

Rent Stabilization Board

## MEMORANDUM

**DATE:** November 5, 2019

**TO:** Honorable Members of the Eviction/Section 8/Foreclosure Committee

**FROM:** Matthew Siegel, Staff Attorney *MS*  
Jen Fabish, Community Services Specialist *JF*

**SUBJECT:** Owner Move-in Eviction Tracking Report (July 2016 – June 2019)

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### BACKGROUND

#### I. Measure Y

In November 2000, in response to a rash of owner-move-in evictions, Berkeley voters adopted Measure Y as an amendment to the Rent Stabilization and Eviction for Good Cause Ordinance. Known as Berkeley's owner move-in (OMI) law, Measure Y was subsequently codified under Berkeley Municipal Code (B.M.C.) Section 13.76.130A.9. It allowed property owners to evict tenants so that the owner or qualifying relatives could move into rental units, but placed restrictions and conditions on such evictions.<sup>1</sup> In addition, property owners who evicted tenant households that qualified as low income were required to pay \$4,500 relocation assistance prior to the tenants relinquishing possession of their rental units.

After an owner move-in eviction, the rental rate for the next tenancy established in the vacant unit cannot exceed the lawful apparent rent ceiling that applied to the former tenancy. (Rent Board Reg. 1016). Furthermore, the evicted tenant/s have the opportunity move back into the unit if they expressed an interest in doing so at the time of the eviction. (B.M.C. 13.76.130A9.o.)

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<sup>1</sup>Under B.M.C. 13.76.130A.9b., an owner could evict a tenant so that the owner, or his/her spouse, child, or parent could occupancy in a rental unit. The owner or relative must have intended to live in the unit for 36 continuous months. Additionally, with few exceptions, property owners could not evict seniors or disabled tenants who have occupied their rental units for five years or more in buildings with four or more units.

## II. Measure AA

In November 2016, Berkeley voters passed Measure AA, which amended Measure Y. While many of above-referenced provisions of the owner move-in law remain the same, Measure AA implemented the following substantial changes:

- Property owners who evict tenants for owner move-in purposes must pay a standard relocation fee to all tenant households where at least one occupant has resided in the unit for more than one year.
- Qualifying low-income, disabled, elderly, families with minor children, or those tenancies that began prior to 1999 are eligible to receive an additional relocation assistance payment.
- Families with minor children are protected from being evicted during the school year.
- A City or Rent Board hearing examiner can adjudicate disputes regarding a tenant's entitlement to the additional relocation assistance.

Finally, as under Measure Y, Measure AA requires that “. . . at least twice annually, Rent Board Staff shall report to the Rent Board regarding the occupancy status of units possession of which has been recovered . . . within the prior thirty-six months.” (B.M.C. 13.76.130A9.r.)

Attached is a report analyzing OMI eviction notices filed with the Rent Stabilization Program from July 1, 2016 – June 30, 2019.

## **OMI REPORT: July 1, 2016 – June 30, 2019**

### **STAFF MONITORING**

To ensure that tenant protections are not violated, Rent Board staff endeavors to contact occupants living in units that have received OMI eviction notices at least once every six months. Staff sends a letter to the unit notifying the occupant of the rent ceiling that would apply if s/he is a tenant rather than the owner or qualified family member (Attachment 1). Staff also researches information in our databases and county ownership records to ensure that residency information is correct. Furthermore, staff conducts focused site visits to attempt to ascertain residency when there is a question as to whether the owner or family member actually lives in the unit after an OMI notice is sent.

When staff receives information that a new tenant may be living in a rental unit following an OMI eviction, staff may contact the owner and/or tenant to ascertain the facts and circumstances pertaining to this occupancy. Staff often will then provide counseling to both the owner and tenant when appropriate regarding the proper rent ceilings for that unit. Additionally, when appropriate, staff will attempt to contact tenant households displaced from a rental unit due to an OMI notice to explain the options, rights and remedies that may be available if it is determined that the Ordinance has been violated.

