

Rent Stabilization Board

## MEMORANDUM

**DATE:** April 13, 2017

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

**FROM:** Matt Brown, Staff Attorney  
Matthew Siegel, Staff Attorney  
Lief Bursell, Associate Management Analyst  
Jen Fabish, Community Services Specialist

**SUBJECT:** Measure Y/AA Tracking Report (January 2014 – December 2016)

---

### BACKGROUND

#### I. Measure Y

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. Known as Berkeley's owner move-in law, Measure Y was subsequently codified under Berkeley Municipal Code (B.M.C.) Section 13.76.130A.9. It allowed property owners to evict tenants so that the owner or qualifying relatives could move into rental units, but placed restrictions and conditions on such evictions.<sup>1</sup> In addition, property owners who evicted tenant households that qualified as low income were required to pay \$4,500 relocation assistance prior to the tenants relinquishing possession of their rental units.

If the owner or qualifying relative does not move into the unit or does not live in the unit for 36 consecutive months, and, instead, the unit is re-rented, the rent cannot exceed the lawful apparent rent ceiling that applied to the former tenancy. (Rent Board Reg. 1016). Furthermore, the evicted tenant/s have the opportunity move back into the unit if they expressed an interest in doing so at the time of the eviction. (B.M.C. 13.76.130A9.o.)

---

<sup>1</sup>Under B.M.C. 13.76.130A.9b., an owner could evict a tenant so that the owner, or his/her spouse, child, or parent could occupancy in a rental unit. The owner or relative must have intended to live in the unit for 36 continuous months. Additionally, with few exceptions, property owners could not evict seniors or disabled tenants who have occupied their rental units for five years or more in buildings with four or more units.

## II. Measure AA

In November 2016, Berkeley voters passed Measure AA, which amended Measure Y. While many of above-referenced provisions of the owner move-in law remain the same, Measure AA implemented the following substantial changes:

- Property owners who evict tenants for owner move-in purposes must pay a standard relocation fee of \$15,000 to all tenant households where at least one occupant has resided in the unit for more than one year.
- Qualifying low-income, disabled, elderly, families with minor children, or those tenancies that began prior to 1999 will receive an additional \$5,000.
- Families with minor children are protected from being evicted during the school year.
- A City or Rent Board hearing examiner can adjudicate disputes regarding a tenant's entitlement to the additional relocation assistance.

Measure AA went into effect on December 19, 2016. The law's relocation assistance provision applies retroactively to any OMI notice that had not yet expired at the time the law went into effect. (B.M.C. 13.76.130A9.p.(v).) As such, tenant households (where at least one occupant has resided in the unit for more than one year) that were served an OMI Notice after October 20, 2016 were entitled to the standard relocation assistance of \$15,000, and the additional \$5,000 payment if eligible.

Finally, as under Measure Y, Measure AA 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.” (B.M.C. 13.76.130A9.r.)

Attached is a report analyzing OMI eviction notices filed with the Rent Stabilization Program from January 1, 2014 through December 31, 2016.

## **MEASURE Y/AA REPORT: JANUARY 1, 2014 – DECEMBER 31, 2016**

### **STAFF MONITORING**

To ensure that tenant protections are not violated, Rent Board staff endeavors to contact occupants living in units that have received owner move-in (OMI) eviction notices at least once every six months. Staff sends a letter to the unit notifying the occupant of the rent ceiling that would apply if s/he is a tenant rather than the owner or qualified family member (Attachment 1). Staff also researches information in our databases and county ownership records to ensure that residency information is correct. Furthermore, staff conducts focused site visits to attempt to ascertain residency when there is a question as to whether the owner or family member actually lives in the unit after an OMI notice is sent.

When staff finds that a new 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.

### **OMI NOTICES AND RELOCATION ASSISTANCE PAYMENTS**

#### **Notices Filed With the Rent Stabilization Program**

Between January 1, 2014, and December 31, 2016, seventy-eight owner move-in eviction notices were filed with the Rent Board.<sup>2</sup> Two of the notices filed within the last six months of this reporting period were rescinded. For one of these rescinded notices, according to an email from the landlord that a tenant forwarded to the Rent Board, the landlord rescinded the eviction notice due to the enactment Measure AA.

