

Rent Stabilization Board

## MEMORANDUM

**DATE:** May 13, 2019

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

**FROM:** Matthew Siegel, Staff Attorney *ms*  
Jen Fabish, Community Services Specialist *JF*

**SUBJECT:** Owner Move-in Eviction Tracking Report (January 2016 – December 2018)

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### 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 (OMI) 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.

After an owner move-in eviction, the rental rate for the next tenancy established in the vacant unit 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.)

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<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 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 are eligible to receive an additional relocation assistance payment.
- 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 a standard relocation assistance payment, and an additional 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, 2016 – December 31, 2018.

## **OMI REPORT: January 1, 2016 – December 31, 2018**

### **STAFF MONITORING**

To ensure that tenant protections 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 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 receives information that a new tenant may be living in a rental unit following an OMI eviction, staff may contact the owner and/or tenant to ascertain the facts and circumstances pertaining to this occupancy. Staff often will then provide counseling to both the owner and tenant when appropriate regarding the proper rent ceilings for that unit. Additionally, when appropriate, staff will attempt to contact tenant households displaced from a rental unit due to an OMI notice to explain the options, rights and remedies that may be available if it is determined that the Ordinance has been violated.

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

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

Between January 1, 2016 and December 31, 2018, fifty-two (52) OMI eviction notices were filed with the Rent Board.<sup>2</sup> The following table shows how these notices were distributed amongst unit types, and the number of instances where a unit is tenant occupied.

<b>Unit designation</b>	<b>Number of notices sent</b>	<b>Unit currently tenant-occupied<sup>3</sup></b>
Single family home	9	0
Duplex	25	5
Triplex	6	0
Fourplex	7	5
Five units & more	5	1

Of the fifty-two notices, 35 were for owner-move-in, 15 involved qualifying relative move-in evictions, and two did not specify with particularity who would be moving into the unit.

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

Seven households (37% of the total in this reporting period that received OMI notices before

<sup>2</sup> During the January 2016-June 2016 period, two notices were filed 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. In the January 2018 – June 2018 period, an owner served one notice on both units of a duplex property because the same tenants were renting both units. This report counts it as two notices.

<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.

Measure AA applied) alleged low-income status and all received the \$4,500 relocation assistance payment.

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

Thirty-three OMI cases fall under the relocation payment requirements of Measure AA. Twenty-one households have received the standard relocation payment. Eight notices were rescinded, and in one case staff's investigation revealed that the owner did not serve an OMI notice; rather, the tenants informed the owner that they were moving out and the owner decided to move in afterwards (thus, no relocation funds were due). In another case, no relocation was due because the tenants had not lived in the unit for one year or more. In two cases, it is unclear whether OMI evictions took place as there was no notice filed with the Rent Board, just the tenants' claims for relocation assistance. One of these cases involved private mediation, and the other case is under investigation.

Nine households received the additional relocation payment on the following grounds (some households have claimed multiple grounds, which is why the total claims documented below exceeds nine):

<b>Claims for Additional Relocation Payment</b>	
<b>Grounds</b>	<b>Number of Claims</b>
Minor Child	6
Disabled	1
Low Income	2
Elderly	1
Long-term Tenant	1

### **NARRATIVE DATA FROM STAFF RESEARCH**

Single Family Homes – Eight of the nine single-family homes that received OMI notices were Costa-Hawkins exempt tenancies, and in one case staff's investigation revealed that the owner did not serve an OMI notice; rather, the tenants informed the owner that they were moving out and the owner decided to move in afterwards

Duplexes – Twenty-five 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 fourteen of these cases.

Five properties appear to be tenant-occupied. Of these, two are new tenancies and three units have original tenants in possession. Three properties are still under investigation.

Of the remaining three duplex cases, two involved mediation and both units are owner-occupied. For another case, the notice was rescinded and the tenancy terminated via the Ellis Act, and the unit is now listed as owner-occupied.

Thirteen of the twenty-five duplex units that received OMI notices are potential "golden duplexes" (i.e. full exemption if an owner of record of at least 50% occupies one of the two units). Of those thirteen properties, staff has verified that nine of the properties are currently owner-occupied, thus fully exempt from the ordinance. Two properties are not fully exempt

since a family member and not an owner of record moved in. In one case the unit is now tenant-occupied, and another is under investigation.

Triplexes – Six OMI notices were served on triplex properties during this reporting period. Of those, four are currently occupied by the owner or the qualifying relative, and two are still under review.

Fourplexes – Seven notices were served on tenants residing in fourplexes during this reporting period. Staff has verified that the owner or qualified family member is occupying the unit in one case, and in another case the notice was rescinded with the tenant still in possession. One unit has been re-rented at a legal rent ceiling, and two units were re-rented after intervening tenancies with legal rent ceilings. Finally, at one property where two notices were served, one unit is shown as “rent free” in the Rent Tracking System, consistent with the OMI notice for family occupancy; the other notice was rescinded as a part of a private settlement with the tenant, who appears to have vacated as a new tenancy was registered with a legal rent ceiling.

