



Rent Stabilization Board

ACTION CALENDAR

December 18, 2007

To: Honorable Mayor and
Members of the City Council

From: Jesse Arreguin, Chair, Rent Stabilization Board

Subject: Ellis Act Eviction Relocation Assistance

RECOMMENDATION

Adopt the first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 13.77.055 to increase relocation allowance payments to tenants evicted pursuant to California's Ellis Act and expand the definition of protected groups eligible for additional relocation assistance to include families with minor children.

SUMMARY

On October 15, 2007, the Rent Stabilization Board unanimously recommended that the City Council adopt the following four changes to the existing Ellis Act Implementation Ordinance:

1. The Base Relocation Payment of \$4,500 should be revised upward to an amount between \$8,685 - \$15,750 per unit - The Council should be presented with a revised range for the base relocation payment. The methodologies for the range will include:

1. The amount CPI has increased since the Ordinance went into effect in 1986, and
2. The amount the average rent in Berkeley has increased from 1986 to the present.

The CPI has increased by 93% since the Ellis Act relocation assistance payment was established at \$4,500 in June 1986. A 93% adjustment in the fee would reset the relocation fee to \$8,685.

The average rent for all units in Berkeley (rent controlled and decontrolled) has increased by 190% (from \$390 to \$1,127) and 251% for decontrolled units (from \$390 to \$1,370) since June of 1986. A 190% adjustment in the \$4,500 relocation fee would result in a new fee of \$13,050 while a 251% increase would reset the relocation fee at \$15,750 per unit.

2. The amount of additional payment for protected classes should not be increased at this time, but the eligibility for additional compensation as a protected class should be expanded to include families with minor children.

Currently, households that include a senior, low-income or disabled tenant are entitled to an additional \$2,500 in relocation payments. San Francisco, Santa Monica and West Hollywood provide protections for these groups but also include families with minor children as well.

3. There should be an additional rent differential payment for long-term tenants.

Several cities have an additional rent differential for long-term tenants, who will be most significantly impacted by the new/higher rent. Two options should be presented to Council for consideration:

1. An additional payment of the differential between average rent and market rent for a period of 6-12 months for all tenants who have lived in a unit over five years.
2. An additional payment of the differential in average controlled rent and market rent for a period up to 12 months for all tenants who have resided in a unit prior to January 1, 1999.

It is difficult to determine one standard for what an appropriate rent differential would be for a tenant who has occupied a unit for five years or more. Because this threshold includes units that have both decontrolled and fully controlled rents, staff would recommend an amount approaching \$250 per month, which is the difference in the June 2007 average rent for all units (\$1,127) and the average rent for units that have been decontrolled (\$1,370). If Council adopts this standard and applies it for six months, the differential would be \$1,500 (\$250 x 6 months). The amount of the differential would increase to \$3,000 if we increase the time period to twelve months.

It is easier to determine a differential standard for units occupied prior to January 1, 1999 because in all cases, the average rent paid will shift from a controlled rental unit to a unit that is decontrolled. The average 2007 rent for units occupied prior to January 1, 1999 is approximately \$820 per month. As of June 2007, the average rent for decontrolled units was \$1,370. The difference between these two amounts is \$550 per month. The average differential for a twelve-month period would be \$6,600 per unit.

4. All tenants in possession of their rental unit at the time the Ordinance amendments take effect are entitled to the revised fees.

The Board began discussing amending the ordinance in September of 2007 and any changes will not take effect until early 2008. This action will avoid a rush on preemptive Ellis Act filings.

BACKGROUND

A detailed staff analysis, dated October 15, 2007, is provided as background for this report.

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FINANCIAL IMPACT

None

CONTACT INFORMATION

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Rent Stabilization Board
Legal Department

Date: October 15, 2007 (Revised)
To: Members of Eviction Committee
From: Jay Kelekian, Executive Director
By: Brian Kelly, Staff Attorney
Subject: Increase in Ellis Eviction Relocation Assistance

REASON ACTION IS NEEDED

The Mayor's Office and the Rent Board have recently received inquiries from numerous tenants whose landlords have stated that they are contemplating removing the tenant's rental unit from the market through use of the Ellis Act (Gov't Code §7060, *et seq.*). Many of the inquiries have come from long-term, elderly, and low-income tenants. Concern has been expressed over the adequacy of the relocation fees an owner must pay in order to remove a rental unit from the market. Because of the high number of contemplated evictions, there is an urgent need to review the Berkeley's Ellis Act relocation fee

ISSUE:

Is there a basis for requesting the City Council to amend Berkeley Municipal Code (B.M.C.) section 13.77.055 to increase the amount of relocation assistance an owner must provide his or her tenants when the owner removes residential rental units from the market through use of the Ellis Act?

