



Berkeley City Council

ACTION CALENDAR  
December 11, 2007

To: Honorable Mayor and Members of the City Council

From: Councilmember Laurie Capitelli  
Councilmember Linda Maio

Subject: Modification of Berkeley Municipal Code Section 13.77.055 - Ellis Implementation Ordinance

RECOMMENDATION

Adopt the first reading of an Ordinance amending section 13.77.055 of the Berkeley Municipal Code (BMC) (Ellis Implementation Ordinance) to adjust the base amount of relocation payments to displaced tenants from \$4,500 per unit to \$8,700 per unit and that there be an additional rent differential of \$5,000 per unit for tenancies that began prior to January 1, 1999. The amount of \$2,500 for senior, disabled and low-income tenants would remain unchanged but households with minor children in residence would be added to the list of tenants eligible to receive this additional relocation assistance.

BACKGROUND

Over the past several months, the Rent Stabilization Board, Mayor and some Councilmembers have received reports of a dramatic increase in the number of threatened evictions under the provisions of the Ellis Act. Long-term tenants have been the disproportional focus of these threatened evictions and in several recent incidents, the tenants threatened have been in their 80's or 90's. These dramatic actions caused the Mayor's office to request the Rent Stabilization Board to review if the current relocation payments allowed under the Ellis Implementation Ordinance (BMC 13.77.055) is sufficient to cover the cost associated with displacement (including increased rents and deposits, moving costs and the time required to find replacement housing and to move).

At Council's request, the Rent Stabilization Program administers the Ellis Implementation Ordinance for the City. In October, the Rent Board received an initial staff report and determined that it would be appropriate to adjust the amount of relocation payments to displaced tenants. This report was supplemented and presented to the Board at their November 2007 meeting. A copy of the staff report and Board recommendation is attached.

The Board found that the base amount of relocation payments available for displaced tenants has not been adjusted from the \$4,500 per unit established by Council back in 1986. In 2005, Council did create a requirement that an additional \$2,500 be paid if the displaced tenant was disabled, senior, or low-income, but otherwise the relocation amount has remained the same as it was in 1986. During that twenty-one year period, the CPI has increased nearly 93% and the average rent has gone from \$390 per unit to \$1,127 per unit—a 190% increase! The average rent for decontrolled units is even higher- \$1,370 as of June 2007. The table below lists the changes since 1986.

<b>June 1986 Baseline Measures</b> Average Rent = \$390 CPI = 112	June 2007 Comparative Measure	Percentage Increase Since 1986	Adjusted Relocation Fee
CPI in June 2007	216	93%	\$ 8,685
Average Rent in June 2007 (All Units)	\$1,127	190%	\$13,050
Average Rent in June 2007 (Decontrolled Units)	\$1,370	251%	\$15,750

In 1986, almost all units in Berkeley were under rent control. Consequently, the potential financial impact on displaced tenants was generally far less because if the tenant stayed in Berkeley, s/he would probably be moving into another rent controlled unit. Because both the cost of finding replacement housing as well as the profitability for alternative uses of rental property (TICs and condominiums) have increased so dramatically over the past decade. (Between 1999-2005, the price of the median single family home increased by 139%, from \$310,000 to \$740,000. The price for the median condominium increased over 110%, from 228,500 to \$480,000, during the same time period), many other cities have reviewed and substantially adjusted the amount of relocation payments to displaced tenants. The chart below shows the most recent information and reflects that, with the exception of Oakland, Berkeley is significantly below what other municipalities are requiring to make displaced tenants whole.

	Berkeley	Los Angeles	Oakland	San Francisco	Santa Monica	West Hollywood
<b>All Tenants</b>	\$4500/unit	<3yrs \$6810  >3yrs. \$9040	None	\$4500/tenant,  max. \$13,500/unit	Bdrm 0 - \$5300 1 - \$6650 2 - \$7500 3 - \$9300 4 - \$9750	Bdrm 0 - \$5100 1 - \$7200 2 - \$9700 3 - \$12,800
<b>Protected Classes</b>	Low-Income, Disabled, Elderly.  Additional \$2500	Low-income, Disabled, Elderly  <3yrs. \$14,850  >3yrs. \$17,080	Low Income  2 months rent	Disabled, Elderly, Household w/ minors.  Additional \$3,000/tenant	Senior, Disabled, or Minor occupied unit on 11/17/99  Add \$1500/ unit	Moderate Income, Senior, Disabled, Terminally ill, or Household w/ minor \$13,500  Lower Income \$17,000