Of the seventy-eight notices, twenty-one were served to tenants in single family homes, thirty notices were served to tenants occupying a unit in a duplex, twelve to units in triplexes, twelve to units in fourplexes, and three to properties with five or more units. See table immediately below.

<b>Unit designation</b>	<b>Number of notices sent</b>	<b>Unit currently tenant-occupied<sup>3</sup></b>
Single family home	21	
Duplex	30	3
Triplex	12	2
Fourplex	12	2
Five units & more	3	

Of the seventy-eight notices, fifty-four were for owner-move-in, and twenty-four involved qualifying relative move-in evictions.

<sup>2</sup> During the January 2016-June 2016 period, two notices were for the same address. The earlier notice was deficient so the landlord rescinded and filed again at a later date. That address is only included once for this report.

<sup>3</sup> The data regarding tenant occupancy in this column only includes units where the information currently available to staff indicates that a unit is tenant occupied.

### **Relocation Assistance, Pre-Measure AA**

Twenty-six households (40% of the total that received OMI notices before Measure AA applied) alleged low-income status. All but three have received the \$4,500 relocation assistance payment.

### **Relocation Assistance, Post-Measure AA**

Of the five OMI notices served after Measure AA applied, two households have received the standard \$15,000 relocation assistance payment, and one such payment is pending. One household received the additional \$5,000 payment based on alleged low-income status and length of tenancy. One notice was rescinded, and one household did not qualify for the standard \$15,000 payment because no tenant had resided in the unit for more than one year.

## **NARRATIVE DATA FROM STAFF RESEARCH**

Single Family Homes – Sixteen of the twenty-one single family homes that received OMI notices were Costa Hawkins exempt tenancies.

Two notices were served on rent controlled tenants. One of these tenants vacated voluntarily and the relocation payment was refunded to the owner, and the other tenant received the payment.

In one case, a hearing determined the unit was new construction, and in another case, the notice was served on a rent-controlled condominium that is currently owner occupied. The last case involved a section 8 tenant who vacated; the unit is now owner occupied.

Duplexes – Thirty notices were served on duplexes during the current reporting period. Staff has verified that the owner or family member named in the notice has moved in for seventeen of these cases.

In one case involving two notices, an owner attempted to evict two tenant households from a duplex, but both notices appeared to be defective. Staff contacted the owner and the tenants who, at the time, had moved out. After providing counseling, one tenant moved back in at her former rent. The other tenant household is currently involved in litigation with the owner. Staff has identified another case involving a notice served on a Section 8 unit, but the tenant remains in possession. In a third case, the owner did not go through with the move-in. Thus, there are three duplex units where tenants remain in possession.

Fifteen of the thirty duplex units that received OMI notices would qualify for an exemption under B.M.C. 13.76.050F [“golden duplex”] if the owner moved in. Of those fifteen units, staff has verified that the owner is currently occupying the appropriate unit in nine cases.

Two OMI notices served on duplexes were rescinded. In one case, the tenant had moved out, but the unit was already exempt as a golden duplex when the notice was served. In the other, the tenant entered into a buyout agreement and is no longer in possession. This case is still under review because it was discovered that the property owner subsequently sold the property without moving in.

Seven additional cases remain under investigation.

Triplexes – Twelve OMI notices were served on triplex units during this reporting period. Of those, nine are currently occupied by the owner or the qualifying relative named in the notice, two tenant households remain in possession, and one case is still under review.

Fourplexes – During the most recent reporting period, twelve notices have been served on tenants residing in fourplexes. Staff has verified owner-occupancy status for six cases, and one notice was rescinded with the tenants still in possession.

In one case, the tenant moved out under the impression that the owner was terminally ill and wanted to reoccupy the unit. The property was sold in July of 2016. The new owner does not reside at the property, and the unit subject to the OMI notice appears to be rented. Staff will follow up with the displaced tenant and the new owner. In another case, the unit was subsequently rented at market rate. Litigation pertaining to this unit is ongoing.

Three more cases remain under investigation.