Five or more units – Five OMI notices were served at buildings with five or more units. Staff has verified owner-occupancy status for two cases, one case is still under review, and one notice was rescinded. In another case, there was no notice filed, but the tenant made a claim for relocation. Upon investigation, the unit appears owner-occupied, and staff is continuing to monitor the property.

#### **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>

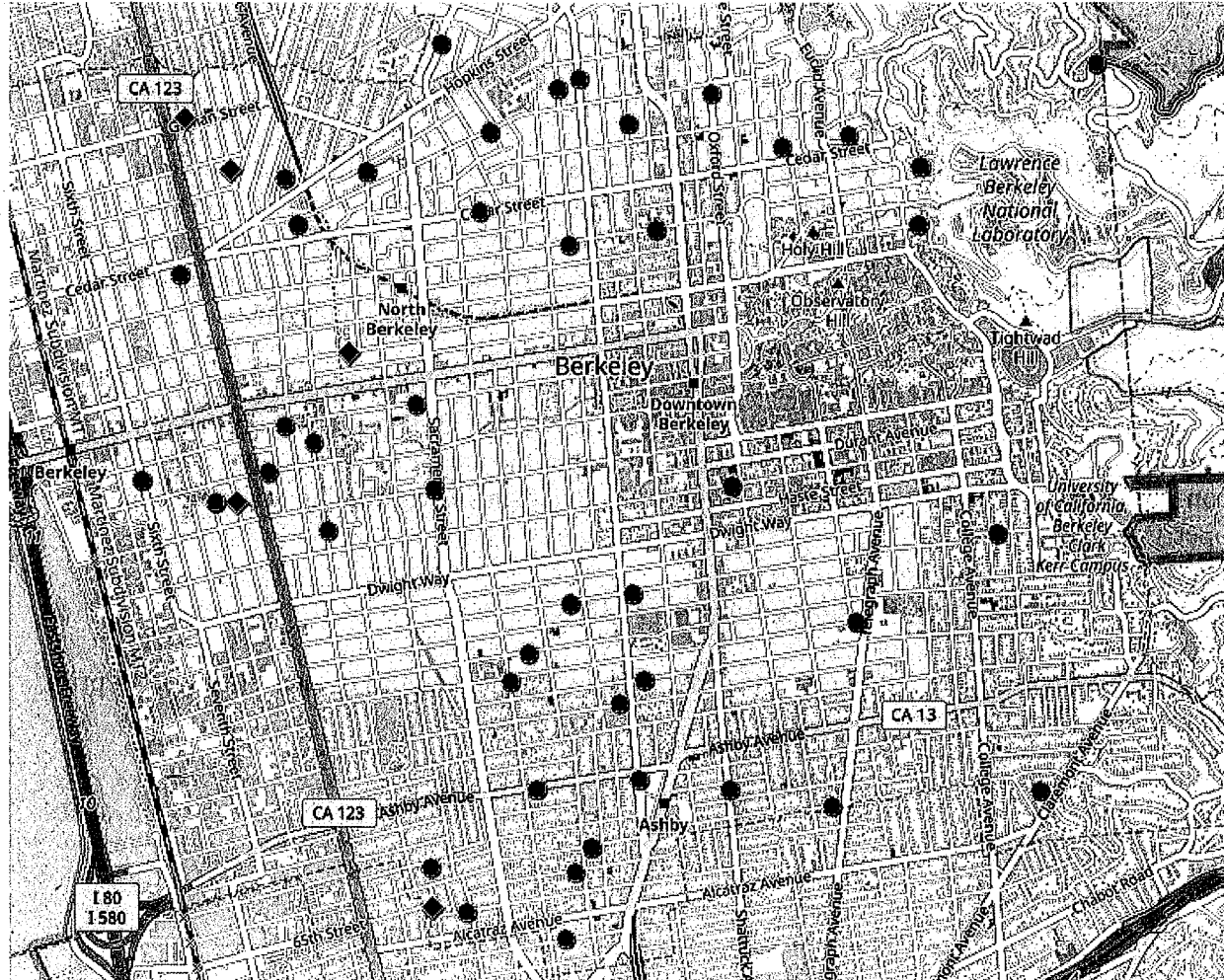
<b>Ownership Prior to Notice</b>	<b># Props.</b>
less than 1 year	18
Between 1 and 2 years	2
2 to 5 years	6
5 to 10 years	6
More than 10 years	20

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

## LOCATION OF OMI PROPERTIES

### General Distribution

The map below shows the general distribution of OMI notices for the current reporting period.



