway Street has been owned by the current owner since 1999. This is a partially covered property covered under measure MM. The property owner did not register this property by the Measure MM deadline and failed to pay the 22/23 registration fees on time. The first time the owner reached out the Rent Board to register their property was December 2022. The owner states in their waiver that they, "understood their house was previously exempt but learned of the passing of measure mm earlier that year". At that time the property owner was required to provide information regarding the rental of their unit. Unfortunately, this information was not provided to the rent

board. The owner States they were having a crisis this year having been required to leave their residents of five plus years and didn't have access to the rental records the rent Board needed. A search of Rent Board records will show the property owner reached out to the Rent Board Counselors regarding her housing situation. Per Regulation 884 (11), Staff recommends the penalty be waived in full.

**City Of Berkeley  
Rent Stabilization Board**

**Recommendation on Requested Waiver of Registration Penalties**

<b>Waiver No:</b> W5074	<b>Property address:</b> 1104 EUCLID AVE BERKELEY	<b>Transferred:</b> 09/11/1992
<b>Exempt units (as of February 2021):</b> Unit # 1104 EUCLID AVE BERKELEY CA 94708 - OCCC - Owner		
<b>Owner(s):</b> DAN DORFMAN & LAURIE	<b>Waiver filed by:</b> OWNER	<b># of Units:</b> 2
<b>Other Berkeley rental property owned:</b> None		

**Late payment/penalty history:** In the last five fiscal years the owner has paid the registration fee late in the 18/19, 20/21 and 21/22 registration cycles.

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

**Penalties Currently Under Consideration**

**Reason for Penalties:** Financial Hardship

Registration Date or Year	Unit(s) registered late at this time	Registration fees paid	Date fees paid	Penalties charged	Penalties forgiven	Penalties Due
FY22-23	0	-	-	\$2,000.00	-	\$2,000.00
<b>Totals</b>				<b>\$2,000.00</b>	<b>\$0.00</b>	<b>\$2,000.00</b>

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

**Good cause claimed by owner:** The owner was experiencing a financial hardship that prevented the timely payment of registration fees.

**Recommendation:** Staff recommends denying the penalty waiver.

**Staff Analysis:** This waiver was originally scheduled to be heard at the December 2022 Board meeting. In the initial waiver signed and submitted under penalty of perjury, the property owner states, "their family moved into 1104 Euclid in March 2020 after the previous tenants were evicted for good cause and that the unit at 1106 Euclid remained a rental unit". At the time of the initially signed waiver, the property owner asked the Board to remove the penalty fees, "since they were unaware of the fees and did not receive a billing statement". When the Registration Unit Manager began researching the property and reviewing the waiver for the Board's consideration; staff designated the waiver as Ministerial because the initial explanation provided by the property owner did not align with a discretionary category for the Board to hear.

While researching this property, staff found and recommended to the Executive Director: The single-family home located at 1104/1106 Euclid has been owned by the current owner since 1992. In the last five fiscal years the owner has paid the registration fee late in the 18/19, 20/21 and 21/22 registration cycles. Per Rent Board regulation 884 C, this property qualifies to have 60% of their penalties waived. Staff recommends waving 60% of the penalties per the ordinance. Based on the signed statement provided by the initial waiver, and no additional evidence provided, staff recommended following Regulation 884 C which would reduce the penalties by 60%. The Executive Director agreed and notification to the property owner of the preliminary decision was sent.

At the December Board meeting the property owners attended the meeting and made verbal statements to the Board presenting a different case than what was stated on their signed waiver submitted by the property owner. In light of these new circumstances, the Board agreed to pull the ministerial waiver from the December Board meeting and hear it as a discretionary waiver at a different meeting once the owners provided the following information listed below for the Board's review:

Financial Hardship Documentation  
City of Berkeley Rent Relief Application

Following the December Board meeting, the Registration Unit Manager did further investigation into the property based on the new statements provided at the Board meeting. Staff found this property was on the Small Claims Action list for having unpaid registration fees and penalties for the 20/21 and 21/22 registration cycles. Rent Board records will also show the property has submitted a waiver for an administrative correction which was also granted. The property owner is now claiming a financial hardship and would like the Board to consider waiving the penalties in full. As of February 9, 2023 Rent Board staff still have not received the City of Berkeley Rent Relief Application, both legal and registration staff reached out to the property owner regarding this information. However, the property owner did provide for the Board's review an excel spreadsheet of the rental income owed.

Public

**CITY OF BERKELEY**

**RENT STABILIZATION PROGRAM**

**2125 Milvia Street, Berkeley, CA 94704**

**PHONE: (510) 981-7368 • FAX: (510) 981-4910**

**WEB: <https://rentboard.berkeleyca.gov>**

**Request for Waiver of Late Registration Penalties**

*Please Read Important Information on Page 2*

**Property Address:** 1104/1106 Euclid Ave

**Owner:** Laurie Zoloth

**Date of acquisition, if new owner:** n/a

**Name & relationship of person filing request, if not owner:** Noah Zoloth Levy, Owner's Son

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

I am the son of the property owner at 1104/1106 Euclid Ave. My family and I moved into the house in March 2020.

We moved into the single family home at 1104 Euclid, and the rental unit at 1106 remained as a rental unit. The previous tenants at 1104 Euclid were evicted through the Good Cause for eviction per the city of Berkeley Rent Ordinance, section 13.76.130(A)(9).

1104 Euclid is no longer a rental unit. I was unaware of any fees that were due to the Berkeley Rent Board, and did not receive a billing statement. As such, we are requesting a full waiver of all penalties due. We will pay the current and back fees associated with the rental unit at 1106. Thank you.

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

**Date:** 10/27/22 **Signature:** Noah Z. Levy 2022.10.27 12:31:56 -07'00'

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

**Email Address:** noahzlevy@gmail.com

**Mailing Address:** 1104 Euclid Ave., Berkeley CA 94708

**Phone Number:** 510-2207343 **Fax Number:** n/a

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

## **Request for Waiver of Late Registration Penalties – Information**

Please Read Before Completing the Waiver Request

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

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

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

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

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

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

For questions about waivers please call Amanda Eberhart at (510) 981-4904.

### **Communications Disclaimer:**

**This document will be included in the Rent Board's agenda packet and, as such, will become part of the City's electronic records, which are accessible through the City's website.** This means that any e-mail addresses, names, addresses, and other information you provide will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, please call the Rent Board's Registration Unit at (510) 981-7368 to make that request.

\* The referenced regulations can be found at: Chapter 8: Rent Registration



# Form 1099G

This tax information has been provided to the IRS. If you are required to file a federal tax return, the IRS may charge a penalty if this income is taxable and is not reported.

For more information, view [Form 1099G instructions](#).

## 2022 Form 1099G — Certain Government Payments

**OMB No.1454-0120**

### Employment Development Department

Unemployment Insurance Integrity and Accounting

Division – MIC 16A

P.O. Box 2408

Rancho Cordova, CA 95741-2408

Payer's Federal ID No. 94-2650401

### Recipient's Name

MARGALYN SCHINDLER

1184 ENCLID AVE

BERKELEY, CA 94708-

### Social Security Number

XXXXXXXXXX

Table A														
<b>1. Unemployment Compensation (UC)</b> \$3,961.00  <b>Type of UC Payments</b>  <table> <tr> <td><b>UI</b></td> <td>\$3,961.00</td> </tr> <tr> <td><b>DUA</b></td> <td>\$0.00</td> </tr> <tr> <td><b>PUA</b></td> <td>\$0.00</td> </tr> <tr> <td><b>DI</b></td> <td>\$0.00</td> </tr> </table>	<b>UI</b>	\$3,961.00	<b>DUA</b>	\$0.00	<b>PUA</b>	\$0.00	<b>DI</b>	\$0.00	<b>2. State or Local Income Tax Refunds, Credits, or Offsets</b> \$0.00  <b>3. Box 2 Amount is for Tax Year 2022</b> <table> <tr> <td><b>(a) 2022 Benefits Repaid</b></td> <td>\$0.00</td> </tr> <tr> <td><b>(b) Prior Year(s) Benefits Repaid</b></td> <td>\$0.00</td> </tr> </table>	<b>(a) 2022 Benefits Repaid</b>	\$0.00	<b>(b) Prior Year(s) Benefits Repaid</b>	\$0.00	<b>4. Federal Income Tax Withheld</b> \$358.00
<b>UI</b>	\$3,961.00													
<b>DUA</b>	\$0.00													
<b>PUA</b>	\$0.00													
<b>DI</b>	\$0.00													
<b>(a) 2022 Benefits Repaid</b>	\$0.00													
<b>(b) Prior Year(s) Benefits Repaid</b>	\$0.00													

Table B								
<b>1. Unemployment Compensation Paid Family Leave (UC-PFL)</b> \$0.00  <table> <tr> <td><b>PFL Payments</b></td> <td>\$0.00</td> </tr> </table>	<b>PFL Payments</b>	\$0.00	<b>2. State or Local Income Tax Refunds, Credits, or Offsets</b> \$0.00  <b>3. Box 2 Amount is for Tax Year 2022</b> <table> <tr> <td><b>(a) 2022 Benefits Repaid</b></td> <td>\$0.00</td> </tr> <tr> <td><b>(b) Prior Year(s) Benefits Repaid</b></td> <td>\$0.00</td> </tr> </table>	<b>(a) 2022 Benefits Repaid</b>	\$0.00	<b>(b) Prior Year(s) Benefits Repaid</b>	\$0.00	<b>4. Federal Income Tax Withheld</b> \$0.00
<b>PFL Payments</b>	\$0.00							
<b>(a) 2022 Benefits Repaid</b>	\$0.00							
<b>(b) Prior Year(s) Benefits Repaid</b>	\$0.00							

If you do not agree with the amounts on your Form 1099G, call 1-866-401-2849. Customer service representatives are available Monday through Friday from 8 a.m. to 5 p.m. General information is available 24 hours a day, 7 days a week through the automated system.

**To: Berkely Rent Board**  
**Re: 1106 Euclid Ave Fee Waiver Request**

### **Statement of Economic Hardship**

To Whom It May Concern:

I am writing regarding a discretionary waiver request for registration late fee penalties assessed for the property located at 1106 Euclid Avenue. This statement of financial hardship provides additional information to supplement the original waiver request submitted in October 2022 to the Berkeley Rent Board.

I respectfully request that the Berkeley Rent board waive 100% of the late fee penalties, which amount to \$2,000. The total registration fees on which the penalties are assessed is \$750, and are currently paid in full. These penalty fees are extremely high and will cause an undue hardship on our family during a difficult and tumultuous time.

As the son of the elderly property owner, my wife and two small children moved back into our family home in March 2020, just before the global Covid 19- Pandemic. We share the property with the Tenants who live in an attached unit at 1106 Euclid.

The penalties assessed are a tremendous amount of money during a very difficult time of financial hardship issues associated with the Covid-19 pandemic. See below for details and justification for the waiver request:

1. The Tenants in the rental unit at 1106 Euclid have not paid rent. or only paid partial rent for nearly two years, beginning in Summer 2021. They currently owe back due rent of \$16,140. The tenants applied for Covid Relief rental assistance from Alameda County in Winter of 2021, however backlogs in the distribution system have caused extreme delays, and the rental assistance has not arrived to date. My family is left to hold the financial responsibilities, and continue to pay expenses associate with owning a home, such as mortgage payments, insurance, upkeep and utilities. We have no recourse to recoup payment from the tenants due to the Eviction Moratorium. (See attached document showing accounting of unpaid rent).
2. My wife and I are sole proprietors a small business. During the past three years of the Covid-19 pandemic, multiple client cancelations have caused a dramatic decrease in work sourcing and income revenue.
3. During the mandated Covid Shelter in Place order, schools and daycare were closed for extended periods of time. Our older child participated in on-line kindergarten classes at Berkeley public schools. The total instruction time lasted approximately one hour per day on the computer. As working parents, we had to find multiple alternative sources to care for our two small children, the amount and costs for childcare dramatically increased.

4. My wife could not perform her typical work duties as teacher and was not able to teach her regularly scheduled classes due to increased need for childcare during the shelter in place orders. In order to make ends meet, she went on unemployment for a period of 4 months.

We respectfully ask that the Berkeley Rent Board take these financial hardship items into account when making the determination of the discretionary waiver request and waive 100% of the unit registration late fees. We truly hope that you will consider the needs of our small family and recognize that these fees are extremely high and will cause additional hardships.

Sincerely and Respectfully,

SHEDULE OF RENTAL PAYMENTS				
			purple-underpayment	
Submitted to Rental Assistance Ledger for Centro Legal 1106 Euclid Avenue, Berkeley, CA 94708			green-paid in full transactions	
			<b>RED-Total Rental Assistance Needed</b>	
			<b>For outstanding/past due rent payments</b>	
<b>Payments 2019 (Rent \$2800/mo)</b>				
	November 15	\$700	partial for December (mid-month move in)	
	Dec 30	\$2,800	for January 2020	
<b>Payments 2020 (Rent \$2800/mo)</b>				
	Jan 27	\$2,800	for February	
	Feb 29	\$2,800	for March	
	March 29	\$2,800	for April	
	May 1	\$700	for May	
	May 4	\$700	for May	
	May 15	\$1,400	for May	
	June 2	\$1,400	for June	
	June 20	\$1,400	for June	
	June 30	\$2,800	for July	
	August 3	\$2,800	for August	
	August 31	\$1,400	for September	
	September 7	\$1,400	for September	
	September 29	\$1,400	for October	
	November 2	\$1,400	for October	
	November 2	\$300	for November	
	November 16	\$2,500	for November	
	December 4	\$2,800	for December	
<b>2021 Payments (Rent \$2800/mo)</b>				
	January 6	\$2,800	for January	
	January 6	\$300	for February	
	January 15	\$1,400	for February	\$1,100 unpaid
	February 19	\$2,800	for March	
	March 19	\$2,800	for April	
	April 3	\$1,400	for May	
	May 5	\$1,400	for May	
	June 1	\$1,400	for June	
	June 17	\$1,400	for June	
	July 2	\$2,800	for July	
	August 2	\$1,400	for August	\$1,400 unpaid
	September 17	\$650	for September	\$1,450 unpaid
	September 17	\$700	for September	
	October 14	\$2,800	for October	
	October 14	\$1,400	for November	
	November 17	\$1,400	for November	
	November 30	\$700	for December	\$700 unpaid
	December 1	\$700	for December	
	December 28	\$700	for December	\$700 unpaid
<b>Payments 2022 (Rent \$2916/mo. notified March 2022)</b>				
	January 24	\$1,400	paid half for January	\$1,400 unpaid
	February 4	\$1,400	paid half for February	\$1,400 unpaid
	March	\$1,458	paid half for March on September 15	\$1,458 unpaid
	April	\$1,458	paid half for April on September 15	\$1,458 unpaid
	May	\$1,458	paid half for May on September 15	\$1,458 unpaid
	June	\$1,458	paid half for June on September 15	\$1,458 unpaid
	July	\$1,458	paid half for July on September 15	\$1,458 unpaid
	August	\$1,458	paid half for August September 15	
	August	\$1,458	paid half for August November 3	
	September 6	\$2,916	paid September 15	
	October	\$500	paid	
	October	\$1,458	paid October 2	
	October	\$958	Rachelle paid November 3 for October	
	November	\$1,458	Rachelle paid half for November on November 7	
	November	\$1,458	Rachelle paid half for November on November 15	
	December	\$2,916	Paid	
<b>Rent payment made during Covid financial hardship</b>		<b>\$83,546</b>	<b>Total unpaid rent due</b>	<b>\$15,440</b>

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
**DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
 Sacramento, CA 95833  
 (916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



January 30, 2023

Jordan Klein, Director  
 Planning and Development Department  
 City of Berkeley  
 1947 Center Street, 3<sup>rd</sup> Floor  
 Berkeley, CA 94704

Dear Jordan Klein:

**RE: City of Berkeley's 6<sup>th</sup> Cycle (2023-2031) Revised Draft Housing Element**

Thank you for submitting the City of Berkeley's (City) revised draft housing element that was received on December 1, 2022, along with revisions received on January 30, 2023. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. HCD considered comments from State Senator Nancy Skinner, Councilmember Terry Taplin, East Bay for Everyone, Berkeley Neighbors for Housing and Climate Action, East Bay YIMBY, David Kellogg, Jennifer Chatman, and Clifford Fred pursuant to Government Code section 65585, subdivision (c).

The revised draft element addresses many statutory requirements; however, revisions will be necessary to comply with State Housing Element Law (Article 10.6 of the Gov. Code), as follows:

1. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

*Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09... (Gov. Code, § 65583, subd. (c)(1).)*

**Suitability of Nonvacant Sites:** The element now lists opportunity sites by various factors (e.g., age of structure, improvement to land value ratio, existing floor

area) utilized to indicate the potential for redevelopment in the planning period (Table C-10: Opportunity Sites). However, as noted in the prior review, the element must support the validity of the various factors. To support these factors, the element should evaluate development trends or recent experience in redevelopment relative to the factors. For example, the element could utilize Table C-6 (Pipeline Sites) and list the values of the factors for prior uses.

For your information, the housing element must demonstrate existing uses are not an impediment to additional residential development and will likely discontinue in the planning period. Absent findings (e.g., adoption resolution) based on substantial evidence, the existing uses will be presumed to impede additional residential development and will not be utilized toward demonstrating adequate sites to accommodate the Regional Housing Needs Allocation (RHNA).

Programs: As noted above, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised, as follows:

- *Program 28 (BART Station Area Planning):* The Program now commits to various actions to facilitate development and to evaluate the progress of development by January 2026 but should also commit to when alternative sites will be identified if necessary.
  - *Program 30 (Accessory Dwelling Units):* The Program commits to identify additional efforts, such as rezoning or pre-approved building plans. However, the Program should commit to when these additional efforts will be completed (e.g., six months to one year).
2. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities...(Gov. Code, § 65583, subd. (c)(3).)*

Program 34 (Permit Processing): The Program commits to analyze and develop permit procedures to address identified constraints but should also specifically commit to remove constraints and establish appropriate procedures by a specified date. This specific commitment should reflect all identified constraints in the analysis (pp. 76 to 80).

3. *Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

Goals, Actions, Metrics, and Milestones: While the element add actions to improve housing mobility, including housing choices and affordability, throughout the City, it must still be revised, as follows:

- *Program 27 (Priority Development Areas):* The Program now commits to increase allowed densities in all transit and commercial corridors, especially between formerly red-lined and higher resource areas and initiate changes within one year of certification. In addition, the Program should target relatively higher-income areas, specifically commit to when zoning changes will be completed and include a numerical target such as the number of added units and minimum densities or floor area ratios.
- *Place-based Strategies:* While the element includes several place-based strategies for neighborhood improvements, it should include additional actions beyond housing improvements such as infrastructure, streetscapes, active transportation, community amenities, parks, and other community improvements. These actions should be targeted geographically targeted with numerical targets or metrics for the planning period.
- *Mid-term Evaluation:* The element should include a mid-term evaluation of progress and effectiveness of Affirmatively Furthering Fair Housing (AFFH) action and commit to make adjustments, as appropriate, within a specified time (e.g., six months) to better achieve AFFH goals.

The element will meet the statutory requirements of State Housing Element Law once it has been revised and adopted to comply with the above requirements.

HCD understands the City adopted the housing element, including the revisions received on January 30, 2023, at the January 18, 2023, City Council meeting. Pursuant to Government Code section 65585 (g), the City must promptly submit a copy of the adopted housing element to HCD for review.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), if a local government fails to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), then any rezoning to make prior identified sites available or accommodate the RHNA, including for lower-income households, shall be completed no later than one year from the statutory deadline pursuant to Government Code section 65583, subdivision (c)(1)(A) and Government Code section 65583.2, subdivision (c). Please be aware, if the City fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until these rezones are completed.

Public participation in the development, adoption, and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly

available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

For your information, pursuant to Government Code section 65583.3, the City must submit an electronic sites inventory with its adopted housing element. The City must utilize standards, forms, and definitions adopted by HCD. Please see HCD's housing element webpage at <https://www.hcd.ca.gov/planning-and-community-development/housing-elements> for a copy of the form and instructions. The City can reach out to HCD at [sitesinventory@hcd.ca.gov](mailto:sitesinventory@hcd.ca.gov) for technical assistance.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City meets housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the responsiveness, collaboration, and commitment the City's housing element team provided during the review. We are committed to assisting the City in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Jose Ayala, of our staff, at [Jose.Ayala@hcd.ca.gov](mailto:Jose.Ayala@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager



## Mueller, Aimee B.

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**Subject:** FW: Housing Element Update

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**From:** Leah Simon-Weisberg <leahfsw@gmail.com>

**Sent:** Wednesday, February 8, 2023 7:46 PM

**To:** Mueller, Aimee B. <AMueller@cityofberkeley.info>; Williams, DeSeana <DeWilliams@cityofberkeley.info>

**Subject:** Fwd: Housing Element Update

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Here is the message from HCD that was provided to HAC

----- Forwarded message -----

**From:** Housing Advisory Commission <[HAC@cityofberkeley.info](mailto:HAC@cityofberkeley.info)>

**Date:** Mon, Feb 6, 2023 at 10:36 AM

**Subject:** Housing Element Update

**To:** Housing Advisory Commission <[HAC@cityofberkeley.info](mailto:HAC@cityofberkeley.info)>

Hello Commissioners, please find the statement regarding the Housing Element from staff that was read at last night's meeting below. Also, the speaker at public comment was incorrect. The comment letter from HCD, the adopted Housing Element, and all other documents are available on the City's dedicated webpage: <https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/housing-element-update>

On January 18, 2023, the Berkeley City Council approved and adopted the 2023-2031 Housing Element (version 6) with amendments, and submitted it to the Department of Housing and Community Development (HCD) on January 23, 2023. The Council found the 2023-2031 Housing Element to be in substantial compliance with State Housing Element Law. A public review draft was made available for comment between January 23 and January 30, 2023.

On January 30, 2023, HCD provided formal comments following a 60-day review of the version 5 draft 2023-31 Housing Element and appendices that were submitted on December 1, 2022. HCD's review also incorporated the edits and amendments (v6) submitted on January 23, 2023; however, HCD's review did not include the City Council's resolution of adoption and findings of substantial compliance.

Several stakeholders have inquired as to whether HCD's latest letter means that housing projects in Berkeley are eligible for "builder's remedy" and can disregard the City's zoning rules. However, the City has met the statutory requirement to adopt a Housing Element that is in substantial compliance with State law by January 31, 2023.

Berkeley's adopted Housing Element demonstrates that the City has the zoned capacity to accommodate its Regional Housing Needs Allocation (RHNA) and includes a buffer of 68% over the RHNA number. Although no rezoning is required in order to accommodate its RHNA, the Housing Element commits the City to proactively upzone several areas including the Southside neighborhood adjacent to the UC Berkeley campus and all of the City's low-density residential districts. The Housing Element also includes a variety of programs and policies to affirmatively further fair housing, including a commitment to upzone commercial corridors in the City's highest-resource neighborhoods and to allow by-right housing projects in low-density residential districts. Berkeley's Housing Element Update is the product of an extensive and participatory community process that culminated in the January 18, 2023 adoption. For these and other reasons stated in the resolution of adoption, the City Council found the Housing Element to be substantially compliant with State law.

City staff are carefully evaluating HCD's latest comments. The City will seek additional clarification from HCD to determine what improvements may be necessary to achieve State certification beyond local findings of substantial compliance. The City will continue to work to achieve state certification as quickly as possible.

Anna Cash (She/Her)

City of Berkeley

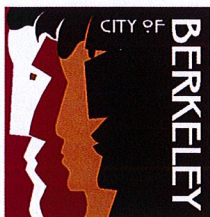
Health, Housing & Community Services

[acash@cityofberkeley.info](mailto:acash@cityofberkeley.info)

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Leah Simon-Weisberg

(323) 842-8614



Rent Stabilization Board

January 26, 2023

Chief Investment Officer Jagdeep Singh Bachher  
 Office of the Chief Investment Officer of the Regents  
 University of California Office of the President  
 1111 Franklin Street  
 Oakland, CA 94607

Re: Call on the University of California to divest more than \$6 billion from Blackstone Investments, including nearly \$4 billion in recently acquired holdings from Blackstone's Real Estate Income Trust (BREIT)

Dear Mr. Bachher:

I write to you on behalf of the City of Berkeley Rent Stabilization Board (Rent Board). On January 19, 2023, the Rent Board unanimously voted to demand the University of California Regents divest its investment in Blackstone Real Estate Income Trust. Tenants worldwide have struggled with Blackstone because of the predatory and negligent management of its rental housing portfolio. The University of California Regents' recent investment into Blackstone's REIT shows a callous disregard for the housing crisis facing your students and the communities surrounding your schools.

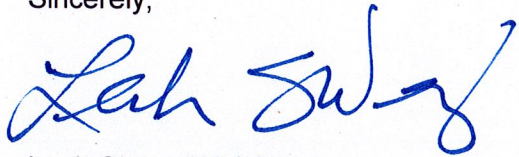
We join university unions, tenants across California, and the United Nations Human Rights Council to express our grave concerns about this investment. As far back as 1999, the United Nations Council put the United States government on notice of violations by Blackstone of the United Nations Guiding Principles on Business and Human Rights (UNGPs) into Human Rights Council resolutions 34/9 and 35/7. This troubling behavior, unfortunately, has not been left in the past.<sup>[1]</sup> As recently as January 2023, angry residents from a Blackstone REIT building in San Diego traveled to a rally in Los Angeles to confront BREIT over cockroach infestations, maintenance concerns, and eviction fears.<sup>[2]</sup>

It is incumbent on the Regents, as a public institution whose mission "is to serve society as a center of higher learning, providing long-term societal benefits" to root decisions in the greater university community.<sup>[3]</sup> As such, you must ensure its investment dollars are utilized to foster housing that meets the immediate need of the students, educators, and communities surrounding the universities. Instead, you have invested in a questionable company whose practices have forced governments to pass laws solely to address its abusive practices. <sup>[4]</sup>

It is very frustrating that such a troubling investment be made when Berkeley is struggling to respond to a housing crisis partially due to the Regents' failure to provide affordable housing for its students. The Rent Board believes that growth in a REIT run by Blackstone will lead to unnecessary harm to our diverse community and request that the Regents act immediately to withdraw its investment.

Thank you for your consideration of this request. Should you have any questions or wish to talk further, please do not hesitate to contact me.

Sincerely,

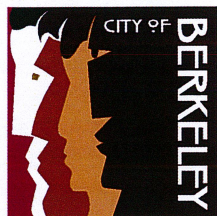


Leah Simon-Weisberg  
Chair, Berkeley Rent Board

Cc: President Michael V. Drake, M.D., Chair Rich Leib, Vice Chair Gareth Elliott, Maria Anguiano, Elaine E. Batchlor, Marlenee Blas Pedral, Carmen Chu, Michael Cohen, Gareth Elliott, Howard "Peter" Guber, Jose M. Hernandez, Hadi Makarechian, Ana Matosantos, Lark Park, John A. Pérez, Janet Reilly, Mark Robinson, Richard Sherman, Jonathan "Jay" Sures, Chair of Academic Senate Susan Cochran, Student Regent Delegate Marlenee Blas Pedral

References:

- [1] <https://www.theguardian.com/business/2022/sep/29/blackstone-rebellion-how-one-country-worlds-biggest-commercial-landlord-denmark>
- [2] <https://therealdeal.com/2023/01/20/blackstone-reits-latest-adversary-tenants/>
- [3] The [University of California Academic Plan](#); [The University of California Mission](#)
- [4] <https://www.theguardian.com/business/2022/sep/29/blackstone-rebellion-how-one-country-worlds-biggest-commercial-landlord-denmark>



Rent Stabilization Board

January 20, 2023

The Honorable Matt Haney  
California State Assembly  
State Capitol  
P.O. Box 942849  
Sacramento CA 94249-0017

**Re: AB 12 — Support**

Dear Assembly Member Haney:

As Chair of the City of Berkeley's Rent Stabilization Board, I am pleased to inform you of the Board's support for AB 12, which would limit security deposits for all tenants to the amount of one month's rent. The Rent Board, an elected body, administers Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance. The purposes of the Ordinance include addressing the City's housing crisis and barriers to accessing housing, including excessive security deposit requirements, which are a significant contributor to our ongoing housing and homelessness crisis.

While rent stabilization is efficient and successful in providing stable, secure and affordable housing for sitting tenants, due to the vacancy decontrol provisions of the state Costa-Hawkins Act, new tenants face significant barriers at the outset of the tenancy. Move-in costs have become astronomical, not only in Berkeley but in many areas of California.

Since the law sets the maximum amount of a security deposit based on the monthly rent, the current maximums of two or three times the monthly rent imposes a triple or quadruple whammy on families trying to find a place to live, as they try to pull together the first month's rent and security deposit. As an example, the Board tracks rents charged for new tenancies in the City. Recently, the average initial rent for a 2-bedroom unit reached \$2995. A tenant would need nearly \$9000 to move in, *just for the first month's rent and deposit*. And if the unit is furnished, that figure increases to nearly \$12,000. For many low-income families, ultra-high deposits force them to high-cost, predatory lenders, dooming them to even deeper poverty, and imperiling their ability to make future monthly rent payments.

AB 12 will provide relief to these families, lowering one barrier to entry for new tenants. We commend you for taking on this important issue. If you or your staff have any questions or concerns, please do not hesitate to contact me or the Board's Legislative Advocate, Brian Augusta, at [baugusta@piadvocates.org](mailto:baugusta@piadvocates.org) or (916) 400-3136. Thank you for authoring this critically needed legislation.

Sincerely,

A handwritten signature in blue ink that reads "Leah Simon-Weisberg".

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



**RENT STABILIZATION BOARD**  
**BUDGET & PERSONNEL COMMITTEE MEETING**

**Thursday, February 9, 2023**

**5:30 p.m.**

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

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S. and Berkeley Rent Stabilization Board (Rent Board) Resolution 21-29, this meeting of the Rent Board's **Budget & Personnel Committee** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, **there will not be a physical meeting location available.**

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/82205509823?pwd=dTlRbHB6UURrUXlhYytYVnRPLzdWZz09>. 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: 822 0550 9823 and Passcode: 613860. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email [amueller@cityofberkeley.info](mailto:amueller@cityofberkeley.info) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR BUDGET & PERSONNEL COMMITTEE." Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 3:30 p.m. on the day of the Committee meeting in order to be included.**

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

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



Rent Stabilization Board

**RENT STABILIZATION BOARD**  
**BUDGET & PERSONNEL COMMITTEE MEETING**

**Thursday, February 9, 2023 – 5:30 p.m.**

**AGENDA**

1. Roll Call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-Chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors, and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of agenda
4. Election of Committee Chair
5. Public Comment
6. Approval of November 7, 2022, meeting minutes (attached to agenda)
7. Budget Cycle Orientation and Process Overview (staff presentation)
8. Update on 3Di System Data Cleanup Process (verbal report only)
9. Discussion and Possible Action regarding Mid-Fiscal Year Budget Review, including an Update on Recent Changes to the Staffing Model (see attached report)
10. Discussion and Possible Action on the Process to Adopt the FY 2023/24 Registration Fee for Fully Covered and Measure MM units (staff presentation)
11. Office Relocation process (verbal report only)
12. Future agenda items
13. Discussion and possible action to set the next meeting
14. Adjournment

**STAFF CONTACT: DéSeana Williams, Executive Director (510) 981-7368**  
COMMITTEE: Soli Alpert, Nathan Mizell, Leah Simon-Weisberg, Dominique Walker



**RENT STABILIZATION BOARD**  
**LEGISLATION, IRA / AGA & REGISTRATION COMMITTEE MEETING**

**Monday, February 6, 2023**

**5:30 p.m.**

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

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

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/88960991315?pwd=WUJXQzRSR3Fxb3dIcHhXK2NVMIzZz09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial 1-408 638 0968 and enter Webinar ID: 889 6099 1315 and Passcode: 013595. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email [mbrown@cityofberkeley.info](mailto:mbrown@cityofberkeley.info) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR LIRA COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 3:30 p.m. on the day of the Committee meeting in order to be included.**

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

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





Rent Stabilization Board

## **RENT STABILIZATION BOARD**

### **LEGISLATION, IRA / AGA & REGISTRATION COMMITTEE MEETING**

**Monday, February 6, 2023 – 5:30 p.m.**

#### **AGENDA**

1. Roll call
2. Approval of the agenda
3. Land Acknowledgment Statement: The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.
4. Approval of minutes from the September 21, 2022 meeting (Attached to agenda)
5. Public Comment
6. Election of Chair
7. Discussion and possible action to recommend that full Board approve changes to Regulations 525, 1205, 1210 (See attached Staff Report)
8. Discussion and possible action regarding preparing agency for the expiration of the current eviction moratorium and possible action to recommend that full Board request that City Council extend protections
9. Discussion and possible action regarding LIRA Committee Work Plan
10. Discussion and possible action regarding future agenda items
11. Confirm next meeting date
12. Adjournment

**STAFF CONTACT: Matt Brown, General Counsel (510) 981-4930**

**COMMITTEE:** Soli Alpert, Andy Kelley (Chair), Ida Martinac, Nathan Mizell



**RENT STABILIZATION BOARD  
OUTREACH COMMITTEE MEETING**

**Tuesday, January 31, 2023 – 5:00 p.m.**

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

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

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/83808375643?pwd=L24vVXNiVUQvdUIreTINcHVsa2k0QT09>

. 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, enter Webinar ID: 838 0837 5643, and Passcode: 803382. If you wish to comment during the Public Comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email [ndahl@cityofberkeley.info](mailto:ndahl@cityofberkeley.info) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR OUTREACH COMMITTEE." Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 3:00 p.m. on the day of the Committee meeting to be included.**

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

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



Rent Stabilization Board

**RENT STABILIZATION BOARD**  
**OUTREACH COMMITTEE MEETING**

**Tuesday, January 31, 2023 – 5:00 p.m.**

**AGENDA**

1. Roll call (2 min)
2. Election of Outreach Committee Chair (5 min)
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 (Chochen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors, and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley’s landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley’s incorporation in 1878 and since the Rent Stabilization Board’s creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
4. Approval of the Agenda (2 min)
5. Approval of the Minutes of the Nov. 16, 2022 Meeting (5 min)
6. Public Comment (5 min)
7. Tenant Survey Update (25 min)
8. 2023 Meeting dates and times – Set 2023 Calendar Dates (15 min)
9. Future Agenda Items (5 min)
10. Adjournment (2 min)

**STAFF CONTACT: Nathan Dahl, Public Information Unit Manager (510) 981-4935**

COMMITTEE: Andy Kelley, Stefan Elgstrand, Vanessa Marrero, Soli Alpert



## **RENT STABILIZATION BOARD** **OUTREACH COMMITTEE MEETING**

**Wednesday, February 15, 2023 – 5:30 p.m.**

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

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

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/82738913615?pwd=aHN0YlRuRFVyNVRxREFDOXcvdmlhQT09>. 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, enter Webinar ID: 827 3891 3615 and Passcode: 027502. If you wish to comment during the Public Comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email [ndahl@cityofberkeley.info](mailto:ndahl@cityofberkeley.info) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR OUTREACH COMMITTEE." Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 3:30 p.m. on the day of the Committee meeting to be included.**

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

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



Rent Stabilization Board

## **RENT STABILIZATION BOARD**

### **OUTREACH COMMITTEE MEETING**

**Wednesday, February 15, 2023 – 5:30 p.m.**

#### **AGENDA**

1. Roll call (2 min)
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchium- (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors, and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of the Agenda (2 min)
4. Approval of the Minutes of the January 31, 2023 Meeting (5 min)
5. Public Comment (5 min)
6. Public Information Unit (PIU) Orientation, Work Plan, and Outreach Budget for Fiscal Year 22/23 (45 min)
7. Future Agenda Items (5 min)
  - Update on Fair Chance Ordinance Outreach (March)
  - Update on Tenant Survey Progress (March)

- Building Capacity for Emergency Responses and Direct Outreach for issues facing tenants and landlords, such as habitability issues related to storms and flooding, end of eviction moratorium, etc. (March/April)
8. Next Meeting Scheduled for Thursday, March 9, 2023 – Location TBD (2 min)
  9. Appreciation for Moni Law in Serving the Outreach Committee (5 min)
  10. Adjournment (2 min)

**STAFF CONTACT: Nathan Dahl, Public Information Unit Manager (510) 981-4935**

COMMITTEE: Soli Alpert (Chair), Stefan Elgstrand, Andy Kelley, Vanessa Marrero



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

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

**Wednesday, February 1, 2023 – 3:00 p.m.**

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

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

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/82863248059?pwd=SGtvRlNjMStLclZNNmRmdi9objhWQT09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial 1-669-900-6833 and enter Webinar ID: 828 6324 8059 and Passcode: 302897. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit a written communication for the Committee's consideration and inclusion in the public record, email [BTran@cityofberkeley.info](mailto:BTran@cityofberkeley.info) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE." Please observe a 150-word limit. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

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

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





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

**\*\*\*REVISED AGENDA\*\*\***

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

**Wednesday, February 1, 2023 – 3:00 p.m.**

1. Roll call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of the agenda
4. Public comment on non-agenda matters
5. Approval of December 14, 2022 Committee meeting minutes (see attachment)
6. Discussion and possible recommendations on a moratorium on rent increases (requested by Chair Simon-Weisberg)
7. Discussion and possible recommendations to City Council regarding amendments to the Demolition Ordinance (Steve Buckley, Planning Department, see attached February 1, 2022 staff report to the Planning Commission)
8. Discussion and possible action regarding the expiration of the Eviction Moratorium (see attached BMC 13.110) and amendments to the COVID-19 Emergency Response Ordinance (requested by Mayor Arreguin)
9. Discussion of possible future agenda items
10. Confirm next meeting date
11. Adjournment

COMMITTEE MEMBERS:

Mayor Jesse Arreguín

City Councilmember Sophie Hahn

City Councilmember Kate Harrison

City Councilmember Rigel Robinson

Rent Board Chairperson Leah Simon-Weisberg

Rent Board Commissioner Xavier Johnson

Rent Board Commissioner Vanessa Danielle Marrero

Rent Board Commissioner Dominique Walker



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

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

**Wednesday, December 14, 2022 – 2:30 p.m.**

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

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

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

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

Wednesday, December 14, 2022 – 2:30 p.m.

### Minutes To Be Approved

- 1. Roll call:** Mayor Arreguín called the meeting to order at 2:34 p.m.  
Present: Mayor Arreguín, CM Harrison (logged on at 2:51 p.m.), RBC Johnson, RBC Kelley, CM Robinson, RB Chair Simon-Weisberg, CM Taplin (logged on at 3:05 p.m., logged off at 4:28 p.m.)  
Absent: RBC Alpert.  
Staff present: Diego Aguilar-Canabal. Matt Brown, Steven Buckley, Lief Bursell, Nate Dahl, Brendan Darrow, Ollie Ehlinger, Stefan Elgstrand, Jen Fabish, Hannah Kim, Jordan Klein, Be Tran, DéSeana Williams.
- 2. Land Acknowledgment Statement:** *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*

The Land Acknowledgement Statement was read aloud.
- 3. Approval of the agenda:** M/S/C (Simon-Weisberg/Robinson) Approve the agenda as written. Roll call vote. YES: Arreguín, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Harrison, Taplin. Carried: 5-0-0-3.
- 4. Public comment on non-agenda matters:** There were no speakers.
- 5. Approval of October 26, 2022 Committee meeting minutes (see attachment):** M/S/C (Robinson/Kelley) Approve the October 26, 2022 meeting minutes as written. Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Taplin. Carried: 6-0-0-2.
- 6. Approval of November 30, 2022 Committee meeting minutes (see attachment):** M/S/C (Robinson/Arreguín) Approve the November 30, 2022 meeting minutes as written. Roll call

vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Taplin. Carried: 6-0-0-2.

7. Discussion and possible action on Committee meeting schedule for 2023 (requested by Mayor Arreguín): The committee discussed moving to a bi-monthly or quarterly schedule. Mayor Arreguín and Chair Simon-Weisberg will take the committee's feedback into account when setting the 2023 meeting schedule.
8. Discussion and possible action to consider a recommendation to City Council regarding amendments to the Demolition Ordinance (Steve Buckley, Planning Department, see attached staff report): The committee had a lengthy discussion on this item, and staff from the Planning Department, Rent Board, and City Attorney's Office responded to questions. Issues and possible amendments raised by the committee included:
  - a. Revise the process regarding the determination of whether harassment has occurred (as per sections 23.326.030.A.2 and 23.326.040.C.2): restate so that the Hearing officer makes the determination and ZAB reviews/confirms. Consider whether a body other than ZAB (i.e., City Council or Rent Board) should make the determination.
  - b. Reconsider applicability to ADUs/JADUs (and review whether it would be allowable under state law). Alternatively, add tenant protections requirements for demolished ADUs/JADUs (as is applied to unpermitted units).
  - c. Reconsider applicability to unpermitted units; consider distinguishing between units that are unsafe, and other units.
  - d. Add definition of "comparable unit"- size, amenities, location (e.g., consider requiring in the same school district).
  - e. Expanding noticing requirements.
  - f. Keep section "23.326.040.D. Effect of Eliminating a Dwelling Unit."
  - g. Reconsider deletion of non-detriment finding (23.326.030.A).
  - h. Use definition of harassment from Tenant Protection Ordinance.

M/S/C (Arreguín/Harrison) Motion to refer the issues and amendments raised today to City staff, and recommend the adoption of the Ordinance with these revisions. Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Taplin. Carried: 6-0-0-2.

There was one public speaker.

9. Discussion of possible future agenda items: Occupancy limits (Johnson), Elevator Ordinance (Harrison)
10. Confirm next meeting date: Mayor Arreguín and Chair Simon-Weisberg will confer with staff on a 2023 meeting schedule. The committee will likely meet in January 2023 at a date to be announced.
11. Adjournment: M/S/C (Kelley/Harrison) Adjourn the meeting. Roll call vote. YES: Arreguín, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Alpert, Taplin. Carried: 6-0-0-2.

The meeting adjourned at 4:30 p.m.

COMMITTEE MEMBERS:

Mayor Jesse Arreguín

City Councilmember Kate Harrison

City Councilmember Rigel Robinson

City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg

Rent Board Vice-Chairperson Soli Alpert

Rent Board Commissioner Xavier Johnson

Rent Board Commissioner Andy Kelley



**Planning and Development Department**

Land Use Planning Division

## **STAFF REPORT**

**DATE:** February 1, 2023

**TO:** Members of the Planning Commission

**FROM:** Steven Buckley, Land Use Planning Manager

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

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### **BACKGROUND**

The Planning Commission is asked to make a recommendation to the City Council regarding amendments to the demolition ordinance (Berkeley Municipal Code Chapter 23.326). The existing and proposed ordinance are presented in Attachments 1 and 2, respectively. A comparison of the two versions is provided in Attachment 3. Excerpts of relevant State law are provided in Attachment 4.

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 the 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.

The State law provides optional ways to comply depending on whether the units were occupied or vacant, whether those tenants were low income, whether the units were subject to local rent control (in Berkeley, this would be most properties with more than two units built before 1980), and whether the units were removed from the rental market pursuant to the Ellis Act (which allows landlords to “go out of the rental business”). In particular, replacement units required by the Housing Crisis Act of 2019, 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 an affordable rent.

Density bonus law now mirrors these requirements. This law goes on to specifically address requirements where units are vacant and/or existing tenant incomes are not known, and thus the level of affordability of replacement units must be inferred from HUD data for the community and distributed accordingly.

### **Summary of Existing Demolition Ordinance Provisions**

The existing demolition ordinance addresses issues similar to the new State law, 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, and when units are being merged or converted within an existing building rather than physical demolished.

A Use Permit is required for the demolition or other elimination of a dwelling unit in Berkeley. The Zoning Adjustments Board (ZAB) may issue a Use Permit for the demolition of a dwelling unit for specific enumerated reasons, including in instances where a building is “hazardous or unusable and is infeasible to repair” or “demolition is necessary to permit construction... of at least the same number of dwelling units.” Before permitting the demolition of a dwelling unit, ZAB must also find that “the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.” Finally, applicants must either provide below-market-rate replacement units to “qualifying household[s]” or pay an in-lieu fee (but the fee has never been set).

Demolition of dwelling units is prohibited where a building has been removed from the rental market 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. Most of these provisions are carried forward in the proposed ordinance.

### **Previous Discussions**

Planning Commission. On October 19, 2022, the Planning Commission considered the most recent version of proposed amendments.

Staff provides the following response to questions raised during the Commission’s discussion.

- Does this ordinance apply to condominium conversions?
  - The ordinance does not apply to condominium conversions because the housing unit remains physically available as housing. However, a mitigation fee is required upon sale to recoup some of the value

differential, if any, which is placed into the Housing Trust Fund to provide affordable housing elsewhere in the city.

- Would displaced tenants be able to return at the same rent in a “market rate” unit?
  - Yes, for tenants that are not low income, the proposed ordinance requires a form of rent control in a replacement unit that is not designated as one of the below-market-rate (BMR) replacement units equivalent to their prior rent for the duration of their tenancy. The Commission requested clarification of the income restrictions / rent / BMR requirements, which is provided in the revised draft attached to this report.
  
- Did SB330 override Costa-Hawkins (which prohibits the imposition of rent control on new dwelling units) to allow rent control / BMR units for the new project?
  - Yes, SB330 allows the imposition of rent control if it is required by local ordinance. In Berkeley, the citywide rent control ordinance does not apply to new units, but this demolition ordinance is being drafted to mimic rent control by limiting the annual rent increases for any tenant that returns to a new unit for the duration of that tenancy, in addition to the requirement that all of the demolished units be replaced as BMR units in perpetuity.
  
- Would there be a “right of return” for existing tenants even if demolition would be for the purpose of constructing a project that contains only affordable units?
  - To the extent a displaced tenant could qualify for one of the replacement units, then they would have a right of first refusal. However, because of how they are funded and operated, 100%-affordable projects would not be required to provide additional units for those tenants that do not income-qualify. However, those displaced tenants would receive all of the specified relocation benefits.
  
- Is the University of California required to comply with this ordinance?
  - No, but they are subject to applicable State law.
  
- What applicability would this have to illegal units?
  - The revised draft of the ordinance includes a section that applies the demolition, tenant protection and replacement requirements to illegal units, to the degree those units are recognized in some form as previously rented (registered with the Rent Stabilization Board) and/or there is substantial evidence of landlord-tenant relationship within the past five years.



Public commenters requested clarity whether the five-year prohibition on demolition of units that were vacated by Ellis Act evictions should apply to the entire building versus each unit. Comments also noted a general desire to replace older, dilapidated housing stock and that the provision of BMR units would be preferable as a long-term solution. Commenters also indicated a desire that the 4x4 Committee be provided an opportunity to review the revised ordinance.

The Commission summarized its recommendations as follows:

- Illegal units should be covered by the ordinance, and an amnesty program should be considered for units that can be made safe to remain occupied.
  - Illegal units are included for the purpose of providing tenant protections. Replacing illegal units is subject to the usual code enforcement, zoning and building code compliance process.
- Focus on like-for-like replacement units – rent control is preferable.
  - Rent control is available as a means of accommodating the return of tenants that don't income qualify for BMR units. for the 4x4 Committee recommended that the ordinance require replacement unit =s to be established as BMR units, which are permanently affordable, while also protecting the rights of existing/returning tenants.
- The exemption for demolitions to create childcare and other public benefit uses is not needed because other buildings are available for those uses.
  - Staff has not received a consensus direction from all policymakers on this topic, so the provision for certain exceptions remains in the draft ordinance.
- No mitigation fee should be allowed – all units should be replaced.
  - Some cases will require that replacement units are not provided, for example when the project results in no new residential development. The existing ordinance has a fee requirement for cases where an owner-occupant eliminates a unit – the same requirement could apply in some other cases, but a nexus and feasibility study would be needed.
- Consider whether the Rent Stabilization Board will administer tenant rights or if another review body is appropriate.
  - The ordinance has been amended to clarify that the Rent Stabilization Board would serve as an appeal body to review any disputes from the Hearing Officer's determination.

- Evaluate the provisions related to combining units, which address owner-occupancy / relocation and the death of an owner.
  - The 4x4 Committee recommended that these provisions be retained.
- Clarify whether historic resources are affected and how Landmarks Preservation Commission review occurs.

The LPC is only involved in demolitions of non-residential properties, though an historic evaluation is required for all development on properties over 40 years old in order to comply with CEQA.
- Clarify how the local rent stabilization ordinance affects the ability of the City to require rent controlled replacement units.
  - In general, local rent control does not apply to new units that receive a Certificate of Occupancy. However, this ordinance is intended to impose an equivalent of rent control for the returning tenants for the duration of their tenancy, as allowed by SB330 and Density Bonus Law.
- Consider whether tenants may benefit from “market rate” rents if they are less than prior rents.
  - A provision has been added to require the lesser of prior rents or market rents for returning tenants. In practice, “market rents” are difficult to determine or enforce.
- Clarify whether single-family homes are subject to rent control.
  - Single-family homes are not subject to rent control, but tenant protections apply.
- Make sure that the local ordinance is sufficient to address the issues in case State law is amended or sunsets.
  - The intent of this ordinance is to supplement the law, and to incorporate all of the substantive provisions of the law. To the degree the law is amended, the City is required to conform to it, so restating the law in its entirety in our local ordinance would lead to non-conformities that would require further ordinance amendment and potentially lead to unenforceable provisions, so not every provision of the law is restated.

The Commission moved to refer the draft ordinance back to the 4x4 Committee for consideration.

4x4 Joint Committee on Housing. On December 14, 2022, the 4x4 Committee reviewed a revised version of the ordinance and provided the following comments and recommendations:

- Revise the process regarding the determination of whether harassment has occurred to restate so that the Hearing officer makes the determination and ZAB reviews/confirms. Consider whether a body other than ZAB (i.e., City Council or Rent Board) should make the determination.
  - This amendment has been included in the revised draft ordinance.
- Reconsider applicability to ADUs/JADUs (and review whether it would be allowable under State law). Alternatively, add tenant protections requirements for demolished ADUs/JADUs (as is applied to unpermitted units).
  - This amendment has been included in the revised draft ordinance.
- Reconsider applicability to unpermitted units; consider distinguishing between units that are unsafe and other units.
  - Illegal units are included in the definition of Residential Unit for the purpose of providing tenant protections. Replacing illegal units is subject to the usual code enforcement, zoning and building code compliance process.
- Add definition of "comparable unit" - size, amenities, location (e.g., consider requiring in the same school district).
  - This amendment has been included in the revised draft ordinance.
- Expand noticing requirements for tenants and neighbors.
  - This amendment has been included in the revised draft ordinance.
- Keep section "23.326.040.D. Effect of Eliminating a Dwelling Unit."
  - This section has been reinstated in the revised draft ordinance.
- Reconsider deletion of the non-detriment finding (23.326.030.A).
  - The non-detriment finding is a standard finding for all Use Permits.
- Use definition of harassment from Tenant Protection Ordinance.
  - Reference is made to the other code sections for purposes of addressing tenant rights.

The revised draft ordinance being presented for consideration by the Planning Commission includes revisions reflecting the direction of the Planning Commission, the 4x4 Committee, and additional technical and administrative edits recommended by staff.

## **Issues for Discussion**

Staff has identified topics for further discussion.

Use Permit. The requirement to obtain a Use Permit may interfere with the trend toward by-right approval of housing development projects. Several policies in the Housing Element and regulations in State law provide for the approval of smaller multi-family housing in lower density zoning districts without public hearings or discretionary permits. In light of State law and the revised demolition ordinance, there are clear mandates for how the effect of removing units and displacing tenants are mitigated. While a Use Permit provides an opportunity for public review and a hearing by the Zoning Adjustments Board, it would not necessarily provide an opportunity to require anything different from the law and ordinance. The revised draft ordinance provides that a Use Permit is required except as otherwise provided by the Zoning Ordinance or State law, i.e. where the City is mandated, or may choose in the future, to approve a project by-right. The City Council adopted the 2023-2031 Housing Element on January 18, 2023, and amended a program specifically related to this topic. The Council action states:

To facilitate the by-right development of Middle Housing, the City will consider eliminating the requirement of a use permit to demolish single-family homes for applications that 1) add net density and 2) have not been occupied by tenants within the past five years and in which Ellis Act eviction did not occur within the preceding five years. This policy will be referred for consideration to the 4x4 Committee of the City Council and Rent Board. Further, explore the effect on local and state laws relating to the demolition of historic resources.

Illegal Units. A clause has been added to the definition section to clarify that illegal units are considered residential units for the purposes of this ordinance and that the tenant protections apply. Whether those units can be removed without being replaced remains a question. In some cases the units can be legalized under the zoning, building and housing codes. In other cases these units are substandard, unsafe, exceed allowable density, or otherwise impermissible such that they should be permanently removed. Tenant protections are provided in these cases, but no replacement units are required. A rent differential cap is established because these tenants will be relocated with no option to return, , so it is advisable to not have an indefinite time and cost to the relocation benefits.

Elimination of Units Through Combination and Conversion to Other Uses. The ordinance addresses several situations in which residential units are combined with other units or converted to another use, such as a daycare center or nursing home. These situations have occasionally occurred in the past and led to the special provisions in the existing ordinance. The intent is to allow conversion of owner-occupied buildings with a lesser standard, i.e. no replacement units are required. However, the

special provisions related to continued occupancy by the owner, retroactive penalties if the owner moves out, and provisions for inheritances and changes in life circumstances are difficult to interpret and enforce.

The Commission and public commenters in the past have suggested these provisions should be eliminated. One of these circumstances references a mitigation fee, which could be expanded to cover other similar circumstances. For now, Section 23.326.040 remains in the draft ordinance pending clearer direction. A defined relocation benefit could be established for these circumstances, similar to the one established for tenants of illegal units, because these tenants will not have a new unit to return to.

### **Recommendation**

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

### **ATTACHMENTS**

1. Existing Ordinance
2. Revised Draft Ordinance
3. Compare Version of Ordinances
4. State Law Excerpts

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.*

(a) Demolition is not allowed if:

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

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

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

- (a) The building containing the units is hazardous or unusable and is infeasible to repair.
- (b) The building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units.
- (c) The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community.
- (d) The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

4. *Fee Required.*

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

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

(c) *In Lieu of a Fee.*

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

ii. The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.

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

5. *Occupied Units.*

(a) *Applicability.*

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

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

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

(c) *General Requirements.*

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

ii. The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are



ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

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

(d) *Sitting Tenants Rights.*

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

ii. Tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.

iii. Income restrictions do not apply to displaced tenants.

iv. *Exception.*

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

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

B. *Buildings with a Single Dwelling Unit.*

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

(a) Demolition is not allowed if:

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

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

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

23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.

A. *General.* The ZAB may approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household if it finds that:

1. The existing number of dwelling units exceeds maximum residential density in the district where the building is located; and
2. One of the following is true:
  - (a) One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.

(b) All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

**B. *Limitations.***

1. Demolition is not allowed if:

(a) The building was removed from the rental market under the Ellis Act during the preceding five years; or

(b) There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

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

**C. *Effect of Noncompliance with the Two-Year Requirement.***

1. If a unit eliminated under Subsection A (General) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.

2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.

3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.

4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of an unforeseeable life change that requires relocation.

D. *Effect of Eliminating a Dwelling Unit.*

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements 23.326.040.A.1 and 2 and 23.326.040.B and C.

E. *Exceptions.*

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

2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-residential occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:

- (a) The re-conversion restores the original single-family use of the main building or lot; and
- (b) No tenant is evicted.

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.

23.326.060 Elimination of Residential Hotel Rooms.

A. *General Requirements.* Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:

1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.
2. One of the following three requirements shall be met:
  - (a) The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.
  - (b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.
  - (c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).

B. *Criteria for Replacement Rooms.* For purposes of this section, replacement rooms must be:

1. Substantially comparable in size, location, quality, and amenities;
2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and
3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:
  - (a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;
  - (b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or
  - (c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.
    - i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.
    - ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.

C. *Exception for Non-Profit Ownership.* In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in

each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel.

23.326.070 Demolitions of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A main building used for non-residential purposes may be demolished with a Use Permit.

B. *Accessory Buildings.*

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

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

D. *Findings.* A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:
  - (a) Is required to allow a proposed new building or other proposed new use;

- (b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
- (c) Will remove a structure which represents an inhabitable attractive nuisance to the public; or
- (d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within in Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.

B. *Findings.* The ZAB may approve a Use Permit to relocate a building upon finding that:

1. The building to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area to which it will be relocated; and
2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.



23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act.* This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

ORDINANCE NO.

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

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

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

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

- 23.326.010 Chapter Purpose.
- 23.326.020 General Requirements.
- 23.326.030 Demolition of Residential Units.
- 23.326.040 Eliminating Dwelling Units through Combination with Other Units.
- 23.326.050 Demolition of Accessory Buildings.
- 23.326.060 Private Right of Action.
- 23.326.070 Demolition of Non-Residential Buildings.
- 23.326.080 Building Relocations.
- 23.326.090 Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing and safety goals of the City.

23.326.020 General Requirements.

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

1. "Residential Unit" means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of

a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op.

2. “Residential Unit” includes any Accessory Dwelling Unit or Junior Accessory Dwelling Unit to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to any Accessory Dwelling Unit or Junior Accessory Dwelling Unit that is removed from the rental market.
3. “Residential Unit” includes Dwelling Units created without proper Use Permit(s) or Building Permit(s) if they have been registered with the Rent Stabilization Board or there is substantial evidence of a tenant-landlord relationship during the preceding five years to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to an illegal unit that is removed from the rental market.
4. “Comparable Unit” means a dwelling unit of similar size (square footage and number of bedrooms), amenities (private open space and common facilities) and location within the city (neighborhood and school attendance area).

23.326.030 Demolition of Residential Units.

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

1. The unit (or units) was removed from the rental market through a no-fault eviction during the preceding five years; or
2. There is 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.* A Use Permit is required to eliminate or demolish one or more Residential Units, except where otherwise provided by the Zoning Ordinance. The Board shall only approve the Use Permit if one of the following is true:

1. The building containing the units is hazardous or unusable and is infeasible to repair.
2. The building containing the unit(s) will be moved to a different location within Berkeley with no net loss of units and no change in the rent levels of the unit(s).
3. The demolition is necessary to permit construction of socially and/or economically beneficial uses that serve the greater good of the community.
4. The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

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

D. *Requirements for Occupied Units.*

1. *Applicability.* The following requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.
2. *Notice.* The applicant shall provide all sitting tenants and the Rent Stabilization Board notice of the application to demolish the unit(s) no later than the date the application is submitted to the City, including notice of their rights under Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program), 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.*
  - (a) The applicant shall provide assistance with moving and relocation assistance equivalent to the requirements set forth in Municipal Code

Chapter 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City Council by Resolution; provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-4655).

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

4. *Sitting Tenants Rights.*

(a) Any tenant of a Residential Unit that is permitted to be demolished under this section shall have the right of first refusal to rent a comparable unit in the new project.

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

- i. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with the preceding requirements but must comply with the following requirement.
- ii. Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed affordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements.

23.326.040 Eliminating Dwelling Units through Combination With Other Units.

A. *Process for Projects Where Density Exceeds Current Allowance.* A Use Permit is required to eliminate one or more Residential Units by combining with another 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 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 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 units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. *Process for Projects That Restore Original Development Density.* The Zoning Officer may issue an Administrative Use Permit (AUP) for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed.

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

1. The building was removed from the rental market through a no fault eviction during the preceding five years; or
2. There 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.

D. *Two-Year Occupancy Requirement Following Elimination*

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

E. *Effect of Eliminating a Dwelling Unit.*

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements of 23.326.040.A.1 and 2 and 23.326.040.B and C.

F. *Exception.* The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

23.326.050 Demolition of Accessory Buildings.

Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.

23.326.060 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections



23.326.030 (Eliminating Dwelling Units through Demolition) and 23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff shall recover reasonable attorney's fees.

23.326.070 Demolition of Non-Residential Buildings.

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

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

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure 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 that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot within the city is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot.

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

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of

collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act*. This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

Chapter~~ORDINANCE NO.~~

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

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

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

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

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

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, ~~aesthetic~~, and safety goals of the City.

23.326.020 General Requirements.

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

- ~~1. B. Findings.~~ In addition, “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.
- ~~2. “Residential Unit” includes any Accessory Dwelling Unit or Junior Accessory Dwelling Unit to the requirements below, the Zoning Adjustments Board (ZAB) may approve a extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to any Accessory Dwelling Unit or Junior Accessory Dwelling Unit that is removed from the rental market.~~
- ~~3. “Residential Unit” includes Dwelling Units created without proper Use Permit to eliminate or demolish a dwelling(s) or Building Permit(s) if they have been registered with the Rent Stabilization Board or there is substantial evidence of a tenant-landlord relationship during the preceding five years to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to an illegal unit only upon finding that eliminating is removed from the rental market.~~
- ~~4. “Comparable Unit” means a dwelling unit would not be materially detrimental to the housing needs and public interest of the affected of similar size (square footage and number of bedrooms), amenities (private open space and common facilities) and location within the city (neighborhood and Berkeley school attendance area).~~

23.326.030 ~~Eliminating Dwelling Units through Demolition.~~

~~A. Buildings with Two or More of Residential 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.     i.—The building unit (or units) was removed from the rental market under the Ellis Act through a no-fault eviction during the preceding five years; or~~

~~ii.—There have been verified cases is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years.~~

~~2.     (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, whose determination may be appealed to the Rent Stabilization Board.~~

~~B.   3.—*Procedure and Findings.* The ZAB may approve a A Use Permit is required to eliminate or demolish a building constructed before June 1980 on a property containing two one or more dwelling units Residential Units, except where otherwise provided by the Zoning Ordinance. The Board shall only approve the Use Permit if anyone of the following are is true:~~

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

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

~~3.   (c) The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers socially and affordable housing developments/or economically beneficial uses that serve the greater good of the entire community.~~

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

~~4. Fee Required.~~

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

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

~~(c)–In Lieu of a Fee.~~

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

~~ii.–The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.~~

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

~~5. C. Conditions of Approval. Any Residential Unit(s) that will be demolished shall be replaced with equivalent units and comply with applicable affordability requirements in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.~~

~~D. Requirements for Occupied Units.~~

~~(a)–Applicability.~~

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

~~1. ii.–These~~The following requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

~~2. (b)–Notice.~~ The applicant shall provide all sitting tenants and the Rent

Stabilization Board notice of the application to demolish the building unit(s) no later than the date ~~#~~the application is submitted to the City, including notice of their rights under Municipal Code ~~Section~~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. (e) – General Requirements.

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

(a) ii.—Municipal Code Chapter 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City ~~Council by Resolution;~~ provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 et seq.) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601- 4655).

(b) 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~~7260 et seq.).



~~4. (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.~~

~~(a) ii. - Tenants of unitsa Residential Unit that are is permitted to be demolished under this section shall have the right of first refusal to rent new below 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 units designated household shall be made available to replace the units that were demolished, household at the same rent that would have applied as had been previously charged, or a lesser rent if they had remained in place, as long as 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 continuesshall 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.~~

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

~~(d) iv. - Exception.-~~

~~i. (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, the preceding requirements but must comply with the following requirement.~~

~~ii. (2) - Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed buildingaffordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and~~

other applicable eligibility requirements ~~when the new units are ready for occupancy.~~

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

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

~~2. Limitation.~~

~~(a) Demolition is not allowed if:~~

~~i. The building was removed from the rental market under the Ellis Act during the preceding five years; or~~

~~ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.~~

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

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

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

~~A. Process for Projects Where Density Exceeds Current Allowance. A. General. The ZAB may Use Permit is required to eliminate one or more Residential Units by combining with another unit when the existing development exceeds currently allowable density. The ZAB shall approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy one or more~~

Residential Units by ~~a single household combining with another unit only~~ if it finds that:

- ~~1. 1.~~—The existing number of ~~dwelling~~ units exceeds the current maximum allowed residential density in the zoning district where the ~~building is~~ units are located; and
- ~~2. 2.~~—One of the following is true:
  - ~~(a) (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) (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. B.—Process for Projects That Restore Original Development Density. The Zoning Officer may issue an Administrative Use Permit (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.~~

*Limitations.*

~~C. 1.—DemolitionCombination~~ is not allowed if:

- ~~1. (a)~~—The building was removed from the rental market ~~under the Ellis Act~~ through a no fault eviction during the preceding five years; or
  - ~~(b)~~—There ~~have been verified cases~~ is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years.
- ~~2. 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, whose determination may be appealed to the Rent Stabilization Board.~~

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

~~1. 1. – If a unit that is eliminated ~~under Subsection A (General)~~through combination is not occupied by the applicant’s household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.~~

~~2. 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. 3. – The condition and notice will provide that if the owner’s household does not occupy the unit for at least two years from the date of elimination then the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley’s Housing Trust Fund.~~

~~4. 4. – The City of Berkeley may exempt an applicant from the two-year residency requirement if if there is an unforeseeable life change that requires relocation.~~

~~E. D. – Effect of Eliminating a Dwelling Unit.~~

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates

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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 of 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.~~

~~F. 2. Exception.~~ The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-~~residential~~resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

~~3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:~~

- ~~(a) The re-conversion restores the original single-family use of the main building or lot; and~~
- ~~(b) No tenant is evicted.~~

~~23.326.050~~23.326.050 Demolition of Accessory Buildings.

~~Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.~~

23.326.060 Private Right of Action.

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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.-

~~23.326.060 — Elimination of Residential Hotel Rooms:~~

~~A. General Requirements. Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:~~

~~1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.~~

~~2. One of the following three requirements shall be met:~~

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

~~(b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.~~

~~(c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).~~

~~B. Criteria for Replacement Rooms. For purposes of this section, replacement rooms must be:~~

~~1. Substantially comparable in size, location, quality, and amenities;~~

~~2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are~~

being replaced; and

3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:

(a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;

(b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or

(c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.

i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.

ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.

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

23.326.070 ~~Demolitions~~Demolition of Non-Residential Buildings.

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

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

1. 1.—Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. 2.—An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. C.—*Landmarks Preservation Commission Review.*—

1. 1.—Any application for a Use Permit or AUP to demolish a non-residential building or structure ~~which~~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. 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. 3.—The ZAB or Zoning Officer shall consider the recommendations of the LPC ~~in~~ when acting on the application.

D. D.—*Findings.* A Use Permit or an AUP for demolition of a main building used for non-residential building or structure 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. 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. 2.—The demolition:
  - (a) (a)—Is required to allow a proposed new building or other proposed new use;
  - (b) (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) (e)~~ Will remove a structure which represents an ~~inhabitable~~uninhabitable attractive nuisance to the public; or

~~(d) (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. A. ~~Treatment of Building Relocation.-~~

~~1. 1.~~ Relocating a building from a lot is considered a demolition for purposes of this chapter.

~~2. 2.~~ Relocating a building to a lot within the city is considered new construction and is subject to all requirements applicable to new construction.

~~3. 3.~~ When a building is relocated to a different lot within ~~in~~ Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. ~~In such cases all notification requirements apply to both the source and receiving lots.~~

~~B. Findings.~~ The ~~ZAB may~~Zoning Officer shall approve a ~~Use Permit~~Zoning Certificate to relocate a building upon finding that:

~~1. The building to be relocated is not in conflict with the architectural character, or resulting development on the building scale of the neighborhood or area to which it will be relocated; and~~

~~B. 2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space. is in conformance with applicable zoning code development standards.~~

23.326.090 Limitations.

A. A. ~~Unsafe, Hazard, or Danger.-~~

~~1. 4.~~ 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. 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).-

B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) For purposes of this paragraph:

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

(ii) “Protected units” means any of the following:

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

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

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

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

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

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

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

**Govt. Code section 65915 (Density Bonus Law)**

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

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

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

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

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

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

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

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

value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

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

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

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

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

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

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

from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

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

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

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

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

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

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



**Govt. Code section 7060 et seq (Ellis Act)**

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

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

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

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

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

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

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

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

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

**7060.1**

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

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

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

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

the purchaser. The county recorder shall index such a written memorandum in the grantor-grantee index.

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

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

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

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

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

## **7060.2**

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

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

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

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

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

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

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

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

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

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

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

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

the acceptance in the United States mail by registered or certified mail with postage prepaid.

(c) A public entity which has acted pursuant to this section, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that an owner who offers accommodations again for rent or lease within a period not exceeding 10 years from the date on which they are withdrawn, and which are subject to this subdivision, shall first offer the unit to the tenant or lessee displaced from that unit by the withdrawal, if that tenant or lessee requests the offer in writing within 30 days after the owner has notified the public entity of an intention to offer the accommodations again for residential rent or lease pursuant to a requirement adopted by the public entity under subdivision (c) of Section 7060.4. The owner of the accommodations shall be liable to any tenant or lessee who was displaced by that action for failure to comply with this paragraph, for punitive damages in an amount which does not exceed the contract rent for six months, and the payment of which shall not be construed to extinguish the owner's obligation to comply with this subdivision.

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

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

### **7060.3**

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

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

#### **7060.4**

(a) Any public entity which, by a valid exercise of its police power, has in effect any control or system of control on the price at which accommodations are offered for rent or lease, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that the owner notify the entity of an intention to withdraw those accommodations from rent or lease and may require that the notice contain statements, under penalty of perjury, providing information on the number of accommodations, the address or location of those accommodations, the name or names of the tenants or lessees of the accommodations, and the rent applicable to each residential rental unit. Information respecting the name or names of the tenants, the rent applicable to any residential rental unit, or the total number of accommodations, is confidential information and for purposes of this chapter shall be treated as confidential information by any public entity for purposes of the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). A public entity shall, to the extent required by the preceding sentence, be considered an “agency,” as defined by subdivision (d) of Section 1798.3 of the Civil Code.

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

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

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

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

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

(5) Within 90 days of date of delivery to the public entity of the notice of intent to withdraw, the owner shall give written notice of the owner's election to extend a tenancy under paragraph (3) and the revised date of withdrawal to the public entity and any tenant or lessee whose tenancy is extended.

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

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

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

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

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

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

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

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

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

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

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

### **7060.5**

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

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

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

### **7060.6**

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

### **7060.7**

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

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

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

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

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

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

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

(A) A unit that was the principal place of residence of any owner or owner's family member at the time of withdrawal, provided that it continues to be that person's or those persons' principal place of residence when accommodations are returned to the rental market as provided in this section.

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

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

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



## Chapter 13.110

### COVID-19 EMERGENCY RESPONSE ORDINANCE

Sections:

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

#### **13.110.010 Findings and Purpose.**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of

business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

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

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

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

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

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

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

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations

and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter [13.110](#). (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.020 Prohibited Conduct.**

- A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a Resident of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.
- B. *Residential Eviction Moratorium.* It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period.
- C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section [13.110.020 C.](#) shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.
- D. For the duration of the Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7720-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.030 Definitions.**

- A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.
- B. "Covered Reason for Delayed Payment" means:
- (1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and
  - (2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.
- C. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.
- D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.
- E. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:
1. whose operation has been shut down due to the COVID-19 emergency, or
  2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
  3. who suffered a material loss of income.
- F. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.
- G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.
- H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.040 Collection of Back Rent and Late Fees.**

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

B. 1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

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

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the Covered Period, whichever is later. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections [1161\(2\)](#) et seq. does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

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

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.050 Application.**

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

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

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities, reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on non-payment of rent during the Covered Period as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section [13.76.130\(A\)\(1\)](#), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.060 Implementing Regulations.**

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.070 Waiver.**

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

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.080 Remedies.**

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

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

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

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

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

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

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

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

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

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

law. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020: Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

### **13.110.090 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020: Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

### **13.110.100 Liberal Construction.**

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants. (Ord. 7832-NS § 1, 2022)

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**The Berkeley Municipal Code is current through Ordinance 7838-NS, passed November 3, 2022.**

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

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Code Publishing Company](#)





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

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

Wednesday, February 15, 2023 – 3:00 p.m.

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

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

**To access this meeting remotely:** Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/83758415401?pwd=TVdxY2xwUkRnVHFzTIIXK21Yb3JPZz09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

**To join by phone:** Dial 1-669-900-6833 and enter Webinar ID: 837 5841 5401 and Passcode: 702926. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Committee Chair.

To submit a written communication for the Committee's consideration and inclusion in the public record, email [btran@cityofberkeley.info](mailto:btran@cityofberkeley.info) with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE." Please observe a 150-word limit. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

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

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



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

## AGENDA

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

**Wednesday, February 15, 2023 – 3:00 p.m.**

1. Roll call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of the agenda
4. Public comment on non-agenda matters
5. Approval of February 1, 2023 Committee meeting minutes (see attachment)
6. Discussion and possible action regarding the expiration of the Eviction Moratorium and amendments to the COVID-19 Emergency Response Ordinance (requested by Mayor Arreguín, see attached BMC 13.110)
7. Discussion and possible recommendations on a moratorium on rent increases (requested by Chair Simon-Weisberg)
8. Discussion and possible recommendations to City Council regarding amendments to the Demolition Ordinance (Steve Buckley, Planning Department, see attached February 1, 2022 staff report to the Planning Commission)
9. Discussion of possible future agenda items
10. Confirm next meeting date
11. Adjournment

COMMITTEE MEMBERS:

Mayor Jesse Arreguín  
City Councilmember Sophie Hahn  
City Councilmember Kate Harrison  
City Councilmember Rigel Robinson

Rent Board Chairperson Leah Simon-Weisberg  
Rent Board Commissioner Xavier Johnson  
Rent Board Commissioner Vanessa Danielle Marrero  
Rent Board Commissioner Dominique Walker



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

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

**Wednesday, February 1, 2023 – 3:00 p.m.**

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

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

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

Wednesday, February 1, 2023 – 3:00 p.m.

### Minutes to be Approved

1. Roll call: Mayor Arreguín called the meeting to order at 3:03 p.m.  
Present: Mayor Arreguín, CM Hahn, CM Harrison, RBC Johnson, RBC Marrero, RBC Alpert, RCB Walker.  
Absent: CM Robinson.  
Staff present: Steve Buckley, Lief Bursell, Nate Dahl, Brendan Darrow, Ollie Ehlinger, Stefan Elstrand, Jen Fabish, Alene Pearson, Be Tran, DéSeana Williams.
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*

The Land Acknowledgement Statement was read aloud.

