



Relocation of 1922 Walnut Street

Photo credit: Frances Dinkelspiel/Berkeleyside

IV. Community Discussion

Neighbor/Community Noticing: Prior to submitting an application to the City, a pre-application poster was erected by the applicant in July 2015. On April 28, 2016, the City mailed public hearing notices to property owners and occupants within 300 feet of the subject site, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.

V. Issues and Analysis

A. Rent Controlled Units: The project proposes to relocate the existing two-unit, rent controlled residential building from 1922-24 Walnut Avenue to the subject receiving lot (2214 Martin Luther King, Jr. Way). The relocation of the subject building from the original lot was considered a demolition for purposes of the Zoning Ordinance (BMC 23C.08.060), however, not per the Building and Safety Code. This is critical as, confirmed by the Chief Building Official, the relocation of the existing building would not require a new Certificate of Occupancy and would, therefore, not lose its rent controlled status.

WHEREAS, nothing in this agreement should be construed to cover the existing commercial structure at 2214 Martin Luther King Jr. Way as this agreement only covers the two units at 2214 Martin Luther King Jr. Way Units A and B and the commercial structure is exempt from all provisions in this agreement; and

WHEREAS, the Owner has agreed to execute and comply with this Agreement and Exhibits A and B and has agreed to comply with the City's Program Guidelines and Operational Manual for the Inclusionary and Below Market-Rate Housing Program ("City Guidelines") in consideration of the City's approval of the Acheson Commons Project and the relocation of the City Affordable Units to the Property. This Agreement and Exhibits A and B ensure that all provisions of the Berkeley Municipal Code, and all conditions of the Use Permits are also complied with; and

Possible Language

- ▶ 23.326.030 C. Conditions of Approval.
 - ▶ Any Residential Unit(s) that will be demolished shall be replaced with equivalent units. Any units created to comply with applicable affordability requirements in Chapter 23.328 [Affordable Housing Requirements], Chapter 23.330 [Density Bonus], or that replace a protected unit as defined in Government Code section 66300(d)(2)(E)(ii) shall be subject the following additional requirements:

Possible Language

- ▶ 1. Initial rents for such units shall be set at 30% of the Area Median Income unless, in the case of a sitting tenant, more specific requirements of section 23.326.030.D apply.
- ▶ 2. The owner of such units shall not increase the rent for any tenant greater than the lesser of 65% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region (as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics for the twelve-month period ending the previous December 31) on an annual basis.
- ▶ 3. Material terms of any tenancy in such units shall not be subject to any unilateral change during the term of that tenancy unless necessary for the owner to meet any compliance requirements associated with Chapter 23.328 or any other regulatory agreement with a government entity for the purposes of controlling or subsidizing the rent level of such units.

Possible Language

- ▶ 4. Any tenant of such units may petition to adjust the lawful rent of such rent in response to:
 - ▶ a. Decreases living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;
 - ▶ b. Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear; or
 - ▶ c. Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, any regulatory agreement that the property is subject to; any applicable federal, state, or local regulations pursuant to a subsidy program that applies to the property; or the rental agreement.
- ▶ 5. The Rent Stabilization Board shall have the authority to administer the requirements of this section, including to adjudicate any petition through the procedures in Chapter 13.76 and associated regulations of the Rent Stabilization Board.
- ▶ 6. Notwithstanding any other provision of law, the requirements of this section shall be enforceable for as long as such unit is rented or available for rent and shall be enforceable against all successor owners.

Comparison of Rent Control vs. BMR Units

	Fully-covered Units	BMR Units	Proposed Units
Initial Rental Levels	Market Rate	% of AMI under regulatory agreement	% of AMI under regulatory agreement
Rental Increase	Annual General Adjustment (AGA)	Annual Increase in AMI	Annual General Adjustment
Income Eligibility	None	% of AMI	% of AMI
Eviction Protection	Good cause in Ordinance	Good cause in Ordinance (due to MM)	Good Cause in the Ordinance
Rent Board Services	Full Services	Partial (Measure MM)	Full Services
Duration of control	While unit is rented	For the life of the unit	For the life of the unit
Terms of Tenancy	No unilateral changes	Unilateral changes allowed with 30 days notice outside of initial lease term	No unilateral changes unless necessary for income certification