



Rent Stabilization Board

CONSENT CALENDAR
November 15, 2005

To: Honorable Mayor and
Members of the City Council

From: Howard Chong, Chair, Rent Stabilization Board

Submitted by: Jay Kelekian, Executive Director, Rent Stabilization Program

Subject: Ellis Bill Relocation Fees

RECOMMENDATION

Adopt the first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 13.77.055 to require relocation allowance payments to all tenants evicted pursuant to California's Ellis Act.

SUMMARY

On August 29, 2005, the Rent Board unanimously adopted a resolution (see Attachment #2) recommending to the City Council that it amend the City's ordinance to extend relocation payments to all tenants subject to Ellis evictions. Currently, only low income, handicapped, and senior tenants are entitled to relocation payments.

In 2004, the City Council amended the Ellis implementation ordinance to increase the amount of relocation payments and extended the coverage of relocation allowances to senior and disabled tenants. At that time, the Mayor and several Council members suggested that it may be preferable to extend the relocation payment requirement to all classes of tenants. The Board believes that all tenants in good standing who are subject to this type of no-fault eviction merit some compensation for the costs of relocation. Furthermore, the Board is concerned about the possibility that the number of Ellis evictions might increase as a result of the legalization of the creation of new TIC's (tenancy in common ownership.)

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

The Ellis Act authorizes landlords to evict all residential tenants in a building pursuant to a plan to withdraw from the rental housing business. Under Berkeley's code, evictions of low-income, elderly, and disabled tenants pursuant to the Ellis Act must be accompanied by relocation payments of \$7,000

per household. (BMC Sec.13.77.055). Other tenants do not receive any assistance if they are evicted pursuant to the Ellis Act.

BACKGROUND AND RATIONALE FOR RECOMMENDATION

A. Evictions Pursuant to the Ellis Act – The Legal Framework

1. State Law - The Ellis Act (California Gov't Code Sec. 7060 – 7060.7)

Under the Ellis Act, apartment owners have a right to evict tenants for the purpose of going out of the rental business. Tenants must be provided with 120 days notice of evictions pursuant to the Act. Tenants who are either disabled or at least 62 years old are entitled to a one year notice. (Gov't Code Sec. 7060.4 (b)).

If the units that have been removed are re-rented within five years, the unit must be rented at the rent that could have been charged under the rent control ordinance if the last tenant had continuously remained in the unit. (Gov' Code Sec. 7060.2.(a)). If the units that have been removed are re-rented within two years, the owner is liable to the displaced tenants for "actual and exemplary damages" (Gov't Code Sec. 7060.2(b)(1)).

While the Ellis Act provides owners of rental housing with the right to withdraw their units from rental use, "nothing in the [Act] ... diminishes or enhances any power in any public entity to mitigate any adverse impact on persons displaced by reason of withdrawal from rent or lease of any accommodations." (Gov't Code Sec. 7060.1.(c))

2. The City's Ordinance – Local Implementation of the Ellis Ordinance (B.M.C. 13.77.010-.090)

Under the existing City's Ellis ordinance (see Attachment 3), "low income, elderly, or disabled" tenants are entitled to a relocation payment of \$7,000. (B.M.C. 13.77.055).

"Elderly" means any tenant who is 60 or older. (B.M.C. 13.77.030.H.)

"Low income tenants" are defined as households with an income of less than 80% of the Area Median Income. (B.M.C. 13.77.030.F.) Currently, the income ceilings for "low income" households are: one person - \$46,350; two persons - \$53,000; three persons – \$59,600.

The City does not have current data on tenant income levels. However, the last census indicates that as of 1999, 59.3% of all tenant households in the City had an income of less than \$35,000. Assuming that current income levels of tenants households are comparable to 1999 levels adjusted by the CPI, more than 60% of all tenant households would fall into the "low income" category.

B. Legislative and Legal History

In 1986, the City Council adopted B.M.C. section 13.77.055 that required a property owner to pay \$4,500 in relocation assistance to the tenants in each unit removed from the residential rental market through use of the Ellis Act.

In 1992, in response to a challenge to the validity of Berkeley's ordinance, in Channing Properties v. City of Berkeley (11 Cal.App.4th 88), the Court of Appeal relying upon references in the Act to "lower income households", held that under the Ellis Act cities could only require the payment of relocation assistance to low income households.

In 2003, the legislature amended the Ellis Act. The amended language (with strikeout lines through the deleted language) is set forth below.

2003 Amendment to Ellis Act

... nothing in this chapter does any of the following: ...

(1) Diminishes or enhances any power which currently exists or which may hereafter exist in any public entity to mitigate any adverse impact on persons displaced by reason of withdrawal from rent or lease of any accommodations in any residential hotel,which is ... for occupancy by lower income households.

~~(2) the reference to residential hotels in paragraph (1) is not intended to diminish or enhance any power which currently exists or which may hereafter exist in any public entity to require those same actions for other types of accommodations.~~¹

In response to this change in the law, several California cities amended their ordinances to require relocation assistance for all classes of tenants evicted pursuant to the Ellis Act.²

In 2004, Berkeley amended its ordinance to increase the relocation allowance for tenants in protected classes from \$4,500 to \$7,000 and to expand the coverage of the act to include elderly and disabled, as well low-income households. (Ordinance No. 6827-NS Sec. 2) However, it did not extend the coverage of the law to all tenants. In the course of Council discussions about the amendments to the ordinance, several City Council members indicated that it might be desirable to extend the required relocation assistance to all tenants displaced by Ellis evictions and asked the Board to consider such a change.

In April 2005, however, a Superior Court ruled that San Francisco's provision of relocation assistance to all displaced tenants is not authorized by the Ellis Act. The court ruled that, although the language cited in Channing as limiting relocation assistance to low-income tenants has been removed from the Act, the state legislature did not intend to repeal the limitation. Currently, there is no language in the Ellis Act that limits relocation assistance to low-income tenants. For this reason, this decision has been appealed and does not constitute a binding legal precedent. No jurisdiction that provides relocation assistance to all displaced tenants has amended its ordinance to follow the ruling of the San Francisco court. Appeals on the case may last into late 2006 or early 2007. The Rent Board believes that, given the potential for increased Ellis activity, this is too long a period to wait to reinstitute relocation assistance for all displaced tenants

1 Gov't Code Sec. 7060.1 (c) (as amended in 2003).

2 E.g. See report from City Staff to Santa Monica City Council, June 22, 2004 concluding that the legislature's amendment to the Ellis Act authorized the extension of relocation assistance to all tenants evicted pursuant to the Ellis Act.

C. Relocation Assistance Required by Other Cities for Ellis Evictions

All of the cities that have adopted ordinances covering Ellis evictions, except Berkeley and Oakland, require relocation assistance for all tenants, rather than only tenants within qualified classes. Typically, the assistance required of tenants in protected classes is substantially higher than the assistance for all tenants. The following chart compares the requirements of each jurisdiction.

**Municipal Requirements
Relocation Assistance for Evictions Pursuant to Ellis Act**

	Berkeley	Los Angeles	Oakland	San Francisco	Santa Monica	West Hollywood
All tenants	None	\$3,200/unit	None	\$4,500/tenant max. \$13,500/unit	Per unit – one room \$3,400 one bdr. \$4,250 two bdr. \$4,800 three bdr. \$6,250	Per unit - one room \$2,000 one bdr. \$2,350 two bdr. \$3,200 three bdr. \$4,950 + \$1,000 if not protected class
Protected Classes	Low Income, Senior, Disabled \$7,000/unit	Senior, Handicapped, Dependent minor(s) \$8,000/unit	Low Income two months rent	Senior or Disabled \$7,500/tenant max.13,500/unit	Senior or Disabled or child under 18 and occupied unit since Nov. 1999 \$1,000 above benefits for all tenants	Lower income Greater of: schedule for all tenants or 24 months difference between actual rent & market rent ceiling - \$15,000 Senior or Disabled \$8,000/unit

Sources: Los Angeles Mun. Code Sec. 151.09G.1; Oakland, Mun. Code Ch. 8.22; Ord. No. 12539 (July 16, 2003); San Francisco Adm. Code, Sec. 37.9A.(e); Santa Monica Mun. Code Sec. 4.36.040 ; West Hollywood, Mun.Code, Sec. 17.52.070.

D. Federal Relocation Assistance Requirements for Public Displacement

Currently, federal relocation guidelines provide relocation assistance to cover rent increases for comparable housing and moving expenses. Assistance for rent increases is subject to a ceiling of \$5,250. (See the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) 42 U.S.C. 4601 and 49 CFR 24.402(b)(1).) The URA also provides a choice of actual or fixed compensation for moving expenses. Fixed moving expenses are set by the Federal Highway Administration based on the number of rooms in a rental unit that have furniture. (49 CFR 24.302.) For California, fixed moving expenses range from \$575 for a unit with one room with furniture to \$2000 for a unit with eight rooms with furniture. (See attached schedule.) The State of California provides the same level of relocation assistance as provided under the URA when tenants are displaced by state construction projects. (See Gov't Code §7260, *et seq.*)

E. The Number of Evictions Pursuant to the Ellis Act

In recent years the number of evictions in Berkeley pursuant to the Ellis Act has been minimal compared to the size of the rental housing stock (approximately 25,000 units). Since the Ellis Act was adopted in 1985, through December 2004, 271 rental units in 94 properties have been removed pursuant to the Ellis Act. Most removals have involved properties with only a few units. 61 properties had only one or two units. 11 properties had three units. In the current year, only one unit has been removed pursuant to the Ellis Act. It is certain that other owners provided relocation payments to tenants in return for voluntarily vacating their units, thereby freeing the owner from the restrictions on rents and other liabilities that follow Ellis evictions. However, there is no data on such removals.

In contrast to Berkeley, Santa Monica, which has about the same number of rental units as Berkeley has had a substantial number of Ellis evictions. From 1986 through December 2004, 418 buildings with 1,980 rental units were removed from the rental market. It is probable that one factor leading to the much higher rate of Ellis removals in Santa Monica may have been higher potential densities for buildings that replace demolished structures. Another may have been higher market rent levels. Of the buildings that have been removed from rental use in Santa Monica, 91 buildings with 440 units have been returned to the rental market.³ Removals following the adoption of the Costa-Hawkins Act (vacancy decontrol) have far exceeded removals in the years preceding the Act.

In San Francisco, which has 214,000 rental units, from 2000 through 2004 1,511 rental units were removed pursuant to the Ellis Act.

The number of Ellis evictions is primarily determined by the potential profit from possible alternate uses of the property, including owner occupancy, condominium use, tenants-in-common (ownership), demolition, and new construction, and/or conversion to a commercial use.

In Berkeley, the number of Ellis evictions may increase as a result of recent changes in the law and market. In 2004, the California Court of Appeal ruled that cities may not forbid the creation of tenants in common agreements (TIC's) which include exclusive right of occupancy provisions. (Tom v. San Francisco, 120 Cal.App.4th 674 (2004)) Pursuant to this decision, the City repealed its ban on the creation of TIC's, which had been adopted in 1992. (Berkeley Ord. No. 6852-NS)

3 Santa Monica Rent Control Board, "The Impact of the Ellis Act, July 2003-Dec. 2004" (March 2005) (report available on the web page of the Rent Board.)

While there are serious practical problems associated with TIC ownership (primarily due to the fact that co-owners usually have one common mortgage and the TIC shares cannot be separately deeded), they are an attractive form of ownership for some households because they are more affordable than condominiums. At the same time, apartment owners may have financial incentives to sell TIC shares or sell to a group of purchasers who want to create a TIC, because the market value of TIC's commonly exceeds the market value of rental units.

In the past few years, there have been phenomenal increases in house and condominium prices. As a result, potential homeowners may be willing to pay higher prices for TIC ownership interests.

Under the foregoing circumstances, more owners may find it profitable to incur the cost of Ellis evictions in order to be able to realize the potential profits associated with such evictions. Currently, the average rent of apartments in Berkeley (including units that have not obtained a vacancy decontrol increase and units that have obtained such increases) is \$1056 per month, which in turn would typically yield an income ("net operating income") in the range of \$700 per month, \$8,400 per year, after operating expenses (but, excluding debt service).⁴ In contrast, the average market value of condominium units now exceeds \$440,000. The City's recently adopted conversion ordinance does not allow condominium conversions of units that have been withdrawn from rental use pursuant to the Ellis Act within the prior 20 years (B.M.C. section 21.28.050). However, if TIC shares of buildings removed pursuant to the Ellis Act may be marketed for \$300,000, their market value would exceed the market value of rental units which may yield a net income of \$8,400 per year.

Also, soaring house prices provide additional economic incentives to convert small multifamily dwellings to single family use. Such conversions are regulated by City ordinance, but in practice they are difficult to regulate once an owner removes a property from rental use.

