

Rent Stabilization Board

MEMORANDUM

DATE: December 9, 2021

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 2018 – June 2021)

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.¹ 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.)

¹Under 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.²
- 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.³
- 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.)

² The current standard relocation assistance amount is \$16,341, and may be increased each year by the percentage increase in the Consumer Price Index – All Urban Consumers in the San Francisco-Oakland-San Jose Region for the 12-month period ending June 30 of the prior year, as published by the United States Department of Labor.

³ The current additional relocation assistance amount is \$5,621, which may also be adjusted each year as described above.

OMI REPORT: July 1, 2018 – June 30, 2021

COVID-19 SHELTER-IN-PLACE & EVICTION MORATORIUM

Due to the COVID-19 pandemic, the City of Berkeley declared a local State of Emergency on March 3, 2020, which is still in effect. On March 16, 2020, the City of Berkeley Public Health Officer issued a Shelter-in-Place Order, and has subsequently issued a number of Health Orders aimed at reducing the spread of COVID-19. On March 17, 2020, the City of Berkeley passed the COVID-19 Emergency Response Ordinance that placed a moratorium on most evictions, including OMI evictions. (B.M.C 13.110.) It remains in effect as of the date of this report.

STAFF MONITORING

To ensure that tenant protections are not violated, Rent Board staff endeavor to contact occupants living in units that have received OMI eviction notices at least once every six months. Staff send a letter to each 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 research information in our databases and county ownership records to ensure that residency information is correct. Additionally, staff typically conduct focused site visits to try 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 will often 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 believed that the Ordinance has been violated.

OMI NOTICES AND RELOCATION ASSISTANCE PAYMENTS

Notices Filed with the Rent Stabilization Program

Between July 1, 2018 and June 30, 2021, seventeen OMI eviction notices were filed with the Rent Board. The following table shows how these notices were distributed amongst unit types, and the number of instances where a unit is tenant occupied.

Unit designation	Number of notices sent	Unit currently tenant-occupied⁴
Single family home	7	0
Duplex	6	0
Triplex	0	0
Fourplex	3	1
Five units & more	1	0

⁴ 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.

Of the seventeen notices, twelve were for owner-move-in and 5 involved qualifying relative move-in evictions.

Relocation Assistance⁵

Eleven of the seventeen properties that received OMI notices in the reporting period received the standard relocation assistance payment. Four OMI notices were rescinded. In two cases, no relocation was due because the tenants had not lived in the unit for one year or more.

Six 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 six):

Claims for Additional Relocation Payment	
Grounds	Number of Claims
Minor Child	1
Disabled	2
Low Income	3
60 or more years old	1
Long-term Tenant	0

NARRATIVE DATA FROM STAFF RESEARCH

Single Family Homes – All seven of the single-family homes in the reporting period were Costa-Hawkins exempt tenancies.

Duplexes – Six 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 four of these cases. Two cases remain under investigation.

Three of the six 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 three properties, staff has verified that one is currently owner-occupied, thus fully exempt from the Ordinance. In one case where the notice designated a family move-in, staff has verified that the owner’s son has moved in. One case remains under investigation.

Triplexes – There were no OMI notices served on triplex properties during this reporting period.

Fourplexes – Three 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. The last case is still under investigation.

Five or more units – One OMI notice was served at a property with five or more units. The OMI

⁵ Prior reports included information on properties subject to Measure Y’s relocation assistance requirement. There are no longer any such properties in the reporting period, so all relocation assistance data pertain to properties subject to Measure AA’s relocation assistance requirements.

notice appears to be defective and staff counseled the owners and the evicted tenant. Staff has verified that the unit is owner occupied, but the tenant is litigating the defective notice.

