



4x4 Joint Task Force Committee on Housing
City Council and Rent Board

4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Tuesday, October 24, 2023 – 3:00 p.m.
2180 Milvia Street, 1st Floor, Cypress Room, Berkeley

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION.

For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

To access this meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://cityofberkeley-info.zoomgov.com/j/1603535796?pwd=a2tyeUxyYkMxWkNtT1hEYkxWZWovUT09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

To join by phone: Dial 1-669-254-5252 and enter Webinar ID: 160 353 5796 and Passcode: 084063. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

To submit a written communication for the Committee's consideration and inclusion in the public record, email BTran@berkeleyca.gov with the Subject line in this format: "PUBLIC COMMENT ITEM FOR 4 X 4 COMMITTEE." Please observe a 150-word limit. **Email comments must be submitted to the email address above by 1:00 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for both in-person attendees and those participating by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director of the Rent Board, at (510) 981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at (510) 981-6418 (voice) or (510) 981-6347 (TDD) at least three (3) business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



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AGENDA

4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING CITY COUNCIL/RENT STABILIZATION BOARD

Tuesday, October 24, 2023 – 3:00 p.m.

2180 Milvia Street, 1st Floor, Cypress Room, Berkeley

1. Roll call
2. Land Acknowledgment Statement: *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiu-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*
3. Approval of the agenda
4. Public comment on non-agenda matters
5. Approval of September 27, 2023 Committee meeting minutes (see attachment)
6. Discussion and possible recommendations to City Council regarding amendments to the Demolition Ordinance (Planning Department, see attachment)
7. Discussion and possible action regarding the scheduling of future 4x4 Joint Committee meetings (Be Tran, Rent Board)
8. Discussion of possible future agenda items
9. Confirm next meeting date
10. Adjournment

COMMITTEE MEMBERS:

Mayor Jesse Arreguín
City Councilmember Sophie Hahn
City Councilmember Kate Harrison
City Councilmember Rigel Robinson

Rent Board Chairperson Leah Simon-Weisberg
Rent Board Commissioner Xavier Johnson
Rent Board Commissioner Vanessa Danielle Marrero
Rent Board Commissioner Dominique Walker



4x4 Joint Task Force Committee on Housing
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**4 X 4 JOINT TASK FORCE COMMITTEE ON HOUSING
CITY COUNCIL/RENT STABILIZATION BOARD**

Wednesday, September 27, 2023 – 3:00 p.m.

2180 Milvia Street, 1st Floor, Cypress Room, Berkeley

Teleconference location: 3655 S Grand Ave, #250, Los Angeles, CA 90007

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CITY COUNCIL/RENT STABILIZATION BOARD**

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2180 Milvia Street, 1st Floor, Cypress Room, Berkeley

Teleconference location: 3655 S Grand Ave, #250, Los Angeles, CA 90007

Minutes – To Be Approved

- 1. Roll call:** Mayor Arreguín called the meeting to order at 3:08 p.m.
Present: Mayor Arreguín (left at 5:00 p.m.), CM Hahn (left at 5:00 p.m.), CM Harrison, RBC Johnson, RBC Marrero, CM Robinson, RB Chair Simon-Weisberg (via Zoom), RBC Walker (arrived at 3:27 p.m.)
Absent: None.
Staff present: Matt Brown, Lief Bursell, Lourdes Chang, Nate Dahl, Brendan Darrow, Stefan Elgstrand, Ollie Ehlinger, Margo Ernst, Jen Fabish, Justin Horner, Hannah Kim, Jordan Klein, Kieron Slaughter, Be Tran, Mike Uberti, DéSeana Williams.
- 2. Land Acknowledgment Statement:** *The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.*

The Land Acknowledgement Statement was read aloud.
- 3. Approval of the agenda:** M/S/C (Arreguín/Harrison) Approve the agenda as written. Roll call vote. YES: Arreguín, Hahn, Harrison, Johnson, Marrero, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Walker. Carried: 7-0-0-1.
- 4. Public comment on non-agenda matters:** There were four speakers.
- 5. Approval of May 2, 2023 Committee meeting minutes (see attachment):** M/S/C (Robinson/Harrison) Approve the minutes as written. Roll call vote. YES: Arreguín, Hahn, Harrison, Johnson, Marrero, Robinson, Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: Walker. Carried: 7-0-0-1.

