

RESOLUTION 21-20

**APPROVING EMPLOYMENT AGREEMENT FOR RENT STABILIZATION BOARD
GENERAL COUNSEL WITH MATTHEW BROWN**

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley (“Board”) as follows:

WHEREAS, the Board is authorized under Article XVII Section 123(2) of the Charter of the City of Berkeley to employ staff as necessary to perform its functions; and

WHEREAS, the Board desires to appoint a General Counsel to independently report directly to the Board and serve as its legal advisor; and

WHEREAS, the General Counsel shall serve as the chief legal advisor and litigator for the Board and is charged with the responsibility of protecting the interests of the Board and its employees as provided for under California law and the Article XVII of the Charter of the City of Berkeley; and

WHEREAS, Matthew Brown has long served as the Board’s Staff Attorney III and has been working for the Board since January 5, 2004, and

WHEREAS, based upon Mr. Brown’s background, qualifications, experience and expertise, Mr. Brown is qualified to serve as General Counsel to the Board; and the Board desires to appoint Matthew Brown as its General Counsel

NOW, THEREFORE, BE IT RESOLVED that the City of Berkeley Rent Stabilization Board hereby authorizes the Board Chair to execute an employment agreement with Matthew Brown in the form attached hereto as Exhibit “A”.

Dated: September 23, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board

Attest: _____
Board Secretary

EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made and entered into on this ____ day of September, 2021, by and between the **Rent Stabilization Board of the City of Berkeley** (the “Board”) and **Matthew Brown** (“Employee”) for services to be performed by Employee in the position of General Counsel. Board and Employee are collectively hereinafter referred to as “Parties.”

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. **Term.** The Board hereby employs Employee as General Counsel to the Board and Employee hereby accepts employment for a period of five (5) years commencing on September ____, 2021 and ending on September ____, 2026, subject to the limitations of this Agreement.
2. **Duties.** Employee shall serve as General Counsel to the Board and staff in a manner consistent with the City of Berkeley Charter, Ordinances of the City of Berkeley, and applicable law. Employee shall provide a full range of legal services to the Board including preparation of legal opinions, research and support, representation in legal actions, preparation of documents and agreements. Employee shall also perform other legally permissible and proper duties and functions as may be assigned by the Board and which are reasonably related to the duties of a General Counsel to a public agency. Employee shall not render any compensated services of a business, commercial or professional nature to any other person or organization during the term of this Agreement without prior written consent of the Board.
3. **Compensation and Benefits.** For services rendered pursuant to this Agreement the Board shall pay Employee an annual base salary of Two Hundred Twenty-Eight Thousand Two Hundred Fifty-Nine Dollars (\$228,259), which is 15% above the top salary of the Staff Attorney III classification in the City of Berkeley. Said salary shall be paid on the dates and in the manner consistent with the payroll procedures of the City of Berkeley. Except as otherwise provided in this Agreement, Employee shall receive such employee benefits, for example, pension and vacation benefits, as are payable to that class of City of Berkeley employees designated in Unit Z9 under the City of Berkeley’s Unrepresented Employee Manual. Employee shall receive any cost-of-living adjustments awarded to the Staff Attorney III classification to the extent such increases do not exceed cost-of-living as defined in Government Code Section 3511.1. Any annual increase awarded to the Staff Attorney III classification above cost-of-living shall be subject to the sole and absolute discretion of the Board, although it is the parties intent that the salary of the General Counsel remain at least 15% above that of a Board Staff Attorney III. Nothing herein prevents the Board from otherwise adjusting the annual base salary of Employee at such times and to such extent as the Board may determine.
4. **Annual Performance Evaluation.** Annually, prior to the anniversary date of the commencement of this Agreement, the Board and Employee shall meet to evaluate the performance of Employee. The Board may, in its sole discretion, use any professional assistance in establishing standards for performance assessment. Nothing in this section shall be construed to require Board to grant Employee any pay increases based on the performance standards, if any, mentioned above nor to limit in any manner the discretion of Board to grant or not pay increases. Nor shall anything in

this Agreement be interpreted to require Board to evaluate Employee solely upon the performance standards, nor to limit the discretion of the Board to evaluate Employee as it deems necessary in the sole discretion of the Board.

5. **Termination and Severance.**

- a. Due to the confidential relationship and the legal services provided by Employee to Board, the Employee serves at-will at the pleasure of the Board, and nothing herein shall prevent, limit, or otherwise interfere with the right of the Board to terminate Employee with or without cause. Employee shall have no right to a termination hearing.
- b. Employee shall be subject to Section 9.5 of the City of Berkeley Unrepresented Employee Manual and shall be entitled to reinstatement as provided under said section. After the first six (6) months of this Agreement, if Employee is terminated by the Board while the Employee is still willing and able to perform the duties of General Counsel, the Board agrees to pay Employee a lump sum payment, of twelve (12) months aggregate salary for termination on or before the four-year anniversary of the commencement of this Agreement. For termination arising after the four-year anniversary of this Agreement, Employee shall receive severance in the amount of the number of months remaining on the term of this Agreement at the time of termination of employment. Any severance payment made by the Board pursuant to this section, shall release the Board from any further obligations under this Agreement. Contemporaneously with the payment of severance under this section, the Employee shall execute and deliver to Board a release releasing the Board and the City of Berkeley from liability for all claims that the Employee may have against the Board or the City, except those claims prohibited from such release under either California or Federal law.
- c. Notwithstanding section 5(b) above, the Board shall not be obligated to pay, and shall not pay any amounts under section 5(b) to Employee if Employee is terminated because of:
 - i. The conviction of felony or misdemeanor or plea of nolo contendere to a crime,
 - ii. the conviction of any felony or misdemeanor involving moral turpitude,
 - iii. the loss or suspension of Employee's license to practice law,
 - iv. the willful or persistent material breach of duties or inattention to duties,
 - v. a violation of statute or law constituting misconduct in office, or
 - vi. willful misconduct.

Further, Board shall not be obligated to pay Employee any severance amount under section 5(b) if Employee voluntarily retires or resigns in writing prior to termination. In the event Employee voluntarily retires or resigns, Employee shall provide advance written notice to the Board of at least one (1) month.

- d. This Agreement shall be immediately terminated upon Employee's death or legal incapacity by operation of Labor Code section 2920.

6. **Indemnification and Defense.** Board shall indemnify, defend, and hold Employee harmless from and against all demands, claims, suits, actions, and legal proceedings brought against Employee and arising out of events within the scope of Employee's employment and performance of professional duties as General Counsel, except to the extent that Employee's actions are the result of gross negligence or willful misconduct. Employee shall cooperate in good faith with the Board with respect to defense of such claims, demands, or legal actions.
7. **Severability.** In the event that any term of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Board and Employee, the remainder of this Agreement shall remain in full force and effect unless the term or terms held to be illegal or void are wholly inseparable from the remaining provisions of the Agreement.
8. **Governing Law.** This Agreement shall be governed by the laws of the State of California.
9. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.
10. **Entire Agreement.** This Agreement is the entire agreement between the parties regarding Board's employment of Employee and supersedes all prior oral or written understandings. This Agreement cannot be modified except by a written amendment signed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement which shall be effective upon the commencement date specified in Section 1 herein.

RENT STABILIZATION BOARD OF THE CITY OF BERKELEY

Leah Simon-Weisberg, Chair

Matthew Brown