The chart above shows that most cities with Ellis relocation ordinances (Ellis evictions are usually only an issue in cities with rent control and just cause for eviction protections) have a minimum base payment of \$4,500 per tenant up to \$13,500 per unit. The specific amount required is determined based upon either the tenure of the tenancy or the size of the unit. All cities have an additional amount of relocation payments for tenants in protected classes. San Francisco, Santa Monica and West Hollywood, unlike Berkeley's current Ordinance, consider households with minors as meriting protected class status. Parents with school-age children will often pay extra to stay in an area that does not require switching schools.

**Range of Action Recommended by the Rent Board**

1. Raise the base relocation amount for all units using one of two indexes - either by the increase in the CPI ( to \$8,685) or commensurate to the increase in average rents in Berkeley since 1986 (\$13,050 for all units and \$15,750 for decontrolled units).
2. Add households with minor children as a protected class to receive the additional \$2,500 in relocation payments.
3. Because long-term tenants have an increased likelihood of incurring a greater economic hardship, there should be an additional rent differential

of between \$1,500 - \$6,600 for long-term tenants. Long-term tenants would be defined either as tenants that have resided in a unit for five or more years (receiving between \$1,500 - \$3,000) or, alternatively, for tenancies that began prior to January 1, 1999 (the date of the inception of full vacancy decontrol) a differential of up to \$6,600 should be considered.

4. In order to avoid a rush of Ellis evictions prior to these changes being adopted, the new relocation amounts should apply to all Ellis evictions in which a tenant is still in possession at the date the new Ordinance becomes effective.

### **Analysis of Our Recommendation**

As indicated above, and in the attached reports from the Rent Board, other cities rely upon a mixture of criteria including: tenure of tenancy, number of bedrooms and assumed rent differentials that the tenant will need to pay in their new home. Many of the options in the chart above seem complicated and potentially difficult to understand and administer. Consistent with past Council practice, our goal is to both rely upon the criteria established by other cities but to also maintain simplicity for easy administration and implementation.

The base amount—currently \$4,500—has always assumed some rent differential as well as costs related to relocating (moving, time, increased deposit, etc). The Rent Board recommends that the \$4,500 base amount be adjusted to between \$8,685 - \$15,750, depending upon what Council believes is an appropriate index for additional costs since 1986. We propose establishing the new base to be paid to all tenants displaced by Ellis evictions at \$8,700. This amount places Berkeley right in the range established by other cities, while maintaining a simpler methodology. This amount very closely tracks the increase in CPI since 1986, which should suffice as compensation for most shorter-term tenants.

Because Council set the amount of additional relocation compensation seniors, disabled and low-income tenants receive fairly recently (2005), we do not propose adjusting the amount of \$2,500 at this time but would agree that we should follow other municipalities and add households with minor children as a protected class eligible to receive the additional amount if displaced. Tenants that may qualify under more than one protected class would receive only one additional payment of \$2,500.

The Rent Board recommends that some additional rent differential be provided to long-term tenants because they will presumably be forced to shoulder the greatest burden of those displaced. Two methodologies were proposed for consideration. The first, establishes a differential be paid after a tenant has resided in a unit for five years or greater. While there are certainly additional costs associated with moving after one is established in a unit, we believe most of these costs are factored into the base relocation payment. More importantly,

the Rent Board (see the attached report) was not able to establish one clear additional cost for rent differential that a tenant living in a unit five or more years would be paying. Some tenants would be paying relatively little while those that have lived in their units prior to vacancy decontrol, would be paying a substantially higher rent differential.

One date stands out as a bright-line for an increased amount of rent to be paid by a tenant—January 1, 1999—the date full vacancy decontrol took effect. According to the Rent Board, the average tenant in a pre January 1, 1999 tenancy will, on average, pay \$6,600 per year in additional rent for a unit in Berkeley. According to the Rent Board less than 30% of the rentals fall within this category and these tenants are the most at risk of being threatened with an Ellis Act eviction. Any additional differential should focus on the tenants most dramatically affected. We propose that there be an additional rent differential of \$5,000 per unit but only for tenancies that began prior to January 1, 1999.

