



Rent Stabilization Board
Legal Unit

MEMORANDUM

DATE: April 6, 2016

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

FROM: Matt Brown, Staff Attorney
Matthew Siegel, Staff Attorney
Lief Bursell, Associate Management Analyst

SUBJECT: Measure Y Tracking Report (January 2013 – December 2015)

BACKGROUND

In November 2000, in response to a rash of owner-move-in evictions, Berkeley voters adopted Measure Y as an amendment to the Rent Stabilization and Eviction for Good Cause Ordinance. Measure Y was subsequently codified under Berkeley Municipal Code (B.M.C.) Section 13.76.130A.9 placing restrictions and conditions on owner and/or relative occupancy evictions. Berkeley's owner-move-in law allows property owners and their qualifying relatives¹ to evict tenants and move into rental units. Property owners who evict tenant households that qualify as low income are required to pay \$4,500 relocation assistance prior to the tenants relinquishing possession of their rental units. Measure Y further requires that “. . . at least twice annually, Rent Board Staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered . . . within the prior thirty-six months.”

Attached is a report detailing Measure Y evictions from January 2013 through December 2015.

¹ B.M.C. 13.76.130A.9b. allows a landlord's spouse, child, or parent to evict a tenant for occupancy in a rental unit. The owner or relative must intend to live in the unit for 36 continuous months. Additionally, with few exceptions, property owners may not evict seniors or disabled tenants who have occupied their rental units for five years or more in buildings with four or more units.

SUMMARY OF ATTACHED REPORT

Between January 1, 2013 and December 31, 2015 there have been sixty-six Measure Y eviction notices filed with the Rent Board. Of these sixty-six, twenty notices were served to tenants in single family homes, twenty-three notices were submitted to tenants occupying a unit in a duplex, fourteen to units in triplexes and nine in fourplexes. See table immediately below.

Unit designation	Number of notices sent	Unit currently tenant-occupied²
Single family home	20	0
Duplex	23	0
Triplex	14	2
Fourplex	9	1

Staff has conducted research into these sixty-six cases by focused mailing to each rental unit that received an eviction notice. The letter requested information regarding the current occupants of the unit. Additionally, staff reviewed county records, property files, and internal databases, conducted follow-up counseling with tenants, and performed on-site inspections. Of the sixty-six notices, forty-four were for owner-move-in and twenty-two involved qualifying relative move-in evictions. Twenty-six tenant households (39% of the total that received OMI notices) have alleged low-income status and all but one have received the \$4,500 relocation assistance payments. The last case is pending because the tenants still reside in the unit.

NARRATIVE DATA FROM STAFF RESEARCH

Single Family Homes – Sixteen of the twenty single family homes that received owner-move-in (OMI) notices were Costa Hawkins exempt tenancies. Two of these were for long-term tenancies under rent control. One of these were Section 8 tenancies. One of these was for a condominium that was not registered with the Rent Board.

Of these cases, staff's research indicates that tenants are still residing in one unit.

Duplexes – Six of the units in duplexes where tenants received OMI notices would now qualify for exemption under B.M.C. 13.76.050F ["golden duplex"]. One of the notices was for a rented unit in an exempt duplex property.

Staff research indicates that fourteen of the duplexes where tenants received OMI notices are currently occupied by owners or relatives. One unit is rented to a new tenant at the previous rent ceiling. One unit is undergoing repairs and renovations. In one case the owner has not yet moved in.

For one case, the owner attempted to evict two tenant households from a duplex. Both notices appeared to be defective. Upon further review, staff contacted the owner and the tenants, who, at the time had moved out. After providing counseling, one of the tenants moved back in at her

²The data regarding tenant occupancy in this column only includes units where staff has determined that a unit is tenant-occupied. There are several other cases that staff continues to investigate to find out if the unit is tenant or owner-occupied.

former rent. The other tenant household is currently involved in litigation with the owner. Four cases are still under review.