#### OMI Notices January 2016 – December 2018

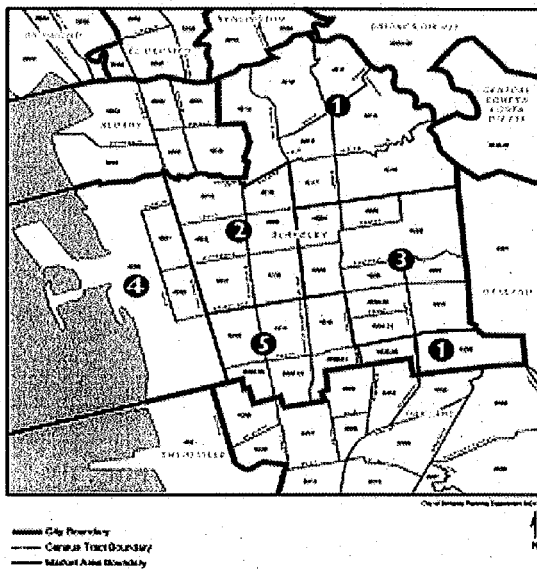
- Owner Notice
- Family Notice
- ◆ Owner Notice - last 6 months
- ◆ Unknown

**Geographic Location and Market Area**

The table below shows the geographic location and market area of the three properties that received an OMI Notice in the last six months of the current reporting period, and Attachment 2 shows this information for all properties subject to OMI notices during the current reporting period.

Date filed	Street	Market Area
7/3/2018	2228 10 <sup>th</sup> St.	West Berkeley (Area 4)
8/17/2018	1243 Kains Ave.	Central Berkeley (Area 2)
11/7/2018	1408 Cornell Ave.	Central Berkeley (Area 2)

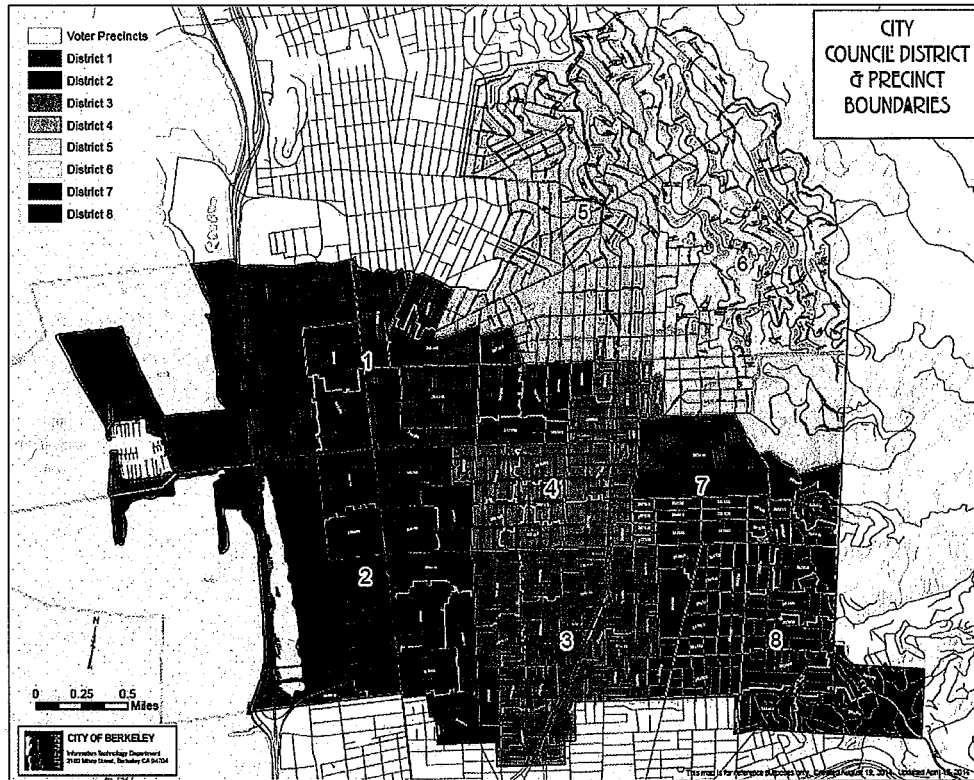
City of Berkeley Census Tract Map & Market Areas



**Number of OMI Notices by Council District**

At its April 13, 2017 Meeting, the Committee requested information about the number of notices served in each City Council District. The table below summarizes this information for the current reporting period:

Council District	Number of Total Notices	Number of Notices, Last Six Months
1	9	2
2	12	1
3	12	0
4	3	0
5	6	0
6	6	0
7	1	0
8	3	0



## **CONCLUSION**

During this reporting period (January 2016 – December 2018) the Board received a total of fifty-two OMI eviction notices. During the initial three-year monitoring period (December 2000 – December 2003), the Board received 110 eviction notices. Historically, after the passage of 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 increments, the number of OMI 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, 47 of the 56 evictions occurred during the three months prior to the adoption of 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 Measure Y became law.