### **OMI NOTICES AND RELOCATION ASSISTANCE PAYMENTS**

#### **Notices Filed With the Rent Stabilization Program**

Between July 1, 2016 and June 30, 2019, forty-eight (48) OMI eviction notices were filed with the Rent Board.<sup>2</sup> The following table shows how these notices were distributed amongst unit types, and the number of instances where a unit is tenant occupied.

<b>Unit designation</b>	<b>Number of notices sent</b>	<b>Unit currently tenant-occupied<sup>3</sup></b>
Single family home	11	0
Duplex	21	2
Triplex	4	0
Fourplex	9	6
Five units & more	3	1

Of the 48 notices, 32 were for owner-move-in, 15 involved qualifying relative move-in evictions, and one did not specify with particularity who would be moving into the unit.

#### **Relocation Assistance, Pre-Measure AA**

Of the three households that received OMI notices prior to the passage of Measure AA, one

<sup>2</sup>In the January 2018 – June 2018 period, an owner served one notice on both units of a duplex property because the same tenants were renting both units. This report counts it as two notices. In November of 2016, an owner filed a notice for purposes of owner-occupancy, then rescinded it. In May of 2019, the same owner filed a notice to move a qualified family member into the unit. Both notices are counted.

<sup>3</sup> The data regarding tenant occupancy in this column only includes units where the information currently available to staff indicates that a unit is tenant occupied.

alleged low-income status and received the \$4,500 relocation assistance payment.

### **Relocation Assistance, Post-Measure AA**

Forty-five OMI cases fall under the relocation payment requirements of Measure AA. Of the forty-five, twenty-nine households have received the standard relocation payment. Ten OMI notices were rescinded, and in one case staff's investigation revealed that the owner did not serve an OMI notice; rather, the tenants informed the owner that they were moving out and the owner decided to move in afterwards (thus, no relocation funds were due). In three cases, no relocation was due because the tenants had not lived in the unit for one year or more. In two cases, it is unclear whether OMI evictions took place as there was no notice filed with the Rent Board, just the tenants' claims for relocation assistance. One of these cases involved private mediation, and the other case is under investigation.

Fourteen households received the additional relocation payment on the following grounds (some households have claimed multiple grounds, which is why the total claims documented below exceeds fourteen):

<b>Claims for Additional Relocation Payment</b>	
<b>Grounds</b>	<b>Number of Claims</b>
Minor Child	7
Disabled	3
Low Income	5
60 or more years old	2
Long-term Tenant	1

### **NARRATIVE DATA FROM STAFF RESEARCH**

Single Family Homes – All ten of the single-family homes that received OMI notices were Costa-Hawkins exempt tenancies, and in one case staff's investigation revealed that the owner did not serve an OMI notice; rather, the tenants informed the owner that they were moving out and the owner decided to move in afterwards

Duplexes – Twenty-one notices were served on duplexes during the current reporting period. Staff has verified that the owner or family member named in the notice has moved in for eleven of these cases, including three where the family member named in the notice appears to have moved in with rent-paying roommates. These three units are registered in accordance with the Ordinance.

One property appears to be occupied by the original tenant, and one property that had an intervening tenancy at a legal rent is now designated as "rent free." Two cases involved mediation and both units are owner-occupied. Two notices were rescinded and the tenancies terminated via the Ellis Act, and the units are now listed as owner-occupied. In two cases, staff has verified that the owners have not yet moved into the units, which are being rehabilitated, and two cases remain under investigation.

Ten of the twenty-one duplex units that received OMI notices are potential "golden duplexes," i.e. fully exempt properties if an owner of record of at least 50% occupies one of the two units. Of those ten properties, staff has verified that seven are currently owner-occupied, thus fully

exempt from the Ordinance. Two properties are not fully exempt since a family member and not an owner of record moved in. In one case, staff has verified that the owner has not yet moved into the OMI unit and thus the second unit on the property remains fully protected by the Ordinance.

