MEMORANDUM

DATE: May 21, 2020

TO: Honorable Members of the Berkeley Rent Board

FROM: Honorable Members of the IRA/AGA/Habitability Committee

By: Matt Brown, Acting Executive Director
    Matthew Siegel, Staff Attorney
    Lynn Wu, Staff Attorney

SUBJECT: Proposed Amendments to Rent Stabilization and Eviction for Good Cause Ordinance

Summary

The IRA-AGA-Registration Committee met on May 8, 2020 to discuss amendments to the Rent Stabilization and Eviction for Good Cause Ordinance and voted unanimously to propose them to the full Board. This memorandum compiles the Committee’s recommendations for proposed amendments that are designed to ensure that the Ordinance better serves its purpose; namely the prevention of arbitrary, discriminatory or retaliatory evictions, in order to maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. In light of both the ongoing housing crisis and the new threat to housing stability posed by the COVID-19 pandemic, these proposed amendments enhance the ability of the Board and City Council to preserve the public peace, health and safety, and the availability of housing for low and fixed income households, people of color, students, people with disabilities, and older residents.

The proposed amendments include an expanded registration requirement for partially-exempt units; an amendment to eliminate the exemption for owner-occupied duplexes; an amendment to the nonpayment of rent cause for eviction to exclude rent that is delayed due to a covered reason related to a state of emergency such as the COVID-19 pandemic; and an amendment to eliminate the exemption for Accessory Dwelling Units (ADUs). Each proposed amendment is discussed separately below.
1. Expanded Registration

Background and Need for Rent Stabilization Board Action:

This proposal would require the registration of certain types of units not covered by rent control for purposes of monitoring the ongoing housing crisis and improving the efficacy of local regulatory efforts to mitigate the crisis.

If this proposal were enacted, the Board would adopt a secondary Registration Fee for two types of partially-exempt units: single-family homes and newly constructed units. The Registration Fee for these units would cover only those additional expenses incurred by the Board as a result of counseling the owners and tenants of these partially-exempt units, as well as registration of those units, and would not cover the costs associated with petitions for individual rent adjustments and other services that are not provided to partially-exempt units.

The proposal should set forth a deadline for the registration of partially-exempt units, which are currently exempt from registration requirements. This deadline should be established in consideration of the administrative resources required by Board staff, in addition to the other policy goals of the proposal.

Proposed Language:

Chapter 13.76 is amended as follows:

Section 13.76.050

APPLICABILITY

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

... I. Newly constructed rental units, as defined in Section 13.76.040. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting: Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

... O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting: Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.
Section 13.76.060

RENT STABILIZATION BOARD

... N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter, including Section 13.76.130, to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

... L. Landlords of partially-exempt units (set forth above in Sections 13.76.050I. and 13.76.050O.) shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

2. “Golden Duplex” Repeal

Background and Need for Rent Stabilization Board Action:

This proposal would repeal the “golden duplex” exemption for owner-occupied duplexes that were owner-occupied on December 31, 1979, and would bring all duplexes within the coverage of the ordinance, except those that are also exempt under a separate provision, such as new construction. Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020, for tenants who occupied the unit continuously on or before March 1, 2020, through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).
Proposed Language:

Section 13.76.050

APPLICABILITY

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

... F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.0801 and 13.76.100C. applied to them.

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty-five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

... I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. Units with tenancies established on or before March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the rent in effect on March 1, 2020, and the initial rent ceiling shall be established on the basis of that monthly rent, subject to applicable annual general adjustments. Units with current tenancies established after March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.F) shall register the monthly rent in effect on the first day of the tenancy and the initial rent ceiling shall be established on the basis of that initial rent set pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50, et. seq.). The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

3. COVID19 Delayed Payments Are Not Good Cause for Eviction

Background and Need for Rent Stabilization Board Action:

The Berkeley City Council’s COVID-19 Emergency Response Ordinance (Berkeley Municipal
Code Chapter 13.110) provides that where a tenant has a Covered Reason for Delayed Payment, those delayed payments shall not constitute grounds for eviction, even after the expiration of the local State of Emergency. Alameda County has enacted a similar protection that applies countywide. This proposal would amend the Rent Stabilization Ordinance to ensure that there is no conflict with these or any other future pieces of emergency legislation by limiting the substantive basis for eviction for nonpayment of rent so that it does not apply to rent payments that come due during a state or local state of emergency when triggered by applicable federal, state, or local emergency legislation.

Proposed Language:

Section 13.76.130

GOOD CAUSE REQUIRED FOR EVICTION

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

4. Eliminating the Accessory Dwelling Unit (ADU) Exemption

Background and Need for Rent Stabilization Action:

The committee proposes to eliminate the ADU exemption entirely.¹

Rent ceilings must be established for units that lose exemption. Thus, this proposal would set the rent ceilings at the amount of rent in effect on March 1, 2020 for tenants who occupied the unit continuously from on or before March 1, 2020 through the date this amendment becomes effective. For tenancies that begin after March 1, 2020, the rent ceiling would be the lawfully

¹ Starting in January 2020, owners may create ADUs in multi-family properties. If voters do not eliminate the ADU exemption as proposed by the committee, they will need to amend the exemption as currently written in the Rent Ordinance. Otherwise, there would likely be unintended exemptions created, since rental units in multi-family properties would become exempt after an owner occupies a unit on the property as their principal residence. As initially drafted the existing exemption was only meant to apply narrowly to situations in which only a Single Family Dwelling shares a property with a single ADU. If nothing else, this language must be amended to ensure that rental units are not exempted that were never meant to be.
established initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.).

**Proposed Language:**

Section 13.76.050

APPLICABILITY

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

...  
N. A rental unit in a residential property containing a lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018.

Section 13.76.080

RENT REGISTRATION

A. The board shall require all landlords subject to the provisions of this chapter to file with the board by September 1, 1980 a rent registration statement for each rental unit covered by this chapter. An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

...  
I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. Units with tenancies established on or before March 1, 2020, that were formerly exempt as Accessory Dwelling Units where the landlord also occupies a unit in the same property as his/her principal residence (under repealed subsection 13.76.050.N) shall register the monthly rent in effect on March 1, 2020, and the initial rent ceiling shall be established on the basis of that rent, subject to applicable annual general adjustments. Units with current tenancies established after March 1, 2020, that were formerly exempt as owner-occupied duplexes (under repealed subsection 13.76.050.N) shall register the monthly rent in effect on the first day of the tenancy and the initial rent ceiling shall be established on the basis of that initial rent set pursuant to the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et. seq.). The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.
CONCLUSION

The IRA/AGA/Registration Committee has unanimously proposed that the Board adopt these proposed amendments at its May 8, 2020 meeting. After the Board discusses them and decides what it wishes to propose, the City Council will have to vote to place these matters on the ballot for the November general election. Typically, proposed Rent Ordinance amendments have also been brought to the 4 x 4 Committee, but that Committee has not been deemed essential and consequently is not convening at this time as a result of the local state of emergency related to the COVID-19 pandemic.

Time is of the essence as Council will have to place these matters on an agenda soon in order to meet any ballot measure deadlines. Staff awaits the Board’s instruction on how it wishes to proceed.