



Rent Stabilization Board
Office of the Executive Director

Item 4.

MEMORANDUM

DATE: February 11, 2016

TO: Honorable Members of the 4 x 4 Committee

FROM: Jesse Townley, Chair, Berkeley Rent Board
97 Jay Kelekian, Executive Director

SUBJECT: Increase in Owner Move In Relocation Assistance

Reason Action is Needed

Berkeley voters passed Measure Y in November 2000. It is codified as Berkeley Municipal Code (B.M.C.) section 13.76.130A.9. The law currently requires landlords to pay \$4,500 only to tenant households who qualify as low income when the landlord recovers possession of the tenant's unit pursuant to owner-move-in (OMI) eviction. No other Berkeley tenants qualify for any relocation assistance despite being displaced through no fault of their own. Berkeley is one of the only major rent control jurisdictions in the state that does not provide relocation assistance to all tenants, regardless of income status. Also, the relocation assistance the voters approved with Measure Y has not been adjusted since it was passed almost 16 years ago. The assistance is close to four times lower than that offered by the cities of San Francisco, Los Angeles, Santa Monica, and West Hollywood – each of which have periodically adjusted relocation payments over the years in response to rising rents, moving costs, and inflation.

Issue:

Is there a basis for requesting that the City Council place an item on this year's November ballot to amend B.M.C. section 13.76.130A.9.f. to increase the amount of relocation assistance an owner must provide his or her tenants when the owner evicts them from their rental units by way of an OMI eviction?

Answer:

Yes. The amount of relocation assistance passed by the voters in November 2000 has never been increased. During this time, median market rents have increased by 160% when compared to median rents, and moving expenses have also sharply increased. These expenses, along with inflation, serve to erode the actual value of the current required relocation assistance. Moreover, Berkeley is the only jurisdiction that does not require relocation assistance to all tenants evicted for owner occupancy. Because the Berkeley Rent Ordinance was passed by voter initiative, the relocation assistance may only be adjusted by the voters. Accordingly, it would be appropriate for the City Council to place a measure on the November ballot to amend B.M.C. section 13.76.130A.9.f. to increase the amount of relocation assistance an owner must provide his or her tenants when the owner evicts them from their rental units by way of an OMI eviction. Given that the Rent Ordinance is so rarely amended, it would also be appropriate to incorporate an automatic inflationary adjustment into the new fee structure, so that it increases automatically commensurate with the local Consumer Price Index. Additional options to expand protections and improve the administration of the Ordinance are also listed for consideration.

Analysis:

I. Legislative Framework and City's Authority to Require Relocation Assistance

The Costa Hawkins Rental Housing Act (Costa Hawkins) completely eliminated vacancy control on January 1, 1999. After that date, Costa Hawkins allowed all landlords a vacancy rent adjustment to market rate for any new tenancy. As such, landlords had great incentive to evict sitting tenants and establish new tenancies with no restrictions on the rental amount. The law did not require any relocation assistance or minimum length of occupancy once the property owner successfully recovered possession from the tenants. During the three-month period before Measure Y passed some forty-seven (47) tenancies were served with OMI notices¹ (well more than in any other documented three-month period). Many of these notices were filed with no intent to move in but rather to convince the tenant to leave, since there are few, if any, defenses to an OMI eviction.

Measure Y amended Berkeley's OMI requirements to require, among other things, that landlords live in the unit for at least 36 continuous months and provide \$4,500 relocation assistance to qualifying low income households that are evicted.² The City Council adopted the Ellis Implementation Ordinance (B.M.C. section 13.77) in 1986 and set the relocation fee at \$4,500

¹ The Board received 47 OMI notices during the period from September – November 2000. There may have been many other OMI notices served on other tenancies that the Board did not receive.