6. Discussion regarding recent eviction activities (Nate Dahl, Rent Board): Nate Dahl, Rent Board Public Information Unit Manager, presented. Representatives from Satellite Affordable Housing Associates, and Peter Selawsky from the Eviction Defense Center provided additional information during the committee's discussion.

There were three public speakers.

7. Discussion and possible recommendations to City Council regarding amendments to the Demolition Ordinance (Planning Department, see attached February 1, 2023 staff report to the Planning Commission and proposed amendment language from Chair Simon-Weisberg): Chair Simon-Weisberg presented on her proposed amendment language. Jordan Klein, Planning Department Director, Brendan Darrow, Assistant City Attorney, and Matt Brown, Rent Board General Counsel, provided feedback. The committee discussed the item, but no action was taken.

There were no public speakers.

8. Update on the Ronald V. Dellums Fair Chance Access to Housing Ordinance activities (Nate Dahl, Rent Board): This item was not taken up due to time constraints.
9. Discussion and possible action regarding the scheduling of future 4x4 Joint Committee meetings (Be Tran, Rent Board): This item was not taken up due to time constraints.
10. Discussion of possible future agenda items: This item was not taken up due to time constraints.
11. Confirm next meeting date: This item was not taken up due to time constraints.
12. Adjournment: M/S/C (Harrison/Robinson) Adjourn the meeting. Roll call vote. YES: Harrison, Johnson, Marrero, Robinson, Simon-Weisberg, Walker; NO: None; ABSTAIN: None; ABSENT: Arreguín, Hahn. Carried: 6-0-0-2.

The meeting adjourned at 5:07 p.m.

COMMITTEE MEMBERS:

Mayor Jesse Arreguín

City Councilmember Sophie Hahn

City Councilmember Kate Harrison

City Councilmember Rigel Robinson

Rent Board Chairperson Leah Simon-Weisberg

Rent Board Commissioner Xavier Johnson

Rent Board Commissioner Vanessa Danielle Marrero

Rent Board Commissioner Dominique Walker

ORDINANCE NO.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 23.326, DEMOLITION AND
DWELLING UNIT CONTROLS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 23.326 is hereby amended to read as follows:

Chapter 23.326 DEMOLITION AND DWELLING UNIT CONTROLS

Sections:

- 23.326.010 Chapter Purpose.
- 23.326.020 General Requirements.
- 23.326.030 Demolition of Residential Units.
- 23.326.040 Eliminating Dwelling Units through Combination with Other Units.
- 23.326.050 Demolition of Accessory Buildings.
- 23.326.060 Private Right of Action.
- 23.326.070 Demolition of Non-Residential Buildings.
- 23.326.080 Building Relocations.
- 23.326.090 Limitations.

23.326.010 Chapter Purpose.

This chapter establishes demolition and dwelling unit control standards that promote the affordable housing and safety goals of the City.

23.326.020 General Requirements.

A. No Residential Unit or units may be eliminated or demolished except as authorized by this chapter.

- 1. "Residential Unit" means, for purposes of this Chapter, any Dwelling Unit, any Live-Work Unit, any Residential Hotel unit, or any bedroom of

a Group Living Accommodation (GLA) except a GLA in a University-recognized fraternity, sorority or co-op.

