

Rent Stabilization Board

Date: October 15, 2007
To: Members of the Rent Stabilization Board
From: The Eviction/Section 8 Committee
Subject: Increase in Ellis Eviction Relocation Assistance

Recommendation

The Eviction/Section 8 Committee unanimously recommends that the Board advise the Mayor and members of the City Council that it is appropriate to adjust the relocation amounts required under Berkeley's Ellis Act Implementation Ordinance.

The Committee recommends that a Council Action Report be prepared and forwarded to the Council recommending that the base amount of relocation payments be increased from the current rate of \$4500 per unit.

Revised Base Relocation Payment - 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.

Additional Payments for Protected Classes - The Committee recommends that we not alter the amount of relocation for seniors, low-income and disabled tenants at this time. The Committee recommends that the additional payments be expanded to include families with minor children, as is the practice in San Francisco, Santa Monica and West Hollywood.

Additional 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. The Committee recommends that the Council be presented with two options:

1. An additional payment of the differential between average rent and market rent for a period of 6-12 months for all tenants of 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 that have resided in a unit prior to January 1, 1999.

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.



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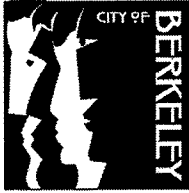
To: Berkeley Rent Stabilization Board

From: Jay Kelekian, Executive Director

Subject: Agenda Item 7.a.(3), Proposal to adopt a resolution to recommend that the City Council increase Ellis relocation benefits provided under BMC Chapter 13.77

Attached, please find a staff report, which will be presented to the Eviction Committee at their meeting Monday afternoon. It is our hope that the Committee will make a recommendation on revising the Ellis Act relocation fees, for consideration by the full Board Monday evening. At this time, there is no recommendation for the Board to review. We are providing the staff report so that the full Board has an opportunity to review the same background information available to the Committee.

Please let me know if you have any questions.



Rent Stabilization Board
Legal Department

Date: October 15, 2007
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 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 the 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. 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.

IV. 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 entitled to the higher fee.