E. Potential Costs for Tenants of Ellis Evictions

The impacts of Ellis evictions on tenant households in Berkeley would vary substantially depending on the current rent of the unit and the circumstances of the household.

In cases of evictions from units that have not obtained full vacancy decontrol increases pursuant to the Costa-Hawkins Act it is probable that the tenant would face a rent increase of hundreds of dollars per month. As of June 2005, 5785 rental units, 32.3% of all rental units were in this class. The median rent for units that have not had any vacancy increase was \$723, while the median rent for new tenants in the first six months of 2005 was \$1,174.

Tenants with vacancy decontrolled rents may or may not experience substantial rent increases. However, displaced tenants would still incur moving expenses, the time and effort associated with finding a replacement unit, the time and effort associated with packing and unpacking of all household possessions, and possibly would face other losses due to a change in location.

F. Rationale for Extending Relocation Allowance to All Tenants Evicted Pursuant to the Ellis Act

Ellis evictions are no fault evictions, rather than evictions triggered by the failure of a tenant to perform the obligations of a rental agreement. As previously indicated – Los Angeles, San

⁴ This sum is referred to as "net operating income" in the real estate industry.

Francisco, Santa Monica, and West Hollywood have extended relocation allowances to all tenants. A relocation allowance of \$4,500 for tenant households would be comparable to those provided in those jurisdictions. Furthermore, such an allowance would be nominal compared to the economic benefits that owners may obtain from “conversions” to non-rental uses in a market where an alternative use of the property leads to an increase in value of a hundred or a few hundred thousands dollars per unit.

ALTERNATIVE ACTIONS CONSIDERED

The Board considered two additional alternatives:

- 1. Take no action at this time
- 2. Increase the amount of relocation benefits on all units receiving Ellis notices to an amount more commensurate to the amounts rents have increased since 1986 rather than using CPI as a benchmark.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission’s Report.

CONTACT PERSON(S)

Jay Kelekian, Executive Director, Rent Stabilization Board, 644-6128 (ext.103)

Howard Chong, Chair, Rent Stabilization Board, 644-6128

Attachments:

- 1: Proposed Ordinance Amendments
- 2: Berkeley Rent Stabilization Board Resolution
- 3: Current Ellis Implementation Ordinance, Berkeley Municipal Code Chapter 13.77

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) SECTION 13.77.055 TO REQUIRE RELOCATION ALLOWANCE PAYMENTS TO ALL TENANTS EVICTED PURSUANT TO CALIFORNIA'S ELLIS ACT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 13.77.055 is amended to read as follows:

Section 13.77.055 Financial mitigation of adverse impact on displaced persons.

A. The ~~low income, elderly or disabled~~ tenants of any residential rental unit who are required to move as a result of the owner's withdrawal of the accommodation from rent or lease shall be entitled to a relocation payment in the sum of ~~\$7000~~\$4500 from the owner. The payment shall be divided equally among all qualifying tenants occupying the rental unit at the time of service on the tenants of the notice of intent to withdraw the unit from rent or lease. Only those persons who have a written or oral agreement with the owner for possession of the rental unit or who have paid rent to the owner shall be deemed tenants for purposes of this Section 13.77.055.

B. At the time of filing the notice of intent specified in Section 13.77.050A.3, the owner shall deposit the relocation payments specified in subparagraph A above into escrow with the City. The City or its designated agent shall distribute these funds to the tenants upon request.

C. Low-income, elderly or disabled tenants of a rental unit that is withdrawn from the residential rental market shall be entitled to an additional relocation payment of \$2500 from the owner.

1. An additional relocation payment based on low-income status shall be divided equally among all tenants occupying the rental unit at the time of service on the tenants of the notice of intent to withdraw the unit from rent or lease.

2. An additional relocation payment based on elderly or disabled status shall be divided equally among the qualifying elderly and/or disabled tenants occupying the unit at the time of service on the tenants of the notice of the intent to withdraw the unit from rent or lease.

3. If a household qualifies for an additional relocation payment because the household is both low-income and is occupied by elderly or disabled tenants, the payment shall be divided equally among all tenants occupying the rental unit at the time of service on the tenants of the notice of intent to withdraw the unit from rent or lease.

~~D.B~~ In order to claim entitlement to the additional \$2500 relocation payment ~~assistanc~~ee ~~under this chapter~~, a tenant must mail the postcards provided under Section 13.77.050A.1 within 30 days of the date the notice required by that section is ~~mailed~~served. The owner shall deposit the ~~full~~additional relocation payment in escrow in trust for any tenants who claim to qualify for relocation assistance within ten days after such postcard is mailed. Thereafter, the City or its designated agent shall distribute amounts held in escrow as follows:

1. If no written challenge is made to the tenant's claim of entitlement to additional relocation assistance within ten days after the postcard provided under Section 13.77.050A.1 is mailed, the City shall release the relocation assistance to the tenant upon request.

2. If the City receives conflicting information or assertions which indicate that there is a dispute or uncertainty concerning the tenant's qualification for relocation assistance the City shall continue to retain the disputed relocation assistance funds in escrow. The City then shall release the relocation assistance funds to either the tenant or the owner upon receipt of either a written agreement by both the owner and the affected tenant or an order of a court of competent jurisdiction.

~~C.E.~~ The owner may rescind the notice of intent to withdraw the accommodation from rent or lease and the notice of termination of tenancy prior to any release of relocation payment to the qualifying tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the owner. Subsequent to the release of any relocation payment to a qualifying tenant, the owner may rescind the notice of intent to withdraw the accommodation from rent or lease and the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the qualifying tenants remain in possession of the rental units after service of an owner's written notice of rescission of the eviction, the tenants shall provide an accounting to the owner of the amount of the relocation payment expended for moving costs, return to the owner that portion of the relocation payment not expended for moving costs, and assign to the owner all rights to recover the amount of relocation payment paid to third parties.

~~D.F.~~ Where an owner has served a notice of intent to withdraw an accommodation from rent or lease on a tenant prior to January 1, 2005 and withdrawal of the accommodation has not been completed, the owner shall give notice as specified in Section 13.77.050A.1 to all tenants, including any tenants who have already vacated their rental units, that elderly and disabled tenants qualify for relocation assistance. The owner shall deposit the full relocation payment in escrow in trust for the elderly and disabled tenants who return the postcards provided under Section 13.77.050A.1 within 30 days of the date that the above required notice was served or mailed. Said deposit in escrow for the qualifying tenants shall be made within ten days of the date the postcards provided pursuant to Section 13.77.050A.1 are mailed. The owner shall also increase the amount of the relocation assistance deposited into escrow for each qualified low income tenant to the amount specified in Section ~~13.77.055A-13.77.055C~~.

