



Rent Stabilization Board
Office of the Executive Director

ACTION CALENDAR
July 12, 2022

TO: Honorable Mayor and Members of the City Council
FROM: 4 x 4 Joint Committee on Housing City Council/Rent Board
SUBMITTED BY: Matt Brown, General Counsel, Rent Stabilization Board
SUBJECT: Placing a Measure on the November 8, 2022 Ballot Amending the
Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76)

RECOMMENDATION

1. Adopt a Resolution placing the proposed amendments to the Rent Stabilization and Eviction for Good Cause Ordinance on the ballot of the November 8, 2022 General Municipal Election.
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.

SUMMARY

The Rent Stabilization Board and 4 x 4 Committee on Housing City Council/Rent Board has recommended a set of amendments to the Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. Chapter 13.76). These amendments set forth the following changes:

1. Amend the Rent Stabilization and Eviction for Good Cause Ordinance to allow for rent control to attach to all residential rental units where state law does not prohibit it, and specifically allow Council to designate new units as rent-controlled when they are created pursuant to demolition projects as allowed by Senate Bill 330;
2. Eliminate the good cause for Eviction that allows landlords to evict tenants who have exceeded previously established occupancy limits unless the number of occupants

currently in the rental unit exceeds the maximum number of occupants legally allowed under Section 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922;

3. Eliminate B.M.C. Section 13.76.060Q, which allows Council, upon request by the Board, to decontrol rental units in the event the annual average vacancy rate for all rental units in the City of Berkeley exceeds five percent over a six-month period;
4. Add eviction protections for certain units that do not currently have them.

FISCAL IMPACTS OF RECOMMENDATION

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.

If more rental units are fully covered by the Ordinance, 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 all fully-covered units.

CURRENT SITUATION AND ITS EFFECTS

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. Berkeley City Council has, periodically, placed measures on the general ballot for the voters to decide when the Board recommends amendments.

1. Expansion of Rent Control to Cover Units Created as the Result of Demolition Pursuant to SB 330 and make clear that Rent Control Applies to all Units unless Specifically Prohibited by State Law

The Rent Ordinance currently defines “new construction” as a rental unit that was created after June 30, 1980. The date a unit was created is based upon the date of issuance of the first certificate of occupancy. While newly constructed units are partially covered by the Rent Ordinance (Registration, Security Deposit Interest, and Good Cause Eviction Protections), they are not covered by rent control.

2. Allow for Increased Occupancy of Rental Units Without Threat of Eviction

The Ordinance specifically provides a ground for eviction when any subletting by the tenant household results in an increase above the base occupancy level. A tenant household may also be evicted from their rental unit if they substantially violate a material term of the rental agreement, and a landlord may argue that households that exceed the base occupancy level may be evicted

for this reason.

3. Eliminate “Decontrol” Clause from the Ordinance

The elected Board may request that Council decontrol rental units if the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six-month period.

4. Add Eviction Protections to Rental Units that do not Currently Receive Them

The Rent Ordinance fully exempts a subset of owner-occupied duplexes from the Rent Ordinance. These “golden duplexes” are ones that are currently owner-occupied as a principal residence and were owner-occupied (not necessarily by the same owner) on December 31, 1979.

The Rent Ordinance also fully exempts rental units on properties with a permitted Accessory Dwelling Unit where one unit on the property is owner-occupied as a principal residence and the tenancy was created after November 7, 2018.

Tenant occupied units on these properties do not have eviction protections articulated in the Rent Ordinance when the property owner occupies a unit on the property as their principal residence.

BACKGROUND

1. Expansion of Rent Control to Cover Units Created as the Result of Demolition Pursuant to SB 330 and make clear that Rent Control Applies to all Units unless Specifically Prohibited by State Law

SB 330 allows cities to impose rent control protections on units that are built as the result of demolition of previously-controlled units. The Housing Crisis Act of 2019 requires all housing projects that demolish existing residential units to create as least as many residential units as are being demolished. Projects that contain "protected units," which include residential units that have been subject to a local rent control program within the previous five years, are required to provide replacement units at an affordable rent (or sales price) with the same number of bedrooms as the demolished unit. The affordability level of a replacement unit is based on the income level of the last household occupying the demolished unit and must be rented (or sold) at a rate that is affordable to occupants of the same income category or lower. If a "protected unit" was last occupied by persons or families above the low-income category, the affected city has the option to require that the housing project provide: 1) a replacement unit affordable to low-income households for a period of at least 55 years, or 2) a replacement unit that complies with the jurisdiction's rent or price control ordinance.

Currently, the Rent Control Ordinance expressly exempts newly constructed units from Chapters 10 (Establishment of Base Rent Ceiling and Posting), 11 (Annual General Adjustment of Rent

Ceilings) and 12 (Individual Adjustments of Rent Ceilings) of Ordinance. These residential units are subject to the registration requirements of Measure MM, are covered by good cause for eviction, and are entitled to annual security deposit interest, but they are not subject to local rent controls. SB 330 would allow for these new units created as the result of demolition to be fully covered by the rent control provisions of the ordinance should the City choose that option when approving new construction that was the result of demolition of existing qualifying units.

The 4 x 4 Committee also directed staff to draft language that would amend the Rent Ordinance to make clear that all newly constructed units are fully rent-controlled unless otherwise prohibited by state law.

The Board voted unanimously to support this proposal on March 17, 2022, and the 4 x 4 Committee voted on May 3, 2022, to support this proposal. The approved language is set forth in Attachment A, in subsections 13.76.040 and 13.76.050.

2. Allow for Increased Occupancy of Rental Units Without Threat of Eviction

The 4 x 4 Committee also recommended that the Ordinance be amended to prohibit evictions based on the addition of occupants if the landlord has unreasonably refused the tenant's written request, including a refusal based on the number of occupants allowed by the rental agreement or lease.

Tenants' ability to add additional occupants to their household can be a precarious proposition given that a good cause for eviction lies when a tenant household substantially violates a material term of the rental agreement. While tenants are currently protected from eviction when there is one-for-one replacement of tenants, the Ordinance specifically provides a ground for eviction when any subletting by the tenant household results in an increase above the base occupancy level (B.M.C. 13.76.130A.2.(c)).

While the Board has express authority to regulate the manner and grounds for which rents may be increased or decreased,¹ the grounds for eviction are hard-coded in the Ordinance (B.M.C. 13.76.130.). One such basis for eviction is when the "...tenant has continued...to substantially violate any of the material terms of the rental agreement..."(B.M.C. 13.76.130A.2.). Thus, while Board Regulation 1270 can be amended to allow for an increase in the base occupancy level of a unit without a corresponding rent increase, the regulation cannot override the good cause for eviction based on a lease violation, such as when a household has more occupants than those allowed pursuant to the initial agreement between the landlord and tenant.

The current proposal would allow tenants to exceed the base occupancy limits without risk of eviction unless the number of occupants exceeds the maximum number of occupants legally

¹ See B.M.C. Section 13.76.120C.

allowed under 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922. Landlords would still have the ability to deny occupancy to a tenant if the proposed subtenant does not meet the landlord's customary occupancy qualifications or if the proposed subtenant presents a direct threat to the health, safety, or security of other residents of the property.

The Board voted unanimously to support this proposal on March 17, 2022, and the 4 x 4 Committee voted on May 3, 2022, to support this proposal. The approved language is set forth in Attachment A, in subsection 13.76.130.

3. Eliminate "Decontrol" Clause from the Ordinance

The Rent Ordinance has a section that allows the Berkeley City Council (upon request by the Board) to exempt units from rent control should vacancy rates reach 5% over a six-month period.² While Council has the discretion to eliminate rent controls for units (it is not mandatory), this clause is inconsistent with the Charter and most all of the Rent Ordinance which establishes the Board's separate authority to regulate rents and administer the law independent of any other elected or appointed body.

Moreover, given that both the Charter and Rent Ordinance are voter-adopted initiatives, it follows that the issue of decontrol would be put before the voters in the event that the community decides to eliminate local rent control. Council has no other authority to interfere either substantively or procedurally in the Board's administration, so removing this clause will be consistent with the overall operation of the rent program and the law the Board and staff administer.

The proposal would be to simply eliminate this paragraph from the Rent Ordinance.