2. "Residential Unit" includes any Accessory Dwelling Unit or Junior Accessory Dwelling Unit to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to any Accessory Dwelling Unit or Junior Accessory Dwelling Unit that is removed from the rental market.
3. "Residential Unit" includes Dwelling Units created without proper Use Permit(s) or Building Permit(s) if they have been registered with the Rent Stabilization Board or there is substantial evidence of a tenant-landlord relationship during the preceding five years to the extent that tenant notice, protections for eviction and relocation benefits outlined in this ordinance shall apply to an illegal unit that is removed from the rental market.
4. "Comparable Unit" means a dwelling unit of similar size (square footage and number of bedrooms), amenities (private open space and common facilities) and location within the city (neighborhood and school attendance area).

23.326.030 Demolition of Residential Units.

A. *Limitation.* Demolition is not allowed if:

1. The unit (or units) was removed from the rental market through a no-fault eviction during the preceding five years; or
2. There is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner, whose determination may be appealed to the Rent Stabilization Board.

B. *Procedure and Findings.* A Use Permit is required to eliminate or demolish one or more Residential Units, except where otherwise provided by the Zoning Ordinance. The Board shall only approve the Use Permit if one of the following is true:

1. The building containing the units is hazardous or unusable and is infeasible to repair.
2. The building containing the unit(s) will be moved to a different location within Berkeley with no net loss of units and no change in the rent levels of the unit(s).
3. The demolition is necessary to permit construction of socially and/or economically beneficial uses that serve the greater good of the community.
4. The demolition is necessary to permit construction approved pursuant to this chapter of at least the same number of dwelling units.

C. *Conditions of Approval.* Any Residential Unit(s) that will be demolished shall be replaced with equivalent units and comply with applicable affordability requirements in Chapter 23.328 [Affordable Housing Requirements] and Chapter 23.330 [Density Bonus] as they may be amended from time to time.

1. In the event that a displaced household has an income below 50% AMI, a comparable replacement unit shall be offered at a rent that is affordable to households at 30% of AMI, and the displaced household shall have the first right of refusal for that unit. Such a unit shall be counted as a Very Low-Income unit for applicable affordability requirements in Chapter 23.328.

D. *Requirements for Occupied Units.*

1. *Applicability.* The following requirements do not apply to tenants who move in after the application for demolition is submitted to the City if the owner informs each prospective tenant about the proposed demolition and that demolition constitutes good cause for eviction.
2. *Notice.* The applicant shall provide all sitting tenants and the Rent Stabilization Board notice of the application to demolish the unit(s) no later than the date the application is submitted to the City, including notice of their rights under Municipal Code Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program), Chapter 13.77 (Requirements, Procedures, Restrictions and Mitigations Concerning the Withdrawal of Residential Rental Accommodations from Rent or Lease), 13.79 (Tenant Protections: Automatically Renewing Leases and Buyout Agreements) and 13.84 (Relocation Services and

Payments for Residential Tenant Households).

3. *General Requirements.*

(a) The applicant shall provide assistance with moving and relocation assistance equivalent to the requirements set forth in Municipal Code Chapter 13.84 or Government Code section 66300(d)(2)(D)(i), whichever requires greater relocation assistance to displaced tenants, and shall not be subject to the limitations in section 13.84.070.B.3(a). The applicant shall subsidize the rent differential for a comparable replacement unit, in the same neighborhood if feasible, until new units are ready for occupancy. Tenants shall have until the date that the new units are ready for occupancy to decide whether to move into the newly constructed building. Funding for the rent differential shall be guaranteed in a manner approved by the City Council by Resolution; provided, however, that any project that is carried out or funded by the state or federal government shall be subject to applicable provisions of the California Relocation Act (Government Code section 7260 *et seq.*) and/or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. sections 4601-4655).

(b) *Exception.* An applicant who proposes to construct a 100-percent affordable housing project is not required to comply with this subsection but must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the California Relocation Act (Government Code sections 7260 *et seq.*).

4. *Sitting Tenants Rights.*

(a) Any tenant of a Residential Unit that is permitted to be demolished under this section shall have the right of first refusal to rent a comparable unit in the new project.