~~E.G.~~ Failure of the owner to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the owner's intent to withdraw the accommodation from rent or lease. In addition, if tenants of a rental unit who qualify for relocation assistance have vacated the unit as a result of a notice of intent to withdraw the accommodation from rent or lease, and the owner fails to make any payment specified herein, the owner shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

(Ord. 6827-NS § 2 (part), 2004: Ord. 6783-NS § 1 (part), 2003: Ord. 6646-NS § 2, 2001: Ord. 6237-NS § 1 (part), 1994: Ord. 6181-NS § 1 (part), 1993: Ord. 5751-NS § 1 (part), 1986)

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. –N.S.**AMENDING BERKELEY MUNICIPAL CODE (BMC) SECTION 13.77.055 TO REQUIRE RELOCATION ALLOWANCE PAYMENTS TO ALL TENANTS EVICTED PURSUANT TO CALIFORNIA’S ELLIS ACT**

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 13.77.055 is amended to read as follows:

Section 13.77.055 Financial mitigation of adverse impact on displaced persons.

A. The tenants of any residential rental unit who are required to move as a result of the owner's withdrawal of the accommodation from rent or lease shall be entitled to a relocation payment in the sum of \$4500 from the owner. The payment shall be divided equally among all tenants occupying the rental unit at the time of service on the tenants of the notice of intent to withdraw the unit from rent or lease. Only those persons who have a written or oral agreement with the owner for possession of the rental unit or who have paid rent to the owner shall be deemed tenants for purposes of this Section 13.77.055.

B. At the time of filing the notice of intent specified in Section 13.77.050A.3, the owner shall deposit the relocation payments specified in subparagraph A above into escrow with the City. The City or its designated agent shall distribute these funds to the tenants upon request.

C. Low-income, elderly or disabled tenants of a rental unit that is withdrawn from the residential rental market shall be entitled to an additional relocation payment of \$2500 from the owner.

1. An additional relocation payment based on low-income status shall be divided equally among all tenants occupying the rental unit at the time of service on the tenants of the notice of intent to withdraw the unit from rent or lease.

2. An additional relocation payment based on elderly or disabled status shall be divided equally among the qualifying elderly and/or disabled tenants occupying the unit at the time of service on the tenants of the notice of the intent to withdraw the unit from rent or lease.

3. If a household qualifies for an additional relocation payment because the household is both low-income and is occupied by elderly or disabled tenants, the payment shall be divided equally among all tenants occupying the rental unit at the time of service on the tenants of the notice of intent to withdraw the unit from rent or lease.

D. In order to claim entitlement to the additional \$2500 relocation payment, a tenant must mail the postcards provided under Section 13.77.050A.1 within 30 days of the date the notice required by that section is served. The owner shall deposit the additional relocation payment in escrow in trust for any tenants who claim to qualify for relocation assistance within ten days after such postcard is mailed. Thereafter, the City or its designated agent shall distribute amounts held in escrow as follows:

1. If no written challenge is made to the tenant's claim of entitlement to additional relocation assistance within ten days after the postcard provided under Section 13.77.050A.1 is mailed, the City shall release the relocation assistance to the tenant upon request.

2. If the City receives conflicting information or assertions which indicate that there is a dispute or uncertainty concerning the tenant's qualification for relocation assistance the City shall

continue to retain the disputed relocation assistance funds in escrow. The City then shall release the relocation assistance funds to either the tenant or the owner upon receipt of either a written agreement by both the owner and the affected tenant or an order of a court of competent jurisdiction.

E. The owner may rescind the notice of intent to withdraw the accommodation from rent or lease and the notice of termination of tenancy prior to any release of relocation payment to the qualifying tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the owner. Subsequent to the release of any relocation payment to a qualifying tenant, the owner may rescind the notice of intent to withdraw the accommodation from rent or lease and the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the qualifying tenants remain in possession of the rental units after service of an owner's written notice of rescission of the eviction, the tenants shall provide an accounting to the owner of the amount of the relocation payment expended for moving costs, return to the owner that portion of the relocation payment not expended for moving costs, and assign to the owner all rights to recover the amount of relocation payment paid to third parties.

F. Where an owner has served a notice of intent to withdraw an accommodation from rent or lease on a tenant prior to January 1, 2005 and withdrawal of the accommodation has not been completed, the owner shall give notice as specified in Section 13.77.050A.1 to all tenants, including any tenants who have already vacated their rental units, that elderly and disabled tenants qualify for relocation assistance. The owner shall deposit the full relocation payment in escrow in trust for the elderly and disabled tenants who return the postcards provided under Section 13.77.050A.1 within 30 days of the date that the above required notice was served or mailed. Said deposit in escrow for the qualifying tenants shall be made within ten days of the date the postcards provided pursuant to Section 13.77.050A.1 are mailed. The owner shall also increase the amount of the relocation assistance deposited into escrow for each qualified low income tenant to the amount specified in Section 13.77.055C.

G. Failure of the owner to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the owner's intent to withdraw the accommodation from rent or lease. In addition, if tenants of a rental unit who qualify for relocation assistance have vacated the unit as a result of a notice of intent to withdraw the accommodation from rent or lease, and the owner fails to make any payment specified herein, the owner shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees.

(Ord. 6827-NS § 2 (part), 2004: Ord. 6783-NS § 1 (part), 2003: Ord. 6646-NS § 2, 2001: Ord. 6237-NS § 1 (part), 1994: Ord. 6181-NS § 1 (part), 1993: Ord. 5751-NS § 1 (part), 1986)

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RESOLUTION NO. 05-22

REQUESTING THE CITY COUNCIL TO AMEND CHAPTER 13.77.055 OF THE BERKELEY MUNICIPAL CODE TO REQUIRE THAT HOUSEHOLDS, OTHER THAN PROTECTED CLASSES, DISPLACED BY AN EVICTION BROUGHT UNDER THE ELLIS ACT (GOVT. CODE § 7060, ET SEQ.) RECEIVE \$ 4,500.00 IN RELOCATION ASSISTANCE.