Although the diligent implementation of Measure Y reduced the displacement of long-term tenants and required some relocation assistance for the most vulnerable displaced tenants, as housing prices and rents increased dramatically in recent years, so did the number of OMI evictions. The number of OMI evictions started to pick up in early-2014 (e.g., there were 19 OMI notices filed from January – June 2014). Between 2014 and 2016, there were 78 notices filed.

In November 2016, Berkeley voters passed Measure AA, which requires a standard relocation payment and an additional payment if a member of the evicted household is elderly, disabled, a long-term tenant, a minor child, or low income.



Since Measure AA went into effect, there have been 33 OMI notices filed, eight of which have been rescinded. A rescinded notice does not necessarily indicate that the tenants remain in the unit. In some instances, the parties negotiate private buyouts, and in one case the building has been removed from the rental market under the Ellis Act.

During the last six months of the current reporting period, there were three notices filed. The notices continue to be most heavily concentrated for properties in South and Central Berkeley and City Council Districts 2 and 3.

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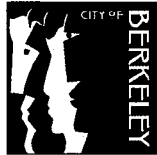
**Attachment 1:** Sample of letter sent to select rental units that received an owner-move-in eviction notice between January 2016 – December 2018.

**Attachment 2:** Table reflecting geographic location and market area of properties subject to OMI notices for the period of January 2016 – December 2018.

**Attachment 3:** Table of Measure AA notices filed with the Rent Board for the period of September 2000 through December 2018.

## ATTACHMENT 1

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



Rent Stabilization Board

April 11, 2019

[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:

**\$1411.34**

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.cityofberkeley.info/rent](http://www.cityofberkeley.info/rent).

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Siegel". The signature is written in a cursive, flowing style.

Matthew Siegel  
Staff Attorney

**ATTACHMENT 2**

**Geographic Location and Market Area of Properties Subject to OMI Notices**

Date filed	Street	Market Area
1/21/2016	1411 Northside Ave. #A	Central Berkeley (Area 2)
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)
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)
1/17/2017	2705 Ridge Rd. #4	University Area (Area 3)
1/25/2017	1434 Addison St.	Central Berkeley (Area 2)
2/17/2017	2319 Woolsey St. #A	South Berkeley (Area 5)
4/14/2017	2327 Browning St. #B	Central Berkeley (Area 2)
4/21/2017	1820 Virginia St. #B	Central Berkeley (Area 2)
5/2/2017	1708 Woolsey St.	South Berkeley (Area 5)
5/5/2017	2217--9th St. #3	West Berkeley (Area 4)
5/5/2017	2217--9th St. #1	West Berkeley (Area 4)
5/8/2017	1324--67th St.	South Berkeley (Area 5)

Date filed	Street	Market Area
6/8/2017	1452 Acton St.	Central Berkeley (Area 2)
6/14/2017	3006 MLK Jr. Way #B	South Berkeley (Area 5)
6/19/2017	1638 Fairview St. #1(upper)	South Berkeley (Area 5)
6/19/2017	158 Brookside Dr.	North Berkeley (Area 1)
6/21/2017	2125 Browning St. #A	Central Berkeley (Area 2)
6/26/2017	3049 Shattuck Ave. #1	South Berkeley (Area 5)
7/21/2017	1914 Stuart St. #C	South Berkeley (Area 5)
8/21/2017	1339 Hearst Ave.	Central Berkeley (Area 2)
11/30/2017	1225 Monterey Ave.	North Berkeley (Area 1)
12/1/2017	1278 65 <sup>th</sup> St.	South Berkeley (Area 5)
2/8/2018	1608 10 <sup>th</sup> Street	West Berkeley (Area 4)
5/25/2018	1530 Grizzly Peak Blvd.	North Berkeley (Area 1)
5/25/2018	1530 Grizzly Peak Blvd. Guest	North Berkeley (Area 1)
5/29/2018	1730 Parker St. #C	South Berkeley (Area 5)
6/15/2018	2732 Parker St.	University Area (Area 3)
6/18/2018	2124 Channing Way #B	University Area (Area 3)
7/3/2018	2228 10 <sup>th</sup> St.	West Berkeley (Area 4)
8/17/2018	1243 Kains Ave.	Central Berkeley (Area 2)
11/7/2018	1408 Cornell Ave.	Central Berkeley (Area 2)

**ATTACHMENT 3**

**OMI 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
January-June 2017	15
July-December 2017	4
January – June 2018	6
July-December 2018	3
<b>Total Notices Filed 10/2000- 06/2018</b>	<b>387</b>