The Board voted unanimously to support this proposal on March 17, 2022, and the 4 x 4 Committee voted on May 3, 2022, to support this proposal. The approved language is set forth in Attachment A, in subsection 13.76.060.

4. Add Eviction Protections to Rental Units that do not Currently Receive Them

The 4 x 4 Committee voted on a proposal that would protect more tenants from eviction. The Committee particularly expressed concern regarding vulnerable tenants who may lose their homes following the expiration of the eviction moratorium associated with the COVID-19 Pandemic (B.M.C. Section 13.110).

² BMC Section 13.76.060Q.

The Committee requested that good cause for eviction protections articulated in B.M.C. Section 13.76.130 be extended to tenants in properties that are currently fully exempt from the Ordinance; namely the Accessory Dwelling Unit exemption as defined in B.M.C. Section 13.76.050N, and the “golden duplex” exemption as defined in B.M.C. Sections 13.76.050F, and 13.76.050H. Both of these properties are fully exempt when the property owner principally resides in a unit on the property. The proposal would only add good cause eviction protections pursuant to B.M.C. Section 13.76.130; it would not remove any other exemptions from the Ordinance for these properties.

The 4 x 4 Committee voted on May 3, 2022, to support this proposal. The approved language is set forth in Attachment A, in subsection 13.76.050.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

This report and its recommendations are the result of direction from the 4 x 4 Committee, which voted on May 3, 2022 to recommend to the City Council to place the proposed amendments on the ballot for November 8, 2022. The Rent Stabilization Board also voted on March 17, 2020, to support the first three proposals.

ALTERNATIVE ACTIONS CONSIDERED

There was some discussion at both the Board and the 4 x 4 Committee of including a clause that makes explicit that California Civil Code Section 1954.52(b) allows Council to attach rent control to units that would otherwise qualify as new construction in the event that projects allowed for certain density bonuses, but this ultimately did not gain sufficient traction and is not a part of the proposed amendments. The Committee discussed at some length that they thought this was already allowed by the current amendments included in B.M.C. 13.76.040R, which make explicit that all new construction is fully covered by the Ordinance in the event that state law does not specifically prohibit it. In any event, the City will need to make more sweeping changes to the Planning/Zoning Ordinances in order to implement these changes should Council wish to do so in the future.

CONTACT PERSON

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Attachments:

1. Resolution

Exhibit A: Ordinance as Amended

2. May 3, 2022 Staff Report to 4 x 4 Committee

Attachment 1

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

SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE TO AMEND BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ALLOW, TO THE EXTENT THAT STATE OR LOCAL LAW PERMITS, FOR THE REGULATION OF NEWLY CONSTRUCTED UNITS, INCLUDING BUT NOT LIMITED TO, UNITS CREATED PURSUANT TO SENATE BILL 330 (HOUSING CRISIS ACT OF 2019); TO ADD EVICTION PROTECTIONS FOR RENTAL UNITS IN A RESIDENTIAL PROPERTY CONSISTING OF TWO UNITS WHERE ONE OF THE UNITS IS OCCUPIED BY A LANDLORD AS THEIR PRINCIPAL PLACE OF RESIDENCE AND WHERE ONE OF THE TWO UNITS WAS OWNER-OCCUPIED AS OF DECEMBER 31, 1979 AND EVICTION PROTECTIONS TO TENANTS IN RENTAL UNITS CONTAINING A SINGLE FAMILY DWELLING AND ONE LAWFULLY ESTABLISHED ACCESSORY DWELLING UNIT WHERE THE LANDLORD OCCUPIES A UNIT IN THE SAME PROPERTY; TO PROHIBIT EVICTIONS BASED ON THE ADDITION OF OCCUPANTS IF THE LANDLORD HAS UNREASONABLY REFUSED THE TENANT'S REQUEST; AND TO ELIMINATE SECTION 13.76.060 (DECONTROL).