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, the Ellis Act allows residential property owners the right to evict tenants for the purpose of going out of the rental business;

WHEREAS, displaced tenants face the difficulty of moving and relocating into affordable housing;

WHEREAS, the impacts of these no-fault evictions are particularly significant on senior, disabled and low-income tenants;

WHEREAS, in response to these problems, in 2004 the City Council voted to amend B.M.C. Section 13.77.055 to extend relocation benefits to these protected classes and increase the amount of assistance to \$ 7,000.00;

WHEREAS, in 2003, the State Legislature amended the Ellis Act to remove language limiting the payment of relocation assistance to low-income tenants;

WHEREAS, tenants in all households evicted under the Ellis Act incur moving costs and the difficulty of finding affordable and comparable rental housing;

WHEREAS, other municipalities have recognized these impacts and require the payment of relocation assistance to all households displaced under this Act;

WHEREAS, the amount of relocation assistance required by other municipalities, to households other than those in protected classes, ranges from \$3,000 to \$ 13,500;

WHEREAS, in light of recent changes in the rental housing market and the potential loss of rental units, it is important that the City amend the Ellis Act Implementation Ordinance to extend relocation benefits to all tenants;

RESOLUTION NO. 05-22

REQUESTING THE CITY COUNCIL TO AMEND CHAPTER 13.77.055 OF THE BERKELEY MUNICIPAL CODE TO REQUIRE THAT HOUSEHOLDS, OTHER THAN PROTECTED CLASSES, DISPLACED BY AN EVICTION BROUGHT UNDER THE ELLIS ACT (GOVT. CODE § 7060, ET SEQ.) RECEIVE \$ 4,500.00 IN RELOCATION ASSISTANCE. Page 2

NOW, THEREFORE BE IT RESOLVED, that the Rent Stabilization Board of the City of Berkeley hereby requests the City Council to amend Chapter 13.77.055 of the Berkeley Municipal Code to extend the coverage of the ordinance to permit households in non-protected classes to receive \$ 4,500.00 in relocation assistance.

Dated: August 29, 2005

Adopted by the Rent Stabilization Board by the following vote:

Yes: Arreguin, Chong, Evans, Harrison, Kavanagh, Overman, Payne, Spector, Walden
No: None
Abstain: None
Absent: None

Howard Chong, Chairperson
Rent Stabilization Board

Attest: _____
Jay Kelekian, Executive Director

BERKELEY MUNICIPAL CODE CHAPTER 13.77 REQUIREMENTS, PROCEDURES, RESTRICTIONS AND MITIGATIONS CONCERNING THE WITHDRAWAL OF RESIDENTIAL RENTAL ACCOMMODATIONS FROM RENT OR LEASE

Section 13.77.010 Findings.

The Council of the City of Berkeley finds and determines that:

A. Government Code Chapter 12.75 (commencing with Section 7060 *et seq.*) permits owners of residential rental property to withdraw said property from rent or lease and evict tenants for this purpose while permitting local entities to impose restrictions, conditions and requirements upon property which is so withdrawn.

B. There is a continuing housing shortage and low vacancy rate in the City of Berkeley and the withdrawal of residential rental property from rent or lease will increase said shortage making it more difficult for tenants displaced by said withdrawal to find other housing as well as making it more difficult for other persons seeking housing to obtain it.

C. Because of the housing shortage and low vacancy rate it is essential that tenants displaced through the withdrawal of residential rental property from rent or lease be given substantial advance notice to enable them to relocate to other housing.

D. Because of the housing shortage and low vacancy rate, it is essential that the maximum possible protections be given to tenants who may be displaced as a result of the withdrawal of residential rental property from rent or lease. (Ord. 6529-NS § 1, 2000; Ord. 5732-NS § 1 (part), 1986)

Section 13.77.020 Purpose and scope.

A. The City of Berkeley hereby acts pursuant to Government Code Chapter 12.75 (commencing with 7060 *et seq.*) to establish certain requirements, procedures, restrictions and mitigations concerning the withdrawal of residential rental accommodations from rent or lease in accordance with Government Code Section 7060. The City also acts pursuant to its general police powers to protect the health, welfare and safety of its citizens. In adopting these provisions, it is the intent of the City of Berkeley to accord tenants the maximum protections which are available pursuant to Government Code Section 7060 and to provide certain additional rights and protections necessary to deal with the housing shortage in the City of Berkeley.

B. Nothing in this chapter shall otherwise diminish any power which currently exists or which may hereafter exist in the City to grant or deny any entitlement to the use of, or physical modifications to, real property, including, but not limited to, building, planning, zoning and subdivision map approvals. Nothing in this chapter shall entitle an owner of property which has been withdrawn from rent or lease to any special consideration in the granting of any entitlement to the use of said property, nor shall the fact that the property may be vacant be considered as a basis for granting any requested change in use. (Ord. 6529-NS § 2, 2000; Ord. 5751-NS § 1 (part), 1986; Ord. 5732-NS § 1 (part), 1986)

Section 13.77.030 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings set forth below.

A. "Owner" means only the holder of record title having the entire legal and equitable title to the property, or the successor in interest thereto. It shall not include the lessor, sublessor, agent or representative of the landlord. It is the intention of this chapter to permit only the "owner" as defined herein to have and exercise the privileges and responsibilities set forth in this chapter.

B. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a tenant'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 and includes a former tenant displaced by the withdrawal of an accommodation from rent or lease.

C. "Accommodations" means either of the following:

1. The residential rental units in any detached physical structure containing four or more residential units.

2. With respect to a detached physical structure containing three or fewer residential rental units, the residential rental units in that structure and in any other structure located on the same parcel of land, including any detached physical structure specified in subparagraph (1).

D. "Rent control" means the system of controls on residential rents and evictions established pursuant to the Rent Stabilization and Eviction for Good Cause Ordinance, including all amendments thereto, and any successor ordinance or charter provision regulating residential rents in Berkeley.

E. "Withdrawal" means the eviction of all tenants from all units on a particular property through compliance with the requirements of this chapter and implementing regulations. Such withdrawal results in a removal of rental units from the housing market under the terms and conditions set forth in this chapter, and as such is a limited form of removal by means other than conversion or demolition. To the extent that owners of withdrawn units desire to convert such units to other uses, including but not limited to condominiums, community apartments, stock cooperatives, other forms of owner-occupancy, or other change in use, or to permanently remove them from the rental housing market by demolition, or otherwise remove them by means other than withdrawal, such owners must obtain all required permits and approvals from the City in addition to complying with the provisions of this chapter.