Five or more units – Three OMI notices were served to buildings with 5 or more units. Staff has verified owner-occupancy status for two, and one case is still under review.

## **OWNERSHIP HISTORY PRIOR TO OMI FILING**

Previously, the committee requested data showing how long a landlord owned the property prior to filing an OMI notice.<sup>4</sup> The table below details this history for the January 1, 2014 – December 31, 2016 reporting period.

Ownership Prior to notice	# props.
less than 1 year	28
Between 1 and 2 years	6
2 to 5 years	8
5 to 10 years	11
More than 10 years	25

Thirty-six (46%) landlords served notices after owning the property for five years or more. Forty-two (54%) of the notices were served by landlords who owned the property for fewer than five years. Just a little less than half (44%) of the notices were served by landlords who owned the property fewer than two years.

## **LOCATION OF OMI PROPERTIES**

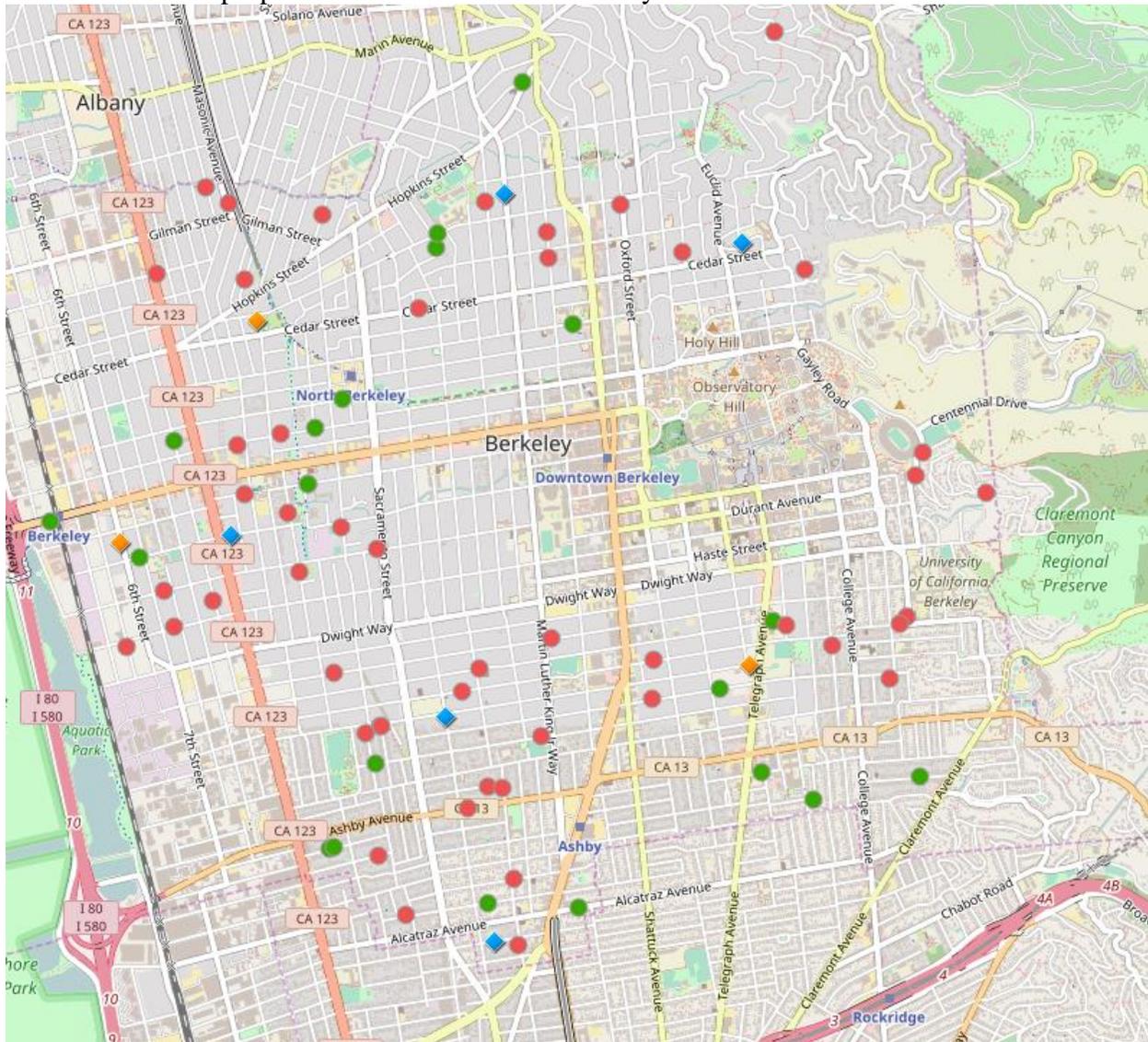
### **General Distribution**

The map below shows the general distribution of OMI notices for the current reporting period. The notices were distributed relatively evenly throughout Berkeley, except that there were no

---

<sup>4</sup> This data includes four intra-family title transfers. For the purpose of calculating data, we used the time between the transfer date and the notice of eviction.

notices served for properties in the downtown Berkeley area.



**OMI Notice Location Map**  
January 2014-December 2016

**Legend**

- Owner Notice
- Family Notice
- ◆ Owner Notice- last 6 months
- ◆ Family Notice- last 6 months

**Geographic Location and Market Area**

At its August 3, 2016 meeting, the Committee requested that staff include the street name and geographic location of each property subject to an OMI eviction notice.

For the prior reporting period (July 1, 2013 – June 30, 2016), eight out of seventeen OMI notices

filed during the last six months of that reporting period were for properties located in North Berkeley. By contrast, the eight notices filed during the last six months of the current reporting period (July 1, 2014 – December 31, 2016) were spread relatively evenly throughout the city:

Date filed	Street	Market Area
9/7/2016	2112--6th Street	West Berkeley (Area 4)
9/29/2016	1502 Chestnut St.	Central Berkeley (Area 2)
