

Shall the ordinance amending the Rent Stabilization Ordinance to: account for potential repeal of the Costa-Hawkins Rental Housing Act by preserving existing vacancy rent adjustments; update the new construction exemption from rent stabilization to a 20-year rolling period; and exempt all lawfully permitted Accessory Dwelling Units from rent stabilization and eviction for good cause protections, be adopted?

ORDINANCE NO. #,###-N.S.

AN ORDINANCE OF THE CITY OF BERKELEY AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.76 TO ACCOUNT FOR POTENTIAL REPEAL OF THE COSTA-HAWKINS RENTAL HOUSING ACT BY PRESERVING EXISTING VACANCY RENT ADJUSTMENTS AND UPDATE NEW CONSTRUCTION EXEMPTION FROM RENT STABILIZATION TO A ROLLING 20-YEAR PERIOD; AND TO EXEMPT LAWFULLY PERMITTED ACCESSORY DWELLING UNITS

The People of the City of Berkeley ordain as follows:

Section 1. Section 13.76.040 of the Berkeley Municipal Code is amended to read as follows:

13.76.040 Definitions.

A. "Board" refers to the elected Rent Stabilization Board established by this chapter and Article XVII of the Charter of the City of Berkeley.

B. "Commissioners" means the members of the board who are denominated commissioners.

C. "Housing services" include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

D. "Landlord" means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

E. "Rent" means the consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

F. "Rental agreement" means an agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.

G. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-NS), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

H. "Property" means a parcel of real property which is assessed and taxed as an undivided whole.

I. "Tenant" means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or

sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

J. "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility can be obtained promptly when needed.

K. "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

L. "Recognized tenant organization" means any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.

M. "Rent ceiling" means the maximum allowable rent which a landlord may charge on any rental unit covered by this chapter.

N. "Base rent ceiling" means the maximum allowable rent established under Section 13.76.100 of this chapter.

O. "Fees" means for the purpose of this chapter, a charge fixed by law for services of public officers or for use of a privilege under control of government.

P. "Nonprofit, accredited institution of higher education" means a post secondary educational institution whose legal status under the California Education Code is verified by an annual validation receipt from the California State Department of Education, and which is accredited by the Western Association of Schools and Colleges or the Association of Theological Schools and which is exempt from taxation under Section 501 (c)(3) of the United States Internal Revenue Code and under Section 23701(d) of the Revenue and Taxation Code, and which, if otherwise required by law to do so, has obtained a valid unrevoked letter or ruling from the United States Internal Revenue Service or from the Franchise Tax Board which states that the organization so qualifies for exemption from taxation.

Q. "Newly Constructed" means a rental unit created after June 30, 1980. For purposes of this definition, the date a unit was created is based upon the date of the first certificate of occupancy issued for the subject unit. However, in the event of the repeal or amendment of Civil Code Section 1954.52, such that "certificate of occupancy" is no longer the operative standard set forth under state law, the date a unit was created shall be determined by the final inspection approval by the City.

Section 2. Section 13.76.050 of the Berkeley Municipal Code is amended to read as follows:

13.76.050 Applicability.

This chapter shall apply to all real property that is being rented or is available for rent for residential use in whole or in part, except for the following:

A. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this chapter shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter.

B. Rental units which are rented primarily to transient guests for use or occupancy less than fourteen consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen days or less shall not by itself exempt any unit from coverage by this chapter.

C. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

D. Rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f) or the Shelter Plus Care Program (42 U.S.C. 11403 et. seq.) or similar federally funded rent subsidy program. Except as may be preempted by state or federal law, the exemption of such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. However, the exemption from Sections 13.76.080, 13.76.110 and 13.76.120 shall apply only for so long as the rent demanded does not exceed the authorized Payment Standard, which, for purposes of this subsection, is the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority or successor agency. For units where the rent demanded exceeds the Payment Standard, the Payment Standard or an initial rent above the Payment Standard if approved by the Berkeley Housing Authority, as reported to the board by the Berkeley Housing Authority or successor agency, shall become the unit's base rent ceiling and the reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120.

E. Rental units in any hospital, skilled nursing facility, health facility, asylum, or non-profit home for the aged.

F. Rental units in a residential property which is divided into a maximum of four units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (13.76.050 F.) shall be limited to rental units that would have been exempt under the provisions of this chapter had this chapter been in effect on December 31, 1979. After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three or four units. It shall continue to apply to rental units in a residential property which is divided into two units, and which meet all the other requirements of this subsection (13.76.050F). Rental units which become non-exempt under this provision shall have the provisions of Subsections 13.76.080I and 13.76.100C. applied to them.

G. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

H. For the purposes of Subsections 13.76.050 F., G., and N., the term landlord shall be defined only as the owner of record holding at least 50% interest in the property.

I. Newly constructed rental units, as defined in Section 13.76.040. However, the exemption of such newly constructed units shall be limited to their exemption from the terms of Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings, of this chapter. To the extent that state law permits, the exemption of such newly constructed units shall be limited to the first 20 years after completion of construction.

J. A rental unit which is rented by a nonprofit, accredited institution of higher education to a tenant or tenants who are student(s), faculty, or staff of the institution or of a member school of the Graduate Theological Union, provided, however, that the institution owned the unit as of January 1, 1988.

K. A rental unit in a residential property owned by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that is rented to a low income tenant and subject to a regulatory agreement with a governmental agency that controls the unit's rent levels. However, the exemption for such rental units from the terms of this chapter shall be limited to Section 13.76.080, Rent Registration; Section 13.76.100, Establishment of Base Rent Ceiling and Posting; Section 13.76.110, Annual General Adjustment of Rent Ceilings; and Section 13.76.120, Individual Adjustments of Rent Ceilings of this chapter and shall apply only for so long as the regulatory agreement is in effect. This exemption shall not apply to rental units at the property that are not subject to a regulatory agreement with a governmental agency or that are rented by a tenant who occupied the unit prior to the property's acquisition by the tax-exempt organization.

L. Rental units in a facility owned or leased by an organization exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code that has the primary purpose of operating a treatment, recovery, therapy, sanctuary or shelter program for qualified clients, where such rental units are provided incident to the client's participation in the primary program and where the client has been informed in writing of the temporary or transitional nature of the housing at the inception of his or her participation in the program. However, except as may be preempted by the Transitional Housing Participant Misconduct Act (California Health and Safety Code Sections 50580 et. seq.) or other state or federal law, such rental units shall not be exempted from the terms of Section 13.76.130, