



Rent Stabilization Board

RENT STABILIZATION BOARD
EVICITION / SECTION 8 / FORECLOSURE COMMITTEE MEETING

Thursday, July 29, 2021

5:30 p.m.

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

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the Rent Stabilization Board's **Eviction / Section 8 / Foreclosure Committee** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, **there will not be a physical meeting location available.**

To access this meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/81341230557?pwd=V0l6U1FQeTJJWXZDckhVZEplVbHpGUT09>. 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: 813 4123 0557 and Passcode: 252922. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during public comment, email msiegel@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM FOR EVICTION/SECTION 8 COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 4:00 p.m. on the day of the Committee meeting in order to be included.**

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

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



Rent Stabilization Board

RENT STABILIZATION BOARD
EVICTION / SECTION 8 / FORECLOSURE COMMITTEE MEETING

Thursday, July 29, 2021 – 5:30 p.m.

AGENDA

1. Roll call
2. Approval of the Agenda
3. Approval of Minutes of the May 13, 2021 meeting
4. Public Comment
5. Discussion and possible action on Ellis Act Report
6. Discussion and possible action on Distressed Properties Report
7. Discussion and possible action on invitation to BHA
8. Future Agenda Items
9. Confirm next meeting date (Commissioners: please bring calendars to meeting)
10. Adjournment

STAFF CONTACT: Matthew Siegel – (510) 981.4903

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



Rent Stabilization Board

Item 3.

RENT STABILIZATION BOARD

EVICITION / SECTION 8 / FORECLOSURE COMMITTEE MEETING

Thursday, May 13, 2021 – 5:30 p.m.

MINUTES (Unapproved)

1. Roll call at 5:30 p.m.
Members present: Laverde, Mendonca, Selawsky and Walker.
Staff present: M. Siegel and A. Mueller.
2. Approval of the Agenda: m/s/c: Laverde/Selawsky. Motion to approve the agenda. Roll call vote: 4-0-0-0.
3. Approval of Minutes of the March 11, 2021 meeting: m/s/c: Selawsky/Walker. Motion to approve the March 11, 2021 meeting minutes. Roll call vote 4-0-0-0.
4. Public Comment: None
5. Discussion, presentation and possible action on proposals by Eviction Defense Center and East Bay Community Law Center for Rent Board/City of Berkeley funding: Commissioner Selawsky recused himself. m/s/c: Laverde/Mendonca. Motion to recommend to the full Board to approve the funding proposals for the Eviction Defense Center and East Bay Community Law Center as presented and to support their request for additional Funding from the City. Roll call vote 3-0-0-1.
6. Future Agenda Items: Distressed Properties and Not available for Rent Unit Reports.
7. Confirm next meeting date: Meeting Set for Thursday, June 24, 2021 at 5:30 p.m.
8. Adjournment: m/s/c: Selawsky/Walker: Motion to adjourn. Roll call vote 4-0-0-0. Meeting adjourned 6:54 p.m.

STAFF CONTACT: Matthew Siegel – (510) 981.4903

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



Rent Stabilization Board

DATE: July 29, 2021
TO: Honorable Members of the Eviction/Section 8/Foreclosure Committee
FROM: Matthew Siegel, Staff Attorney
SUBJECT: Summary of Ellis Act Evictions (1986 – 6/1/2021)

Background

The origins of the Ellis Act (Gov't Code sections 7060 *et seq.*; "the Act.") are found in *Nash v. City of Santa Monica* (1984) 37 Cal.3d 97. The plaintiff in *Nash* argued that rent control was a form of indentured servitude, and it was unconstitutional to force him to continue as a landlord by not being able to evict his tenants at will. The California Supreme Court disagreed and found that a city's interest in maintaining adequate rental housing outweighed a landlord's interest in demolishing his residential rental property provided the landlord was receiving a fair return on his investment. In 1985, in direct response to the *Nash* decision, the Legislature adopted the Ellis Act which provides that: "[n]o public entity . . . shall . . . compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease." (Gov't Code §7060(a).) Thus, the Act gives property owners an absolute right to leave the residential landlord-tenant business. Accordingly, a claim that a landlord is going out of the residential rental business is good cause for eviction. The Ellis Act does not expressly create new or additional rights to change the use of the property after the property owner regains possession of the rental units and, in fact, allows cities to maintain control over most land use issues.