3. Approval of the agenda: M/S/C (Arreguín/Harrison) Approve the agenda as written. Roll call vote. YES: Arreguín, Hahn, Harrison, Johnson, Marrero, Alpert, Walker; NO: None; ABSTAIN: None; ABSENT: Robinson. Carried: 7-0-0-1.
4. Public comment on non-agenda matters: No speakers.
5. Approval of December 14, 2022 Committee meeting minutes (see attachment): M/S/C (Arreguín/Harrison) Approve the December 14, 2022 minutes as written. Roll call vote. YES: Arreguín, Hahn, Harrison, Johnson, Marrero, Alpert, Walker; NO: None; ABSTAIN: None; ABSENT: Robinson. Carried: 7-0-0-1.

6. Discussion and possible recommendations on a moratorium on rent increases (requested by Chair Simon-Weisberg): The committee briefly discussed this item, but agreed by consensus to table it given that Chair Simon-Weisberg was unable to attend today's meeting. There were four public speakers.
7. Discussion and possible recommendations to City Council regarding amendments to the Demolition Ordinance (Steve Buckley, Planning Department, see attached February 1, 2022 staff report to the Planning Commission): The committee discussed this item, but agreed to delay formulating substantive recommendations until Chair Simon-Weisberg could be present. There were five public speakers.

M/S/C (Arreguín/Alpert) Recommend that the Planning Commission delay discussion/action on this item to allow for further analysis and action by the 4x4 Committee. **Friendly amendment by Hahn (accepted)**: That the delay be until such time as the 4x4 can transmit formal recommendations to the Planning Commission. Roll call vote. YES: Arreguín, Hahn, Harrison, Johnson, Marrero, Alpert, Walker; NO: None; ABSTAIN: None; ABSENT: Robinson. Carried: 7-0-0-1.

8. Discussion and possible action regarding the expiration of the Eviction Moratorium (see attached BMC 13.110) and amendments to the COVID-19 Emergency Response Ordinance (requested by Mayor Arreguín): The committee agreed by consensus to table this item due to Chair Simon-Weisberg's inability to attend today's meeting. Several committee members expressed a sense of urgency about addressing this item, and Mayor Arreguín mentioned his intent to bring a budget referral to Council to request more funding for COVID-19 rent relief. There were four public speakers.
9. Discussion of possible future agenda items: The committee will schedule a special meeting in February to discuss the items tabled at today's meeting, with item 8 as the top priority, item 6 as the second priority, and item 7 as the third priority.
10. Confirm next meeting date: The committee did not discuss this item.
11. Adjournment: M/S/C (Arreguín/Hahn) Adjourn the meeting. Roll call vote. YES: Arreguín, Hahn, Harrison, Johnson, Marrero, Alpert, Walker; NO: None; ABSTAIN: None; ABSENT: Robinson. Carried: 7-0-0-1. The meeting adjourned at 4:23 p.m.

**COMMITTEE MEMBERS:**

Mayor Jesse Arreguín  
City Councilmember Sophie Hahn  
City Councilmember Kate Harrison  
City Councilmember Rigel Robinson

Rent Board Chairperson Leah Simon-Weisberg  
Rent Board Commissioner Xavier Johnson  
Rent Board Commissioner Vanessa Danielle Marrero  
Rent Board Commissioner Dominique Walker

## Chapter 13.110

### COVID-19 EMERGENCY RESPONSE ORDINANCE

Sections:

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

#### **13.110.010 Findings and Purpose.**

International, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2." And the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19"). In response to this emergency, on March 3, 2020, the City Manager acting as the Director of Emergency Services declared a local State of Emergency based on COVID-19 (hereinafter referred to as "the Local Emergency"), which the City Council subsequently ratified on March 10, 2020. On April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, and July 26, 2022, the council ratified an extension of the local emergency. In addition, on March 4, 2020, the Governor declared a state of emergency in California and the President of the United States declared a national state of emergency on March 13, 2020 regarding the novel coronavirus and COVID-19.

On March 16, 2020, the City of Berkeley Public Health Officer, along with several other neighboring jurisdictions issued a Shelter in Place Order directing all individuals living in the City of Berkeley to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities, and prohibiting non-essential gatherings and ordering cessation of non-essential travel. On March 31, 2020 this Shelter in Place Order was extended to May 3, 2020, and restricted activities further.

Furthermore, on March 16, 2020, the Governor issued Executive Order N-28-20, specifically authorizing local governments to halt evictions for commercial tenants, residential tenants, and homeowners who have been affected by COVID-19, emphasizing that the economic impacts of COVID-19 have been significant and could threaten to undermine housing security as many people are experiencing material income loss as a result of

business closures, the loss of hours or wages or layoffs related to COVID-19, hindering their ability to keep up with rents, mortgages and utility bills.

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

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

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

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

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

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

On expiration of leases when the emergency order is in place, unreasonable rent increases have already forced the closure of businesses and will result in closing of additional business causing loss of income for the business owners, loss of employment for the employees and of revenue to the city, and an increase in homelessness. To reduce the spread of COVID-19, it is essential to avoid unnecessary displacement and homelessness. Because of the emergency restrictions, businesses forced out due to increased rents will be unable to move to new locations



and new businesses will be unable to open during this emergency period. During a state of emergency cities have extraordinary powers and jurisdiction to create legislation in order to counteract the effects of the emergency situation on its people and businesses. Protecting tenants from excessive rent increases will prevent additional loss of employment and essential services for Berkeley residents. In order to effectively implement an eviction moratorium, the City Council finds it imperative to prevent constructive eviction through unreasonable rent increases.

Accordingly, the City of Berkeley adopts the following amendments to Berkeley Municipal Code Chapter [13.110](#). (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.020 Prohibited Conduct.**

- A. During the Covered Period, no Landlord or Lender shall evict or attempt to evict a Resident of real property, or otherwise require a Tenant to vacate, unless necessary to stop an imminent threat to the health and safety of other occupants. For purposes of this Ordinance, the basis for an exception to this Ordinance cannot be the Resident's COVID-19 illness or exposure to COVID-19, whether actual or suspected.
- B. *Residential Eviction Moratorium.* It shall be a complete defense to any action for unlawful detainer that the notice upon which the action is based was served or expired, or that the complaint was filed or served, during the Covered Period.
- C. No landlord of an Impacted Business or Nonprofit may upon expiration of a lease increase rent for an Impacted Business or Nonprofit in an amount greater than ten (10) percent over the rent in effect at the commencement of the local emergency declared by the Director of Emergency Services. For purposes of this section, rent means all consideration for the use and enjoyment of the rented premises, including base rent and any additional rent or other charges for costs such as utilities, maintenance, cleaning, trash removal, repairs and any other charges to the tenant required under the rental agreement. This section [13.110.020 C.](#) shall expire on May 31, 2020, concurrent with Executive Order N-28-20; provided, however, that this section shall be automatically extended if Executive Order N-28-20 is extended or the tenant protections therein are extended pursuant to another Governor's Executive Order.
- D. For the duration of the Covered Period, if a tenant has a Covered reason for delayed payment, the tenant may terminate a lease or rental agreement with 30 days' notice without penalty. A tenant may also exercise rights under this subsection if the tenants or roommates of the tenants are or were registered at an educational institution that cancelled or limited in-person classes due to the COVID-19 pandemic. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7720-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.030 Definitions.**

- A. "Covered Period" means the period of time beginning with March 17, 2020 and concluding upon the expiration of the local emergency. However, the City Council may vote by resolution to extend the duration of the Covered Period.
- B. "Covered Reason for Delayed Payment" means:
- (1) The basis for the eviction is nonpayment of rent, arising out of a material decrease in household, business, or other rental unit occupant(s)'s income (including, but not limited to, a material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or to caregiving responsibilities, or a material decrease in business income caused by a reduction in opening hours or consumer demand), or material out-of-pocket medical expenses, or a reduction in the number of tenants living in the unit (including due to difficulty finding new tenants and/or subtenants willing and able to cover a sufficient share of rent) which reduces the ability of the remaining tenants to pay rent, or a rent increase that exceeds the Annual General Adjustment for the current year; and
  - (2) The decrease in household, business, or other rental unit occupant's income or the expenses or reduction in number of tenants described in subparagraph (1) was caused by the impacts of COVID-19 pandemic, or by any local, state, or federal government response to COVID-19.
- C. "Delayed Rent Payment Agreement" means a mutual agreement between a landlord and tenant regarding the timing and amount of payments for rent that is delayed by a Covered Reason for Delayed Payment.
- D. "Homeowner" means the owner or owners of a Residential Unit subject to a mortgage or similar loan secured by the residential unit. "Homeowner" is limited to owners who reside in the unit and includes the individuals residing in the unit with the homeowner.
- E. "Impacted Business or Nonprofit" means a business or nonprofit organization that had a business license in 2019 or 2020 in the City of Berkeley or is a registered nonprofit in either or both of those years and:
1. whose operation has been shut down due to the COVID-19 emergency, or
  2. that is unable to accept customers at its location and is open for limited virtual, take-out or pickup services only, or
  3. who suffered a material loss of income.
- F. "Landlord" includes owners, lessors, or sublessors of either residential or commercial rental property, and the agent, representative, or successor of any of the foregoing.
- G. "Lender" means the mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more units, which person has the right to mortgage or similar payments from the owner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.
- H. "Resident" means a Tenant, Homeowner, or their household.

I. "Tenant" includes a tenant, subtenant, lessee, sublessee, lodger or any other person entitled by written or oral rental agreement to use or occupancy of either residential or commercial property. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.040 Collection of Back Rent and Late Fees.**

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

B. 1. For rent accrued through January 31, 2021, Tenants shall have until March 31, 2022, or the date adopted by state law, as applicable, to pay rent that was delayed by a Covered Reason for Delayed Payment unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

2. For rent accrued beginning February 1, 2021, Tenants shall have until twenty-four (24) months after the conclusion of the Covered Period to pay rent that was delayed by a Covered Reason for Delayed Payment, or the period of time adopted by state law, as applicable, unless the landlord and tenant come to a mutual repayment agreement ("Delayed Rent Payment Agreement").

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

C. A Tenant is not required to provide documentation to the Landlord in advance to qualify for the delayed repayment of rent. However, upon the request of a Landlord, a Tenant shall provide such documentation to the Landlord within forty-five (45) days after the request or within thirty (30) days after the Covered Period, whichever is later. A declaration sworn under penalty of perjury shall constitute documentation for the purpose of this requirement. In the case of nonpayment of rent, the failure of a Tenant to notify the landlord in advance of being delinquent in the payment of rent prior to being served with a notice pursuant to Code of Civil Procedure sections [1161\(2\)](#) et seq. does not waive the Tenant's right to claim this Chapter as a complete defense to nonpayment of rent in an unlawful detainer action.

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

E. Any relief from the City of Berkeley either directly to a property owner on their own application or as a pass through for City relief payments to the tenant shall directly reduce the amount of any rent that was delayed by a Covered Reason for Delayed Payment. This requirement shall be applied into any Delayed Rent Payment Agreement, regardless of the terms of that agreement. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.050 Application.**

A. This Chapter applies to eviction notices and unlawful detainer actions based on notices served, filed, or which expire during the Covered Period. It does not apply to commercial leases where the term has expired and the City has issued a permit for the demolition or substantial alteration of the commercial unit, or to units ordered by the City to be vacated for the preservation of public health, including where the City deems necessary to control the spread of COVID-19.

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

C. A Landlord or Lender shall not retaliate against a Resident for exercising their rights under this Ordinance, including but not limited to shutting off any utilities, reducing services or amenities, refusing to make or delaying repairs to which the Resident would otherwise be entitled, or taking actions which hurt the Resident's credit rating based on non-payment of rent during the Covered Period as allowed under this ordinance.

D. In addition to the affirmative defenses set forth above, in any action to recover possession of a rental unit filed under Berkeley Municipal Code section [13.76.130\(A\)\(1\)](#), it shall be a complete defense that the landlord impeded the tenant's effort to pay rent by refusing to accept rent paid on behalf of the tenant from a third party, or refusing to provide a W-9 form or other necessary documentation for the tenant to receive rental assistance from a government agency, non-profit organization, or other third party. Acceptance of rental payments made on behalf of the tenant by a third party shall not create a tenancy between the landlord and the third party. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.060 Implementing Regulations.**

The City Manager may promulgate implementing regulations and develop forms to effectuate this Ordinance. This includes the option of requiring Landlords and Lenders to give a notice to Residents informing them of this Chapter and the right to seek the benefits of this Chapter. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.070 Waiver.**

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

B. Any agreement by a Tenant to waive any rights under this ordinance shall be void and contrary to public policy. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020; Ord. 7704-NS § 1 (part), 2020; Ord. 7698-NS § 1 (part), 2020; Ord. 7693-NS § 1 (part), 2020)

### **13.110.080 Remedies.**

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

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

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

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

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

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

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

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

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

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

law. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020: Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

### **13.110.090 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional. (Ord. 7832-NS § 1, 2022; Ord. 7762-NS § 1, 2021; Ord. 7743-NS § 1, 2020: Ord. 7704-NS § 1 (part), 2020: Ord. 7698-NS § 1 (part), 2020: Ord. 7693-NS § 1 (part), 2020)

### **13.110.100 Liberal Construction.**

The provisions of this Chapter shall be liberally construed so as to fully achieve its purpose and provide the greatest possible protections to tenants. (Ord. 7832-NS § 1, 2022)

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**The Berkeley Municipal Code is current through Ordinance 7838-NS, passed November 3, 2022.**

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

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Code Publishing Company](#)



**Planning and Development Department**

Land Use Planning Division

## **STAFF REPORT**

**DATE:** February 1, 2023

**TO:** Members of the Planning Commission

**FROM:** Steven Buckley, Land Use Planning Manager

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

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### **BACKGROUND**

The Planning Commission is asked to make a recommendation to the City Council regarding amendments to the demolition ordinance (Berkeley Municipal Code Chapter 23.326). The existing and proposed ordinance are presented in Attachments 1 and 2, respectively. A comparison of the two versions is provided in Attachment 3. Excerpts of relevant State law are provided in Attachment 4.

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 the 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.

The State law provides optional ways to comply depending on whether the units were occupied or vacant, whether those tenants were low income, whether the units were subject to local rent control (in Berkeley, this would be most properties with more than two units built before 1980), and whether the units were removed from the rental market pursuant to the Ellis Act (which allows landlords to “go out of the rental business”). In particular, replacement units required by the Housing Crisis Act of 2019, 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 an affordable rent.

Density bonus law now mirrors these requirements. This law goes on to specifically address requirements where units are vacant and/or existing tenant incomes are not known, and thus the level of affordability of replacement units must be inferred from HUD data for the community and distributed accordingly.

### **Summary of Existing Demolition Ordinance Provisions**

The existing demolition ordinance addresses issues similar to the new State law, 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, and when units are being merged or converted within an existing building rather than physical demolished.