² "Low income" is defined as "persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5." B.M.C. section 13.76.1309.f. Currently, a family of four would have to make under \$71,600 to qualify for relocation assistance if they are displaced pursuant to an OMI notice.

per unit (B.M.C. 13.77.055). At that time, however, case law limited no-fault eviction relocation assistance (including Ellis) to low-income tenants.³ Nevertheless, the courts have recognized the longstanding principle that cities may use their police power to require landlords to provide relocation assistance to tenants evicted on “no-fault” grounds in order to mitigate the effects of displacement. See, *Pieri v. City and County of San Francisco*, 137 Cal.App.4th 886 (2006) (affirming that mitigation for displaced tenants could come in the form of monetary payments); *Kalaydjian v. City of Los Angeles* (1983) 149 Cal.App.3d 690, 692 (1983) (holding that the city’s ordinance requiring landlords who converted apartments to condominium use to provide relocation payments to displaced tenants was within the city’s police power.)

Measure Y was drafted using the same amount as the Ellis Implementation Ordinance provided at the time. In response to inflation, increasing rents, and more costly moving expenses, the Ellis Implementation Ordinance has been amended three times – most recently in 2007 – and now requires property owners to pay *all* Ellis evicted tenants a relocation fee ranging from \$8,700 - \$16,200.⁴

California case law and the legislature have since upheld higher relocation assistance to all tenants evicted by no-fault evictions such as OMI and Ellis. Although rents are among the highest in the state, Berkeley currently requires property owners to pay some of the lowest OMI and Ellis relocation fees in the state.

II. OMI Evictions on the rise

The Board maintains detailed records regarding all OMI evictions.⁵ There were a large number of OMI evictions immediately before and after Measure Y passed. Thereafter, there were very few OMI evictions reported to the Board from 2006 – 2013 (between 8 – 14 per year). The years 2014 and 2015, however, have seen a sharp increase in the number of reported OMI evictions. For example, there were at least three times the number of OMIs reported to the Board in both 2014 and 2015 as there were in either 2007 or 2008.

³ *Channing Properties v. City of Berkeley* (1992) 11 Cal.App.4th 88

⁴ B.M.C. 13.77.055 requires payment of \$8,700 for all tenant households evicted using the Ellis Act and additional relocation fees for tenancies that began prior to 1/1/99 (\$5,000); and low-income, disabled, or elderly tenants, and tenant households with minor children (\$2,500). Thus, the maximum a Berkeley tenant household may currently receive when evicted pursuant to the Ellis Act is \$16,200.

⁵ It is important to note, however, that a number of OMI evictions fly under the radar with no reporting to the Board whatsoever. Often owners or their representatives will inform tenants that they intend to move in and convince the tenant to leave without formal notice. The Board has no authority to decide whether a tenant must surrender possession of her rental unit in an eviction action – such power is granted solely to the state court – so our participation in the process is strictly to warehouse the data. When an owner evicts a tenant through OMI or threat of an OMI but does not notify the Board, we have no way of capturing this data. We would not hazard a guess as to how many tenants are permanently displaced by way of unreported OMIs or threats of OMIs, but we believe – based on anecdotal evidence collected informally by the Board’s Public Information Unit – that the numbers are significant.

Board staff further analyzed the demographics of the property owners serving these notices over the last three years. During this time, over 50% of owners who served OMI notices have owned the property for fewer than two years (with the overwhelming majority evicting tenants within the first year of purchase). The tenants evicted for OMIs are generally longer term tenants who have made Berkeley their home for many many years. They are being replaced by property owners who, by and large, have just purchased their home and often have no roots in Berkeley. Given the dramatic increase in rents (particularly over the last three years), many tenants that are displaced from their long-time homes are unable to find suitable replacement housing and are thus forced to move away from Berkeley. An increase in relocation fees has the potential to bridge the gap to find a replacement home in Berkeley for many of these tenants while preserving for a property owner, acting in good faith, the right to occupy her home.

III. Current OMI relocation assistance

Property owners often target homes with two or more bedrooms for OMI. The median rent for units rented at market for a two bedroom rental unit during the 3rd Quarter of 2015 was \$2,600 and the median rent for a three bedroom during that quarter was \$3,498.⁶ Tenants living in a unit that the landlord recovers for owner occupancy are likely paying far less than they would pay for a similar unit on the open market. Assuming a landlord charges a tenant the common deposit of first and last month's rent, plus a one month deposit, a tenant would have to pay \$7,800 up front for a two bedroom and \$10,494 for a three bedroom plus moving expenses. The current OMI relocation fee is \$4,500 and *only* available for tenants who qualify as low income.