Triplexes – Four OMI notices were served on triplex properties during this reporting period. Of those, three are currently occupied by the owner or the qualifying relative, and one is still under review.

Fourplexes – Nine notices were served on tenants residing in fourplexes during this reporting period. Staff has verified that the owner or qualified family member is occupying the unit in one case, and in another case the notice was rescinded with the tenant still in possession.

One property received two notices, one in 2016 which was rescinded with the tenant still in possession, and the other in 2019 served on the same tenant, who will vacate the property in January 2020 pursuant to a buyout agreement.

Two units were re-rented after intervening tenancies with legal rent ceilings, and at another property where a notice was served to move a qualifying family member into the unit, the unit is shown as “rent free” in the Rent Tracking System (RTS).

Finally, at one property where two notices were served, one unit is shown as “rent free” in RTS, consistent with the OMI notice for family occupancy; the other notice was rescinded as a part of a private settlement with the tenant, who appears to have vacated as a new tenancy was registered with a legal rent ceiling.

Five or more units – Three OMI notices were served at buildings with five or more units. One notice was rescinded. In another case, there was no notice filed, but the tenant made a claim for relocation. Upon investigation, the unit appears owner-occupied, and staff is continuing to monitor the property. In the third case, the OMI notice appears to be defective and staff has counseled the owners and the evicted tenant.

### **OWNERSHIP HISTORY PRIOR TO OMI FILING**

Previously, the committee requested data showing how long a landlord owned the property prior to filing an OMI notice.<sup>4</sup>

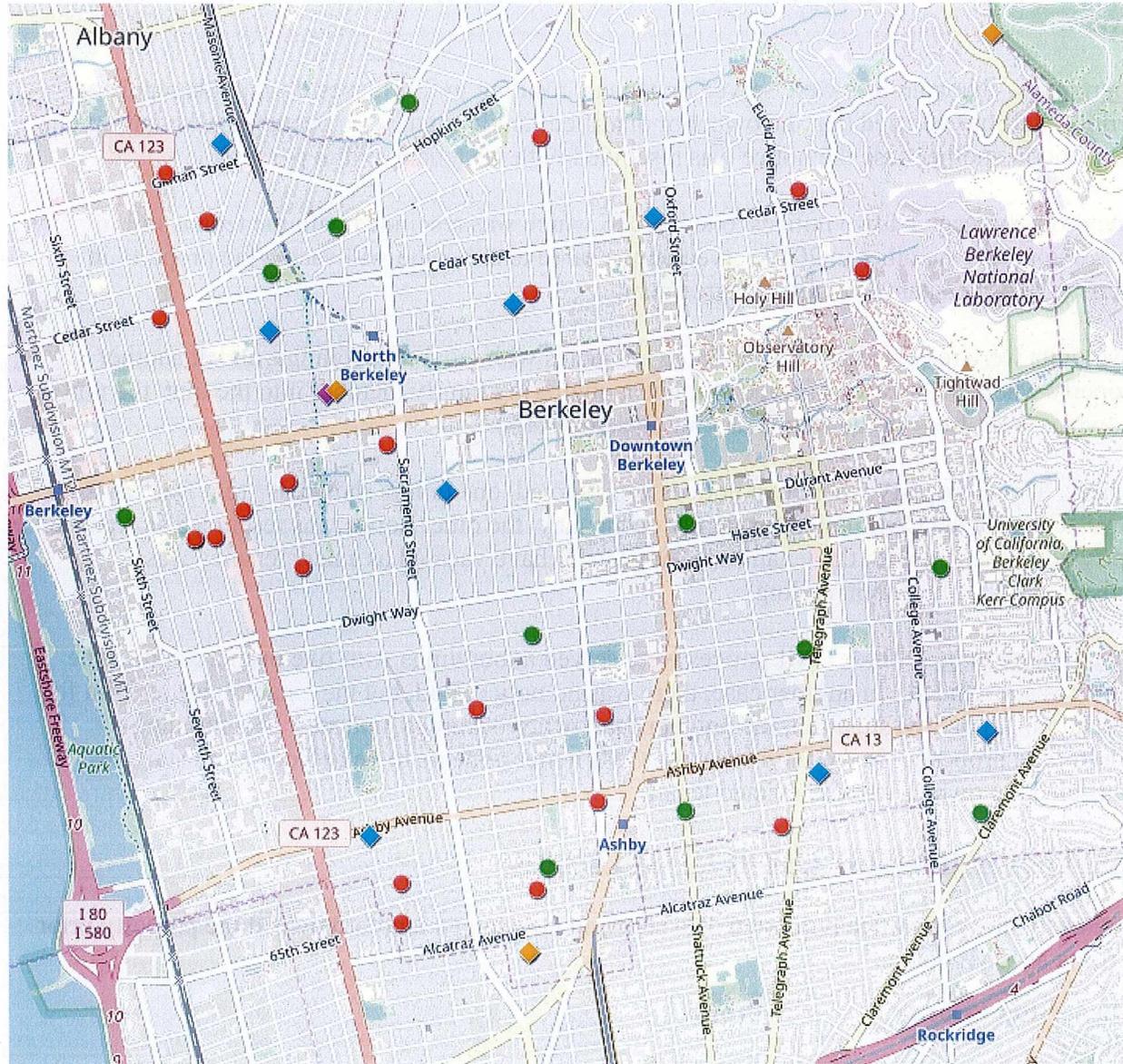
<b>Ownership Prior to Notice</b>	<b># Props.</b>
less than 1 year	16
Between 1 and 2 years	4
2 to 5 years	7
5 to 10 years	7
More than 10 years	14

<sup>4</sup> This data includes several title transfers. For the purpose of calculating data, we used the time between the transfer date and the notice of eviction.

## LOCATION OF OMI PROPERTIES

### General Distribution

The map below shows the general distribution of OMI notices for the current reporting period.



#### OMI Notices: July 2016 – June 2019

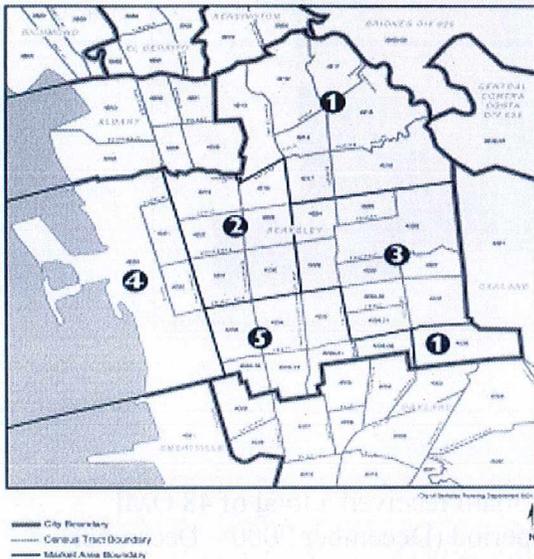
- Owner Notice
- Family Notice
- ◆ Owner Notice - Last 6 Months
- ◆ Family Notice - Last 6 Months
- ◆ Unknown

**Geographic Location and Market Area**

The table below shows the geographic location and market area of the 12 properties that received an OMI Notice in the last six months of the current reporting period, and Attachment 2 shows this information for all properties subject to OMI notices during the current reporting period.

Date filed	Street	Market Area
1/16/2019	1655 Belvedere Ave.	Central Berkeley (Area 2)
1/22/2019	3003 Mabel St.	South Berkeley (Area 5)
2/1/2019	921 Grizzly Peak Blvd	North Berkeley (Area 1)
2/14/2019	1707 Grant St.	Central Berkeley (Area 2)
3/12/2019	1359 Hearst Ave. #3	Central Berkeley (Area 2)
4/9/2019	1533 Walnut St.	North Berkeley (Area 1)
4/18/2019	1300 Summit Road	North Berkeley (Area 1)
4/18/2019	2217 California St. #B	Central Berkeley (Area 2)
5/10/2019	1222 Evelyn Ave.	Central Berkeley (Area 2)
5/31/2019	1631--63rd St.	South Berkeley (Area 5)
6/10/2019	2947 Linden Ave.	North Berkeley (Area 1)
6/13/2019	3000 Dana St.	South Berkeley (Area 5)

City of Berkeley Census Tract Map & Market Areas

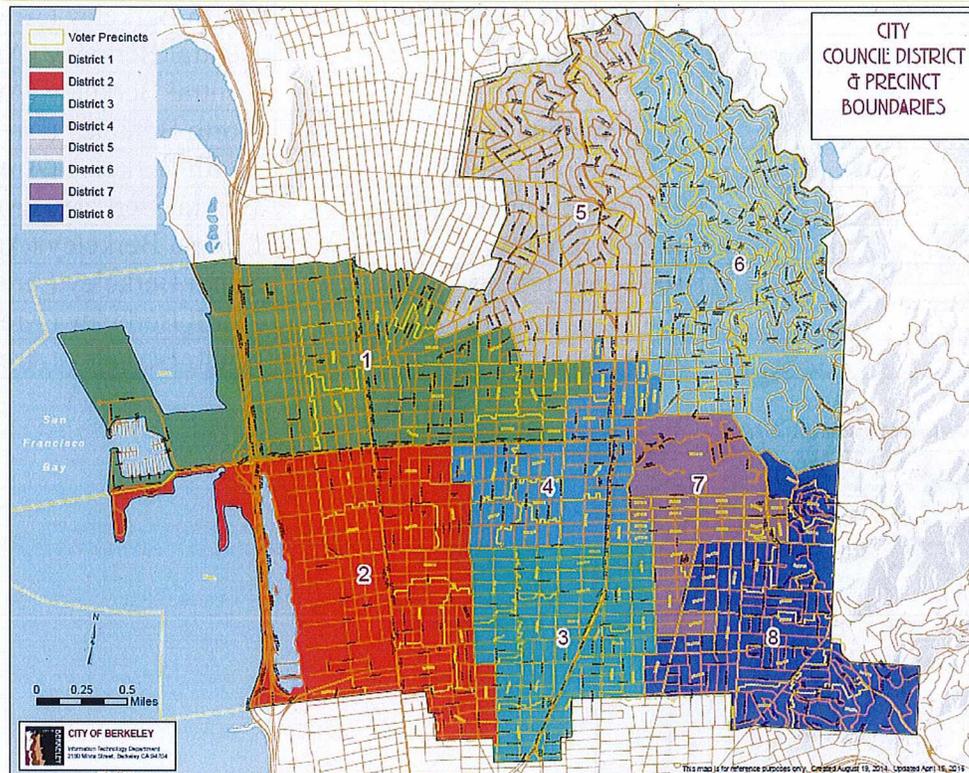


**Number of OMI Notices by Council District**

At its April 13, 2017 Meeting, the Committee requested information about the number of notices served in each City Council District. The table below summarizes this information for the current reporting period:

Council District	Number of Total Notices	Number of Notices, Last Six Months
1	11	4
2	10	1
3	9	1

Council District	Number of Total Notices	Number of Notices, Last Six Months
4	3	1
5	3	1
6	6	2
7	1	0
8	5	2



## CONCLUSION

During this reporting period (July 2016 – June 2019) the Board received a total of 48 OMI eviction notices. During the initial three-year monitoring period (December 2000 – December 2003), the Board received 110 eviction notices. Historically, after the passage of Measure Y, the number of evictions reported for each three-year period was significantly less than the initial period. This trend can be seen in Attachment 3, which shows, in six-month increments, the number of OMI eviction notices the Board has received since September 2000. The first reporting period in the table reflects only four months (September-December 2000), but during this time, 47 of the 56 evictions occurred during the three months prior to the adoption of Measure Y. While the Rent Stabilization Program did not track the number of OMI notices received prior to September 2000, it has been reported that the number of notices issued during the period from December 1997 to December 2000 was similar to or greater than the four-month period from September to December 2000, before Measure Y became law.

Although the diligent implementation of Measure Y reduced the displacement of long-term

tenants and required some relocation assistance for the most vulnerable displaced tenants, as housing prices and rents increased dramatically in recent years, so did the number of OMI evictions. The number of OMI evictions started to pick up in early-2014 (e.g., there were 19 OMI notices filed from January – June 2014). Between 2014 and 2016, there were 78 notices filed.

In November 2016, Berkeley voters passed Measure AA, which requires a standard relocation payment to all households and an additional payment if a member of the evicted household is elderly, disabled, a long-term tenant, low income or if the household has a child who is a minor.

Since Measure AA went into effect, there have been 45 OMI notices filed, ten of which have been rescinded. A rescinded notice does not necessarily indicate that the tenant(s) remains in the unit. In some instances the parties negotiate private buyouts and in two cases the building has been removed from the rental market under the Ellis Act.

During the last six months of the current reporting period, there were twelve notices filed, six of which were served on single-family homes with Costa-Hawkins exempt tenancies. Five of the notices were for properties in Central Berkeley, four for properties in North Berkeley, and three for properties in South Berkeley.

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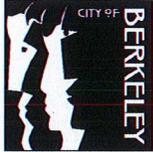
**Attachment 1:** Sample of letter sent to select rental units that received an owner-move-in eviction notice for the period of July 2016–June 2019.

**Attachment 2:** Table reflecting geographic location and market area of properties subject to OMI notices for the period of July 2016–June 2019.

**Attachment 3:** Table of Measure AA notices filed with the Rent Board for the period of September 2000 through June 2019.

## ATTACHMENT 1

### Sample of Letter Sent to Select Rental Units that Received OMI Notices



Rent Stabilization Board

October 9, 2019

[REDACTED] /Occupants

Berkeley, CA 94702

**RE: Owner Move-in eviction at [REDACTED]**

Dear Occupant:

Our records indicate that a prior tenant in your unit was evicted so that the unit could be occupied by the owner or a close relative of the owner. Berkeley Municipal Code section 13.76.130.A(9)(p) requires the Rent Board to monitor your unit for three years to ensure that the unit is, in fact, occupied by the owner or a relative of the owner. Therefore, you will receive a letter like this once every six months during this three year period. If you are the owner or a *non-rent* paying parent, spouse, domestic partner, or child of the owner, it is not necessary for you to respond to this letter.

If you are not the owner and are paying rent, your rent should not exceed:

**\$2268.29**

If you are paying rent in excess of this amount, you should contact me at (510) 981-4903. Also, Rent Board Counselors are available to explain your rights and options, including the procedure for recovering any rent overcharges you have paid. An explanation of your rights may also be found on the Rent Board's web site: [www.cityofberkeley.info/rent](http://www.cityofberkeley.info/rent).

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Siegel".