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, the Berkeley Rent Stabilization Board will be able to provide greater protections to tenants in newly constructed units; and

WHEREAS, the Berkeley Rent Stabilization Board will be able to provide greater eviction protections for tenants in units that previously did not have such protections; and

WHEREAS, eviction protections will be increased for tenant households that add additional occupants if a landlord has unreasonably refused a tenant's written request; and

WHEREAS, Section 13.76.060 (Decontrol) is to be eliminated; 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 8, 2022 General Municipal Election, a measure to amend Berkeley Municipal Code Chapter 13.76 to allow for the regulation of newly constructed units if permissible under state or local law; to provide eviction protections under the Ordinance for tenants in properties consisting of two units where one unit is a landlord's principal place of residence and one unit was a landlord's principal place of residence as of December 31, 1979 and eviction protections to tenants residing on a property containing a single family dwelling and a lawfully established Accessory Dwelling Unit where the landlord occupies a unit at the property; to provide eviction protections for tenants that add additional occupants to their household after the landlord has unreasonably refused a written request to do so; and to eliminate Section 13.76.060 (Decontrol) from the Ordinance; 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 8, 2022; 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: allow, to the extent that state or local permits, for the regulation of newly-constructed units; to provide eviction protections to tenants in certain two-unit properties where such eviction protections previously did not apply; to provide eviction protections to tenants who add additional occupants after the landlord has unreasonably denied such a request; and to eliminate Section 13.76.060 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

Exhibit A

ORDINANCE NO. ##,###-N.S.

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ALLOW, TO THE EXTENT THAT STATE OR LOCAL LAW PERMITS, FOR THE REGULATION OF NEWLY CONSTRUCTED UNITS, INCLUDING BUT NOT LIMITED TO, UNITS CREATED PURSUANT TO SENATE BILL 330 (HOUSING CRISIS ACT OF 2019); TO ADD EVICTION PROTECTIONS FOR RENTAL UNITS IN A RESIDENTIAL PROPERTY CONSISTING OF TWO UNITS WHERE ONE OF THE UNITS IS OCCUPIED BY A LANDLORD AS THEIR PRINCIPAL PLACE OF RESIDENCE AND WHERE ONE OF THE TWO UNITS WAS OWNER-OCCUPIED AS OF DECEMBER 31, 1979 AND EVICTION PROTECTIONS TO TENANTS IN RENTAL UNITS CONTAINING A SINGLE FAMILY DWELLING AND ONE LAWFULLY ESTABLISHED ACCESSORY DWELLING UNIT WHERE THE LANDLORD OCCUPIES A UNIT IN THE SAME PROPERTY; TO PROHIBIT EVICTIONS BASED ON THE ADDITION OF OCCUPANTS IF THE LANDLORD HAS UNREASONABLY REFUSED THE TENANT'S REQUEST; AND TO ELIMINATE SECTION 13.76.060 (DECONTROL)

The People of the City of Berkeley do ordain as follows:

Section 1. Section 13.76.040 of the Berkeley Municipal Code is amended to read as follows:

13.76.040 Definitions.

- A. "Board" refers to the elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.
- B. "Commissioners" means the members of the board who are denominated commissioners.
- C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility

connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.

G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.

I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

J. "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing,

dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

K. "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

L. "Recognized tenant organization" means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.

M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this chapter.

N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this chapter.

O. "Fees" means for the purpose of this chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

P. "Nonprofit, accredited institution of higher education" means a post secondary educational institution whose legal status under the California Education Code is verified by an annual validation receipt from the California State Department of Education, and which is accredited by the Western Association of Schools and Colleges or the Association of Theological Schools and which is exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code and under Section 23701(d) of the Revenue and Taxation Code, and which, if otherwise required by law to do so, has obtained a valid unrevoked letter or ruling from the United States Internal Revenue Service or from the Franchise Tax Board which states that the organization so qualifies for exemption from taxation.

Q. "Newly Constructed" means a rental unit created after June 30, 1980. For purposes of this definition, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit. However, in the event of the repeal or amendment of Civil Code Section 1954.52, such that "certificate of occupancy" is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City.

R. Notwithstanding any other provision in this ordinance, and to the extent that state or local law does not prohibit a local jurisdiction from regulating the rent on a residential rental unit, such units shall not be exempt as "newly constructed units" and, unless otherwise exempt, shall be covered by all provisions of this chapter. This includes, but is not limited to, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a "housing development project" as defined in the Housing Crisis Act of 2019 (Senate Bill 330).

Section 2: Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

13.76.050 Applicability

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.

C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). However, the exemption of such rental units shall be limited to

their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F. and G., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040Q. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the

property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

N. A rental unit in a residential property containing only a Single Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection (13.76.050N) shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018. However, the exemption of such rental units shall be limited to their exemption from the terms of

Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

O. A dwelling or a unit alienable separate from the title to any other dwelling unit unless the tenancy commenced before January 1, 1996. However, the exemption of such units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. A property owner who owns only one residential unit in the City of Berkeley, and occupied that residential unit for 365 consecutive days as their principal residence immediately prior to renting the unit, and is absent from the unit for a period not to exceed 24 months, and such period is specified in the lease, shall also be exempt from the terms of Section 13.76.080, Rent Registration, of this Chapter. The exemptions provided in this Section shall apply only as long as the pertinent provisions of California Civil Code Section 1954.50 et. seq. ("Costa-Hawkins") remain in effect and require such an exemption.

Section 3: Section 13.76.060 of the Berkeley Municipal Code is amended to read as follows:

13.76.060 Rent Stabilization Board

A. Composition. There shall be in the city of Berkeley an elected rent stabilization board; the board shall consist of nine commissioners. The board shall elect annually as chairperson one of its members to serve in that capacity.

B. Eligibility. Residents who are duly qualified electors of the city of Berkeley are eligible to serve as commissioners on the board.

C. Full disclosure of holdings. Candidates for the position of commissioner shall fulfill the requirements as set forth in the City Charter in Article III, Section 6 1/2.

In addition, when filing nomination papers, candidates shall submit a verified statement of their interests and dealings in real property, including but not limited to its ownership, sale or management and investment in and association with partnerships, corporations, joint ventures and syndicates engaged in its ownership, sale or management during the previous three years.

D. Election of commissioners. Commissioners shall be elected at the statewide general election held in November of even numbered years.

E. Terms of office. Commissioners' terms of office shall be as set forth in Article XVII of the Berkeley City Charter.

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

1. Set the rent ceilings for all rental units.
2. Require registration of all rental units under Section 13.76.080.
3. Publicize the manner in which the base rent ceiling is established under Section 13.76.100.
4. To make adjustments in the rent ceiling in accordance with Sections 13.76.110 and 13.76.120.
5. Set rents at fair and equitable levels in view of and in order to achieve the purposes of this chapter.
6. To issue orders, rules and regulations, conduct hearings and charge fees as set below.
7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.

8. Report annually to the city council of the city of Berkeley on the status of rental housing units covered by this chapter.
9. Request the City Council to remove rent controls under Section 13.76.060Q.
10. Administer oaths and affirmations and subpoena witnesses and relevant documents.
11. Establish rules and regulations for settling civil claims under Section 13.76.150.
12. Seek injunctive relief under Section 13.76.150.
13. Pursue civil remedies in courts of appropriate jurisdiction.
14. Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this chapter.
15. Hold public hearings.
16. Charge and collect registration fees, including penalties for late payments.
17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.
18. Except as provided in Section 13.76.060N of this chapter, the board shall finance its reasonable and necessary expenses for its operation without the use of general fund monies of the city of Berkeley.

G. Rules and Regulations: The board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of this Chapter. The board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the city of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the board shall be kept in the board's office and shall be available to the public for inspection and copying.

The board shall publicize this Chapter so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Chapter. The board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Chapter. The brochure shall be made available to the public.

H. Meetings: The board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the commissioners of the board. The board shall hold its initial meeting no later than July 15, 1980.

I. Quorum: Five commissioners shall constitute a quorum for the board.

J. Voting: The affirmative vote of five commissioners of the board is required for a decision, including all motions, rules, regulations, and orders of the board.

K. Compensation: The rent stabilization board shall be a working board. Commissioners shall be paid compensation and benefits in an amount set by the board in order to 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.~~ Q. 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 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~~ the maximum number of occupants legally allowed under Section 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- 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; tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request; or~~
 - (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 the proposed new subtenant or additional occupant 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 or
 - ~~(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~~

(iii iv) The landlord has not articulated in writing a well-founded reason for refusing consent. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

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.

7. a. 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 to 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.

I. 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.I 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 of 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.

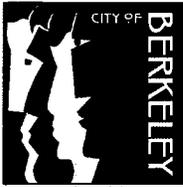
11. The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.76.130A.7.c., following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's 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.



Rent Stabilization Board
Legal Unit

MEMORANDUM

DATE: May 3, 2022

TO: Honorable Members of the 4 x 4 Joint Committee on Housing

FROM: Honorable Members of the Berkeley Rent Stabilization Board
By: Matt Brown, General Counsel
Matthew Siegel, Staff Attorney

SUBJECT: Proposed Amendments to Rent Stabilization and Eviction for Good Cause Ordinance to be Placed on November 2022 Ballot

Summary

The Legislation, IRA/AGA & Registration Committee has discussed potential amendments to the Rent Stabilization and Eviction for Good Cause Ordinance to propose to the full Board at each meeting since October 13, 2020. At its March 9, 2022 meeting, the Committee recommended the amendments articulated in this memorandum. The amendments are designed to ensure that the Ordinance better serves its purpose; namely the prevention of arbitrary, discriminatory or retaliatory evictions, in order to maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. In light of both the ongoing housing crisis and the continuing threat to housing stability posed by the COVID-19 pandemic, these proposed amendments enhance the ability of the Board and City Council to preserve the public peace, health and safety, and the availability of housing for low and fixed income households, people of color, students, people with disabilities, and older residents.

At its March 17, 2022 meeting the Board voted to support these amendments and requested that staff forward them to the 4 x 4 Committee for review prior to Council considering these changes. Should they support these proposed amendments, Council will have to place these items on the ballot for the November general election.

The proposed amendments include an amendment to allow for rent control protections to attach to new units that were built as the result of demolition of pre-existing residential structures now allowed by Senate Bill 330 (SB 330); an amendment to expand eviction protections for tenant

households that exceed the number of occupants allowed at the inception of the tenancy; and an elimination of City Council's ability to exempt rent control from units when the vacancy rate reaches a certain level. Each proposed amendment is discussed separately below.

1. Allowance for rent control protections on new units covered by SB 330

Background and Need for Rent Stabilization Board Action:

SB 330 specifically allows cities to impose rent control protections on units that are built as the result of demolition of previously-controlled units. The Housing Crisis Act of 2019 requires all housing projects that demolish existing residential units to create as least as many residential units as are being demolished. Projects that contain "protected units," which include residential units that have been subject to a local rent control program within the previous five years, are required to provide replacement units at an affordable rent (or sales price) with the same number of bedrooms as the demolished unit. The affordability level of a replacement unit is based on the income level of the last household occupying the demolished unit and must be rented (or sold) at a rate that is affordable to occupants of the same income category or lower. If a "protected unit" was last occupied by persons or families above the low-income category, the affected city has the option to require that the housing project provide: 1) a replacement unit affordable to low-income households for a period of at least 55 years, or 2) a replacement unit that complies with the jurisdiction's rent or price control ordinance.

Currently, the law expressly exempts newly constructed units from Chapters 10 (Establishment of Base Rent Ceiling and Posting), 11 (Annual General Adjustment of Rent Ceilings) and 12 (Individual Adjustments of Rent Ceilings) of the Rent Ordinance. These residential units are subject to the registration requirements of Measure MM, are covered by good cause for eviction, and are entitled to annual security deposit interest, but they are not subject to local rent controls. SB 330 would allow for these new units created as the result of demolished units to be fully covered by the rent control provisions of the ordinance should the City choose that option when approving new construction that was the result of demolition of existing qualifying units.

The Legislation, IRA/AGA & Registration Committee has directed staff to draft language that would amend the Rent Ordinance to allow these units to be fully rent-controlled. To that end, we have added a section to Chapter 4 of the ordinance that distinguishes this type of new construction to that described in BMC Section 13.76.040Q. We also proposed specific reference to paragraph Q in Chapter 5 of the ordinance to distinguish it from newly constructed units that remain exempt from local rent controls.

Proposed Language:

Chapter 13.76 is amended as follows:

Section 13.76.040

DEFINITIONS

R. Notwithstanding any other provision in this ordinance and to the extent that state or local law permits, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a "housing development project" as

defined in the Housing Crisis Act of 2019 (Senate Bill 330), shall not be exempt as “newly constructed units” and, unless otherwise exempt, shall be covered by all provisions of this chapter.

Section 13.76.050

APPLICABILITY

I. Newly constructed rental units, as defined in Section 13.76.040Q. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

2. Allow for increased occupancy of rental units without threat of eviction

Background and Need for Rent Stabilization Board Action:

The Board also recommended that the Ordinance be amended to prohibit evictions based on the addition of occupants if the landlord has unreasonably refused the tenant’s written request, including a refusal based on the number of occupants allowed by the rental agreement or lease. The Legislation, IRA/AGA & Registration Committee also expressed strong interest in adopting changes to Regulation 1270 to be more permissive in allowing an increase in the number of tenants occupying a unit without a corresponding rent increase should such amendments to the eviction protections be adopted by the voters.

Tenants’ ability to add additional occupants to their household can be a precarious proposition given that a good cause for eviction lies when a tenant household substantially violates a material term of the rental agreement. While tenants are currently protected from eviction when there is one-for-one replacement of tenants, the Ordinance specifically provides a ground for eviction when any subletting by the tenant household results in an increase above the base occupancy level (B.M.C. 13.76.130A.2.(c)). For this reason, the Board recommended amendments be made to the Ordinance prior to the adoption or amendment of any regulations that intend to expand a tenant’s right to increase the size of their household.

The Board already has express authority to regulate the manner and grounds for which rents may be increased or decreased,¹ but the grounds for eviction are hard-coded in the Ordinance (B.M.C. 13.76.130.). One such basis for eviction is when the “...tenant has continued...to substantially violate any of the material terms of the rental agreement...”(B.M.C. 13.76.130A.2.). Thus, while Board Regulation 1270 can be amended to allow for an increase in the base occupancy level of a unit without a corresponding rent increase, the regulation cannot override the good cause for eviction based on a lease violation, such as when a household has more occupants than those

¹ See B.M.C. Section 13.76.120C.

allowed pursuant to the initial agreement between the landlord and tenant.

The Board elected to put the proposed changes to the good cause for eviction section of the ordinance before the voters to protect tenants from displacement prior to adopting amendments to the ordinance that would disallow rent increases for increases in occupancy.

Proposed Language:

Section 13.76.130

GOOD CAUSE REQUIRED FOR EVICTION

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~~ the maximum number of occupants legally allowed under Section 503(b)(2) of the Uniform Housing Code as incorporated by California Health & Safety Code Section 17922, except where prohibited by law.
- 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~~ tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request;
or

(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 the proposed new subtenant or additional occupant 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 or

~~(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. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

3. Eliminating "Decontrol" clause from ordinance

Background and Need for Rent Stabilization Action:

The Rent Ordinance has a section that allows the Berkeley City Council to exempt units from rent control should vacancy rates reach 5% over a six-month period.² While Council has the discretion to eliminate rent controls for units (it is not mandatory), this clause is inconsistent with

² BMC Section 13.76.060Q.

the Charter and most all of the Rent Ordinance which establishes the Board's independent authority to regulate rents and administer the law independent of any other elected or appointed body. Moreover, given that both the Charter and Rent Ordinance are voter-adopted initiatives, it certainly makes more sense to put the issue of decontrol before the voters in the event that the community decides to eliminate local rent control. Council has no other authority to interfere either substantively or procedurally in the Board's administration, so removing this clause will be consistent with the overall operation of the rent program and the law the Board and staff administer.

The proposal would be to simply eliminate this section of the Rent Ordinance.

Proposed Language:

Section 13.76.060

RENT STABILIZATION BOARD

~~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.~~

CONCLUSION

The Board unanimously proposed that the 4 x 4 Committee review these amendments and request that they be forwarded to Council for further consideration at a later date. After the 4 x 4 Committee discusses them and decides what it wishes to propose, the City Council will have to vote to place the matters it supports on the ballot for the November general election.

These are the initial matters the Board has discussed, but this memo is not meant to be an exhaustive list of items the Board wishes to have Council consider placing on the November ballot. The Legislation, IRA/AGA & Registration Committee has informed legal staff that there may be other items they will request that the Board and Council support. Time is of the essence as Council will have to place these matters on an agenda soon in order to meet any ballot measure deadlines. Staff awaits this Committee's instruction on how it wishes to proceed.