



PROCLAMATION CALLING A SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

Thursday, July 30, 2020

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81409898529>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-900-9128** and enter Meeting ID: **814 0989 8529**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Public Comment - Limited to items on this agenda only

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

1. **Placing a Measure on the November 3, 2020 Ballot to Amend Various Sections of the Rent Stabilization Ordinance (Chapter 13.76)**

From: Mayor Arreguin (Author)

Recommendation:

1. Adopt a Resolution to submit to the voters proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance at the November 3, 2020 General Municipal Election. The amendments would amend various sections of the Rent Stabilization Ordinance to:

- a) Prohibit eviction of qualifying tenants for nonpayment of rent during state or local emergencies;
- b) Authorize the Rent Stabilization Board to set registration fees for partially exempt units;
- c) Limit the Accessory Dwelling Unit exemption to owner-occupied properties with a single-family home and one accessory unit.

2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 29th day of July, 2020.



Jesse Arreguin, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:



Date: July 29, 2020
Mark Numainville, City Clerk

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 65009(c)(1)(E), no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed and served on the City more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

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Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil>

COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet.

ACTION CALENDAR

July 30, 2020

To: Honorable Members of the City Council

From: Mayor Jesse Arreguin

Subject: Placing a Measure on the November 3, 2020 Ballot to Amend Various Sections of the Rent Stabilization Ordinance (Chapter 13.76)

RECOMMENDATION

1. Adopt a Resolution to submit to the voters proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance at the November 3, 2020 General Municipal Election. The amendments would amend various sections of the Rent Stabilization Ordinance to:
 - a) Prohibit eviction of qualifying tenants for nonpayment of rent during state or local emergencies;
 - b) Authorize the Rent Stabilization Board to set registration fees for partially exempt units;
 - c) Limit the Accessory Dwelling Unit exemption to owner-occupied properties with a single-family home and one accessory unit.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

BACKGROUND

Berkeley voters passed Measure D in June 1980, establishing the current Berkeley Rent Stabilization and Eviction for Good Cause Ordinance as codified in Berkeley Municipal Code Chapter 13.76. Any amendment to the ordinance requires voter approval. The Mayor is recommending three amendments to the Rent Stabilization Ordinance be submitted to the voters at the November 3, 2020 General Municipal Election.

1. Exclusion of Delayed Rent Payments During States of Emergency as a Substantive Basis for Eviction for Nonpayment of Rent

Many jurisdictions, including the City of Berkeley and Alameda County have passed ordinances to prohibit evictions for delayed payment of rent when the tenant has a covered reason related to COVID-19 for delayed payment of rent. BMC Chapter 13.110 permits a tenant to repay any accrued late rent payments within 12 months of the expiration of the state of emergency and makes clear that a tenant may not be evicted for failure to repay the rent. The Rent Ordinance, however, is silent on how states of emergency or emergency legislation impact the substantive basis for eviction for nonpayment of rent.

If the Rent Ordinance was amended to make clear that delayed rent payments during states of emergency could not be used as a substantive basis for eviction for nonpayment of rent, then it

would ensure there is no conflict between the Ordinance and eviction moratoriums passed in response to the COVID-19 global pandemic, including the Berkeley COVID-19 Emergency Response Ordinance (B.M.C. Chapter 13.110).

2. Secondary Registration Fee

The Rent Ordinance currently exempts single-family homes, condominiums, and newly constructed rental units from Registration. When owners and tenants of these rental units seek information from the Rent Board, staff is unable to provide them with substantive assistance since the agency is funded by Registration fees and thus only provides assistance to those that are fully covered by the Rent Ordinance.

If a secondary registration fee is adopted for rental units in single-family homes, condominiums, and new construction, Rent Board staff would be able to assist tenants and landlords of these units. In addition, aggregated information about these types of units would allow policymakers to monitor the ongoing housing crisis and improve the efficacy of local regulatory efforts to mitigate the crisis. The Registration Fee for these units would cover only those additional expenses incurred by the Board as a result of counseling the owners and tenants of these partially-exempt units, as well as registration of those units, and would not cover the costs associated with petitions for individual rent adjustments and other services that are not provided to partially-exempt units.

3. Clarifying Exemption of Accessory Dwelling Units from Rent and Eviction Controls

The exemption established by B.M.C. 13.76.050.N will be amended, to clarify that rental units in properties that contain only a Single-Family Dwelling and a single lawfully permitted Accessory Dwelling Unit are fully exempt from the Berkeley Rent Ordinance.

FINANCIAL IMPLICATIONS

There will be a financial cost to the City limited to the costs associated with placing the measure on the ballot. Each additional measure added to the ballot increases the costs to the city.

Limiting the substantive basis for eviction for nonpayment of rent so that it does not apply to rent payments that come due during a state or local state of emergency when triggered by applicable federal, state, or local emergency legislation will have no fiscal impact on the City. This amendment would ensure there is no conflict between the Rent Stabilization and Eviction for Good Cause Ordinance and the emergency legislation adopted by Council (BMC 13.110) in response to the current state of emergency associated with the COVID-19 pandemic. It would also potentially eliminate conflict with similar legislation in the event of a future state of Emergency.

If a secondary Registration fee for single-family homes, condominiums, and newly constructed units is adopted, the Registration fees currently mandated by B.M.C. 13.76.080 for fully covered

rental units may decrease as a result of economies of scale to provide services to partially covered units that Rent Board staff already provide to fully-covered units.

Amending the current exemption for Accessory Dwelling Units from rent and eviction controls to limit its applicability to owner-occupied single family properties could encourage the production of infill housing on single family lots.

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Attachments:

1. Resolution

 Exhibit A: Proposed Ordinance as Amended

Attachment 1

RESOLUTION NO. ##,###-N.S.

SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE TO AMEND BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO PROHIBIT EVICTION FOR NONPAYMENT OF RENT OF TENANTS WHO QUALIFY UNDER ADOPTED EMERGENCY LEGISLATION; ADOPT A SECONDARY REGISTRATION FEE FOR SINGLE-FAMILY HOMES, CONDOMINIUMS, AND NEWLY CONSTRUCTED UNITS; AND CLARIFY THE EXEMPTION OF LAWFULLY PERMITTED ACCESSORY DWELLING UNITS.

WHEREAS, the purposes of the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged; and

WHEREAS, protections against eviction established by the Berkeley City Council's COVID-19 Emergency Ordinance (B.M.C. Chapter 13.110) and similar future local emergency legislation will be codified in the Berkeley Rent Ordinance (B.M.C. 13.76.130); and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide services to landlords, owners, and tenants of single family homes, condominiums, and new construction with the imposition of a secondary Registration Fee; and

WHEREAS, the exemption established by B.M.C. 13.76.050.N. will be amended, to clarify that rental units in properties that contain only a Single Family Dwelling and a single lawfully permitted Accessory Dwelling Unit are fully exempt from the Berkeley Rent Ordinance; and

WHEREAS, these enumerated amendments to the Rent Stabilization and Eviction for Good Cause Ordinance will prevent displacement of tenants by extending additional protections and services to tenants who do not enjoy such protections under existing law; and

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to amend Berkeley Municipal Code Chapter 13.76 to prohibit eviction for nonpayment of rent of tenants who qualify

under the terms of adopted emergency legislation; adopt a secondary registration fee for single-family homes, condominiums, and newly constructed units; and limit the exemption of lawfully permitted accessory dwelling units to properties that contain a single accessory dwelling unit; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Statewide General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY ORDINANCE	
Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to: prohibit eviction of qualifying tenants for nonpayment of rent during state or local emergencies; authorize the Rent Stabilization Board to set registration fees for partially exempt units; and limit the Accessory Dwelling Unit exemption to owner-occupied properties with a single-family home and one accessory unit be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Measure

compensate commissioners for their time and work performed as required by this chapter and the city charter.

L. Dockets: The board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

M. Vacancies: If a vacancy shall occur on the board, a qualified person to fill such vacancy shall be selected in accordance with the procedures set forth in Article V of the City Charter.

