



Berkeley Rent Board

DATE: December 21, 2023

TO: Honorable Members of the Rent Stabilization Board

FROM: Leah Simon-Weisberg, Chair
DeSeana Williams, Executive Director
By: Matt Brown, General Counsel

SUBJECT: Authorizing the Executive Director or the Chair, in consultation with each other, to appeal decisions of the Zoning Adjustments Board or any Zoning Officer decision that allows for the elimination of residential rental units that are covered by rent stabilization or just cause for eviction

Recommendation:

That the Board adopt the attached Resolution 23-34 to authorize the Executive Director or Chair, in consultation with each other (or their designees), to appeal any decision of the Zoning Adjustments Board (ZAB) or any Zoning Officer decision that allows for the elimination of residential rental units that are covered by rent stabilization or just cause for eviction without adequately mitigating their loss, or when the Planning staff decides that the subject units are not “controlled units” after receiving a contradictory determination from the Rent Board. The cost to appeal a ZAB decision to the City Council is \$1,500, to be drawn from Miscellaneous Legal Expenses.

Background:

In issuing permits for new construction or extensive renovation of existing housing, the Zoning Adjustments Board (ZAB) is required to make findings under various parts of the municipal code and may place conditions on the project applicant as part of its approval process. The Demolition Ordinance does not allow for the elimination or conversion of controlled rental units unless the ZAB can make a specific set of findings.

Commissioners have expressed grave concern that the ZAB has recently approved projects that will demolish existing rent-controlled units and not replace them with an equal number of affordable units. The Board is the only agency that regulates rent-controlled units in the City of Berkeley. Moreover, the Rent Ordinance specifically states that the purpose of the law is to “help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing.” (Berkeley Municipal Code Section 13.76.030)

The elected Commissioners are tasked with ensuring that the purpose of the Ordinance is upheld. Without the ability to challenge the elimination of rent-controlled units, Commissioners are concerned that the City will continue to experience permanent loss of affordability and thus, permanent loss of diversity. The vast majority of Berkeley's housing stock was built pre-War and much of it has been targeted for demolition in recent years. Commissioners have long requested that the City place primary importance on preserving affordability particularly when rent-controlled units are eliminated. ZAB decisions that do not replace all rent-controlled units with an equal number of affordable units will only further serve to erode affordability and cause lower and middle-income families to have to relocate to other cities.

The sole discretion of determining what is or is not a rent-controlled unit resides with the Rent Board. There have also been cases where the City has not accepted the Board's determination that a unit is controlled. By determining that vacant units are not subject to rent control, the City has created a climate that encourages property owners to empty buildings of tenants and keep them empty until the project is approved.

The ZAB has given no indication that it will change its stance on these issues, thus increasing the prospect of future appeals. ZAB and Zoning Officer decisions have a very short timeline to file an appeal. Given that the elected Board meets only once per month as a group, it is necessary to streamline the process to allow the Executive Director and Chair to act quickly. The attached resolution would give the Executive Director or the Chair, in consultation with each other, the authority to appeal any ZAB or Zoning Officer decision that approves the demolition of existing rent-controlled units without providing for an equal number of affordable replacement units or does not conform to the Rent Board determination of the rent control status of the property.

Financial Impact: The cost to appeal a ZAB decision to the City Council is \$1,500, to be drawn from Miscellaneous Legal Expenses.

RESOLUTION 23-34

AUTHORIZING THE EXECUTIVE DIRECTOR OR THE CHAIR, IN CONSULTATION WITH EACH OTHER, TO APPEAL DECISIONS OF THE ZONING ADJUSTMENT BOARD OR ANY ZONING OFFICER DECISION THAT ALLOWS FOR THE ELIMINATION OF ANY RESIDENTIAL RENTAL UNITS THAT ARE COVERED BY RENT STABILIZATION OR JUST CAUSE FOR EVICTION

BE IT RESOLVED BY the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, Article XVII of the Berkeley City Charter and Section 13.76 of the Berkeley Municipal Code Rent Ordinance grants the Board exclusive authority to determine what is and is not a rent-controlled unit in the City of Berkeley; and

WHEREAS, the Rent Ordinance specifically states that the purpose of the law is to “help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing” (Berkeley Municipal Code Section 13.76.030); and

WHEREAS, the elected Board Commissioners have expressed concern that decisions that eliminate rent-controlled housing without fully replacing it with affordable units will further erode diversity in the City and cause low and middle-income families to relocate to other cities; and

WHEREAS, the courts have held that the Rent Board is the sole authority in Berkeley for applying the principles of the rent control system to specific circumstances; and

WHEREAS, recently there have been several cases over the years where city staff or the Zoning Adjustments Board have made findings about units that either contradict the determinations made by the Rent Board or its staff or eliminate rent-controlled units without adequately replacing them with affordable units; and

WHEREAS, these determinations may affect the outcome of an application to eliminate a unit, potentially reducing the stock of units subject to rent control protections in the City of Berkeley; and

RESOLUTION 23-34

AUTHORIZING THE EXECUTIVE DIRECTOR OR BOARD CHAIR, IN CONSULTATION WITH EACH OTHER, TO APPEAL DECISIONS OF THE ZONING ADJUSTMENT BOARD OR ANY ZONING OFFICER DECISION THAT ALLOWS FOR THE ELIMINATION OF ANY RESIDENTIAL RENTAL UNITS THAT ARE COVERED BY RENT STABILIZATION OR JUST CAUSE FOR EVICTION (Page 2)

WHEREAS, when a Notice of Decision is issued by the ZAB or Zoning Officer the appeal period is only fourteen and twenty days respectively; and

WHEREAS, the Board only meets once a month, and therefore it is unlikely Board staff will have the opportunity to obtain Board authorization to appeal individual determinations before the appeal period has passed.

NOW, THEREFORE BE IT RESOLVED, that the Rent Stabilization Board expressly authorizes the Executive Director or the Board Chair, in consultation with each other (or their designees), to appeal any decision of the Zoning Adjustments Board or any Zoning Officer decision that allows for the elimination of rent controlled units without adequately mitigating their loss, or when City staff decides that the subject units are not “controlled units” after receiving a contradictory determination from the Rent Board; and

BE IT FURTHER RESOLVED that any appeal pursuant to this resolution shall be filed on behalf of all the elected Berkeley Rent Board Commissioners; and

BE IT FURTHER RESOLVED that the agency shall use funds from the Board budget to cover all expenses associated with the appeals; and

BE IT FURTHER RESOLVED that Board legal, planning, and finance staff shall be permitted to file all paperwork and otherwise represent the Executive Director or Board Chair as appellants in any appeal filed pursuant to this resolution.

RESOLUTION 23-34

AUTHORIZING THE EXECUTIVE DIRECTOR OR BOARD CHAIR, IN CONSULTATION WITH EACH OTHER TO APPEAL ON BEHALF OF THE CITY OF BERKELEY RENT BOARD ANY DECISION OF THE ZONING ADJUSTMENTS BOARD OR ZONING OFFICER THAT ALLOWS FOR THE ELIMINATION OF RENT CONTROLLED UNITS (Page 3)

Dated: December 21, 2023

Adopted by the Rent Stabilization Board by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board

Attest: _____
DeSeana Williams, Executive Director