Finally, we agree that in order to prevent a rush of Ellis eviction filings in the next two months that Council should protect tenants that remain in possession of their unit at the time these changes go into effect. The minimum Ellis notice period is 120 days (four months). According to Rent Board staff, there were no pending Ellis filings as of the date this report was submitted for consideration. If Council approved these changes expeditiously, the new relocation amounts would apply to all future filings.

#### FINANCIAL IMPLICATIONS

None.

#### CONTACT PERSON

Councilmember Laurie Capitelli, District 5 981-7150  
Councilmember Linda Maio, District 1 981-7110

#### ATTACHMENT

1. Ordinance
2. Report from Berkeley Rent Stabilization Board: "Ellis Act Eviction Relocation Assistance."

## **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.

I. "Minor Child(ren)" means a person(s) who is 18 years or younger at the time the notice of withdrawal of accommodations is served.

(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, and tenant households with minor children 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 13.77.050.A.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 13.77.050.A.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 13.77.050.A.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 13.77.05.0A.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 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~~ ~~\$8700~~ from the owner. The tenants in any unit for which the tenancy began prior to January 1, 1999, shall further be entitled to an additional \$5000 per unit. 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, and tenant households with minor children in ~~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.—An additional relocation payment based on a tenant household with minor children shall be divided equally among tenants who are the parents or guardians of the minor children 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.

3.4. If a household qualifies for an additional relocation payment ~~because the household is both low-income and is occupied by elderly or disabled tenants~~ based on more than one of the grounds specified in this section, 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~~ the date that this amendment takes effect 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 that all tenants are entitled to relocation assistance as provided in subsection 050A. and, including any tenants who have already vacated their rental units, that elderly, low-income and disabled tenants, and tenant households with minor children qualify for additional relocation assistance as provided in subdivision C of this section. The owner shall deposit the full relocation payment in escrow in trust for the ~~tenants 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. 6885-NS § 1, 2005: 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 13.77.080 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)

# Attachment 2



Rent Stabilization Board

## ACTION CALENDAR

December 11, 2007

**To:** Honorable Mayor and  
Members of the City Council

**From:** Jesse Arreguin, Chair, Rent Stabilization Board

**Subject:** Ellis Act Eviction Relocation Assistance

---

## RECOMMENDATION

Adopt the first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 13.77.055 to increase relocation allowance payments to tenants evicted pursuant to California's Ellis Act and expand the definition of protected groups eligible for additional relocation assistance to include families with minor children.

## SUMMARY

On October 15, 2007, the Rent Stabilization Board unanimously recommended that the City Council adopt the following four changes to the existing Ellis Act Implementation Ordinance:

**1. The Base Relocation Payment of \$4,500 should be revised upward to an amount between \$8,685 - \$15,750 per unit -** The Council should be presented with a revised range for the base relocation payment. The methodologies for the range will include:

1. The amount CPI has increased since the Ordinance went into effect in 1986, and
2. The amount the average rent in Berkeley has increased from 1986 to the present.

The CPI has increased by 93% since the Ellis Act relocation assistance payment was established at \$4,500 in June 1986. A 93% adjustment in the fee would reset the relocation fee to \$8,685.

The average rent for all units in Berkeley (rent controlled and decontrolled) has increased by 190% (from \$390 to \$1,127) and 251% for decontrolled units (from \$390 to \$1,370) since June of 1986. A 190% adjustment in the \$4,500 relocation fee would result in a new fee of \$13,050 while a 251% increase would reset the relocation fee at \$15,750 per unit.

2125 Milvia Street, Berkeley, California 94704  
TEL: (510)644-7714 TDD: (510)981-6903 FAX: (510)644-7703  
E-MAIL: [rent@ci.berkeley.ca.us](mailto:rent@ci.berkeley.ca.us) INTERNET: [www.ci.berkeley.ca.us/rent/](http://www.ci.berkeley.ca.us/rent/)

**2. The amount of additional payment for protected classes should not be increased at this time, but the eligibility for additional compensation as a protected class should be expanded to include families with minor children.**

Currently, households that include a senior, low-income or disabled tenant are entitled to an additional \$2,500 in relocation payments. San Francisco, Santa Monica and West Hollywood provide protections for these groups but also include families with minor children as well.

**3. There should be an additional rent differential payment for long-term tenants.**

Several cities have an additional rent differential for long-term tenants, who will be most significantly impacted by the new/higher rent. Two options should be presented to Council for consideration:

1. An additional payment of the differential between average rent and market rent for a period of 6-12 months for all tenants who have lived in a unit over five years.
2. An additional payment of the differential in average controlled rent and market rent for a period up to 12 months for all tenants who have resided in a unit prior to January 1, 1999.