10/13/2016	2727 California St	South Berkeley (Area 5)
11/16/2016	2401 Ward St. #B	University Area (Area 3)
11/10/2016	1631--63rd St.	South Berkeley (Area 5)
12/12/2016	1111 Allston Way, #A	Central Berkeley (Area 2)
12/16/2016	1546 Le Roy Ave. #upper	North Berkeley (Area 1)
12/22/2016	1316 MLK Jr. Way #A	North Berkeley (Area 1)

**Housing Tracts by Area:**

**Area 1**, tract nos. 11, 12, 13, 14, 15, 16, 17, 38

**Area 2**, tract nos. 18, 19, 22, 23, 30, 31

**Area 3**, tract nos. 24, 25, 27, 28, 29, 36, 37

**Area 4**, tract nos. 20, 21, 32

**Area 5**, tract nos. 33, 34, 35, 39, 40



Attachment 2 shows the geographic location and market area for all properties subject to OMI notices during the current reporting period.

**CREATION OF MULTI-GENERATIONAL FAMILY OCCUPANCIES**

The committee previously expressed interest in receiving information regarding the number of Measure AA evictions 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. In the prior reporting period (July 1, 2013-June 30, 2017), staff identified five such cases.

For the subsequent six months, staff have not identified any additional instances of an owner or qualified family member evicting a tenant to move into a unit where another unit on the property is already occupied by either the owner or another family member.

## **CONCLUSION**

During this reporting period (January 2014 – December 2016) the Board received a total of seventy-eight Measure AA eviction notices. During the initial three-year monitoring period (December 2000 – December 2003), the Board received 110 eviction notices. Historically, after the passage of former Measure Y, the number of evictions reported for each three-year period was significantly less than the initial period. This trend can be seen in Attachment 3, which shows (in six-month blocks) the number of Measure AA eviction notices the Board has received since September 2000. The first reporting period in the table reflects only four months (September-December 2000), but during this time, forty-seven of the fifty-six evictions occurred during the three months prior to the adoption of former Measure Y. While the Rent Stabilization Program did not track the number of OMI notices received prior to September 2000, it has been 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 to December 2000, before former Measure Y became law.