F. "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 & Safety Code Section 50079.5. The City shall maintain and provide to owners and tenants information concerning current income levels which qualify tenants as "low-income" under this section.

G. "Disabled" means a person with a disability, as defined in Section 12955.3 of the California Government Code.

H. "Elderly" means a person who is 60 years of age or older. (Ord. 6646-NS § 1, 2001; Ord. 6529-NS § 3, 2000; Ord. 6181-NS § 2, 1993; Ord. 5732-NS § 1 (part), 1986)

Section 13.77.040 Restrictions and responsibilities concerning withdrawn accommodations.

Any accommodations which have been withdrawn from rent or lease and which were subject to rent control at the time of withdrawal, shall be subject to the following conditions and restrictions if said accommodation is again offered for rent or lease:

A. For all tenancies created after December 31, 2002, and commenced during either of the time periods described in subsections 1 and 2 below, the accommodations shall be offered and rented or leased at the lawful rent in effect at the time any notice of intent to withdraw the accommodations was filed with the City, or its designated agency, plus annual adjustments available under the rent control system.

1. The five-year period after any notice of intent to withdraw the accommodations is filed with the City, or its designated agency, whether or not the notice of intent is rescinded or the withdrawal of the accommodations is completed pursuant to the notice of intent.

2. The five-year period after the accommodations are withdrawn.

3. This section shall prevail over any conflicting provision of law authorizing the landlord to establish the rental rate upon the initial hiring of the accommodations.

B. If the accommodations are offered again for rent or lease for residential purposes within two years of the date the accommodations were withdrawn from rent or lease, the following provisions shall apply:

1. The owner of the accommodations shall be liable to any tenant who was displaced from the property by said withdrawal for actual and punitive damages. Any action by a tenant pursuant to this paragraph shall be brought within three years of the tenant's displacement. However, nothing in this paragraph shall preclude a tenant from pursuing any additional or alternative remedy available under law, including, but not limited to general damages. Nothing in this paragraph shall limit or otherwise affect any relocation benefits to which the tenant is entitled under any other law or ordinance.

2. The City, or its designated agency, may institute a civil proceeding against any owner who has again offered accommodations for rent or lease subject to this section for exemplary damages for displacement of tenants. Any action brought by the City or its designated agency shall be brought within three years of the withdrawal of the accommodations. Nothing in this section shall be construed to limit any other powers of the City or its designated agency to pursue litigation in any way involving the subject property.

3. Any owner who offers accommodations again for rent or lease shall first offer the unit for rent or lease to the tenant displaced from that unit by the withdrawal, if the tenant has advised the owner in writing within 30 days of the displacement of his or her desire to consider an offer to renew the tenancy and has furnished the owner with an address to which that offer is to be directed. That tenant or former tenant may advise the owner at any time during the period of eligibility for renewed tenancy of any change in address to which the offer is to be directed. The owner shall also notify the City or its designated agency of the owner's intent to again offer the accommodations for rent or lease at the time the tenant is notified. In addition to the notice required to be given to the tenant, the City or its designated agency shall be deemed to be an agent of the tenant and may request that an offer to renew the tenancy be extended to the tenant. However, nothing in this section shall be construed to relieve the owner of the obligation to directly contact the tenant or former tenant and to advise the tenant that said accommodations are again offered for rent or lease. Notice shall be on a form approved by the City or its designated agency.

4. If the owner offers the accommodations for rent or lease pursuant to this subdivision, and the tenant has advised the owner of a desire to consider an offer to renew the tenancy, then the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced tenant. The terms shall be substantially equivalent to those formerly existing during the tenancy. This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced tenant at the address furnished to the owner as provided in this subsection, and shall describe the terms of the offer. A copy of the notice with proof that it has been mailed to the displaced tenant shall be filed with the City or its designated agency at the time notice is mailed to the tenant. The displaced tenant shall have 30 days from the deposit of the offer in the mail to accept by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid. The City or its designated agency upon learning of the owner's intent to again offer the accommodation for rent or lease shall also attempt to notify each tenant by mail and may further publish notices or advertisements in newspapers or use other reasonable means to attempt to notify the tenants of the availability of the accommodations.

C. An owner who offers accommodations again for rent or lease within ten years of the date on which they are withdrawn shall notify the City or its designated agency of an intention to offer the accommodations again for residential rent or lease. A copy of the notice served on the City or its designated agency shall also be mailed by the owner to each tenant at that tenant's last known address. The City or its designated agency may also attempt to notify each tenant by mail and may further publish notices or advertisements in newspapers or use other reasonable means to attempt to notify the tenants of the availability of the accommodations. If the displaced tenant so requests in writing within 30 days after the owner has notified the City or its designated agency of the intent to again offer the premises for rent or lease, the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced tenant. In the event that the owner fails to comply with this subsection, the owner shall be liable to any affected tenant for general damages and punitive damages in an amount which does not exceed the contract rent for six months.

D. If the accommodations are demolished, and new accommodations are constructed on the same property, and offered for rent or lease within five years of the date the accommodations were withdrawn from rent or lease, the newly constructed accommodations shall be subject to rent control notwithstanding any provision of law which otherwise exempts newly constructed units. The City or its designated agency shall have the power to set rents which will provide a fair return and the landlord shall have the burden of establishing by competent evidence that the rent schedule proposed by the landlord is necessary to provide a fair return. (Ord. 6767-NS § 1 (part), 2003: Ord. 6529-NS § 4, 2000: Ord. 5732-NS § 1 (part), 1986)

Section 13.77.050 Notice requirements.

A. An owner who intends to withdraw an accommodation from rent or lease shall provide the following notices. None of the notices permitted or required by this subsection shall be valid if served or filed prior to July 1, 1986.

1. No less than 120 days prior to the date upon which the accommodation is to be withdrawn, the owner shall provide written notice to each tenant on the property of the owner's

intent to withdraw said accommodation. Said notice shall contain a statement that the accommodation is withdrawn, that all of the accommodations on the parcel are being withdrawn, the date upon which the accommodation is to be withdrawn, that the owner has paid all fees due the City or its designated agency pursuant to Section 13.77.070 of this chapter, and a statement that all "low-income," elderly or disabled tenants are entitled to relocation payment and the amount thereof pursuant to Section 13.77.055. The notice shall include a table clearly showing the low-income range for each household size up to eight people. The owner shall determine whether a member of the household of each unit can speak English and seek appropriate assistance in communicating the importance of the contents of the notice to any household whose members cannot speak English. The notice shall be served on each tenant by either personal service or certified mail, return receipt requested. It shall advise the tenant of the tenant's rights to regain possession of the premises and to damages as set forth in Section 13.77.040 of this chapter. A copy of this notice shall be filed with the City or its designated agency. The notice shall be accompanied by stamped postcards addressed to the owner and the City or its designated agency by which the tenant can represent whether he or she qualifies for relocation assistance. The notice shall be on forms approved by the City or its designated agency. A notice stating the owner's intent to withdraw the accommodation from rent or lease shall not be valid unless the tenants of all of the units on the property are also served with notice that each of their units is to be withdrawn from rent or lease and unless all fees due the City or its designated agency pursuant to Section 13.77.070 of this chapter have been paid.