Triplexes – Fourteen OMI notices were served to triplex units during this reporting period. Of the fourteen tenancies that received notices, one tenant household is still in possession, ten have seen the owner or qualifying relative move in and three cases are still under review.

One property appears to have a rent in violation of Measure Y and Regulation 1016. For this case, the owner submitted a Vacancy Registration Form for a tenancy that appears to be the subsequent tenancy after the OMI occurred (or after the notice was served). The owner and the tenants have been notified of this apparent violation. There has been no response from the tenants. An attorney for the owners contacted staff but have subsequently not returned staff's phone calls.

Fourplexes – For the most recent reporting period, seven notices have been served on tenants residing in fourplexes. Staff has verified owner-occupancy status for five cases, one tenant household is still in possession and fighting the eviction, and one cases is still under review.

One tenant household responded to our mailing and it appears that the owner may be in violation of Measure Y and Board Regulation 1016 (setting of rent level following OMI). Staff is currently reviewing this case in greater detail.

A second property was the subject of an RWN petition where the Hearing Examiner found the subject unit to be a rooming house as defined in Board Regulation 403.5. The tenant is currently still in possession.

STAFF MONITORING

To ensure that the tenant protections incorporated into Measure Y are not violated, Rent Board staff endeavors to contact occupants living in units that have received OMI eviction notices at least once every six months. Staff sends a letter to the unit notifying the occupant of the proper rent ceiling if s/he is a tenant in the unit. Staff also researches information in our databases and county ownership information to ensure that residency information is correct. Furthermore, staff conducts site visits to attempt to ascertain who lives in these rental units when there is a question as to whether a landlord lives in the unit after an OMI notice is sent.

When staff finds that a tenant is living in a rental unit following an OMI eviction, staff may contact the owner and/or counsel the tenant to file a petition if the landlord is charging more than the restricted rent ceiling allowed under Rent Board Regulation 1016. Additionally, staff will attempt to contact the tenant(s) who were displaced from a rental unit due to an OMI notice to explain the tenants' rights if staff determines that the landlord has violated the Ordinance, and the tenant expressed an interest in being notified of changes in the rental unit's status.

OWNERSHIP HISTORY PRIOR TO OMI FILING

Previously, the committee requested data showing how long a landlord owned the property prior to the filing of OMI notices. The table below details this history for the most recent reporting period.

Thirty-eight (58%) of the notices were given by owners with interest in the property for under five years. Twenty-eight (42%) of owners gave notices after owning the property for five years or more.