It is difficult to determine one standard for what an appropriate rent differential would be for a tenant who has occupied a unit for five years or more. Because this threshold includes units that have both decontrolled and fully controlled rents, staff would recommend an amount approaching \$250 per month, which is the difference in the June 2007 average rent for all units (\$1,127) and the average rent for units that have been decontrolled (\$1,370). If Council adopts this standard and applies it for six months, the differential would be \$1,500 (\$250 x 6 months). The amount of the differential would increase to \$3,000 if we increase the time period to twelve months.

It is easier to determine a differential standard for units occupied prior to January 1, 1999 because in all cases, the average rent paid will shift from a controlled rental unit to a unit that is decontrolled. The average 2007 rent for units occupied prior to January 1, 1999 is approximately \$820 per month. As of June 2007, the average rent for decontrolled units was \$1,370. The difference between these two amounts is \$550 per month. The average differential for a twelve-month period would be \$6,600 per unit.

**4. All tenants in possession of their rental unit at the time the Ordinance amendments take effect are entitled to the revised fees.**

The Board began discussing amending the ordinance in September of 2007 and any changes will not take effect until early 2008. This action will avoid a rush on preemptive Ellis Act filings.

**BACKGROUND**

A detailed staff analysis, dated October 15, 2007, is provided as background for this report.

Increase in Ellis Eviction Relocation Assistance  
Page 3  
December 18, 2007

FINANCIAL IMPACT

None

CONTACT INFORMATION

Jesse Arreguin, Chair, Rent Stabilization Board  
Jay Kelekian, Executive Director, Rent Stabilization Program

644-6128  
644-6128 ext 103



Rent Stabilization Board  
Legal Department

**Date:** October 15, 2007 (Revised)  
**To:** Members of Eviction Committee  
**From:** Jay Kelekian, Executive Director  
**By:** Brian Kelly, Staff Attorney  
**Subject:** Increase in Ellis Eviction Relocation Assistance

---

REASON ACTION IS NEEDED

The Mayor's Office and the Rent Board have recently received inquiries from numerous tenants whose landlords have stated that they are contemplating removing the tenant's rental unit from the market through use of the Ellis Act (Gov't Code §7060, *et seq.*). Many of the inquiries have come from long-term, elderly, and low-income tenants. Concern has been expressed over the adequacy of the relocation fees an owner must pay in order to remove a rental unit from the market. Because of the high number of contemplated evictions, there is an urgent need to review the Berkeley's Ellis Act relocation fee

ISSUE:

Is there a basis for requesting the City Council to amend Berkeley Municipal Code (B.M.C.) section 13.77.055 to increase the amount of relocation assistance an owner must provide his or her tenants when the owner removes residential rental units from the market through use of the Ellis Act?

CONCLUSION:

Yes. Other than a premium paid to elderly, disabled and low-income tenants, the amount of the Ellis Act relocation assistance paid to displaced tenants has not been increased, in over 20 years. During this time, both rents and moving expenses have increased and inflation has eroded the actual value of the relocation assistance. Accordingly, it would be appropriate for the City Council to amend the City's Ellis Act Implementation Ordinance to increase the amount of relocation assistance paid to displaced tenants.

## ANALYSIS:

### I. LEGISLATIVE FRAMEWORK.

The Ellis Act (Gov't Code §7060, *et seq.*) allows owners of residential rental property to withdraw accommodations from the rental market. The Act supercedes local eviction protections and permits owners to evict tenants living in the units that are being withdrawn from the rental housing market. Local governments, however, retain the authority to "mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations." (Gov't Code §7060.1(c).) Requiring owners to pay relocation fees has been recognized as a legitimate exercise of this authority. Accordingly, in 1986, the City Council adopted an Ellis Act Implementation Ordinance (the Ordinance) that requires property owners to pay relocation fees as a condition for withdrawing accommodations from the rental housing market. (See B.M.C. Chapter 13.77.)

### II. HISTORY OF RELOCATION ASSISTANCE IN BERKELEY

As originally adopted, the Ellis Act Implementation Ordinance required property owners to pay \$4500 per unit to the tenants of each unit that was withdrawn from the market. However, in *Channing Properties v. City of Berkeley* (1992) 11 Cal.App.4<sup>th</sup> 88, the Court of Appeal held that, under the Act, relocation assistance was limited to low-income tenants. Therefore, for over a decade, relocation assistance was paid only to displaced tenants who qualified as low-income.