Matthew Siegel  
Staff Attorney

**ATTACHMENT 2**

**Geographic Location and Market Area of Properties Subject to OMI Notices**

Date filed	Street	Market Area
9/7/2016	2112--6th Street	West Berkeley (Area 4)
9/29/2016	1502 Chestnut St.	Central Berkeley (Area 2)
10/13/2016	2727 California St	South Berkeley (Area 5)
11/16/2016	2401 Ward St. #B	University Area (Area 3)
11/10/2016	1631--63rd St.	South Berkeley (Area 5)
12/12/2016	1111 Allston Way, #A	Central Berkeley (Area 2)
12/16/2016	1546 Le Roy Ave. #upper	North Berkeley (Area 1)
12/22/2016	1316 MLK Jr. Way #A	North Berkeley (Area 1)
1/17/2017	2705 Ridge Rd. #4	University Area (Area 3)
1/25/2017	1434 Addison St.	Central Berkeley (Area 2)
2/17/2017	2319 Woolsey St. #A	South Berkeley (Area 5)
4/14/2017	2327 Browning St. #B	Central Berkeley (Area 2)
4/21/2017	1820 Virginia St. #B	Central Berkeley (Area 2)
5/2/2017	1708 Woolsey St.	South Berkeley (Area 5)
5/5/2017	2217--9th St. #3	West Berkeley (Area 4)
5/5/2017	2217--9th St. #1	West Berkeley (Area 4)
5/8/2017	1324--67th St.	South Berkeley (Area 5)
6/8/2017	1452 Acton St.	Central Berkeley (Area 2)
6/14/2017	3006 MLK Jr. Way #B	South Berkeley (Area 5)
6/19/2017	1638 Fairview St. #1(upper)	South Berkeley (Area 5)
6/19/2017	158 Brookside Dr.	North Berkeley (Area 1)
6/21/2017	2125 Browning St. #A	Central Berkeley (Area 2)
6/26/2017	3049 Shattuck Ave. #1	South Berkeley (Area 5)
7/21/2017	1914 Stuart St. #C	South Berkeley (Area 5)
8/21/2017	1339 Hearst Ave.	Central Berkeley (Area 2)
11/30/2017	1225 Monterey Ave.	North Berkeley (Area 1)
12/1/2017	1278 65 <sup>th</sup> St.	South Berkeley (Area 5)
2/8/2018	1608 10 <sup>th</sup> Street	West Berkeley (Area 4)
5/25/2018	1530 Grizzly Peak Blvd.	North Berkeley (Area 1)
5/25/2018	1530 Grizzly Peak Blvd. Guest	North Berkeley (Area 1)
5/29/2018	1730 Parker St. #C	South Berkeley (Area 5)
6/15/2018	2732 Parker St.	University Area (Area 3)
6/18/2018	2124 Channing Way #B	University Area (Area 3)

Date filed	Street	Market Area
7/3/2018	2228 10 <sup>th</sup> St.	West Berkeley (Area 4)
8/17/2018	1243 Kains Ave.	Central Berkeley (Area 2)
11/7/2018	1408 Cornell Ave.	Central Berkeley (Area 2)
1/16/2019	1655 Belvedere Ave.	Central Berkeley (Area 2)
1/22/2019	3003 Mabel St.	South Berkeley (Area 5)
2/1/2019	921 Grizzly Peak Blvd	North Berkeley (Area 1)
2/14/2019	1707 Grant St.	Central Berkeley (Area 2)
3/12/2019	1359 Hearst Ave. #3	Central Berkeley (Area 2)
4/9/2019	1533 Walnut St.	North Berkeley (Area 1)
4/18/2019	1300 Summit Road	North Berkeley (Area 1)
4/18/2019	2217 California St. #B	Central Berkeley (Area 2)
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6/10/2019	2947 Linden Ave.	North Berkeley (Area 1)
6/13/2019	3000 Dana St.	South Berkeley (Area 5)

**ATTACHMENT 3**

**OMI Eviction Notices Filed With Berkeley Rent Board**

<b>Date of Eviction Notice</b>	<b>Number of Notices Received</b>
September – December 2000 *(only four months)	56
January – June 2001	32
July – December 2001	21
January – June 2002	17
July – December 2002	9
January – June 2003	13
July – December 2003	10
January – June 2004	14
July – December 2004	5
January – June 2005	16
July – December 2005	6
January – June 2006	10
July – December 2006	1
January – June 2007	7
July – December 2007	2
January – June 2008	1
July – December 2008	7
January – June 2009	7
July – December 2009	7
January – June 2010	6
July – December 2010	3
January – June 2011	6
July – December 2011	2
January – June 2012	5
July – December 2012	5
January – June 2013	10
July – December 2013	3
January-June 2014	19
July – December 2014	8
January – June 2015	16
July – December 2015	10

January- June 2016	17
July-December 2016	8
January-June 2017	15
July-December 2017	4
January – June 2018	6
July-December 2018	3
January-June 2019	12
<b>Total Notices Filed 10/2000- 06/2019</b>	<b>399</b>