2. A notice of termination of tenancy having an effective date no earlier than 120 days after the date of service shall also be served on each tenant at the same time the notice stating the intent to withdraw the premises from rent or lease is served on the tenant.

3. Not less than 120 days prior to the date upon which the accommodations are to be withdrawn, the owner shall notify the City or its designated agency of the intention to withdraw those accommodations from rent or lease. The notice shall be on a form approved by the City or its designated agency, and shall contain statements, under penalty of perjury, providing information on the number of accommodations, the address or location of those accommodations, the name(s) of the tenant(s) of the accommodations and the rent applicable to each residential unit. The notice required to be filed by this subsection shall be maintained by the City or its designated agency in files other than those maintained pursuant to the Rent Stabilization and Eviction for Good Cause Ordinance. The information contained in the notice required by this subsection respecting the name(s) of the tenant(s), the rent applicable to any unit, or the total number of units, is confidential and shall be treated as confidential information for the purposes of the Information Practices Act of 1977, as contained in Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code. The City or its designated agency shall, to the extent required by the preceding sentence, be considered an "agency" as defined by subdivision (b) of Section 1798.3 of the Civil Code. However, nothing in this subsection shall be construed as making any information maintained by the Rent Stabilization Board pursuant to the Rent Stabilization and Eviction for Good Cause Ordinance confidential.

4. At the time the notice specified in Section 13.77.050A.3 is filed with the City or its designated agency the owner shall record with the County Recorder a memorandum of the notice

required by Section 13.77.050A.3 summarizing its provisions, other than the confidential provisions, on a form approved by the City or its designated agency.

The owner shall also file and record a certificate, on a form approved by the City or its designated agency, that actions have been initiated as required by this chapter and other applicable law to terminate any existing tenancies. If the owner has satisfied the requirements of Section 13.77.050A.3, and this subsection, the date upon which the accommodations are withdrawn from rent or lease for the purposes of this chapter is 120 days from the date of delivery in person or by first-class mail of that notice to the City or its designated agency. If the notice has not been given and recorded as specified herein, the date upon which the accommodations are withdrawn shall be 60 days after the memorandum summarizing the notice is recorded with the County Recorder.

5. At the time notice is given to the City or its designated agency as required in Section 13.77.050A.3, the owner shall notify any tenant to be displaced that the City or its designated agency has been notified pursuant to Section 13.77.050A.3, that the notice specified the name of the tenant and the amount of rent paid by the tenant as an occupant of the accommodation and the amount of rent the owner specified in the notice to the City or its designated agency. The notice shall also contain a statement of the tenant's rights to regain possession and to damages, in the event the accommodation is again offered for rent or lease, under Section 13.77.040 of this chapter. A copy of the notice shall be filed with the City or its designated agency with proof of service upon each tenant.

6. Not less than 120 days prior to the date upon which the accommodations are to be withdrawn, the owner shall provide two copies of a notice containing language substantially identical to the following: "I assert that I have lived in this unit at least one year prior to having been notified that I am to be evicted from this unit under the City of Berkeley's Ellis Ordinance (BMC Chapter 13.77 et seq.). I further assert that I am a disabled person under the meaning of California Government Code Section 12955.3. It is my understanding that I am entitled to one year's notice prior to surrendering this unit to its owner." With this notice, the tenant shall be enabled by the owner to assert to both the owner and the City that she or he is disabled.

7. Not less than 120 days prior to the date upon which the accommodations are to be withdrawn, the owner shall provide two copies of a notice containing language substantially identical to the following: "I assert that I have lived in this unit at least one year prior to having been notified that I am to be evicted from this unit under the City of Berkeley's Ellis Ordinance (BMC Chapter 13.77 et seq.). I further assert that I am 62 years or older. It is my understanding that I am entitled to one year's notice prior to surrendering this unit to its owner." With this notice, the tenant shall be enabled by the owner to assert to both the owner and the City that she or he is 62 years or older.

8. If the tenant or lessee is at least 62 years of age or disabled and has lived in his or her accommodations for at least one year prior to the date of delivery of the notice of intent to withdraw to the City, then the date of withdrawal of the accommodations of that tenant or lessee shall be extended to one year after the date of delivery of the notice to the City, provided that the tenant or lessee gives written notice of his or her entitlement to an extension to the owner within 60 days of the date of delivery to the City of the notice of intent to withdraw.

9. If a tenant or lessee gives timely written notice of his or her entitlement to an extension of the date his or her accommodation will be withdrawn from the rental market, the owner may

elect to extend the date of withdrawal on any other accommodations up to one year after date of delivery to the City of the notice of intent to withdraw. To make such an election, the owner shall give written notice to the City and the affected tenant or lessee of the owner's election to extend the date of withdrawal and the new date of withdrawal within 90 days of date of delivery to the City of the notice of intent to withdraw. (Ord. 6827-NS § 1 (part), 2004: Ord. 6767-NS § 2 (part), 2003: Ord. 6538-NS §§ 1, 2, 2000: Ord. 6529-NS § 5, 2000: Ord. 6337-NS § 1, 1996: Ord. 6237-NS § 1 (part), 1994: Ord. 6181-NS § 1 (part), 1993: Ord. 5751-NS § 1, (part), 1986: Ord. 5732-NS § 1 (part), 1986)

Section 13.77.055 Financial mitigation of adverse impact on displaced persons.

A. The low-income, elderly or disabled tenants of any residential rental unit who are required to move as a result of the owner's withdrawal of the accommodation from rent or lease shall be entitled to a relocation payment in the sum of \$7000 from the owner. The payment shall be divided equally among all qualifying tenants occupying the rental unit at the time of service on the tenants of the notice of intent to withdraw the unit from rent or lease. Only those persons who have a written or oral agreement with the owner for possession of the rental unit or who have paid rent to the owner shall be deemed tenants for purposes of this Section 13.77.055.