In an attempt to insure that this right to evict sitting tenants is not abused, the Act authorizes a municipality to place the following constraints on a property that has been removed from the residential rental market. The City Council codified Berkeley's various restrictions in the Ellis Implementation Ordinance (Berkeley Municipal Code Section 13.77):

- For all tenancies commenced within 5 years of the date of filing of the notice of intent to withdraw accommodations from rent or lease or the date the accommodations were withdrawn from the market, whichever is later, the accommodation must be rented at the lawful rent in effect at the time the notice is filed, plus the annual adjustments granted by the Berkeley Rent Board. (B.M.C. 13.77.040A.)

- If the accommodations are rented within 2 years of being withdrawn from the rental housing market, the owner shall be liable to the displaced tenants for actual and punitive damages. (B.M.C. 13.77.040B.)
- If the accommodations are re-rented within 10 years of the date of withdrawal, the accommodation must first be offered to the displaced tenant(s). (B.M.C. 13.77.040C.)
- In addition, the Condominium Conversion Ordinance prohibits owners from applying to convert the building to condominiums for at least 10 years following the filing of an Ellis notice. (B.M.C. 21.28.060C. and 21.28.090B.)

The Ellis Act and Implementation Ordinance authorize accommodations to be withdrawn from the market following at least 120 days' notice to the tenants. (Gov't Code §7060.4(b). and B.M.C. 13.77.050A.1.) The date of withdrawal is extended to one year for tenants who are disabled or 62 years of age or older, have lived in the unit for at least one year and have timely notified the owner of qualification for this extended notice period. (Gov't Code §7060.4(b). and B.M.C. 13.77.050A.8.)

The Ellis Implementation Ordinance has been revised several times throughout the years to account for changes in state law and to adjust relocation benefits. In the ordinance, the Council initially established relocation benefits of \$4,500, an amount that tracked the original relocation benefits given to low-income tenants who are displaced due to owner move-in evictions. In subsequent years, Council has revised the Ellis Implementation Ordinance to remove the requirement that a household be low-income to receive relocation benefits. These were adjusted by Council in December of 2016 increasing the relocation benefits to \$15,000 per household with an additional \$5,000 available to households that qualify as low-income or include disabled or elderly tenants, minor children, or a household with a tenancy that began prior to January 1, 1999. Commencing in 2018, the relocation benefits now increase in an amount based on the Consumer Price Index.

At the request of the Council and as permitted under City of Berkeley Charter Article XVII Section 123(4), the Rent Board monitored compliance with the Ellis Act from 1986-1991. From 1991 through 1999 the City administered the Ellis Act. The Board resumed monitoring compliance in 2000. The Board counsels landlords and tenants regarding the Ellis Act; receives and reviews all Ellis notices; contacts tenants following receipt of notices; holds the relocation funds in escrow and distributes funds at the appropriate time; files the notice of constraints with the County; and continues to monitor rental occupancy of units that were withdrawn from the rental market on a periodic basis.

Ellis Bill filings in the city have remained fairly low the past few years compared to cities such as San Francisco and Los Angeles which have experienced exponentially greater Ellis Act filings. In 2017 there were four properties totaling thirteen units, for 2018 there were six filings totaling twenty-six units, for 2019 there was one filing which has since been rescinded. For the most recent calendar year 2020 there were two filings, one of which was rescinded. For 2021, there has been one filing which has also been rescinded. This is compared to filings in the early 2000's which saw 40 filings representing 113 units over a span from 2001 through 2004.

The following data is taken from the Board's and City's Ellis Act files:

Ellis Bill Filings Since July 1986

Calendar Year	# of Properties Filed	Total Number of Units	Comments
1986	1	6	
1987	3	7	
1988	2	5	
1989	8	19	
1990	14	52	12 unit bldg
1991	8	18	
1992	6	23	
1993	6	26	12 unit bldg
1994	2	2	
1995	2	4	
1996	2	19	12 unit bldg
1997	4	5	
1998	3	4	
1999	4	7	
2000	2	5	
2001	18	51	
2002	9	24	
2003	8	17	
2004	6	21	
2005	2	3	
2006	7	26	
2007	4	8	
2008	6	11	
2009	2	8	
2010	2	11	
2011	0	0	
2012	0	0	
2013	2	7	
2014	3	10	
2015	6	21	
2016	3	11	
2017	4	13	
2018	5	13	
2019	0	0	
2020	2	6	
*2021	1	2	
Totals	157	465	