Although the diligent implementation of former Measure Y reduced the displacement of long-term tenants, as housing prices and rents have continued to increase dramatically in recent years, so too have the number of OMI evictions. While OMI evictions have not yet hit the high water mark of the initial three-year period (110 notices), we noted in the previous report that there had been more than double the number of filed notices from July 2013 – June 2016 compared to the period from July 2010 – June 2013: seventy-three notices compared to thirty-one notices.

This holds true for the current reporting period as well: seventy-eight notices filed from January 2014 – December 2016 versus thirty-one notices from January 2011 – December 2013.

In November 2016, Berkeley voters passed Measure AA, which amended Measure Y and took effect on December 19, 2016. Because it was only in force for a small portion of the current reporting period, it remains to be seen how Measure AA's stronger tenant protection provisions will impact the number of OMI notices going forward. As it stands, we know of one instance from the current reporting period where a landlord rescinded an OMI notice due to the enactment of Measure AA. We should have a better sense of how Measure AA will effect OMI evictions in Berkeley in the next reporting period.

---

**Attachment 1:** Sample of letter sent to select rental units that received an owner-move-in eviction notice between January 2014 and December 2016.

**Attachment 2:** Table reflecting geographic location and market area of properties subject to OMI notices for the period of January 2014 and December 2016.

**Attachment 3:** Table of Measure AA notices filed with the Rent Board for the period of September 2000 through December 2016.

## ATTACHMENT 1

### Sample of Letter Sent to Select Rental Units that Received OMI Notices



Rent Stabilization Board

April 13, 2017

[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](http://www.ci.berkeley.ca.us/rent).

Sincerely

Matthew Siegel  
Staff Attorney  
Berkeley Rent Stabilization Board

## **ATTACHMENT 2**

### **Geographic Location and Market Area of Properties Subject to Measure AA Notices**

<b>Date filed</b>	<b>Street</b>	<b>Market Area</b>
1/10/2014	2130 Bonar St. #B	Central Berkeley (Area 2)
1/29/2014	2311 Bonar St.	Central Berkeley (Area 2)
1/30/2014	3334 King St. #A	South Berkeley (Area 5)
2/4/2014	1275 Hearst Ave.	Central Berkeley (Area 2)
2/25/2014	1520 Milvia St.	North Berkeley (Area 1)
3/21/2014	2709 Benvenue Ave. #A	University Area (Area 3)
3/25/2014	2638 Warring St. #A	University Area (Area 3)
3/31/2014	917 Channing Way	West Berkeley (Area 4)
4/9/2014	1813 10th St.	West Berkeley (Area 4)
4/18/2014	650 University Ave. #3	West Berkeley (Area 4)
4/21/2014	33 Canyon Road, upper	Panoramic Hill (Not in Market Area)
4/28/2014	1204 Evelyn Ave.	Albany Border (Not in Market Area)
5/6/2014	2316 1/2 Stuart St.	University Area (Area 3)
5/7/2014	1705 Carleton St.	South Berkeley (Area 5)
<b>Date filed</b>	<b>Street</b>	<b>Market Area</b>
5/12/2014	1164 Hearst Ave.	Central Berkeley (Area 2)
5/21/2014	1411 Cypress St. #1/2	Central Berkeley (Area 2)
5/22/2014	2419 Webster St.	South Berkeley (Area 5)
6/10/2014	2447 Carleton St. #A	University Area (Area 3)
6/12/2014	1340 Haskell St.	South Berkeley (Area 5)
7/9/2014	1337 Acton St.	Central Berkeley (Area 2)
7/16/2014	3074 Bateman St.	South Berkeley (Area 5)
8/19/2014	1616 Harmon St.	South Berkeley (Area 5)
9/2/2014	66 Twain Ave.	North Berkeley (Area 1)
10/2/2014	2808 Derby St. #A	University Area (Area 3)
11/20/2014	2812 1/2 Piedmont Ave.	University Area (Area 3)
11/20/2014	2328 10th St. #1	West Berkeley (Area 4)
12/31/2014	1971 Hopkins St.	North Berkeley (Area 1)
2/9/2015	2202 Acton St.	Central Berkeley (Area 2)
3/4/2015	1315 Parker St.	South Berkeley (Area 5)
3/11/2015	2631 Regent St.	University Area (Area 3)
3/23/2015	2728 Dohr St.	South Berkeley (Area 5)
4/6/2015	1359 Hearst Ave. #3	Central Berkeley (Area 2)
4/7/2015	162 Panoramic Way	University Area (Area 3)