N. Financing: The board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board. The registration fee for partially-exempt units shall reasonably approximate the cost of registration and counseling services for such units, and shall not include the cost of services from which such units are exempt. Such registration fees shall not be passed on to tenants in the form of rent increases except with the express prior approval of the board. The board is also empowered to request and receive funding, when and if necessary, from the city of Berkeley and/or any other available source for its reasonable and necessary expenses, including expenses incurred at the request of the City.

O. Staff: The board shall be a working board and shall employ such staff as may be necessary to perform its functions efficiently and as provided by Berkeley Ordinance.

P. Registration: The board shall require the registration of all rental units covered by this chapter as provided for in Section 13.76.080. The board may also require landlords to provide current information supplementing their registration statements.

Q. Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.

R. Conflict of Interest: Commissioners shall be subject to the requirements of the California Political Reform Act and other applicable state and local conflict of interest codes. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 13.76.120, where the commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Section 3. Section 13.76.080 of the Berkeley Municipal Code is amended to read as follows:

13.76.080 Rent registration

A. The board shall require all landlords subject to the provisions of this chapter prior to November 3, 2020, including Section 13.76.130, to file a rent registration statement with the board by September 1, 1980 ~~a rent registration statement~~ for each rental unit covered by this chapter. The board shall require all landlords subject to Subsections 13.76.050I. and 13.76.050O. of this chapter to file a rent registration statement with the board for each rental unit covered by this chapter as outlined in Subsection 13.76.080L.

An owner who has resided in a single family dwelling for at least three hundred sixty five consecutive calendar days need not file a rent registration statement under the provisions of this chapter if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

B. Landlords shall provide in their initial rent registration statement the following information:

- (1) The address of each rental unit;
- (2) The name and address of the landlord(s) and the managing agent, if any;
- (3) The date on which the landlord received legal title to or equitable interest in the rental unit;
- (4) The housing services provided for the rental unit;
- (5) The rent in effect on June 6, 1978;
- (6) The rent in effect on December 30, 1979;
- (7) The base rent ceiling;
- (8) The lowest rent in effect between June 6, 1978, and the date of the adoption of this chapter;
- (9) The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;
- (10) Whether the rental unit was vacant or occupied on May 31, 1980;
- (11) Rent in effect on December 31, 1981.

C. All rent registration statements provided by landlords in accordance with this chapter shall include an affidavit signed by the landlord declaring under penalty of perjury that the information provided in the rent registration statement is true and correct.

D. The first annual registration fee of twelve dollars per unit shall be paid by the landlords to the board no later than September 1, 1980. Subsequent annual registration fees set in accordance with Section 13.76.060N of this chapter shall be paid no later than July 1 of each. Because fees charged in years prior to 1991 were due on September 1, but paid for board expenses from each preceding July 1, the fee due 1991 shall be calculated to pay for twelve months of board expenses.

E. The board shall provide forms for the registration information required by this section and shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this section.

F. Every annual registration fee required by this chapter which is not paid on or before July 1 is declared delinquent, and the board shall add to said registration fee and collect a penalty of one hundred percent of the fee so delinquent in addition to the fee. Every six months that the fee and penalty remain delinquent, the penalty shall be increased by one hundred percent of the original fee. The board may waive the penalty if payment is made within thirty days of the original due date.

A landlord may request the board to waive all or part of the penalty if he/she can show good cause for the delinquent payment.

G. The amount of any registration fee and penalty imposed by the provisions of this chapter shall be deemed a debt to the city.

H. Within thirty days after the filing of a rent registration statement, the board shall provide a true and correct copy of said statement to the occupant of the respective unit.

I. Landlords of formerly exempt units shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

J. No landlord shall be deemed to be in compliance with this section with respect to a given unit until the landlord has completed registration for all covered units in the same property. Registration shall be deemed complete when all required information has been provided and all outstanding fees and penalties have been paid.

K. Registration fees shall not be passed along to the tenants without the express, prior approval of the board. Under no circumstances shall penalties be passed along to tenants.

L. Landlords of partially-exempt units (set forth above in Sections 13.76.050I. and 13.76.050O.) shall register within sixty days of coming under coverage of this chapter. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next July 1 annual registration deadline.