CONCLUSION:

Yes. Other than a premium paid to elderly, disabled and low-income tenants, the amount of the Ellis Act relocation assistance paid to displaced tenants has not been increased, in over 20 years. During this time, both rents and moving expenses have increased and inflation has eroded the actual value of the relocation assistance. Accordingly, it would be appropriate for the City Council to amend the City's Ellis Act Implementation Ordinance to increase the amount of relocation assistance paid to displaced tenants.

ANALYSIS:

I. LEGISLATIVE FRAMEWORK.

The Ellis Act (Gov't Code §7060, *et seq.*) allows owners of residential rental property to withdraw accommodations from the rental market. The Act supercedes local eviction protections and permits owners to evict tenants living in the units that are being withdrawn from the rental housing market. Local governments, however, retain the authority to "mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations." (Gov't Code §7060.1(c).) Requiring owners to pay relocation fees has been recognized as a legitimate exercise of this authority. Accordingly, in 1986, the City Council adopted an Ellis Act Implementation Ordinance (the Ordinance) that requires property owners to pay relocation fees as a condition for withdrawing accommodations from the rental housing market. (See B.M.C. Chapter 13.77.)

II. HISTORY OF RELOCATION ASSISTANCE IN BERKELEY

As originally adopted, the Ellis Act Implementation Ordinance required property owners to pay \$4500 per unit to the tenants of each unit that was withdrawn from the market. However, in *Channing Properties v. City of Berkeley* (1992) 11 Cal.App.4th 88, the Court of Appeal held that, under the Act, relocation assistance was limited to low-income tenants. Therefore, for over a decade, relocation assistance was paid only to displaced tenants who qualified as low-income.

In 2003, the Legislature amended the Ellis Act and deleted the language cited by the court in *Channing* as limiting relocation assistance to low-income tenants. Subsequently, in *Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, the Court of Appeal upheld an amendment to San Francisco's Ellis Relocation Ordinance that expanded the coverage of the ordinance to include all tenants displaced by an Ellis Act eviction regardless of income status.

In 2004, the City Council increased the amount of relocation assistance property owners were required to pay from \$4500 to \$7000 per unit and expanded the class of tenants that qualified for assistance to include elderly and disabled tenants. Only low-income, elderly and disabled tenants were eligible for relocation payments.

In 2005, the City Council amended the Ellis Act Implementation Ordinance to provide that **all** displaced tenants are entitled to receive \$4500 in relocation assistance. (B.M.C. §13.77.055.) Elderly, disabled and low-income tenants were still entitled to \$7000 in assistance. (*Id.*)

III. THE NUMBER OF EVICTIONS PURSUANT TO THE ELLIS ACT

In recent years the number of evictions in Berkeley pursuant to the Ellis Act has been minimal compared to the size of the rental housing stock (approximately 25,000 units). Since the Ellis Act was adopted in 1985, through October 2007, 321 rental units in 110 properties have been removed pursuant to the Ellis Act. Most removals have involved properties with only a few units. Fifty-nine properties had only one or two units. Twenty-three properties had three or four units. It is certain that other owners provided larger relocation payments to tenants in return for voluntarily vacating their units, thereby freeing the owner from the restrictions on rents and other liabilities that follow Ellis evictions. However, there is no data on such removals.

In contrast to Berkeley, Santa Monica, which has about the same number of rental units as Berkeley has had a substantial number of Ellis evictions. From 1986 through December 2006, 466 buildings with 2,214 rental units were removed from the rental market. Out of this total, 91 buildings with 440 units have been returned to the rental market.¹ Removals following the adoption of the Costa-Hawkins Act (vacancy decontrol) have far exceeded removals in the years preceding the Act.

In San Francisco, which has 214,000 rental units, from 2000 through 2007 over 3,000 rental units were removed pursuant to the Ellis Act.

In Los Angeles, the numbers are even more dramatic with nearly 13,000 units removed under the Ellis Act between 2004 –2006.