A Use Permit is required for the demolition or other elimination of a dwelling unit in Berkeley. The Zoning Adjustments Board (ZAB) may issue a Use Permit for the demolition of a dwelling unit for specific enumerated reasons, including in instances where a building is “hazardous or unusable and is infeasible to repair” or “demolition is necessary to permit construction... of at least the same number of dwelling units.” Before permitting the demolition of a dwelling unit, ZAB must also find that “the elimination of the dwelling units would not be materially detrimental to the housing needs and public interest of the affected neighborhood and the City.” Finally, applicants must either provide below-market-rate replacement units to “qualifying household[s]” or pay an in-lieu fee (but the fee has never been set).

Demolition of dwelling units is prohibited where a building has been removed from the rental market 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. Most of these provisions are carried forward in the proposed ordinance.

### **Previous Discussions**

Planning Commission. On October 19, 2022, the Planning Commission considered the most recent version of proposed amendments.

Staff provides the following response to questions raised during the Commission’s discussion.

- Does this ordinance apply to condominium conversions?
  - The ordinance does not apply to condominium conversions because the housing unit remains physically available as housing. However, a mitigation fee is required upon sale to recoup some of the value



differential, if any, which is placed into the Housing Trust Fund to provide affordable housing elsewhere in the city.

- Would displaced tenants be able to return at the same rent in a “market rate” unit?
  - Yes, for tenants that are not low income, the proposed ordinance requires a form of rent control in a replacement unit that is not designated as one of the below-market-rate (BMR) replacement units equivalent to their prior rent for the duration of their tenancy. The Commission requested clarification of the income restrictions / rent / BMR requirements, which is provided in the revised draft attached to this report.
  
- Did SB330 override Costa-Hawkins (which prohibits the imposition of rent control on new dwelling units) to allow rent control / BMR units for the new project?
  - Yes, SB330 allows the imposition of rent control if it is required by local ordinance. In Berkeley, the citywide rent control ordinance does not apply to new units, but this demolition ordinance is being drafted to mimic rent control by limiting the annual rent increases for any tenant that returns to a new unit for the duration of that tenancy, in addition to the requirement that all of the demolished units be replaced as BMR units in perpetuity.
  
- Would there be a “right of return” for existing tenants even if demolition would be for the purpose of constructing a project that contains only affordable units?
  - To the extent a displaced tenant could qualify for one of the replacement units, then they would have a right of first refusal. However, because of how they are funded and operated, 100%-affordable projects would not be required to provide additional units for those tenants that do not income-qualify. However, those displaced tenants would receive all of the specified relocation benefits.
  
- Is the University of California required to comply with this ordinance?
  - No, but they are subject to applicable State law.
  
- What applicability would this have to illegal units?
  - The revised draft of the ordinance includes a section that applies the demolition, tenant protection and replacement requirements to illegal units, to the degree those units are recognized in some form as previously rented (registered with the Rent Stabilization Board) and/or there is substantial evidence of landlord-tenant relationship within the past five years.

Public commenters requested clarity whether the five-year prohibition on demolition of units that were vacated by Ellis Act evictions should apply to the entire building versus each unit. Comments also noted a general desire to replace older, dilapidated housing stock and that the provision of BMR units would be preferable as a long-term solution. Commenters also indicated a desire that the 4x4 Committee be provided an opportunity to review the revised ordinance.

The Commission summarized its recommendations as follows:

- Illegal units should be covered by the ordinance, and an amnesty program should be considered for units that can be made safe to remain occupied.
  - Illegal units are included for the purpose of providing tenant protections. Replacing illegal units is subject to the usual code enforcement, zoning and building code compliance process.
- Focus on like-for-like replacement units – rent control is preferable.
  - Rent control is available as a means of accommodating the return of tenants that don't income qualify for BMR units. for the 4x4 Committee recommended that the ordinance require replacement unit =s to be established as BMR units, which are permanently affordable, while also protecting the rights of existing/returning tenants.
- The exemption for demolitions to create childcare and other public benefit uses is not needed because other buildings are available for those uses.
  - Staff has not received a consensus direction from all policymakers on this topic, so the provision for certain exceptions remains in the draft ordinance.
- No mitigation fee should be allowed – all units should be replaced.
  - Some cases will require that replacement units are not provided, for example when the project results in no new residential development. The existing ordinance has a fee requirement for cases where an owner-occupant eliminates a unit – the same requirement could apply in some other cases, but a nexus and feasibility study would be needed.
- Consider whether the Rent Stabilization Board will administer tenant rights or if another review body is appropriate.
  - The ordinance has been amended to clarify that the Rent Stabilization Board would serve as an appeal body to review any disputes from the Hearing Officer's determination.

- Evaluate the provisions related to combining units, which address owner-occupancy / relocation and the death of an owner.
  - The 4x4 Committee recommended that these provisions be retained.
- Clarify whether historic resources are affected and how Landmarks Preservation Commission review occurs.

The LPC is only involved in demolitions of non-residential properties, though an historic evaluation is required for all development on properties over 40 years old in order to comply with CEQA.
- Clarify how the local rent stabilization ordinance affects the ability of the City to require rent controlled replacement units.
  - In general, local rent control does not apply to new units that receive a Certificate of Occupancy. However, this ordinance is intended to impose an equivalent of rent control for the returning tenants for the duration of their tenancy, as allowed by SB330 and Density Bonus Law.
- Consider whether tenants may benefit from “market rate” rents if they are less than prior rents.
  - A provision has been added to require the lesser of prior rents or market rents for returning tenants. In practice, “market rents” are difficult to determine or enforce.
- Clarify whether single-family homes are subject to rent control.
  - Single-family homes are not subject to rent control, but tenant protections apply.
- Make sure that the local ordinance is sufficient to address the issues in case State law is amended or sunsets.
  - The intent of this ordinance is to supplement the law, and to incorporate all of the substantive provisions of the law. To the degree the law is amended, the City is required to conform to it, so restating the law in its entirety in our local ordinance would lead to non-conformities that would require further ordinance amendment and potentially lead to unenforceable provisions, so not every provision of the law is restated.

The Commission moved to refer the draft ordinance back to the 4x4 Committee for consideration.

4x4 Joint Committee on Housing. On December 14, 2022, the 4x4 Committee reviewed a revised version of the ordinance and provided the following comments and recommendations:

- Revise the process regarding the determination of whether harassment has occurred to restate so that the Hearing officer makes the determination and ZAB reviews/confirms. Consider whether a body other than ZAB (i.e., City Council or Rent Board) should make the determination.
  - This amendment has been included in the revised draft ordinance.
- Reconsider applicability to ADUs/JADUs (and review whether it would be allowable under State law). Alternatively, add tenant protections requirements for demolished ADUs/JADUs (as is applied to unpermitted units).
  - This amendment has been included in the revised draft ordinance.
- Reconsider applicability to unpermitted units; consider distinguishing between units that are unsafe and other units.
  - Illegal units are included in the definition of Residential Unit for the purpose of providing tenant protections. Replacing illegal units is subject to the usual code enforcement, zoning and building code compliance process.
- Add definition of "comparable unit" - size, amenities, location (e.g., consider requiring in the same school district).
  - This amendment has been included in the revised draft ordinance.
- Expand noticing requirements for tenants and neighbors.
  - This amendment has been included in the revised draft ordinance.
- Keep section "23.326.040.D. Effect of Eliminating a Dwelling Unit."
  - This section has been reinstated in the revised draft ordinance.
- Reconsider deletion of the non-detriment finding (23.326.030.A).
  - The non-detriment finding is a standard finding for all Use Permits.
- Use definition of harassment from Tenant Protection Ordinance.
  - Reference is made to the other code sections for purposes of addressing tenant rights.

The revised draft ordinance being presented for consideration by the Planning Commission includes revisions reflecting the direction of the Planning Commission, the 4x4 Committee, and additional technical and administrative edits recommended by staff.

## **Issues for Discussion**

Staff has identified topics for further discussion.

Use Permit. The requirement to obtain a Use Permit may interfere with the trend toward by-right approval of housing development projects. Several policies in the Housing Element and regulations in State law provide for the approval of smaller multi-family housing in lower density zoning districts without public hearings or discretionary permits. In light of State law and the revised demolition ordinance, there are clear mandates for how the effect of removing units and displacing tenants are mitigated. While a Use Permit provides an opportunity for public review and a hearing by the Zoning Adjustments Board, it would not necessarily provide an opportunity to require anything different from the law and ordinance. The revised draft ordinance provides that a Use Permit is required except as otherwise provided by the Zoning Ordinance or State law, i.e. where the City is mandated, or may choose in the future, to approve a project by-right. The City Council adopted the 2023-2031 Housing Element on January 18, 2023, and amended a program specifically related to this topic. The Council action states:

To facilitate the by-right development of Middle Housing, the City will consider eliminating the requirement of a use permit to demolish single-family homes for applications that 1) add net density and 2) have not been occupied by tenants within the past five years and in which Ellis Act eviction did not occur within the preceding five years. This policy will be referred for consideration to the 4x4 Committee of the City Council and Rent Board. Further, explore the effect on local and state laws relating to the demolition of historic resources.

Illegal Units. A clause has been added to the definition section to clarify that illegal units are considered residential units for the purposes of this ordinance and that the tenant protections apply. Whether those units can be removed without being replaced remains a question. In some cases the units can be legalized under the zoning, building and housing codes. In other cases these units are substandard, unsafe, exceed allowable density, or otherwise impermissible such that they should be permanently removed. Tenant protections are provided in these cases, but no replacement units are required. A rent differential cap is established because these tenants will be relocated with no option to return, , so it is advisable to not have an indefinite time and cost to the relocation benefits.

Elimination of Units Through Combination and Conversion to Other Uses. The ordinance addresses several situations in which residential units are combined with other units or converted to another use, such as a daycare center or nursing home. These situations have occasionally occurred in the past and led to the special provisions in the existing ordinance. The intent is to allow conversion of owner-occupied buildings with a lesser standard, i.e. no replacement units are required. However, the

special provisions related to continued occupancy by the owner, retroactive penalties if the owner moves out, and provisions for inheritances and changes in life circumstances are difficult to interpret and enforce.

The Commission and public commenters in the past have suggested these provisions should be eliminated. One of these circumstances references a mitigation fee, which could be expanded to cover other similar circumstances. For now, Section 23.326.040 remains in the draft ordinance pending clearer direction. A defined relocation benefit could be established for these circumstances, similar to the one established for tenants of illegal units, because these tenants will not have a new unit to return to.

### **Recommendation**

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

### **ATTACHMENTS**

1. Existing Ordinance
2. Revised Draft Ordinance
3. Compare Version of Ordinances
4. State Law Excerpts

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.*

(a) Demolition is not allowed if:

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

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

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

- (a) The building containing the units is hazardous or unusable and is infeasible to repair.
- (b) The building containing the units will be moved to a different location within Berkeley with no net loss of units and no change in the affordability levels of the units.
- (c) The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers and affordable housing developments that serve the greater good of the entire community.
- (d) The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

4. *Fee Required.*

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



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

(c) *In Lieu of a Fee.*

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

ii. The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.

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

5. *Occupied Units.*

(a) *Applicability.*

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

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

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

(c) *General Requirements.*

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

ii. The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are

ready for occupancy. Funding for the rent differential shall be guaranteed in a manner approved by the City.

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

(d) *Sitting Tenants Rights.*

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

ii. Tenants of units that are demolished shall have the right of first refusal to rent new below-market rate units designated to replace the units that were demolished, at the rent that would have applied if they had remained in place, as long as their tenancy continues.

iii. Income restrictions do not apply to displaced tenants.

iv. *Exception.*

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

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

B. *Buildings with a Single Dwelling Unit.*

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

(a) Demolition is not allowed if:

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

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

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

23.326.040 Eliminating Dwelling Units through Conversion and Change of Use.

A. *General.* The ZAB may approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy by a single household if it finds that:

1. The existing number of dwelling units exceeds maximum residential density in the district where the building is located; and
2. One of the following is true:
  - (a) One of the affected dwelling units has been occupied by the applicant's household as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.

(b) All of the affected dwelling units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

**B. *Limitations.***

1. Demolition is not allowed if:

(a) The building was removed from the rental market under the Ellis Act during the preceding five years; or

(b) There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.

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

**C. *Effect of Noncompliance with the Two-Year Requirement.***

1. If a unit eliminated under Subsection A (General) is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.

2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.

3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.

4. The City of Berkeley may exempt an applicant from the two-year residency requirement if of an unforeseeable life change that requires relocation.

D. *Effect of Eliminating a Dwelling Unit.*

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements 23.326.040.A.1 and 2 and 23.326.040.B and C.

E. *Exceptions.*

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

2. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-residential occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:

- (a) The re-conversion restores the original single-family use of the main building or lot; and
- (b) No tenant is evicted.

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.

23.326.060 Elimination of Residential Hotel Rooms.

A. *General Requirements.* Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:

1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.
2. One of the following three requirements shall be met:
  - (a) The residential hotel rooms being removed are replaced by a common use facility, including, but not limited to, a shared kitchen, lounge, or recreation room, that will be available to and primarily of benefit to the existing residents of the residential hotel and that a majority of existing residents give their consent to the removal of the rooms.
  - (b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.
  - (c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).

B. *Criteria for Replacement Rooms.* For purposes of this section, replacement rooms must be:

1. Substantially comparable in size, location, quality, and amenities;
2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are being replaced; and
3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:
  - (a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;
  - (b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or
  - (c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.
    - i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.
    - ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.

C. *Exception for Non-Profit Ownership.* In a residential hotel owned and operated by a non-profit organization, recognized as tax-exempt by either the Franchise Tax Board and/or the Internal Revenue Service, residential hotel rooms may be changed to non-residential hotel room uses if the average number of residential hotel rooms per day in

each calendar year is at least 95 percent of residential hotel rooms established for that particular residential hotel.

23.326.070 Demolitions of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A main building used for non-residential purposes may be demolished with a Use Permit.

B. *Accessory Buildings.*

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

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

D. *Findings.* A Use Permit or an AUP for demolition of a non-residential building or structure may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:
  - (a) Is required to allow a proposed new building or other proposed new use;



- (b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
- (c) Will remove a structure which represents an inhabitable attractive nuisance to the public; or
- (d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within in Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot. In such cases all notification requirements apply to both the source and receiving lots.

B. *Findings.* The ZAB may approve a Use Permit to relocate a building upon finding that:

1. The building to be relocated is not in conflict with the architectural character, or the building scale of the neighborhood or area to which it will be relocated; and
2. The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act.* This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

ORDINANCE NO.

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

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

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

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

- 23.326.010 Chapter Purpose.
- 23.326.020 General Requirements.
- 23.326.030 Demolition of Residential Units.
- 23.326.040 Eliminating Dwelling Units through Combination with Other Units.
- 23.326.050 Demolition of Accessory Buildings.
- 23.326.060 Private Right of Action.
- 23.326.070 Demolition of Non-Residential Buildings.
- 23.326.080 Building Relocations.
- 23.326.090 Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing and safety goals of the City.

23.326.020 General Requirements.

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

1. "Residential Unit" means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of

a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op.