Section 4. Section 13.76.130 of the Berkeley Municipal Code is amended to read as follows:

13.76.130 Good cause required for eviction

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days. Rent that is lawfully withheld pursuant to emergency legislation that authorizes rent withholding during the effective period of a state of emergency applicable in Berkeley shall not constitute grounds for recovery of possession except as expressly provided in the applicable emergency legislation. Emergency legislation adopted during the emergency may prohibit recovery of possession for lawfully withheld rent even after the expiration of a state or local emergency.

2. The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement. Notwithstanding any contrary provision in this chapter or in the rental agreement, a landlord is not entitled to recover possession of a rental unit under this subsection where a tenant permits his or her rental unit to be occupied by a subtenant, provided:

a. The landlord has unreasonably withheld consent to the subtenancy; and

b. The tenant remains an actual occupant of the rental unit; and

c. The number of tenants and subtenants actually occupying the rental unit does not exceed the number of occupants originally allowed by the rental agreement or the board's regulations, whichever is greater.

d. Withholding of consent by the landlord shall be deemed to be unreasonable where:

(i) The tenant's written request for consent was given at least two weeks prior to commencement of the subtenancy;

(ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information; and

(iii) The proposed new subtenant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; and

(iv) The landlord has not articulated in writing a well-founded reason for refusing consent.

3. The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

4. The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises or the tenant is otherwise subject to eviction pursuant to subdivision 4 of Code of Civil Procedure Section 1161.

6. The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

7a. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and

laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

b. Where such repairs can be completed in a period of 60 or fewer days, and the tenant, within 30 days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this subsection (13.76.130A.7.) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

c. Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this subsection (13.76.130A.7.), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(i) To enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant; or

(ii) To enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

d. Where the landlord recovers possession under this subsection (13.76.130A.7.), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event the landlord files an application for an individual rent adjustment within six

months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

8. The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

9. Owner Move-in Evictions.

a. The landlord seeks in good faith with honest intent and without ulterior motive to recover possession for his/her own use and occupancy as his/her principal residence for a period of at least 36 consecutive months; or

b. For the use and occupancy as the principal residence by the landlord's spouse or by the landlord's child, or parent for a period of at least 36 consecutive months.

c. For the purposes of this subsection (13.76.130A.9.), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record.

d. All notices terminating tenancy pursuant subsection 13.76.130.A.9 shall include the following: the existence and potential availability of relocation assistance under subsection 13.76.130A.9.g; the existence of tenant protections for families with minor children as defined in subsection 13.76.130A.9.k; the name and relationship of any qualified relative for purposes of subsection 13.76.130A.9b; and the landlord's ownership interest in any residential properties in the City of Berkeley where such interest, in any form whatsoever, is ten percent (10%) or greater. The landlord shall, within ten days of giving notice, file a copy of the notice terminating tenancy with the Rent Board.

e. The landlord may not recover possession under this subsection (13.76.130A.9.) if a comparable unit, owned by the landlord in the City of Berkeley, was, at the time of the landlord's decision to seek to recover possession of the

rental unit, already vacant and available, or if a comparable unit, owned by the landlord in the City of Berkeley, thereafter becomes vacant at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

f. The landlord shall offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit at a rate based on the rent the tenant is paying with an upward or downward adjustment based on the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.

g. Where a landlord recovers possession of a unit under subsection 13.76.130A.9, the landlord is required to provide standard relocation assistance to tenant households where at least one occupant has resided in the unit for one year or more in the amount of \$15,000. The landlord is required to provide an additional \$5,000 relocation assistance to tenant households that qualify as low-income; or include disabled or elderly tenants; minor children; or tenancies which began prior to January 1, 1999. The relocation fees set forth above shall be increased in accordance with the rules set forth in subsection 13.76.130A.9.h below. The procedures for payment of this relocation assistance are set forth below in subsection 13.76.130A.9.p.(i) through (iv). The following definitions apply for any tenant households evicted for owner move-in under subsection 13.76.130A.9:

(i)"low-income tenants" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States

Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5.

(ii) a person is “disabled” if he/she has a physical or mental impairment that limits one or more of a person's major life activities within the meaning of the California Fair Housing and Employment Act (Government Code § 12926).

(iii) “elderly” is defined as sixty (60) years of age or older.