IV. Potential Costs for Tenants of OMI Evictions

While the impacts of OMI evictions on Berkeley's tenant households varies depending on the current rent of the unit and circumstances of the household, the vast majority of tenants displaced from their homes by OMIs have lived in their rental units for many years and are paying a rent below the current market. In short, rents for these tenants are very likely to increase dramatically. These tenants are often the most vulnerable to rent increases, and many are forced to leave Berkeley. According to a 2010 Rent Board study, nearly two-thirds of long-term tenant households are low-income and 44% are very low-income. Long-term tenants also comprise a higher proportion of disabled, elderly, retired, African American, and single parents.

In cases of evictions from units that have not obtained full vacancy decontrol Costa Hawkins rent increases it is almost certain that the tenant would face a minimum 150% rent increase to remain in Berkeley. As of January 2016, 2,405 rental units, 12.4% of all rental units covered by the Rent Ordinance were in this class. The difference between the median rent for units that have not had any vacancy rent increase since 1999 and the median market rent in the 3rd Quarter of 2015 is significant – on average, tenants would pay more than \$14,250 in additional yearly rent.

⁶ The citywide average non-market rent for two and three bedroom units was \$1,836 and \$2,593 respectively with rents for longer-term tenants substantially lower than that.

Tenants living in vacancy-decontrolled units would likely experience a less dramatic rent increase. While likely less than pre-'99 tenants would be affected, post Costa Hawkins tenants still may experience a significant increase as median market rents have risen 62.5% for two bedrooms from the 3rd Quarter of 2010 to the 3rd Quarter of 2015.⁷ Nevertheless, displaced tenants would still incur moving expenses, the time and effort associated with finding a replacement unit, and effort associated with packing and unpacking all household possessions, and possibly would face other losses due to a change in location.

V. Relocation Assistance in Other Jurisdictions

Since established by the voters in November 2000, the OMI relocation fee of \$4,500 has not been adjusted. Other rent control jurisdictions throughout California, however, have significantly increased relocation assistance requirements in the past ten years in response to rising rents, moving costs, and inflation. While most jurisdictions require a landlord to pay relocation fees to all tenant households, Berkeley is the only jurisdictions that only requires landlords to pay relocation fees to low-income tenants. Further, all cities other than Berkeley require higher relocation payments for tenant households that include seniors or disabled tenants, and many allow for additional benefits for households with minor children.

The chart on the following page surveys other rent control cities throughout the state. It is instructive for comparative purposes:

⁷ The Rent Board has many other documented cases of landlords attempting to raise rents by well more than the average rent increases for market medians. For example, in 2014, the Board ruled on an appeal where the property owner attempted to raise the rent more than 50% on the one-year anniversary of a tenancy. While she was not successful, it shows just how dramatically rents have risen that landlords are now able to charge upwards of 50% rent increase on a year over year basis for a unit that was already recently decontrolled.

	Berkeley	Los Angeles	San Francisco	Santa Monica	West Hollywood
All Tenants	None	< 3 years \$7,800 > 3 years \$10,300	\$5,890/tenant Maximum of \$17,670/unit	Bedroom 0 - \$8,650 1 - \$13,300 2+ - \$18,050	Bedroom 0 - \$5,100 1 - \$7,200 2 - \$9,200 3+ - \$12,800
Protected Classes	Low-income \$4,500	Low-income \$10,300 Senior, disabled, or family with minor < 3 years \$16,500 > 3 years \$19,500	Disabled, Elderly, Family with Minor Additional \$3,927	Disabled, Elderly, Family with Minor Bedroom 0 - \$9,950 1 - \$15,350 2+ - \$20,750	Moderate income, Senior, Disabled, Terminally ill, Family with Minor \$13,500 Low-income \$17,000
Source	BMC Section 13.76.1309f.	Los Angeles Municipal Code Section 151.09G.	San Francisco Administrative Code Section 37.9C	Santa Monica Municipal Code Section 4.36.040(d)	West Hollywood Municipal Code Section 17.52.020
How the fee is increased	Popular vote	Consumer Price Index	Consumer Price Index	Consumer Price Index	Current proposed legislation to link increase to Consumer Price Index

Los Angeles

The City of Los Angeles establishes its relocation payment scheme on a per household basis. It allows for an increased payment based on length of tenancy and senior/disabled/family with minor children status. Los Angeles also provides a higher payment for low-income tenants.