(b) In the event that a displaced household is ineligible for Below-Market Rate replacement units, a market rate unit shall be made available to that household at the same rent as had been previously charged, or a lesser

rent if that is the market rate.

Where a displaced tenant exercises the right to rent a comparable unit, any increase in rent for the comparable unit for the duration of their tenancy shall be no greater than the lesser of 65% of the 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 December 31) or 65% of the corresponding increase in Area Median Income (AMI) for the same calendar year.

(c) *Exception.*

i. An applicant who proposes to construct a 100 percent affordable housing project is not required to comply with the preceding requirements but must comply with the following requirement.

ii. Sitting tenants who are displaced as a result of demolition and who desire to return to the newly constructed affordable housing project will be granted a right of first refusal subject to their ability to meet income qualifications and other applicable eligibility requirements.

23.326.040 Eliminating Dwelling Units through Combination With Other Units.

A. Process for Projects Where Density Exceeds Current Allowance. A Use Permit is required to eliminate one or more Residential Units by combining with another unit when the existing development exceeds currently-allowable density. The ZAB shall approve a Use Permit for the elimination of one or more Residential Units by combining with another unit only if it finds that:

1. The existing number of units exceeds the current maximum allowed residential density in the zoning district where the units are located; and

2. One of the following is true:

(a) One of the affected units has been occupied by the applicant's household

as its principal place of residence for no less than two years before the date of the application and none of the affected units are currently occupied by a tenant.

(b) All of the affected units are being sold by an estate and the decedent occupied the units as their principal residence for no less than two years before the date of their death.

B. *Process for Projects That Restore Original Development Density.* The Zoning Officer may issue an Administrative Use Permit (AUP) for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed.

C. *Limitations.* Combination is not allowed if:

1. The building was removed from the rental market through a no fault eviction during the preceding five years; or
2. There is substantial evidence of harassment or threatened or actual illegal eviction during the immediately preceding three years. Where allegations of harassment or threatened or actual illegal eviction are in dispute, either party may request a hearing before a Rent Board Hearing Examiner, whose determination may be appealed to the Rent Stabilization Board.

D. *Two-Year Occupancy Requirement Following Elimination*

1. If a unit that is eliminated through combination is not occupied by the applicant's household for at least two consecutive years from the date of elimination, the affected unit must be restored to separate status.
2. This requirement shall be implemented by a condition of approval and a notice of limitation on the property, acceptable to the City of Berkeley.
3. The condition and notice will provide that if the owner's household does not occupy the unit for at least two years from the date of elimination then the affected units must either be restored as separate dwelling units and the vacant unit(s)

offered for rent within six months or the owner must pay a fee of \$75,000 in 2013 dollars, adjusted in May of each year according to the Consumer Price Index for the San Francisco Bay Area. The fee shall be deposited into the City of Berkeley's Housing Trust Fund.

4. The City of Berkeley may exempt an applicant from the two-year residency requirement if there is an unforeseeable life change that requires relocation.

E. Effect of Eliminating a Dwelling Unit.

1. If eliminating a dwelling unit reduces the number of units in a building to four, the applicant shall record a notice of limitation against the subject property that the limitation on eviction of tenants under Chapter 13 (Public Peace, Morals and Welfare) shall continue to apply until:

(a) The building is demolished; or

(b) Sufficient units are added or restored such that the building contains at least five units.

2. The Zoning Officer may issue an AUP for a building conversion which eliminates a dwelling unit upon finding that the conversion will restore or bring the building closer to the original number of dwelling units that was present at the time it was first constructed, provided the conversion meets the requirements of 23.326.040.A.1 and 2 and 23.326.040.B and C.

F. Exception. The ZAB may approve a Use Permit to eliminate a dwelling unit through combination with another dwelling unit for the purpose of providing private bathrooms, kitchenettes, accessibility upgrades, and/or seismic safety upgrades to single-resident occupancy rooms in residential developments undergoing a publicly-funded rehabilitation.