B. In order to claim entitlement to relocation assistance under this chapter, a tenant must mail the postcards provided under Section 13.77.050A.1 within 30 days of the date the notice required by that section is mailed. The owner shall deposit the full relocation payment in escrow in trust for any tenants who claim to qualify for relocation assistance within ten days after such postcard is mailed. Thereafter, the City or its designated agent shall distribute amounts held in escrow as follows:

1. If no written challenge is made to the tenant's claim of entitlement to relocation assistance within ten days after the postcard provided under Section 13.77.050A.1 is mailed, the City shall release the relocation assistance to the tenant.

2. If the City receives conflicting information or assertions which indicate that there is a dispute or uncertainty concerning the tenant's qualification for relocation assistance the City shall continue to retain the disputed relocation assistance funds in escrow. The City then shall release the relocation assistance funds to either the tenant or the owner upon receipt of either a written agreement by both the owner and the affected tenant or an order of a court of competent jurisdiction.

C. The owner may rescind the notice of intent to withdraw the accommodation from rent or lease and the notice of termination of tenancy prior to any release of relocation payment to the qualifying tenants by serving written notice stating such rescission on the tenants. In such instance, the relocation payment shall be released to the owner. Subsequent to the release of any relocation payment to a qualifying tenant, the owner may rescind the notice of intent to withdraw the accommodation from rent or lease and the notice of termination of tenancy only upon the written agreement of the tenants to remain in possession of the rental unit. If the qualifying tenants remain in possession of the rental units after service of an owner's written notice of rescission of the eviction, the tenants shall provide an accounting to the owner of the amount of the relocation payment expended for moving costs, return to the owner that portion of the

relocation payment not expended for moving costs, and assign to the owner all rights to recover the amount of relocation payment paid to third parties.

D. Where an owner has served a notice of intent to withdraw an accommodation from rent or lease on a tenant prior to January 1, 2005 and withdrawal of the accommodation has not been completed, the owner shall give notice as specified in Section 13.77.050A.1 to all tenants, including any tenants who have already vacated their rental units, that elderly and disabled tenants qualify for relocation assistance. The owner shall deposit the full relocation payment in escrow in trust for the elderly and disabled tenants who return the postcards provided under Section 13.77.050A.1 within 30 days of the date that the above required notice was served or mailed. Said deposit in escrow for the qualifying tenants shall be made within ten days of the date the postcards provided pursuant to Section 13.77.050A.1 are mailed. The owner shall also increase the amount of the relocation assistance deposited into escrow for each qualified low income tenant to the amount specified in Section 13.77.055A.

E. Failure of the owner to make any payment specified herein shall be a defense to any action to recover possession of a rental unit based upon the owner's intent to withdraw the accommodation from rent or lease. In addition, if tenants of a rental unit who qualify for relocation assistance have vacated the unit as a result of a notice of intent to withdraw the accommodation from rent or lease, and the owner fails to make any payment specified herein, the owner shall be liable to the tenants for three times the amount of the payment as well as reasonable attorney fees. (Ord. 6827-NS § 2 (part), 2004: Ord. 6783-NS § 1 (part), 2003: Ord. 6646-NS § 2, 2001: Ord. 6237-NS § 1 (part), 1994: Ord. 6181-NS § 1 (part), 1993: Ord. 5751-NS § 1 (part), 1986)

Section 13.77.056 Requirement to offer available accommodations to displaced persons.

A. Where an owner withdraws his or her residential rental accommodations from rent or lease he or she shall offer for rent or lease any available residential rental units in Berkeley that he or she owns, to any tenant who is required to move as a result of the owner's withdrawal of the accommodations from rent or lease. Accommodations shall be considered available if vacant at the time the owner provides notice to the City of his or her intent to withdraw his or her residential rental accommodations from rent or lease pursuant to 13.77.050.A.3 or if the accommodations become vacant at any time prior to the tenant vacating the withdrawn accommodations.

B. If the tenants displaced by the withdrawal of the residential rental accommodations are greater in number than the available residential rental units, the owner shall offer the accommodations to all displaced tenants and give a priority to renting or leasing such available units to any disabled or elderly displaced tenants. If none of the tenants are elderly or disabled, the owner shall give each displaced tenant equal priority in the renting or leasing of such available units. (Ord. 6783-NS § 2 (part), 2003: Ord. 6646-NS § 3, 2001)

Section 13.77.060 Recordation of notice regarding continued applicability of controls.

Within 20 days of receipt of a notice issued by an owner pursuant to Section 13.77.050A., the City or its designated agency may cause to be recorded with the County Recorder a notice which shall recite the fact that the City of Berkeley has determined to apply the constraints adopted pursuant to Government Code Section 7060.2 to successors in interest to the subject property. The notice shall specifically describe the real property where the accommodations are located, the date upon which the owner will withdraw the accommodations from rent or lease and the dates during which the constraints adopted pursuant to Government Code Section 7060.2 shall apply. If the date upon which the accommodations are to be withdrawn is subsequently altered or modified, the City or its designated agency may record an amended notice. The filing of the notice described in this subsection shall not be construed as a finding by the City or its designated agency that the actual or proposed withdrawal of the accommodations has been approved by the City or its designated agency. (Ord. 5732-NS § 1 (part), 1986)

Section 13.77.070 Fees payable to the City.

The City or its designated agency shall establish fees which shall be paid by any owner who exercises the privilege to withdraw accommodations from rent or lease. The City or the designated agency shall set the fee so as to recover all costs of administering this chapter. The fees shall be paid prior to the service of the notice set forth in Section 13.77.050A.1. Failure to pay the fees prior to service of the notice shall invalidate the notice. (Ord. 5732-NS § 1 (part), 1986)

Section 13.77.080 Eviction requirements.

In any action to recover possession of an accommodation subject to the terms of this chapter, it shall be a defense if the owner has not fully satisfied all of the requirements of this chapter including, but not limited to, compliance with all notice requirements, payment of fees to the City or its designated agency, and payment of relocation benefits to displaced tenants. (Ord. 5751-NS § 1 (part), 1986; Ord. 5732-NS § 1 (part), 1986)

Section 13.77.090 Severability.

If any provision of this chapter is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this chapter which can be given effect without the invalid provisions and therefore the provisions of this chapter are severable. (Ord. 5732-NS § 1 (part), 1986)