OWNERSHIP HISTORY PRIOR TO OMI FILING

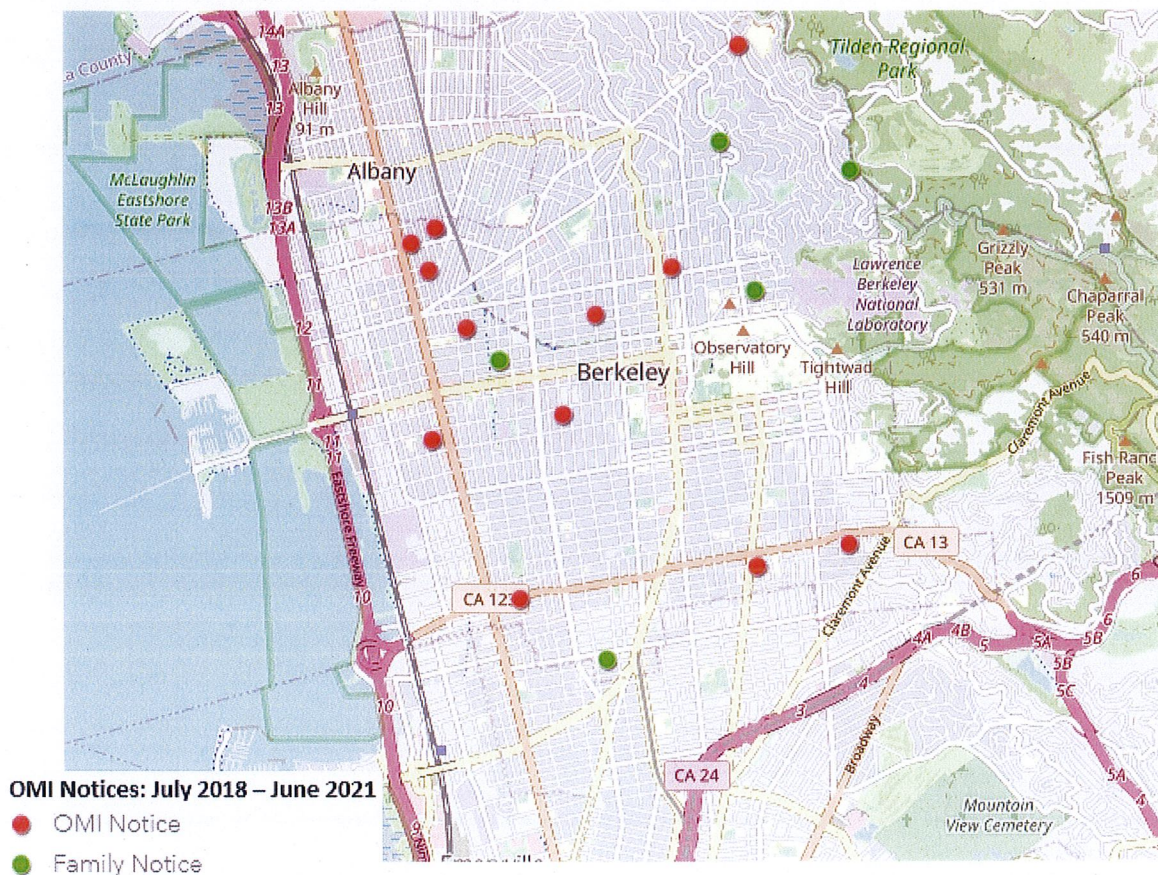
Previously, the committee requested data showing how long a landlord owned the property prior to filing an OMI notice.⁶

Ownership Prior to Notice	# Props.
less than 1 year	3
Between 1 and 2 years	4
2 to 5 years	3
5 to 10 years	2
More than 10 years	5

LOCATION OF OMI PROPERTIES

General Distribution

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



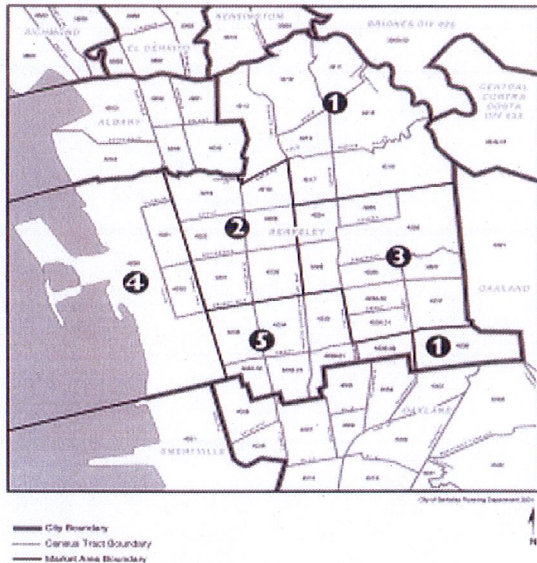
⁶ This data includes several title transfers. For the purpose of calculating data, we used the time between the transfer date and the notice of eviction.

Geographic Location and Market Area

The table below normally shows the geographic location and market area of properties that received an OMI Notice in the last six months of the current reporting period. Berkeley has been under a local eviction moratorium since March of 2020, and no OMI notices were filed during the last six months of this reporting period. Attachment 2 shows geographic location and market area for all properties subject to OMI notices during the current reporting period.