In setting the initial fee in 2007, 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 a displaced tenant will encounter. The fee for a short-term tenant (i.e. less than three years 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 \$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 \$1,000 for moving expenses.

The fee is increased in an amount based on the Consumer Price Index – All Urban Consumers averaged for the twelve (12) month period ending September 30 of each year as determined and published by the Department on or before May 30 of each year. The adjusted amount is rounded to the nearest \$50 increment.

San Francisco

San Francisco requires a relocation fee based on the number of tenants. 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 were entitled to an additional fee of \$3000. The base relocation payment has been adjusted annually and will be \$5,890 per tenant with a maximum fee of \$17,670 per unit and the additional fee allowed for households containing elderly or disabled tenants, or families with minor children is \$3,927.⁸ San Francisco does not allow for a higher relocation payment for lower income households. The fee is increased annually at the rate of increase in the “rent of primary residence” expenditure category of the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region for the preceding calendar year, as that data is made available by the United States Department of Labor and published by the Board.

Santa Monica

Santa Monica ties its relocation benefits to the size of the unit with no reference to the length of the tenancy and does not allow for increased payments to low-income households. The current Santa Monica relocation fees are derived by increasing fee amounts established in 2011 for inflation. In 2011, relocation fees were set based on 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. Current fees are determined by annually increasing the fee established in 2011 by the percentage change in the rent of primary residence component of the CPI-W Index for the Los Angeles/Riverside/Orange County area, as published by the United States Department of Labor, Bureau of Labor Statistics, between November 2011 and the July 1st preceding the date of vacancy rounded to the nearest fifty dollars. This amount is updated annually commencing on July 1, 2012 and on July 1st of each year thereafter.

West Hollywood

West Hollywood, like Santa Monica, ties its relocation benefits to the size of the unit with no reference to the length of the tenancy. This is done to reflect the higher cost associated with relocating the increased number of occupants and volume of belongings in larger units.

⁸ The relocation fees quoted for San Francisco become effective in March 2016.

Additionally, the City of West Hollywood has established two additional payment categories, "Qualified Tenants," which includes tenant households with moderate-income tenants, elderly, disabled, or minor children, and "Lower-Income Tenants." These categories are provided with higher benefit amounts to capture the additional moving costs and greater financial pressures certain tenants face when relocating.

West Hollywood's fee considers 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 tenants, and tenants living with a minor child is based on an 18-month rent differential. The fee for low-income tenants is based on a 24-month rent differential. The fees for tenants in the protected classes are set regardless of unit size.⁹

VI. Recommendation

Previously, the Board and Council have desired simplicity and clarity over precision when determining relocation payments for tenants displaced in a no-fault eviction. The Board recommends the Rent Ordinance (specifically, B.M.C. 13.76.130A.9.f.) be amended so that *all* tenant households receive \$15,000 in relocation fees when they are displaced from their homes by OMI eviction.¹⁰ The other cities surveyed in this report provide relocation payments in this range. Additionally, the Board recommends additional relocation fees of \$5,000 for tenants who qualify as low-income, disabled, elderly, families with minor children, or those tenancies that began prior to 1999 as these tenants are often disproportionately impacted by displacement. Thus, the maximum a tenant household could receive if displaced by an OMI eviction is \$20,000.

Furthermore, the base relocation fee of \$15,000 should be paid to the Board within ten days of service of the notice of termination of tenancy on the tenants. The Board has always held OMI and Ellis relocation fees in escrow and dispersed the funds to eligible tenants. Requiring that the base fee be paid up front will deter landlords who do not actually intend to move into the rental unit from serving a notice as means to unlawfully secure a vacancy through displacing tenants with no good cause.

The Board also recommends that the relocation payment be indexed to inflation, so that it is

⁹ West Hollywood has not adjusted its relocation fee since 2007. The city, however, is considering increasing the current fee by incorporating the yearly increase in CPI. Moving forward, the relocation fees would be adjusted annually by the percentage change in the "rent of primary residence" component of the CPI-U Index for the Los Angeles/Riverside/Orange County area from May to May each year, rounded to the nearest whole dollar. In the event there is a decrease in the percentage change, no increase or decrease in relocation fees would be authorized. The adjusted fee amounts would be effective July 1st of every year, beginning this coming July, 2016. West Hollywood City Council is scheduled to consider this proposal on February 16, 2016.