*Totals through June 1, 2021

Size of the Buildings Taken off the Market

Number of Units in Bldg	Total Ellis Filings	% of Total Filings
1 Unit	48	31%
2 Units	37	24%
3 Units	20	13%
4 Units	21	14%
5 Units	5	3%
6 Units	12	8%
7 Units	4	3%
8 Units	3	2%
9 Units	1	0.6%
10 Units	0	n/a
11-15 Units	3	2%
16 or More Units	0	n/a

ELLIS RELOCATION BENEFITS

Berkeley	\$16,341 for all households \$5,447 additional for any household with disabled, elderly, low-income, long-term or tenant with minor child
San Francisco	Up to \$7,419.12 per tenant (\$22,257 max per household) depending on when filed Add up to \$4,946.07 for each elderly or disabled tenant
Santa Monica	Studio \$16,500 (\$17,200 for disabled, elderly, family with minor) 1 Bedroom \$22,700 (\$24,250 for disabled, elderly, family with minor) 2+ Bedrooms \$31,550 (\$33,650 for disabled, elderly, family with minor)
West Hollywood	Studio \$7,840 1 Bedroom \$11,070 2 Bedroom \$14,911 3+ Bedrooms \$119,679 Disabled/elderly/terminally ill/moderate income or minor child – \$20,753 Low-income \$26,133



Rent Stabilization Board
Legal Department

MEMORANDUM

DATE: July 29, 2021

TO: Members of the Eviction/Section 8/Foreclosure Committee

FROM: Matthew Siegel, Staff Attorney

SUBJECT: Distressed Properties/Foreclosure Report

Each month, the Rent Board receives a list of properties in the City of Berkeley that are at some stage in foreclosure proceedings. Rent Board staff reviews the list and sends an informational letter to the occupants of each residential unit on any property appearing on the list for the first time.¹ The letter informs the occupants that foreclosure is not a good cause for eviction.

From 2009 through January 2015 the City's Finance Department sent the Board information regarding distressed properties identified by a company named RealQuest. Starting in February 2015, the Board began generating these reports in house." While some of the properties are actually foreclosed or are in the process of foreclosure, the list does not necessarily represent an accurate count of the number of foreclosures in Berkeley. The list includes properties where the owners have received notices of default or other indications of distress.

In the past, there were a number of months when the list was not made available to the Rent Board due to circumstances outside of the Board's control. Generally, numbers for the subsequent months will appear somewhat inflated as these numbers include the month(s) during which the lists were not delivered. Staff believes that the yearly totals more or less accurately reflect the number of properties with any foreclosure activity.

At the Commissioners' request, staff has also attached a sheet that provides information regarding the designation of properties to which the Board sends letters (e.g. how many letters

¹ Rental units often appear on the list during successive months, but Board staff does not send letters to units where a letter was previously sent.

are sent to single family homes, duplexes, triplexes, etc.). The attachment includes information going back to April 2012.

On March 4, 2014, the Committee made recommendations to revise the letter the Board sends to units that appear on the list. When the Board first started sending letters to distressed properties, the Committee had requested that Board staff send the letter only to units that appeared to be tenant-occupied. At the March 4, 2014 meeting, however, the Committee requested that the letter also be sent to units that appeared to be owner-occupied, and the Commissioners suggested language to add to the letter regarding referrals for property owners.² As of April 2014 these changes have been incorporated by staff.

The number of distressed properties this year is again down considerably compared to when the region was at the height of the foreclosure crisis. A majority of the letters sent have been directed to properties where at least one unit is owner-occupied with most being Costa-Hawkins Single Family homes. While a majority of our contacts is with property owners, we think it important to continue to notify tenants of their rent control rights in these situations since many banks are still unaware of the rent control protections that remain in the event of foreclosure (e.g. the tenant household's right to remain unless the landlord has good cause to evict).

Beginning in March 2009, letters have been mailed to the following number of units on properties for which the Board receives information:

2009 Calendar Year: 571

2010 Calendar Year: 375

2011 Calendar Year: 303

2012 Calendar Year: 234

2013 Calendar Year: 115

2014 Calendar Year: 189

2015 Calendar Year: 199

2016 Calendar Year: 125

2017 Calendar Year: 95

2018 Calendar Year: 90

² The Committee suggested that property owners contact Housing and Economic Rights Advocates (HERA) and asked staff to contact the organization to make sure it was willing to accept the referrals. Staff did so and HERA agreed to allow the Board to put its information in the letters.

2019 Calendar Year: 39

2020 Calendar Year: 64

2021 Calendar Year To Date:37

1 17 unit property
1 10 unit property
1 five unit property
1 duplex
3 single family rentals