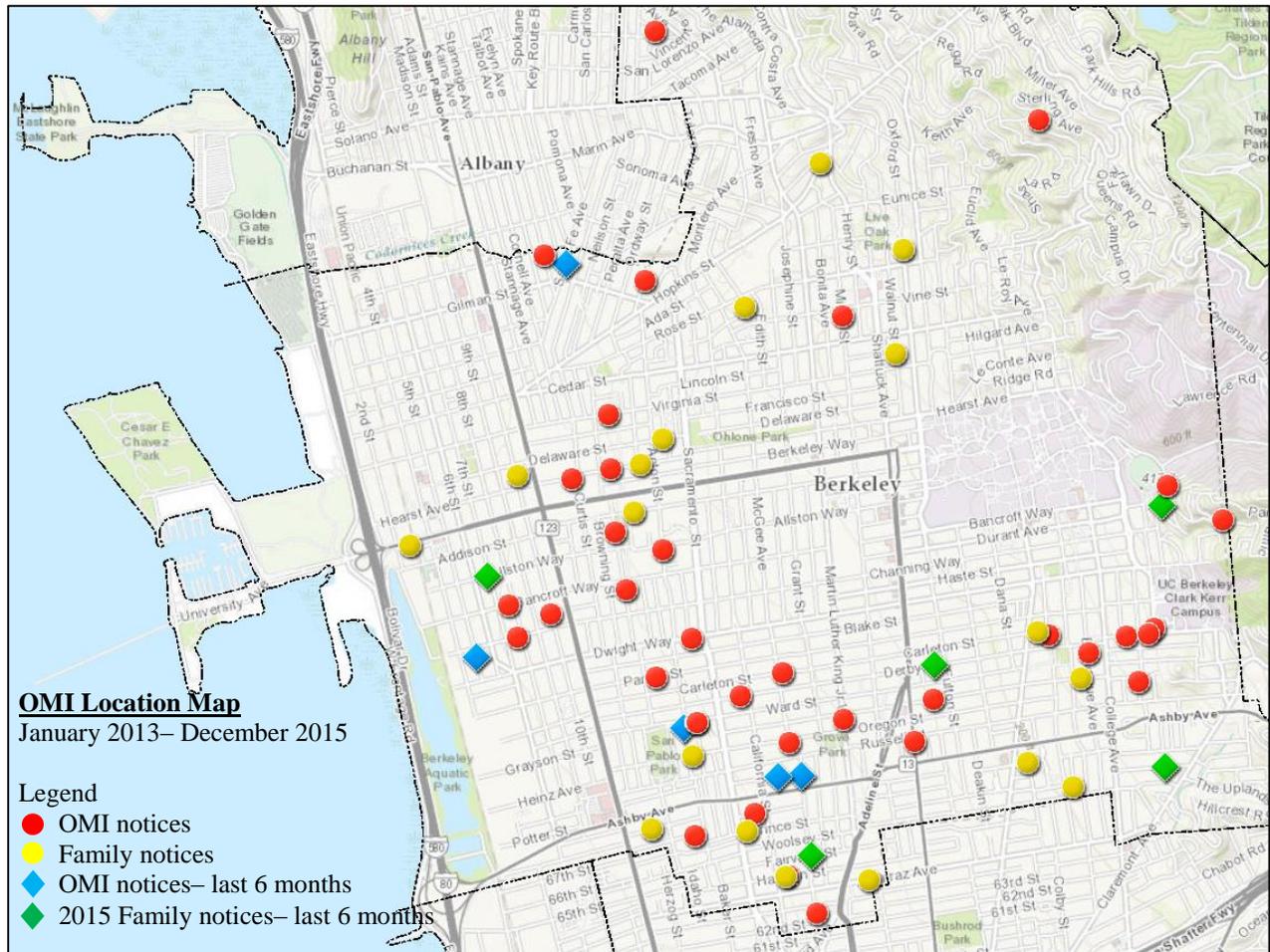
This data can be broken down further, for example:

Ownership Prior to notice	# props.
less than 1 year	26
Between 1 and 2 years	6
2 to 5 years	6
5 to 10 years	9
More than 10 years	19

Just a little less than half (48%) of the notices were given by owners with interest in the property of two years or less.

LOCATION OF OMI PROPERTIES

Six out of ten OMI notices filed during the last six months of the reporting period were located within South Berkeley.



For this reporting period, the Measure Y cases were concentrated in 3 areas: 1) east of San Pablo Ave and north of Ashby 2) in South Berkeley, and 3) in the region south of Campus and north of telegraph, between Dwight Way and the Oakland border. The northern parts of Berkeley did not receive a significant portion of the OMI notices. Only nine of the sixty-six OMI notices filed were for properties located north of Cedar Street.

CREATION OF MULTI-GENERATIONAL FAMILY OCCUPANCIES

The committee previously expressed interest in receiving information regarding the number of Measure Y cases that involved an owner or a qualified family member moving into a unit where there is another unit on the property that is already occupied by either the owner or another family member.

Staffs' review revealed six cases where a qualified family member moved into a property that was already occupied by an owner of record. Three of the properties were duplexes, two were in triplexes, and one was a fourplex. Of these six cases, five involved an adult child moving into the property and one involved the parent of the owner moving into the property. There were no cases within the previous thirty-sixth months where an *owner* evicted a tenant to move into a property where a family member was already residing.