(iv) “minor child” means a person who is under 18 years of age.

(v) “tenancy began prior to January 1, 1999” is a tenancy where an “original occupant” (as defined by Berkeley Rent Board Regulation) still permanently resides in the rental unit.

h. Effective January 1 of each year beginning in 2018, the fees set forth above in subsection 13.76.130A.9.g., may be increased in an amount based on the Consumer Price Index - All Urban Consumers in the San Francisco-Oakland-San Jose Region averaged for the 12-month period ending June 30, of each year, as determined and published by United States Department of Labor. Any increase shall be published by the Board on or before October 31st of each year.

i. It shall be evidence that the landlord has acted in bad faith if the landlord or the landlord's qualified relative for whom the tenant was evicted does not move into the rental unit within three months from the date of the tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least 36 consecutive months.

j. Once a landlord has successfully recovered possession of a rental unit pursuant to subsection 13.76.130A.9.a., then no other current or future landlords may recover possession of any other rental unit on the property pursuant to subsection 13.76.130A.9.a. It is the intention of this subsection that only one specific unit per property may be used for such occupancy under subsection 13.76.130A.9.a and that once a unit is used for such occupancy, all future occupancies under subsection 13.76.130A.9.a must be of that same unit.

k. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit has a custodial or family relationship with a minor child who is residing in the unit, the tenant with the custodial or family relationship has resided in the unit for 12 months or more, and the effective date of the notice of termination of tenancy falls during the school year. The term “school year” as used in this subsection means the first day of instruction for the Fall Semester through the first day of the month following the last day of instruction for the Spring Semester, as posted on the Berkeley Unified School District website for each year.

(i) For purposes of subsection 13.76.130A.9.k, the term “custodial relationship” means that the person is a legal guardian of the child, or has a caregiver’s authorization affidavit for the child as defined by Section 6550 of the California Family Code, or that the person has provided full-time custodial care of the child pursuant to an agreement with the child’s legal guardian or court-recognized caregiver and has been providing that care for at least one year or half of the child’s lifetime, whichever is less. The term “family relationship” means that the person is the biological or adoptive parent, grandparent, brother, sister, aunt or uncle of the child, or the spouse or domestic partner of such relations.

l. A landlord may not recover possession of a unit from a tenant under subsection 13.76.130A.9 if any tenant in the rental unit:

(i) Is 60 years of age or older and has been residing on the property for five years or more;
or

(ii) Is disabled and has been residing on the property for five years or more; or

(iii) Has resided on the property for five years or more and the landlord has a ten percent (10%) or greater ownership interest, in any form whatsoever, in five or more residential rental units in the City of Berkeley.

m. A tenant who claims to be a member of one of the classes protected by subsection 13.76.130A.9.l must submit a statement, with supporting evidence, to the landlord. A

tenant's failure to submit a statement at any point prior to the trial date of an unlawful detainer action for possession of the tenant's unit shall be deemed an admission that the tenant is not protected by subsection 13.76.130A.9.I. A landlord may challenge a tenant's claim of protected status by raising it as an issue at trial in an unlawful detainer action for possession of the tenant's unit.

n. The provisions of subsection 13.76.130A.9.I shall not apply to the following situations:

(i) Where a person is the owner of three or fewer residential units in the City of Berkeley and has no greater than a nine percent (9%) ownership interest in any other residential unit in the City of Berkeley; or

(ii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I and the landlord's qualified relative who is seeking possession of a unit subject to subsection 13.76.130A.9.b is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii) above; or

(iii) Where each residential rental unit in Berkeley in which the landlord holds an ownership interest of ten percent (10%) or greater is occupied by a tenant otherwise protected from eviction by subsection 13.76.130A.9.I, the landlord has owned the unit for which possession is being sought subject to subsection 13.76.130A.9.a for five years or more and is 60 years of age or older or is disabled as defined in subsection 13.76.130A.9.I.(ii).

o. Where a landlord recovers possession under Subsection 13.76.130A.9, the tenant must be given the right of first refusal to re-occupy the unit upon its next vacancy.

p. When a landlord is required to provide a relocation assistance payment subject to subsection 13.76.130A.9.g, the payment shall be divided among the tenants occupying

the rental unit at the time of service of the notice to terminate tenancy.

