



4x4 Joint Task Force
Committee on Housing
City Council and Rent Board

4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Tuesday, May 3, 2022 – 2:30 p.m.

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

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Rent Board Resolution 21-29, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Task Force Committee on Housing** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Resolutions and the findings contained therein that the spread of COVID-19 continues to be a threat to the public health and that holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies. Therefore, **there will not be a physical meeting location available.**

To access this meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/87660974031?pwd=Z251QTZvcDR0QUFJbGV0MGxLaFN6Zz09>. 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 1-669-900-6833 and enter Webinar ID: 876 6097 4031 and Passcode: 059116. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email btran@cityofberkeley.info with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 12:30 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



4x4 Joint Task Force
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AGENDA

4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Tuesday, May 3, 2022 – 2:30 p.m.

1. Roll call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of the agenda
4. Public comment on non-agenda matters
5. Approval of April 18, 2022 Committee meeting minutes (see attachment)
6. Discussion and possible action on a memorandum regarding the potential for adding more rent controlled units under CA Civil Code Section 1954.52(b) (Vice-Chair Alpert, see attachment)
7. Discussion and possible action to recommend various amendments to the Rent Stabilization and Eviction for Good Cause Ordinance to be placed on the November 2022 general election ballot (Rent Board staff, see attachment)
8. Adjournment

COMMITTEE MEMBERS:

Mayor Jesse Arreguín
City Councilmember Kate Harrison
City Councilmember Rigel Robinson
City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg
Rent Board Vice-Chairperson Soli Alpert
Rent Board Commissioner Xavier Johnson
Rent Board Commissioner Andy Kelley



4x4 Committee on Housing
City Council and Rent Board

4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Monday, April 18, 2022 – 3:00 p.m.

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

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Rent Board Resolution 21-29, this meeting of the City Council and Rent Stabilization Board's **4 x 4 Joint Committee on Housing** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Resolutions and the findings contained therein that the spread of COVID-19 continues to be a threat to the public health and that holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies. Therefore, **there will not be a physical meeting location available.**

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To join by phone: Dial 1-669-900-6833 and enter Webinar ID: 811 6628 6812 and Passcode: 458408. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

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This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



4x4 Committee on Housing
City Council and Rent Board

4 X 4 JOINT COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Monday, April 18, 2022 – 3:00 p.m.

Minutes To Be Approved

- Roll call: Mayor Arreguín called the meeting to order at 3:04 p.m.
Present: RBC Alpert, Mayor Arreguín, CM Harrison (logged in at 3:17 p.m., logged off at 4:52 p.m.), RBC Kelley, CM Robinson, RB Chair Simon-Weisberg, CM Taplin (logged in at 3:15 p.m., logged off at 4:59 p.m.)
Absent: RBC Johnson
Staff present: Matt Brown, Steven Buckley, Nate Dahl, Amy Davidson, Stefan Elgstrand, Margot Ernst, Jen Fabish, Matthew Siegel, Be Tran, and DéSeana Williams.
- Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*

The Committee acknowledged the statement.

- Approval of the agenda: M/S/C (Arreguín/Robinson) Approve the agenda with the following changes: Table item 8 to the next meeting and continue with the balance of the agenda. Roll call vote. YES: Alpert, Arreguín, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Harrison, Johnson, Taplin. Carried: 5-0-0-3.

There were no public speakers.

- Public comment on non-agenda matters: There was one speaker.
- Approval of February 23, 2022 Committee meeting minutes: M/S/C (Robinson/Arreguín) Approve the minutes as written. Roll call vote. YES: Alpert, Arreguín, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Harrison, Johnson, Taplin. Carried: 5-0-0-3.

6. Discussion and possible action on the proposed revisions to the Demolition Ordinance (Planning Department, see attachment): Steven Buckley of the Planning Department presented. Mayor Arreguín presented his proposed amendments.

M/S/C (Arreguín/Harrison) Recommend to the City Council and Planning Commission the proposed amendments to the Demolition Ordinance as proposed by the Mayor with the following additions:

1. Require that applicants must provide below market rate replacement units (Option A) and set the base rent and have further rent increases be regulated.
2. To recommend that a rent differential be modeled after the criteria in the City's Relocation Ordinance (Chapter 13.84).
3. That rent increases for new BMR units created and existing BMR units be tied to 65% of the increase in the CPI.
4. Recommend consideration of applying just cause eviction protections to BMR units in the future.
5. Refer to staff/Planning Commission to consider if there are situations where flexibility on rent replacement requirements and an option for rent controlled replacement units should be considered instead, for example in the Southside Plan Area or considerations based on the length of tenancies of current tenants.

Roll call vote. YES: Alpert, Arreguín, Harrison, Kelley, Robinson, Simon-Weisberg, Taplin; NO: None; ABSTAIN: None; ABSENT: Johnson. Carried: 7-0-0-1.

There was one public speaker.

7. Discussion and possible action on a memorandum regarding the potential for adding more rent controlled units under CA Civil Code Section 1954.52(b) (Vice-Chair Alpert, see attachment): The committee agreed to discuss this item with item 9.
8. Discussion and possible policy recommendation to Council regarding Relocation Ordinance and suggested additions from previous discussion regarding Tenant Habitability Plan Ordinance (requested by Mayor Arreguín and Chair Simon-Weisberg): Tabled to the next meeting by a prior vote of the committee.
9. Discussion and possible action to recommend various amendments to the Rent Stabilization and Eviction for Good Cause Ordinance to be placed on the November 2022 general election ballot (Rent Board staff, see attachment): The committee discussed items 7 and 9. Commissioner Alpert offered proposed Ordinance amendment language related to item 7, and Mayor Arreguín offered to share the language with the City Attorney for vetting. Due to time constraints and because some members of the committee had left the meeting, the committee agreed to take up these items again at a meeting tentatively scheduled for Thursday, May 5 at 3:00 p.m.

There were no public speakers on items 7 or 9.

10. Adjournment: M/S/C (Arreguín/Kelley) Motion to adjourn. Roll call vote. YES: Alpert, Arreguín, Kelley, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; Absent: Harrison, Johnson, Taplin. Carried: 5-0-0-3. The meeting adjourned at 5:26 p.m.

COMMITTEE MEMBERS:

Mayor Jesse Arreguín
City Councilmember Kate Harrison
City Councilmember Rigel Robinson
City Councilmember Terry Taplin

Rent Board Chairperson Leah Simon-Weisberg
Rent Board Vice-Chairperson Soli Alpert
Rent Board Commissioner Xavier Johnson
Rent Board Commissioner Andy Kelley

MEMORANDUM

DATE: May 3, 2022

TO: Honorable Members of the 4x4 Joint Task Force Committee on Housing:
City Council and Rent Board

FROM: Rent Board Vice-Chairperson Soli Alpert

SUBJECT: Generating New Rent Controlled Housing in the Context of Costa-Hawkins
and the Upcoming Housing Element Update

Rent control protections are an essential part of ensuring stability for tenants. The ability for California cities to enact and enforce rent control protections, however, has been significantly undermined by restrictive state laws. Foremost among these is the Costa-Hawkins Rental Housing Act. One of Costa-Hawkins three primary prohibitions is an exemption of the application of rent control to “new construction.” In the context of the City of Berkeley, “new construction” is defined as being built after June 30, 1980. By using a fixed date rather than a rolling age window, the new construction exemption increasingly undermines our local protections over time, as a smaller and smaller portion of the City’s housing stock fall under rent control protections.

There are three exemptions to this prohibition that the City can use to generate new rent-controlled units: the remodeling of existing residential space, SB 330, and Section 1954.52(b) of Costa-Hawkins itself. However, Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program) currently does not permit the Board to regulate units under the second two of these, even though they are not exempt under Costa-Hawkins. The Ordinance should be amended to allow units under all three to be directly regulated by the Rent Board.

Remodel of Existing Structures

Numerous court rulings have confirmed that the letter and intention of Costa-Hawkins is to exempt truly new housing, not preexisting housing that is rearranged, converted, or otherwise modified but not created from scratch. Under this principle, when existing habitable space that is older than June 30, 1980 but exempt under a different provision undergoes remodeling, it can become covered by rent control as a result of that work. For example, if a large single-family home built before 1980 is retrofit to become a fourplex, any of the four units consisting entirely of space already habitable before the retrofit would not be considered new construction for the purposes of Costa-Hawkins’ new construction exemption.

This is an important but restricted way to generate new rent-controlled units. As the City considers allowing 2, 3, and 4 unit developments more broadly, incentivizing the use of existing

space and disincentivizing demolition can help projects to fit into this model. Additionally, the Rent Board already has the authority to regulate this type of unit, so no amendment to the Ordinance is necessary.

SB 330

One of the provisions of SB 330, the Housing Crisis Act of 2019, requires that cities cannot approve a housing development project that will require the demolition of protected units unless the project replaces all demolished protected units. Protected units include both rent controlled units and inclusionary affordable housing or other deed restricted affordable housing. Cities are granted the discretion as to which kind of protections the replacement units provide, with regard to rent control and deed restricted affordability. It is possible that replacement units could be required to comply with both, though that requires further, separate analysis.

Regardless of whether the City decides to require replacement units be rent controlled, in general or for a specific project, the Ordinance should be amended to allow the Board to directly regulate such units should they come to exist. That allows the City the flexibility to make those determinations based on the best interest of the City and the facts of a given project. This is especially important as the City considers amendments to the Demolition Ordinance and increased density standards that may incentivize demolition. Such an amendment has already been drafted by Rent Board legal staff and is included in the packet.

Section 1954.52(b)

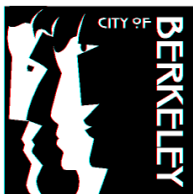
The final exception to the new construction exemption is found in Costa-Hawkins itself and would appear to be the most broad. Section 1954.52(b) of Costa-Hawkins reads:

(b) Subdivision (a) does not apply where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

The referenced Subdivision (a) is the provision of Costa-Hawkins containing both the new construction exemption and the single-family-home/condo exemption. Chapter 4.3 contains the State Density Bonus law. A straightforward reading of this section indicates that the City can require a developer or owner to agree to rent control in exchange for greater density, zoning waivers, or a direct financial contribution. While the City may not be able to blanketly require this on all new development, many new developments, especially large developments that make up a significant proportion of new units, often require zoning exemptions and density bonuses. As the City moves forward with the housing element update, it should evaluate when and how it could take advantage of this provision to increase tenant protections in new construction. Regardless of how the City incorporates Section 1954.52(b), the Ordinance should be amended to allow the potential units to come under Rent Board oversight. Rent Board staff

are working on further legal analysis of this section and relevant case law in the process of preparing that amendment.

This is especially important because the City, specifically the Zoning Adjustments Board, has already required a form of rent control in exchange for granting zoning waivers. Because the Ordinance was not written contemplating such units, the ZAB couldn't directly subject the units to Board Oversight. Instead, they are subject to a sort of ad-hoc rent control, without the benefits of Board enforcement, oversight, and regulation.



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.