The number of Ellis evictions is primarily determined by the potential profit from possible alternate uses of the property, including owner occupancy (via condominium or tenants-in-common), demolition and new construction, and/or conversion to a commercial use.

The majority of the threatened Ellis Act evictions the Rent Board has encountered recently have involved the owner indicating that they do not intend to completely go out of business but rather pursue potential alternative uses on the property – generally, converting to condominiums or tenants-in-common (TIC).

The provisions in the Condominium Conversion Ordinance provide significant disincentives for owners considering converting to not empty their building via the Ellis Act. However, for owners considering selling their buildings as TICs, as the alternative use to maximize profitability on the building, few impediments exist since the Tom decision (Tom v. San Francisco, 120 Cal.App.4th 674 (2004)). Pursuant to this decision, the City repealed its ban on the creation of TIC's, which had been adopted in 1992. (Berkeley Ord. No. 6852-NS)

While TIC interests present serious practical problems (primarily due to the fact that co-owners usually have one common mortgage and the TIC shares cannot be separately deeded), they are an attractive form of ownership for some households because they are more affordable than

¹ Santa Monica Rent Control Board, "The Impact of the Ellis Act, July 2003-Dec. 2004" (March 2005) (report available on the web page of the Rent Board.)

condominiums. At the same time, apartment owners may have financial incentives to sell TIC shares or sell to a group of purchasers who want to create a TIC, because the market value of TICs exceeds the market value of rental units.

The past several years, there have been dramatic increases in house and condominium prices. As a result, potential homeowners may be willing to pay higher prices for TIC ownership interests.

Under the foregoing circumstances, more owners may find it profitable to incur the cost of Ellis evictions in order to be able to realize the potential profits associated with such evictions. Currently, the average market value of apartments in Berkeley is about \$150,000 per unit. In contrast, the average market value of condominium units now approaches \$500,000. If TIC shares may be marketed for two-thirds the price of condominiums (e.g. \$350,000), their market value would still exceed the market value of rental units by \$200,000.

Also, soaring house prices provide additional economic incentives to convert small, multifamily dwellings to single-family use. Such conversions are regulated by City ordinance, but in practice they are difficult to regulate once an owner removes a property from rental use.

IV. POTENTIAL COSTS FOR TENANTS OF ELLIS EVICTIONS

The impacts of Ellis evictions on tenant households in Berkeley would vary substantially depending on the current rent of the unit and the circumstances of the household.

In cases of evictions from units that have not obtained full vacancy decontrol increases pursuant to the Costa-Hawkins Act it is almost certain that the tenant would face a rent increase of hundreds of dollars per month. As of June 2007, 4,830 rental units, 26.2% of all rental units covered by the rent ordinance were in this class. The median rent for units that have not had any vacancy increase since 1999 was \$820, while the median market rent in the first six months of 2007 for new tenants was \$1,370.

Tenants with vacancy-decontrolled rents may or may not experience substantial rent increases. However, displaced tenants would still incur moving expenses, the time and effort associated with finding a replacement unit, the time and effort associated with packing and unpacking of all household possessions, and possibly would face other losses due to a change in location.

In 1986, the Ellis Relocation fee was \$4,500. In June, 1986, the average rent was approximately \$390 per unit and the CPI was 112. The table below reflects the changes in CPI and average rent since that time:

	June 2007 comparative measure	Percentage increase since 1986	Adjusted Relocation Fee
CPI in June 2007	216	93%	\$ 8,685
Average Rent in June 2007 (all units)	\$1,127	190%	\$13,050
Average Rent in June 2007 (decontrolled units)	\$1,370	251%	\$15,750

V. RELOCATION ASSISTANCE IN OTHER JURISDICTIONS

Berkeley has never adjusted the base relocation amount of \$4500 established in 1986. The only change has been the additional \$2500 paid to low-income, senior and disabled tenants. Over the past several years, most cities that require relocation payments have increased the amount. The relocation assistance currently provided in other jurisdictions with eviction protections are set forth in the following chart.