(i) Within ten days of service of a notice terminating tenancy under subsection 13.76.130A.9, the landlord shall deposit the standard relocation assistance (for households where an occupant has resided one year or more) with the City or its designated agent to be held in escrow. Within ten days after the funds

are deposited into escrow, the City shall release the standard relocation assistance to the tenant household, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(ii) In order to claim entitlement to additional relocation assistance under subsection 13.76.130A.9.g, a tenant must notify the landlord and the Rent Stabilization Program in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 (hereinafter "entitlement to additional relocation assistance") per subsection 13.76.130A.9.g within 30 days of filing of notice of termination of tenancy with the Rent Stabilization Program. The landlord shall deposit the additional relocation payment with the Rent Stabilization Program or its designated agent to be held in escrow for any tenant household who claims entitlement to additional relocation assistance within ten days after such notice claiming entitlement to additional relocation assistance is mailed. Within ten days after the funds are deposited into escrow, the Rent Stabilization Program shall authorize release the relocation assistance to the tenant household that claims entitlement to additional relocation assistance, unless the landlord notifies the Rent Stabilization Program in writing that he/she disputes the tenant's eligibility to receive such assistance.

(iii) When a tenant household's eligibility to receive standard or additional relocation

assistance as described in subsection 13.76.130A.9.g is disputed, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. The Rent Stabilization Program shall release disputed relocation assistance funds to either the tenant or the landlord upon receipt of either a written agreement by both the landlord and the affected tenant, an order of a court of competent jurisdiction, or an order of a City or Rent Board hearing examiner issued pursuant to a petition process conducted in accordance with applicable Rent Board Regulations.

(iv) The landlord may rescind the notice of termination of tenancy prior to any release of relocation payment to the tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the landlord. Subsequent to the release of any relocation payment to the tenants, the landlord may rescind the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the tenants remain in possession of the rental units after service of a landlord's written notice of rescission of the eviction, the tenants shall provide an accounting to the landlord of the amount of the relocation payment expended for moving costs, return to the landlord that portion of the relocation payment not expended for moving costs, and assign to the landlord all rights to recover the amount of relocation payment paid to third parties. If a rescission occurs under this subsection, the tenant(s) shall continue the tenancy on the same terms as before the notice was served.

(v) Where a landlord has served a notice of termination of tenancy on a tenant prior to the date that this amendment takes effect and the notice of termination of tenancy has not expired, the landlord shall deposit the full relocation payment with the City or its designated agent to be held in escrow for the

tenants if the tenants have not vacated the rental unit as of the effective date of this amendment, and the landlord shall pay the full relocation payment to the tenants if the tenants have vacated the rental unit as of the effective date of this amendment. Said deposit in escrow or payment to the tenants shall be made within ten days of the effective date of this amendment.

(vi) Failure of the landlord to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the landlord's termination of tenancy notice pursuant to this subsection (13.76.130A.9). In addition, if the tenants of a rental unit have vacated the unit as a result of a notice of termination of tenancy pursuant to this subsection (13.76.130.A.9), and the landlord fails to make any payment specified herein, the landlord shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

q. A tenant who prevails in an action brought under this subsection (13.76.130A.9), in addition to any damages and/or costs awarded by the court, shall be entitled to recover all reasonable attorney's fees incurred in bringing or defending the action.

r. 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 pursuant to this subsection (13.76.130A.9) within the prior 36 months.

s. If any provision or clause of this subsection (13.76.130A.9) or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this subsection are severable.

10. A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for

his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of 90 days).

B. A landlord's failure to specify good cause as listed above in subsections 1. through 11. of Section 13.76.130A. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this chapter.

C. In any action to recover possession of a rental unit covered by the terms of this chapter, except an action to recover possession under subsection 13.76.130A.7., 13.76.130.A.8, or 13.76.130.A.11., a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 13.76.100 (Rent Ceiling) and 13.76.080 (Rent Registration) of this chapter.

D. The landlord shall file with the board a copy of any notice of termination, notice to quit, and summons and complaint, within ten days after the tenant has been served with such notice or summons and complaint.

Section 5. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.