4/9/2015	1308 Addison St. lower	Central Berkeley (Area 2)
4/9/2015	1308 Addison St. upper	Central Berkeley (Area 2)
4/16/2015	2139 Stuart St.	South Berkeley (Area 5)
4/23/2015	2729 Dohr St.	South Berkeley (Area 5)
5/14/2015	1412 Delaware St.	Central Berkeley (Area 2)
5/15/2015	1237 Carrison St.	South Berkeley (Area 5)
5/15/2015	1237 1/2 Carrison St.	South Berkeley (Area 5)
6/1/2015	917 Bancroft Way #B	West Berkeley (Area 4)
6/2/2015	1400 Oregon St.	South Berkeley (Area 5)
6/22/2015	1865 Alcatraz Ave.	South Berkeley (Area 5)
7/13/2015	1702 Fairview St.	South Berkeley (Area 5)
7/20/2015	2133 Derby St.	South Berkeley (Area 5)
8/3/2015	2819 Prince St	North Berkeley (Area 1)
8/7/2015	1 Panoramic Way	University Area (Area 3)
8/27/2015	846 Allston Way	West Berkeley (Area 4)
10/9/2015	1640 Julia St. #C	South Berkeley (Area 5)
10/15/2015	2934 King St.	South Berkeley (Area 5)
11/12/2015	2412 1/2 5th St.	West Berkeley (Area 4)
11/30/2015	2730 Acton St.	South Berkeley (Area 5)
11/30/2015	1235 Santa Fe Ave. #A	Central Berkeley (Area 2)
1/21/2016	1411 Northside Ave. #A	Central Berkeley (Area 2)
<b>Date filed</b>	<b>Street</b>	<b>Market Area</b>
1/25/2016	1817 Oregon St. #B	South Berkeley (Area 5)
2/3/2016	1399 Harmon St.	South Berkeley (Area 5)
2/17/2016	1610 Ashby Ave	South Berkeley (Area 5)
2/19/2016	1465 Bancroft Way	Central Berkeley (Area 2)
3/22/2016	1106 Camelia St	Central Berkeley (Area 2)
3/23/2016	1320 Josephine St.	Central Berkeley (Area 2)
3/29/2016	1627 Cedar St.	Central Berkeley (Area 2)
4/4/2016	1404 Oxford St.	North Berkeley (Area 1)
4/4/2016	1624 Derby St. #A	South Berkeley (Area 5)
4/8/2016	1427 Milvia St.	North Berkeley (Area 1)
4/20/2016	1631 La Vereda Rd. #2	University Area (Area 3)
5/17/2016	1740 Rose St.	Central Berkeley (Area 2)
5/24/2016	1560 Scenic Ave.	North Berkeley (Area 1)
6/6/2016	2022 Virginia St. #5	University Area (Area 3)
6/13/2016	1140 Addison St.	Central Berkeley (Area 2)
6/24/2016	1908 Parker St.	South Berkeley (Area 5)
<b>Date filed</b>	<b>Street</b>	<b>Market Area</b>
9/7/2016	2112--6th Street	West Berkeley (Area 4)

9/29/2016	1502 Chestnut St.	Central Berkeley (Area 2)
10/13/2016	2727 California St	South Berkeley (Area 5)
11/16/2016	2401 Ward St. #B	University Area (Area 3)
11/10/2016	1631--63rd St.	South Berkeley (Area 5)
12/12/2016	1111 Allston Way, #A	Central Berkeley (Area 2)
12/16/2016	1546 Le Roy Ave. #upper	North Berkeley (Area 1)
12/22/2016	1316 MLK Jr. Way #A	North Berkeley (Area 1)

**ATTACHMENT 3**

**Measure AA Eviction Notices Filed With Berkeley Rent Board**

<b>Date of Eviction Notice</b>	<b>Number of Notices Received</b>
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

January- June 2016	17
July-December 2016	8
Total Notices Filed 10/2000- 6/2016	359