In 2003, the Legislature amended the Ellis Act and deleted the language cited by the court in *Channing* as limiting relocation assistance to low-income tenants. Subsequently, in *Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4<sup>th</sup> 886, the Court of Appeal upheld an amendment to San Francisco's Ellis Relocation Ordinance that expanded the coverage of the ordinance to include all tenants displaced by an Ellis Act eviction regardless of income status.

In 2004, the City Council increased the amount of relocation assistance property owners were required to pay from \$4500 to \$7000 per unit and expanded the class of tenants that qualified for assistance to include elderly and disabled tenants. Only low-income, elderly and disabled tenants were eligible for relocation payments.

In 2005, the City Council amended the Ellis Act Implementation Ordinance to provide that **all** displaced tenants are entitled to receive \$4500 in relocation assistance. (B.M.C. §13.77.055.) Elderly, disabled and low-income tenants were still entitled to \$7000 in assistance. (*Id.*)

### III. 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 October 2007, 321 rental units in 110 properties have been removed pursuant to the Ellis Act. Most removals have involved properties with only a few units. Fifty-nine properties had only one or two units. Twenty-three properties had three or four units. It is certain that other owners provided larger 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 2006, 466 buildings with 2,214 rental units were removed from the rental market. Out of this total, 91 buildings with 440 units have been returned to the rental market.<sup>1</sup> 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 2007 over 3,000 rental units were removed pursuant to the Ellis Act.

In Los Angeles, the numbers are even more dramatic with nearly 13,000 units removed under the Ellis Act between 2004 –2006.

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

The majority of the threatened Ellis Act evictions the Rent Board has encountered recently have involved the owner indicating that they do not intend to completely go out of business but rather pursue potential alternative uses on the property – generally, converting to condominiums or tenants-in-common (TIC).

The provisions in the Condominium Conversion Ordinance provide significant disincentives for owners considering converting to not empty their building via the Ellis Act. However, for owners considering selling their buildings as TICs, as the alternative use to maximize profitability on the building, few impediments exist since the Tom decision (Tom v. San Francisco, 120 Cal.App.4<sup>th</sup> 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)

While TIC interests present serious practical problems (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

---

<sup>1</sup> 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)

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 TICs exceeds the market value of rental units.

The past several years, there have been dramatic 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 market value of apartments in Berkeley is about \$150,000 per unit. In contrast, the average market value of condominium units now approaches \$500,000. If TIC shares may be marketed for two-thirds the price of condominiums (e.g. \$350,000), their market value would still exceed the market value of rental units by \$200,000.

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.

#### IV. 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 almost certain that the tenant would face a rent increase of hundreds of dollars per month. As of June 2007, 4,830 rental units, 26.2% of all rental units covered by the rent ordinance were in this class. The median rent for units that have not had any vacancy increase since 1999 was \$820, while the median market rent in the first six months of 2007 for new tenants was \$1,370.

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.

In 1986, the Ellis Relocation fee was \$4,500. In June, 1986, the average rent was approximately \$390 per unit and the CPI was 112. The table below reflects the changes in CPI and average rent since that time:

	June 2007 comparative measure	Percentage increase since 1986	Adjusted Relocation Fee
CPI in June 2007	216	93%	\$ 8,685
Average Rent in June 2007 (all units)	\$1,127	190%	\$13,050
Average Rent in June 2007 (decontrolled units)	\$1,370	251%	\$15,750

V. RELOCATION ASSISTANCE IN OTHER JURISDICTIONS

Berkeley has never adjusted the base relocation amount of \$4500 established in 1986. The only change has been the additional \$2500 paid to low-income, senior and disabled tenants. Over the past several years, most cities that require relocation payments have increased the amount. The relocation assistance currently provided in other jurisdictions with eviction protections are set forth in the following chart.