23.326.050 Demolition of Accessory Buildings.

Notwithstanding anything in Municipal Code Title 23 (Zoning Ordinance) to the contrary, but subject to any applicable requirements in Municipal Code Section 3.24 (Landmarks Preservation Ordinance), Accessory Buildings of any size, including, but not limited to, garages, carports, and sheds may be demolished by right except where the Accessory

Building is occupied by a residential tenant (regardless of whether it is lawfully permitted) or otherwise contains a lawfully established residential unit, which serves and is located on the same lot as a lawful residential use.

23.326.060 Private Right of Action.

Any affected tenant may bring a private action for injunctive and/or compensatory relief against any applicant and/or owner to prevent or remedy a violation of Sections 23.326.030 (Eliminating Dwelling Units through Demolition) and 23.326.040 (Eliminating Dwelling Units through Conversion and Change of Use). In any such action a prevailing plaintiff shall recover reasonable attorney's fees.

23.326.070 Demolition of Non-Residential Buildings.

A. *Main Non-Residential Buildings.* A Use Permit is required to demolish a main building used for non-residential purposes on any lot.

B. *Accessory Buildings.* For any lot located in a non-residential zoning district, Accessory Buildings may be demolished as follows:

1. Demolishing an accessory building with less than 300 square feet of floor area is permitted as of right.
2. An accessory building with 300 square feet or more of floor area may be demolished with an AUP.

C. *Landmarks Preservation Commission Review.*

1. Any application for a Use Permit or AUP to demolish a non-residential building or structure that is 40 or more years old shall be forwarded to the Landmarks Preservation Commission (LPC) for review before consideration of the Use Permit or AUP.
2. The LPC may initiate a landmark or structure-of-merit designation or may choose solely to forward to the ZAB or Zoning Officer its comments on the application.
3. The ZAB or Zoning Officer shall consider the recommendations of the LPC when acting on the application.

D. *Findings.* A Use Permit or an AUP for demolition of a main building used for non-residential purposes on any lot or an accessory building located on a lot in a non-residential district may be approved only if the ZAB or the Zoning Officer finds that:

1. The demolition will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City of Berkeley; and
2. The demolition:
 - (a) Is required to allow a proposed new building or other proposed new use;
 - (b) Will remove a building which is unusable for activities which are compatible with the purposes of the district in which it is located or which is infeasible to modify for such uses;
 - (c) Will remove a structure which represents an uninhabitable attractive nuisance to the public; or
 - (d) Is required for the furtherance of specific plans or projects sponsored by the City of Berkeley or other local district or authority upon a demonstration that it is infeasible to obtain prior or concurrent approval for the new construction or new use which is contemplated by such specific plans or projects and that adhering to such a requirement would threaten the viability of the plan or project.

23.326.080 Building Relocations.

A. *Treatment of Building Relocation.*

1. Relocating a building from a lot is considered a demolition for purposes of this chapter.
2. Relocating a building to a lot within the city is considered new construction and is subject to all requirements applicable to new construction.
3. When a building is relocated to a different lot within Berkeley, the lot from which the building is removed shall be known as the source lot and the lot on which the building is to be sited shall be known as the receiving lot.

B. *Findings.* The Zoning Officer shall approve Zoning Certificate to relocate a building

upon finding that the resulting development on the receiving lot is in conformance with applicable zoning code development standards.

23.326.090 Limitations.

A. *Unsafe, Hazard, or Danger.*

1. Notwithstanding anything to the contrary, if a building or structure is unsafe, presents a public hazard, and is not securable and/or is in imminent danger of collapse so as to endanger persons or property, as determined by the city's building official, it may be demolished without a Use Permit.

2. The Building Official's determination in this matter shall be governed by the standards and criteria in the most recent edition of the California Building Code that is in effect in the City of Berkeley.

B. *Ellis Act.* This chapter shall be applied only to the extent permitted by state law as to buildings which have been entirely withdrawn from the rental market pursuant to the Ellis Act (California Government Code Chapter 12.75).