Date filed	Street	Market Area
N/A	N/A	N/A

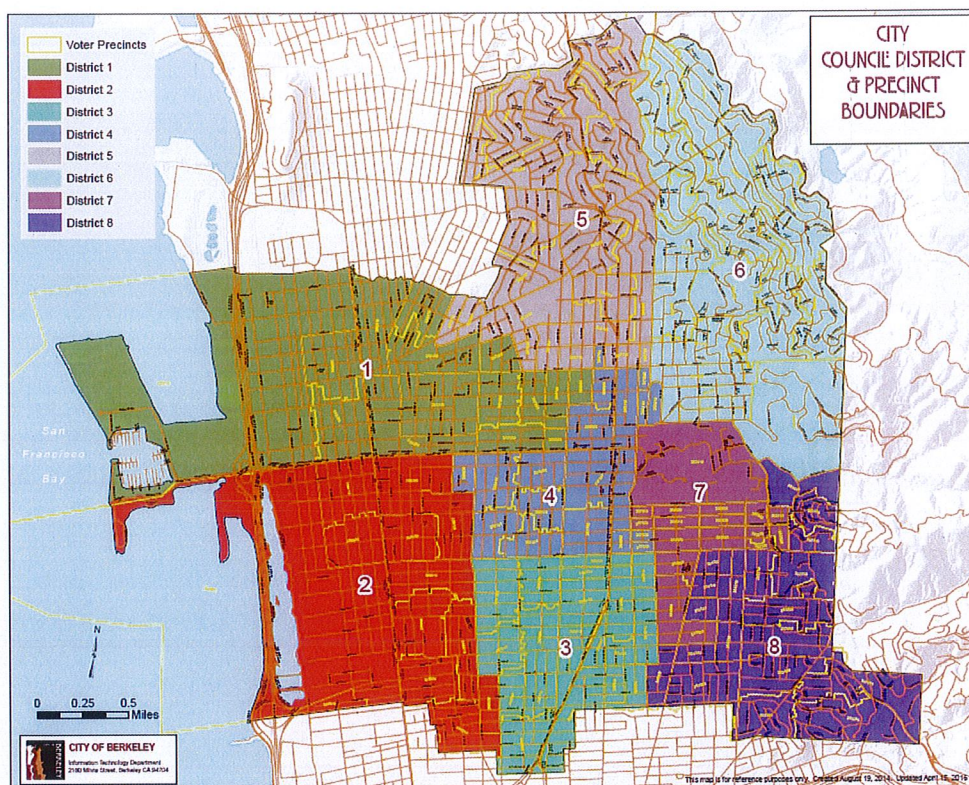
City of Berkeley Census Tract Map & Market Areas



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 of Reporting Period
1	6	0
2	2	0
3	1	0
4	1	0
5	1	0
6	4	0
7	0	0
8	2	0



CONCLUSION

During this reporting period (July 2018 – June 2021), the Board received a total of seventeen 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 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 there is a minor child in the household.

The City's COVID-19 Emergency Response Ordinance, passed in March 2020, placed a

moratorium on evictions, including OMI evictions, and remains in place as of the date of this report. The last OMI notice filed with the Board before the moratorium went into effect was in December 2019, and OMI evictions have been prohibited since March 17, 2020. As such, no OMI notices have been filed with the Board from January 2020 – June 2021.

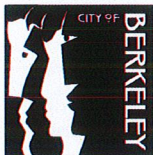
Attachment 1: Sample of letter sent to select rental units that received an owner-move-in eviction notice for the period of July 2018 – June 2021.

Attachment 2: Table reflecting geographic location and market area of properties subject to OMI notices for the period of July 2018 – June 2021.

Attachment 3: Table of Measure AA notices filed with the Rent Board for the period of September 2000 through June 2021.

ATTACHMENT 1

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



Rent Stabilization Board

October 25, 2021

Current Occupants/ [REDACTED]

[REDACTED]
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:

\$3087.79

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Siegel". The signature is fluid and cursive, with the first name "Matthew" and last name "Siegel" clearly distinguishable.

Matthew Siegel
Staff Attorney

ATTACHMENT 2

Geographic Location and Market Area of Properties Subject to OMI Notices

Date filed	Street	Market Area
7/3/2018	2228 10 th 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)
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)
11/22/2019	2587 Le Conte Ave.	University Area (Area 3)
12/6/2019	1140 Euclid Ave.	North Berkeley (Area 1)

ATTACHMENT 3

OMI Eviction Notices Filed With Berkeley Rent Board

Date of Eviction Notice	Number of Notices Received
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
July – December 2019	2
January – June 2020*	0
July – December 2020*	0
January – June 2021*	0
Total Notices Filed 10/2000- 06/2020	401

* Due to the COVID-19 pandemic, on March 17, 2020 the City of Berkeley passed an Urgency Ordinance placing a moratorium on evictions in most cases, including OMI evictions. As of the end of the current reporting period (June 30, 2021), the moratorium remained in place.