	Berkeley	Los Angeles	Oakland	San Francisco	Santa Monica	West Hollywood
All Tenants	\$4500/unit	<3yrs \$6810  >3yrs. \$9040	None	\$4500/tenant, max of. \$13,500/unit	Bdrm 0 - \$5300 1 - \$6650 2 - \$7500 3 - \$9300 4 - \$9750	Bdrm 0 - \$5100 1 - \$7200 2 - \$9700 3 - \$12,800
Protected Classes	Low-Income, Disabled, Elderly.  Additional \$2500	Low-income, Disabled, Elderly  <3yrs. \$14,850  >3yrs. \$17,080	Low Income  2 months rent	Disabled, Elderly, Household w/ minors.  Additional \$3,000/tenant	Senior, Disabled, or Minor occupied unit on 11/17/99  Add \$1500/unit	Moderate Income, Senior, Disabled, Terminally ill, or Household w/ minor \$13,500  Lower Income \$17,000

**LOS ANGELES**

In April 2007, the Los Angeles relocation fees were increased to the current levels. In setting the fees, the City Council noted that relocation had a disproportionate impact on particular identified classes of tenants. The relocation fees are based on the average rent differential or increase a displaced tenant will encounter. The fee for a short-term tenant, i.e., less than three years of occupancy, was set at six times the rent differential. The fee for a short-term tenant who is elderly, disabled, low-income or who has a minor child was set at 18 times the rent differential. The fee for a long-term tenant, i.e., more than three years of occupancy, was set at 12 times the rent differential plus a \$1,000 for moving costs. Finally, the fee for a long-term tenant in a protected class was set at 24 times the rent differential plus \$1000 for moving expenses.

## SAN FRANCISCO

In November 2006, the voters of San Francisco passed a proposition that established relocation fees of \$4500 *per tenant* with a maximum fee of \$13,500 per unit. Elderly or disabled tenants or households with a minor child are entitled to an additional fee of \$3000.

## SANTA MONICA

The current Santa Monica relocation fees are derived by increasing fee amounts established in 1990 for inflation. In 1990, relocation fees were set based on the number of bedrooms in the unit that was being removed from the market and the following factors: (1) the average rent differential a displaced tenant will encounter; (2) the new security deposit; (3) moving expenses; and (4) utility start-up costs. An additional \$1,000 fee was granted to elderly or disabled tenants and to tenants residing with a minor child. Current fees are determined by annually increasing the fees established in 1990 by the Rent of Primary Residence component of the local CPI-W Index, rounded to the nearest \$50.

## WEST HOLLYWOOD

West Hollywood increased relocation fees in May 2007. West Hollywood's fee system is similar to Santa Monica's. The fee is based on the number of bedrooms in the unit and on the following factors: (1) six months, rent differential; (2) the new security deposit; (3) moving costs; and (4) dislocation costs (utility hook-ups, personal expenses, etc.). The fee for moderate-income tenants, elderly, disabled and terminally ill tenants, and tenants living with a minor dependant is based on 18 months rent differential. The fee for low-income tenants is based on 24 months, rent differential. The fees for tenants in the protected classes are set regardless of unit size.

## VI. CONCLUSION

The amount of the Ellis Act relocation fee paid to displaced tenants in Berkeley has not been significantly increased in over 20 years. During this time, rents and moving expenses have increased significantly and inflation has eroded the actual purchasing power of the current fee. Most jurisdictions where Ellis Act evictions are a problem periodically increase the amount of the relocation fee a property owner must pay the tenants he or she is evicting.

In recommending an amount by which the City Council should increase the Ellis Act relocation fees, many factors may be considered. As set forth above, other jurisdictions have considered inflation, rent differentials, security deposit requirements, moving expenses, utility hook-up costs, length of tenancy and whether displacement will cause exceptional hardship due to age, disability, presence of a minor child, or income status. The one caveat is that the amount of the fee may not impose a prohibitive price on the

Ellis Act Relocation Fee Increase

October 15, 2007

Page 7

exercise of an owner's right to go out of the residential rental business. (*Channing Properties v. City of Berkeley*, supra, 11 Cal.App.4<sup>th</sup> at 100.) However, in *Pieri*, the Court of Appeal found that the amount of San Francisco's relocation fee was not beyond the compensation contemplated by the Legislature in enacting and amending the Ellis Act. (*Pieri v. City and County of San Francisco*, supra, 137 Cal.App.4<sup>th</sup> at 894.) Therefore, a relocation fee of between \$15,000 and \$20,000 should withstand judicial scrutiny.

Finally, to avoid a rush of preemptive Ellis Act filings, any amendment to the Ellis Act Implementation Ordinance (B.M.C. Chapter 13.77) increasing the amount of the relocation fee should specifically state that all tenants in possession of their rental unit at the time the ordinance is amended are also entitled to the higher fee.