



Rent Stabilization Board

DATE: January 19, 2017
TO: Honorable Members of the Berkeley Rent Stabilization Board
FROM: Commissioners Igor Tregub and Leah Simon-Weisberg
SUBJECT: Safe and Affordable Housing Policy

RECOMMENDATION

The Rent Board urges support for a City Council referral from the Housing Advisory Commission (HAC) that passed at its 1/5/17 meeting, which applauds the ongoing work of the Four-by-Four Committee (City Council and Rent Stabilization Board) to address the safety, occupancy, and affordability of artist warehouses and workspaces and recommends that the City Council also direct staff to develop a policy that ensure protections, including the retention of rent control if it currently exists, for tenants residing in units being legally converted to a residential use.

BACKGROUND

In the wake of the recent Ghost Ship tragedy, there has been a renewed concern about ensuring that the inhabitants of units that are not properly zoned as residential are able to receive the benefit of life safety code upgrades while also remaining in or being able to return to the unit at rent levels that they can afford.

While the Four-by-Four Committee – comprising of the Mayor, three members of the City Council, and four members of the Rent Board – is continuing to hold an important and productive discussion on the safety, occupancy, and affordability of converted artist warehouses and workspaces, the HAC’s recommendation pertains to an issue that presently affects the inhabitants of *all* units that are caught in the crosshairs of two conflicting definitions of “residential units.” In particular, it affects tenants who reside in units that are currently in the process of formerly unpermitted units that are now in the process being converted to a legal residential use.

Section 13.76.040(G) of the Berkeley Municipal Code defines a “Rental Unit” – in which rents can be “controlled” except in cases where it is exempt from rent control under Section 13.76.050 – as “*any* unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley

Live/Work Ordinance No. 5217-NS).”¹ No distinction is made to “use”² in the Rent Ordinance as it governs whether the rent in a unit is “controlled.”

However, an unknown but likely significant number of tenants live in units that were not properly zoned as “residential”³ uses, even if the Rent Board treats the unit as a controlled unit based on the history of occupancy and/or the unit’s registration with the Board. Prior to “legalizing” the unit, the City of Berkeley requires the unit’s owner to receive a new “Certificate of Occupancy.”⁴ However, the Costa Hawkins Act requires that units that receive a new “Certificate of Occupancy” (regardless of prior history of occupancy and registration with the Rent Board) be exempt from rent control.⁵ Thus, an occupant of an existing unit that becomes legalized may be covered under the Eviction for Good Cause Ordinance⁶ and the Relocation Ordinance⁷ (including the requirement to be provided “first right of refusal” when reoccupying the unit, but may no longer be subject to controlled rent increases upon the expiration of his/her lease. Such was the situation of a tenant in one building where an application to legalize a residential use recently came before the Zoning Adjustments Board,⁸ and there may be countless others.

In response, at its meeting on January 5, 2017, the HAC passed the following motion:

M/S/C Tregub/Martinucci: The HAC applauds the ongoing work of the Four-by-Four Committee (City Council and Rent Stabilization Board) to address the safety, occupancy, and affordability of artist warehouses and workspaces and recommends that the City Council also direct staff to develop a policy that ensure protections, including the retention of rent control if it currently exists, for tenants residing in units being legally converted to a residential use.
Ayes: Gould, Johnson Lord, Martinucci, Tregub. Noes: None. Abstentions: Crandall.

City of Berkeley and Berkeley Rent Board staff should work together to explore alternative frameworks that allow the use of a building to be legalized and, if necessary, brought to code without removing rent-controlled units from the market. One possibility may be an objective determination that a new Certificate of Occupancy may not be required prior to finalizing a change of use permit, so long as a unit has been brought to the applicable code.

1 <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9296>

2 <http://www.codepublishing.com/CA/Berkeley/?Berkeley23E/Berkeley23E68/Berkeley23E68080.html&?f> ,
Definition of “Use”

3 <http://www.codepublishing.com/CA/Berkeley/?Berkeley23E/Berkeley23E68/Berkeley23E68080.html&?f> ,
Definition of “Residential Use”

4 “New Certificates of Occupancy are required whenever there is a change of use, or change of occupancy for a building. (I.e. Change from residential to commercial.)” <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9296>

5 “1954.52. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:

(1) It has a certificate of occupancy issued after February 1, 1995.”

<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9516>

6 <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=9296>

7 <http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=4956>

8 http://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/3353_MLK.aspx