	Berkeley	Los Angeles	Oakland	San Francisco	Santa Monica	West Hollywood
All Tenants	\$4500/unit	<3yrs \$6810 >3yrs. \$9040	None	\$4500/tenant, max of. \$13,500/unit	Bdrm 0 - \$5300 1 - \$6650 2 - \$7500 3 - \$9300 4 - \$9750	Bdrm 0 - \$5100 1 - \$7200 2 - \$9700 3 - \$12,800
Protected Classes	Low-income, Disabled, Elderly. Additional \$2500	Low-income, Disabled, Elderly <3yrs. \$14,850 >3yrs. \$17,080	Low Income 2 months rent	Disabled, Elderly, Household w/ minors. Additional \$3,000/tenant	Senior, Disabled, or Minor occupied unit on 11/17/99 Add \$1500/unit	Moderate Income, Senior, Disabled, Terminally ill, or Household w/ minor \$13,500 Lower Income \$17,000

LOS ANGELES

In April 2007, the Los Angeles relocation fees were increased to the current levels. In setting the fees, the City Council noted that relocation had a disproportionate impact on particular identified classes of tenants. The relocation fees are based on the average rent differential or increase a displaced tenant will encounter. The fee for a short-term tenant, i.e., less than three years of occupancy, was set at six times the rent differential. The fee for a short-term tenant who is elderly, disabled, low-income or who has a minor child was set at 18 times the rent differential. The fee for a long-term tenant, i.e., more than three years of occupancy, was set at 12 times the rent differential plus a \$1,000 for moving costs. Finally, the fee for a long-term tenant in a protected class was set at 24 times the rent differential plus \$1000 for moving expenses.

SAN FRANCISCO

In November 2006, the voters of San Francisco passed a proposition that established relocation fees of \$4500 *per tenant* with a maximum fee of \$13,500 per unit. Elderly or disabled tenants or households with a minor child are entitled to an additional fee of \$3000.

SANTA MONICA

The current Santa Monica relocation fees are derived by increasing fee amounts established in 1990 for inflation. In 1990, relocation fees were set based on the number of bedrooms in the unit that was being removed from the market and the following factors: (1) the average rent differential a displaced tenant will encounter; (2) the new security deposit; (3) moving expenses; and (4) utility start-up costs. An additional \$1,000 fee was granted to elderly or disabled tenants and to tenants residing with a minor child. Current fees are determined by annually increasing the fees established in 1990 by the Rent of Primary Residence component of the local CPI-W Index, rounded to the nearest \$50.

WEST HOLLYWOOD

West Hollywood increased relocation fees in May 2007. West Hollywood's fee system is similar to Santa Monica's. The fee is based on the number of bedrooms in the unit and on the following factors: (1) six months, rent differential; (2) the new security deposit; (3) moving costs; and (4) dislocation costs (utility hook-ups, personal expenses, etc.). The fee for moderate-income tenants, elderly, disabled and terminally ill tenants, and tenants living with a minor dependant is based on 18 months rent differential. The fee for low-income tenants is based on 24 months, rent differential. The fees for tenants in the protected classes are set regardless of unit size.

VI. CONCLUSION

The amount of the Ellis Act relocation fee paid to displaced tenants in Berkeley has not been significantly increased in over 20 years. During this time, rents and moving expenses have increased significantly and inflation has eroded the actual purchasing power of the current fee. Most jurisdictions where Ellis Act evictions are a problem periodically increase the amount of the relocation fee a property owner must pay the tenants he or she is evicting.

In recommending an amount by which the City Council should increase the Ellis Act relocation fees, many factors may be considered. As set forth above, other jurisdictions have considered inflation, rent differentials, security deposit requirements, moving expenses, utility hook-up costs, length of tenancy and whether displacement will cause exceptional hardship due to age, disability, presence of a minor child, or income status. The one caveat is that the amount of the fee may not impose a prohibitive price on the

exercise of an owner's right to go out of the residential rental business. (*Channing Properties v. City of Berkeley*, supra, 11 Cal.App.4th at 100.) However, in *Pieri*, the Court of Appeal found that the amount of San Francisco's relocation fee was not beyond the compensation contemplated by the Legislature in enacting and amending the Ellis Act. (*Pieri v. City and County of San Francisco*, supra, 137 Cal.App.4th at 894.) Therefore, a relocation fee of between \$15,000 and \$20,000 should withstand judicial scrutiny.

Finally, to avoid a rush of preemptive Ellis Act filings, any amendment to the Ellis Act Implementation Ordinance (B.M.C. Chapter 13.77) increasing the amount of the relocation fee should specifically state that all tenants in possession of their rental unit at the time the ordinance is amended are also entitled to the higher fee.