There was also a case that involved an owner's children moving into separate units on a two unit property and one case where the owner, his wife, his three children, and his father are moving into the unit. This case is still under investigation.

PROPOSED INCREASE IN OMI RELOCATION EXPENSES AND OTHER CHANGES

While a significant percentage of tenants receive the relocation assistance, the level of assistance provided by the \$4,500 payment has decreased over time due to inflation and higher rents. The Consumer Price Index (for All Urban Consumers in the San Francisco-Oakland- San Jose area) increased by 39.8% between 2000 and 2014, and the median rent for a single bedroom unit in Berkeley (subject to Rent Stabilization) increased 45% from \$1,100 in 2000 to \$1,595 in 2014. The increases to both CPI and Berkeley rents since the passage of Measure Y suggest that the relocation payment would need to increase significantly in order to provide the same level of assistance that low-income tenants were intended to receive when the requirement was established. A voter approved amendment to the Rent Stabilization and Eviction for Good Cause Ordinance is required to make any changes to the level of low-income relocation assistance.

At its December 14, 2015 regular monthly meeting, the Board voted unanimously to send a request to City Council that it place a Measure on the 2016 ballot to increase relocation fees for tenants who receive OMI eviction notices. The 4 x 4 Committee reviewed Board staff's memo for proposed relocation expenses increase and voted at its February 11, 2016 and March 10, 2016 meetings to adopt the recommendations contained therein; namely:

1. The relocation fee would be increased to \$15,000 for all tenants evicted who receive OMI evictions. Additionally, qualifying low-income, disabled, elderly, families with minor children, or those tenancies that began prior to 1999 would receive an additional \$5,000. The maximum total that a tenant household could receive would be \$20,000. The relocation fee is currently \$4,500 and *only* available to low-income tenants. This fee was established in November 2000 when Measure Y passed and mirrored the Ellis relocation

fee in effect at that time.³ Given what other cities require property owners to pay tenants displaced by OMI, a relocation fee between \$15,000 and \$20,000 should withstand judicial scrutiny.

2. Families with minor children would be protected from being evicted during the school year. Given the disruption it causes children when they are displaced mid-year, San Francisco passed a law several years ago prohibiting evictions of families with children during the school year. Landlords are still entitled to recover possession of their residential rental units; they just must wait until the school year is over. Berkeley would craft a similar protection in the Ordinance.
3. A City or Rent Board hearing examiner would be able to adjudicate disputes regarding a tenant's entitlement to increased relocation fees based on their alleged status as disabled, low-income, elderly, families with minor children, or those tenancies that began prior to 1999. Currently, the Board has no jurisdiction to determine whether a tenant is entitled to relocation fees, and deposited funds often remain in escrow for months while the parties remain in disagreement. Allowing the Board to adjudicate these claims and make determinations regarding a tenant household's eligibility to receive these funds would make it easier for the Board to more efficiently and effectively administer the Ordinance and give parties more streamlined relief when there are disputes of this manner.
4. Current B.M.C. section 13.76.130A.9.k.(i) of the Ordinance would be amended to change "residential rental units" to "residential units." This will make clear that seniors and disabled tenants who have occupied their units for five or more years will be protected from an owner move-in (OMI) eviction if their landlord owns three or more total units in Berkeley (even if the landlord lives in a separate dwelling as an owner occupant or is leaving one or more units vacant).

The Board approved these changes at its monthly meeting on March 21, 2016, and directed staff to bring this to Council to consider placing these items on the ballot for voter approval.

CONCLUSION

During the past three-year period (January 2013-December 2015) the Board received a total of sixty-six Measure Y eviction notices. During the initial three-year monitoring period (December 2000 – December 2003), we received 110 eviction notices, just less than twice the rate as the last three years. Equally notable, in the three months immediately preceding the adoption and enactment of Measure Y (September, October and November 2000) forty seven notices for owner or relative occupancy were filed. A comparable number notices for owner occupancy were filed in the three months preceding passage of Measure Y than were filed in the past 36 months. By any measure, the passage and diligent implementation of Measure Y have significantly reduced the displacement of long-term tenants, which was commonplace after the imposition of vacancy decontrol.