¹⁰ The amount a landlord is required to pay a tenant must be "roughly proportional to the typical relocation costs that the property owner causes a tenant to incur by withdrawing a unit from the rental market." *Levin v. City and County of San Francisco*, (N.D. Cal) 3:14-ev-03352-CRB.

adjusted annually commensurate with the yearly increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous June 30.¹¹

VII. Other Possible Amendments

The Board and Council may also wish to consider two other minor, but important, changes to the OMI section of Rent Ordinance. The first involves meaningful protections for families with minor children, and the other allows for more effective administration of the Ordinance.

A. Protection for families with children during the school year

While displacement from their homes may cause considerable disruption for tenants, evicting families with children from homes during the school year can be particularly harmful. If a family is forced to move away from the neighborhood or to another town, a student often has to enter a new school mid-year. Studies have shown that students who are displaced during the school year do not perform to their potential.¹² Teachers also report that mid-year turnover can be disruptive to the entire class.

San Francisco prohibits OMI evictions of families with minor children during the school year.¹³ San Francisco Administrative Code section 37.9(j). Given the potentially harmful impact on students displaced during the school year, we recommend the issue be brought to the voters so Berkeley can consider doing the same. Owners will still be entitled to occupy a unit on their property, but tenants with minor children would gain a meaningful protection, so that they do not have to transfer during a school year.

B. Allow Board to adjudicate disputes regarding low-income status

Currently, the Ordinance provides that all disputes regarding a tenant's qualification for low-income status shall be settled through mutual agreement or an order from a court of competent jurisdiction. B.M.C. section 13.76.1309.n.(i). A landlord must deposit the relocation fee of \$4,500 with the Rent Board within ten days of a tenant's claim of entitlement to such funds, but the landlord has the opportunity to challenge the tenant's eligibility to receive them. Often times, the Board holds these funds for several months while the parties are held in limbo. Given the relatively minor sum of money required, it is rare, indeed, for a landlord to seek a court order regarding a tenant's eligibility to receive relocation assistance. If the relocation fee is adjusted as

¹¹ Given that this ballot initiative, if successful, would pass in November 2016, when drafting the legislation it should be made clear that the first CPI-U increase would take effect in July 2018 rather than July 2017.

¹² Editorial Projects in Education Research Center. (2004, August 4). Issues A-Z: Student Mobility. *Education Week*. Retrieved February 3, 2016 from <http://www.edweek.org/ew/issues/student-mobility/>

¹³ This provision does not apply where there is only one rental unit in the building owned by the landlord or where the owner will move into the rental unit with a minor child. San Francisco Administrative Code section 37.9(j)(2).

proposed, however, there may be more landlords who challenge a tenant's entitlement to increased assistance. Moreover, once it is established that the unit is vacated, the majority of the money should not be in dispute and could be summarily distributed. Allowing the Board to adjudicate these claims and make determinations regarding a tenant household's eligibility to receive these funds would make it easier for the Board to more efficiently and effectively administer the Ordinance and give parties more streamlined relief when there are disputes of this manner.

VIII. Conclusion

The OMI relocation assistance fee of \$4,500 was established in 2000 by popular vote and has not been adjusted since. During this time, median market rents have increased by 160% when compared to median rents. Additionally, moving costs have risen significantly, and inflation has eroded the actual purchasing power of the current fee. The overwhelming majority of other rent control jurisdictions have either periodically increased their relocation fees to account for increased rents/moving costs or built in adjustments to the formula, so that the fees are increased automatically based on the Consumer Price Index.

In recommending an amount by which the OMI relocation fees should be increased, 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, income status, disability, or presence of a minor child. Given what other cities require property owners to pay tenants displaced by OMI, a relocation fee between \$15,000 and \$20,000 should withstand judicial scrutiny.

Finally, to avoid a rush of preemptive OMI eviction filings, any amendment to the Rent Ordinance (B.M.C. Chapter 13.76.130A.9.f.) 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.