2. “Residential Unit” includes any Accessory Dwelling Unit or Junior Accessory Dwelling Unit to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to any Accessory Dwelling Unit or Junior Accessory Dwelling Unit that is removed from the rental market.
3. “Residential Unit” includes Dwelling Units created without proper Use Permit(s) or Building Permit(s) if they have been registered with the Rent Stabilization Board or there is substantial evidence of a tenant-landlord relationship during the preceding five years to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to an illegal unit that is removed from the rental market.
4. “Comparable Unit” means a dwelling unit of similar size (square footage and number of bedrooms), amenities (private open space and common facilities) and location within the city (neighborhood and school attendance area).

23.326.030 Demolition of Residential Units.

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

1. The unit (or units) was removed from the rental market through a no-fault eviction during the preceding five years; or
2. There is 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.* A Use Permit is required to eliminate or demolish one or more Residential Units, except where otherwise provided by the Zoning Ordinance. The Board shall only approve the Use Permit if one of the following is true:

1. The building containing the units is hazardous or unusable and is infeasible to repair.
2. The building containing the unit(s) will be moved to a different location within Berkeley with no net loss of units and no change in the rent levels of the unit(s).
3. The demolition is necessary to permit construction of socially and/or economically beneficial uses that serve the greater good of the community.
4. The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

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

D. *Requirements for Occupied Units.*

1. *Applicability.* The following requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.
2. *Notice.* The applicant shall provide all sitting tenants and the Rent Stabilization Board notice of the application to demolish the unit(s) no later than the date the application is submitted to the City, including notice of their rights under Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program), 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.*
  - (a) The applicant shall provide assistance with moving and relocation assistance equivalent to the requirements set forth in Municipal Code

Chapter 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City Council by Resolution; provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-4655).

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

4. *Sitting Tenants Rights.*

(a) Any tenant of a Residential Unit that is permitted to be demolished under this section shall have the right of first refusal to rent a comparable unit in the new project.

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

- i. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with the preceding requirements but must comply with the following requirement.
- ii. Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed affordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements.

23.326.040 Eliminating Dwelling Units through Combination With Other Units.

A. *Process for Projects Where Density Exceeds Current Allowance.* A Use Permit is required to eliminate one or more Residential Units by combining with another 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 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 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 units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. *Process for Projects That Restore Original Development Density.* The Zoning Officer may issue an Administrative Use Permit (AUP) for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed.

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

1. The building was removed from the rental market through a no fault eviction during the preceding five years; or
2. There 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.

D. *Two-Year Occupancy Requirement Following Elimination*

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



E. *Effect of Eliminating a Dwelling Unit.*

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements of 23.326.040.A.1 and 2 and 23.326.040.B and C.

F. *Exception.* The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

23.326.050 Demolition of Accessory Buildings.

Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.

23.326.060 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections

23.326.030 (Eliminating Dwelling Units through Demolition) and 23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff shall recover reasonable attorney's fees.

23.326.070 Demolition of Non-Residential Buildings.

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

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

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure 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 that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot within the city is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot.

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

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of

collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act*. This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).

~~Chapter~~ORDINANCE NO.

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

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

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

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

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

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing, ~~aesthetic~~, and safety goals of the City.

23.326.020 General Requirements.

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

~~1. B. Findings.~~ In addition, “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.

~~2. “Residential Unit” includes any Accessory Dwelling Unit or Junior Accessory Dwelling Unit to the requirements below, the Zoning Adjustments Board (ZAB) may approve a extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to any Accessory Dwelling Unit or Junior Accessory Dwelling Unit that is removed from the rental market.~~

~~3. “Residential Unit” includes Dwelling Units created without proper Use Permit to eliminate or demolish a dwelling(s) or Building Permit(s) if they have been registered with the Rent Stabilization Board or there is substantial evidence of a tenant-landlord relationship during the preceding five years to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to an illegal unit only upon finding that eliminating is removed from the rental market.~~

~~4. “Comparable Unit” means a dwelling unit would not be materially detrimental to the housing needs and public interest of the affected of similar size (square footage and number of bedrooms), amenities (private open space and common facilities) and location within the city (neighborhood and Berkeley school attendance area).~~

23.326.030 ~~Eliminating Dwelling Units through Demolition.~~

~~A. Buildings with Two or More of Residential 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. i. The building unit (or units) was removed from the rental market under the Ellis Act through a no-fault eviction during the preceding five years; or~~

~~ii. There have been verified cases is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years.~~

~~2. (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, whose determination may be appealed to the Rent Stabilization Board.~~

~~B. 3. *Procedure and Findings.* The ZAB may approve a A Use Permit is required to eliminate or demolish a building constructed before June 1980 on a property containing two one or more dwelling units Residential Units, except where otherwise provided by the Zoning Ordinance. The Board shall only approve the Use Permit if anyone of the following are is true:~~

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

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

~~3. (c) The demolition is necessary to permit construction of special housing needs facilities such as, but not limited to, childcare centers socially and affordable housing developments/or economically beneficial uses that serve the greater good of the entire community.~~

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

~~4. Fee Required.~~

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

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

~~(c)–In Lieu of a Fee.~~

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

~~ii.–The affordability level of the below market rent and the income level of the qualifying household shall be set by resolution of the City Council.~~

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

~~5. C. Conditions of Approval. Any Residential Unit(s) that will be demolished shall be replaced with equivalent units and comply with applicable affordability requirements in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.~~

~~D. Requirements for Occupied Units.~~

~~(a)–Applicability.~~

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

~~1. ii.–These~~The following requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.

~~2. (b)–Notice.~~ The applicant shall provide all sitting tenants and the Rent



Stabilization Board notice of the application to demolish the building unit(s) no later than the date ~~#~~the application is submitted to the City, including notice of their rights under Municipal Code ~~Section~~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. (e) – General Requirements.

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

(a) ii.—Municipal Code Chapter 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City: Council by Resolution; provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 et seq.) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601- 4655).

(b) 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~~7260 et seq.).

~~4. (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.~~

~~(a) ii. - Tenants of units a Residential Unit that are is permitted to be demolished under this section shall have the right of first refusal to rent new below 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 units designated unit shall be made available to replace the units that were demolished, household at the same rent that would have applied as had been previously charged, or a lesser rent if they had remained in place, as long as 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 continuesshall 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.~~

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

~~(d) iv. - Exception.-~~

~~i. (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, the preceding requirements but must comply with the following requirement.~~

~~ii. (2) - Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed building affordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and~~

other applicable eligibility requirements ~~when the new units are ready for occupancy.~~

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

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

~~2. Limitation.~~

~~(a) Demolition is not allowed if:~~

~~i. The building was removed from the rental market under the Ellis Act during the preceding five years; or~~

~~ii. There have been verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.~~

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

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

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

A. Process for Projects Where Density Exceeds Current Allowance. ~~A. General. The ZAB may~~ Use Permit is required to eliminate one or more Residential Units by combining with another unit when the existing development exceeds currently allowable density. The ZAB shall approve a Use Permit for the elimination of a dwelling unit in combination with another dwelling unit used for occupancy one or more

Residential Units by ~~a single household combining with another unit only~~ if it finds that:

- ~~1. 1.~~—The existing number of ~~dwelling~~ units exceeds the current maximum allowed residential density in the zoning district where the ~~building is~~ units are located; and
- ~~2. 2.~~—One of the following is true:
  - ~~(a) (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) (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. B.~~—~~Process for Projects That Restore Original Development Density. The Zoning Officer may issue an Administrative Use Permit (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.~~

*Limitations.*

~~C. 1.~~—~~DemolitionCombination~~ is not allowed if:

- ~~1. 1.~~ ~~(a)~~—The building was removed from the rental market ~~under the Ellis Act~~ through a no fault eviction during the preceding five years; or
  - ~~(b)~~—There ~~have been verified cases~~ is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years.
- ~~2. 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, whose determination may be appealed to the Rent Stabilization Board.~~

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

~~1. 1. – If a unit that is eliminated ~~under Subsection A (General)~~through combination is not occupied by the applicant’s household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.~~

~~2. 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. 3. – The condition and notice will provide that if the owner’s household does not occupy the unit for at least two years from the date of elimination then the affected units must either be restored as separate dwelling units and the vacant unit(s) offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley’s Housing Trust Fund.~~

~~4. 4. – The City of Berkeley may exempt an applicant from the two-year residency requirement if if there is an unforeseeable life change that requires relocation.~~

~~E. D. – Effect of Eliminating a Dwelling Unit.~~

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates

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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 of 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.~~

~~F. 2. Exception.~~ The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-~~residential~~resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

~~3. Notwithstanding the general Use Permit requirement under 23.326.020 (General Requirements), a lawfully established accessory dwelling unit that is not a controlled rental unit may be eliminated with a Zoning Certificate if:~~

~~(a) The re-conversion restores the original single-family use of the main building or lot; and~~

~~(b) No tenant is evicted.~~

~~23.326.050~~23.326.050 Demolition of Accessory Buildings.

~~Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.~~

23.326.060 Private Right of Action.

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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.-

~~23.326.060 — Elimination of Residential Hotel Rooms:~~

~~A. General Requirements. Before removal, the following requirements must be met for the ZAB to approve a Use Permit for the elimination of residential hotel rooms:~~

~~1. The residential hotel owner shall provide or cause to be provided standard housing of at least comparable size and quality, at comparable rents and total monthly or weekly charges to each affected tenant.~~

~~2. One of the following three requirements shall be met:~~

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

~~(b) Before the date on which the residential hotel rooms are removed, one-for-one replacement of each room to be removed is made, with a comparable room, in one of the methods set forth in this section.~~

~~(c) Residential hotel rooms are removed because of building alterations related to seismic upgrade to the building or to improve access to meet the requirements of the American Disabilities Act (ADA).~~

~~B. Criteria for Replacement Rooms. For purposes of this section, replacement rooms must be:~~

~~1. Substantially comparable in size, location, quality, and amenities;~~

~~2. Subject to rent and eviction controls substantially equivalent to those provided by the Rent Stabilization Ordinance or those that applied to the original rooms which are~~

being replaced; and

3. Available at comparable rents and total monthly or weekly charges to those being removed. Comparable rooms may be provided by:

(a) Offering the existing tenants of the affected rooms the right of first refusal to occupy the replacement rooms;

(b) Making available comparable rooms, which are not already classified as residential hotel rooms to replace each of the rooms to be removed; or

(c) Paying to the City of Berkeley's Housing Trust Fund an amount sufficient to provide replacement rooms.

i. The amount to be paid to the City of Berkeley shall be the difference between the replacement cost, including land cost, for the rooms and the amount which the City of Berkeley can obtain by getting a mortgage on the anticipated rents from the newly constructed rooms.

ii. The calculations shall assume that rents in the newly constructed rooms shall not exceed the greater of either a level comparable to the weekly or monthly charges for the replaced rooms or the level which would be charged if no current tenant paid more than 30 percent of such tenant's gross income for rent.

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

23.326.070 ~~Demolitions~~Demolition of Non-Residential Buildings.

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



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

1. 1.—Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. 2.—An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. C.—*Landmarks Preservation Commission Review.*—

1. 1.—Any application for a Use Permit or AUP to demolish a non-residential building or structure ~~which~~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. 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. 3.—The ZAB or Zoning Officer shall consider the recommendations of the LPC ~~in~~ when acting on the application.

D. D.—*Findings.* A Use Permit or an AUP for demolition of a main building used for non-residential building or structure 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. 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. 2.—The demolition:
  - (a) (a)—Is required to allow a proposed new building or other proposed new use;
  - (b) (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) (e)~~ Will remove a structure which represents an ~~inhabitable~~uninhabitable attractive nuisance to the public; or

~~(d) (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. A. ~~Treatment of Building Relocation.-~~

1. 1. Relocating a building from a lot is considered a demolition for purposes of this chapter.

2. 2. Relocating a building to a lot within the city is considered new construction and is subject to all requirements applicable to new construction.

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

B. Findings. The ~~ZAB may~~Zoning Officer shall approve a ~~Use Permit~~Zoning Certificate to relocate a building upon finding that:

1. ~~The building to be relocated is not in conflict with~~ the architectural character, or resulting development on the ~~building scale of the neighborhood or area to which it will be relocated;~~ and

B. 2. ~~The receiving lot provides adequate separation of buildings, privacy, yards, and usable open space.~~ is in conformance with applicable zoning code development standards.

23.326.090 Limitations.

A. A. ~~Unsafe, Hazard, or Danger.-~~

~~1. 4.~~ 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. 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).-

B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) For purposes of this paragraph:

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

(ii) “Protected units” means any of the following:

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

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

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

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

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

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

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

**Govt. Code section 65915 (Density Bonus Law)**

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

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

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

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

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

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

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

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

value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

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

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

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

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

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

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

from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

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

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

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

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



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

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

**Govt. Code section 7060 et seq (Ellis Act)**

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

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

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

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

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

(1) “Accommodations” means either of the following:

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

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

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

**7060.1**

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

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

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

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

the purchaser. The county recorder shall index such a written memorandum in the grantor-grantee index.

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

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

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

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

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

## **7060.2**

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

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

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

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

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

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

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

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

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

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

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

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

the acceptance in the United States mail by registered or certified mail with postage prepaid.

(c) A public entity which has acted pursuant to this section, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that an owner who offers accommodations again for rent or lease within a period not exceeding 10 years from the date on which they are withdrawn, and which are subject to this subdivision, shall first offer the unit to the tenant or lessee displaced from that unit by the withdrawal, if that tenant or lessee requests the offer in writing within 30 days after the owner has notified the public entity of an intention to offer the accommodations again for residential rent or lease pursuant to a requirement adopted by the public entity under subdivision (c) of Section 7060.4. The owner of the accommodations shall be liable to any tenant or lessee who was displaced by that action for failure to comply with this paragraph, for punitive damages in an amount which does not exceed the contract rent for six months, and the payment of which shall not be construed to extinguish the owner's obligation to comply with this subdivision.

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

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

### **7060.3**

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

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

#### **7060.4**

(a) Any public entity which, by a valid exercise of its police power, has in effect any control or system of control on the price at which accommodations are offered for rent or lease, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that the owner notify the entity of an intention to withdraw those accommodations from rent or lease and may require that the notice contain statements, under penalty of perjury, providing information on the number of accommodations, the address or location of those accommodations, the name or names of the tenants or lessees of the accommodations, and the rent applicable to each residential rental unit. Information respecting the name or names of the tenants, the rent applicable to any residential rental unit, or the total number of accommodations, is confidential information and for purposes of this chapter shall be treated as confidential information by any public entity for purposes of the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). A public entity shall, to the extent required by the preceding sentence, be considered an “agency,” as defined by subdivision (d) of Section 1798.3 of the Civil Code.

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

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

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

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

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

(5) Within 90 days of date of delivery to the public entity of the notice of intent to withdraw, the owner shall give written notice of the owner's election to extend a tenancy under paragraph (3) and the revised date of withdrawal to the public entity and any tenant or lessee whose tenancy is extended.

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

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

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

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

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

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

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

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

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

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

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

**7060.5**

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

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

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

**7060.6**

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

**7060.7**

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

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

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

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

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



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

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

(A) A unit that was the principal place of residence of any owner or owner's family member at the time of withdrawal, provided that it continues to be that person's or those persons' principal place of residence when accommodations are returned to the rental market as provided in this section.

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

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

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