One condition established by Measure Y was a requirement that the owner provide a \$4,500 relocation assistance payment to any displaced low-income tenant household that has resided in

³ The Ellis relocation fee was established in 1986 and had not been adjusted when Measure Y was passed 14 years hence.

the unit for one year or more. Since passage of Measure Y roughly 37% of those households receiving eviction notices for owner occupancy have qualified for and benefited from the low-income relocation assistance provisions of the ordinance.⁴ This number is particularly noteworthy if we consider that historically between 25%-30% of Measure Y eviction notices are later rescinded and the tenants remain in the unit. When we back-out these rescinded units, the percentage of Measure Y tenants receiving low-income relocation is over 30% of those households being displaced.

The chart below breaks down in six-month periods, the number of Measure Y eviction notices the Board has received since September 2000. The first reporting period on the table below only reflects a four-month period. As noted above, 47 of the 56 evictions occurred during the three months prior to the adoption of Measure Y. While we did not track the number of owner move-in notices received prior to September 2000, it was reported that the number of notices issued during the period from December 1997 to December 2000 was similar to or greater than the four-month period from September – December 2000, before Measure Y became law.

Attachment 1: Table of Measure Y notices filed with the Rent Board for the period between September 2000 through December 2015.

Attachment 2: Sample of letter sent to all rental units that received an owner-move-in eviction notice between January 2013 and December 2015.

⁴ Twenty-six households that received OMI eviction notices during the three year period reviewed in this report qualified for and received the \$4,500 relocation assistance required by the Ordinance.

Measure Y Eviction Notices Filed With Berkeley Rent Board

Date of Eviction Notice	Number of Notices Received
September – December 2000 *(only four months)	56
January – June 2001	32
July – December 2001	21
January – June 2002	17
July – December 2002	9
January – June 2003	13
July – December 2003	10
January – June 2004	14
July – December 2004	5
January – June 2005	16
July – December 2005	6
January – June 2006	10
July – December 2006	1
January – June 2007	7
July – December 2007	2
January – June 2008	1
July – December 2008	7
January – June 2009	7
July – December 2009	7
January – June 2010	6
July – December 2010	3
January – June 2011	6
July – December 2011	2
January – June 2012	5
July – December 2012	5
January – June 2013	10
July – December 2013	3
January-June 2014	19
July – December 2014	8
January – June 2015	16
July – December 2015	10
Total Notices Filed 10/2000- 12/2015	334



Rent Stabilization Board

April 13, 2016

[REDACTED]
[REDACTED]
Berkeley, CA 94702

RE: Owner Move-in eviction at [REDACTED]

Dear occupant:

Our records indicate that a prior tenant in your unit was evicted so that the unit could be occupied by the owner or a close relative of the owner. Berkeley Municipal Code section 13.76.130.A(9)(p) requires the Rent Board to monitor your unit for three years to ensure that the unit is, in fact, occupied by the owner or a relative of the owner. Therefore, you will receive a letter like this once every six months during this three year period. If you are the owner or a **non-rent** paying parent, spouse, domestic partner, or child of the owner, it is not necessary for you to respond to this letter.

If you are not the owner and are paying rent, your rent should not exceed:

\$667.84

If you are paying rent in excess of this amount, you should contact me at (510) 981-4903. Also, Rent Board Counselors are available to explain your rights and options, including the procedure for recovering any rent overcharges you have paid. An explanation of your rights may also be found on the Rent Board's web site: www.ci.berkeley.ca.us/rent.

Sincerely

Matthew Siegel
Staff Attorney
Berkeley Rent Stabilization Board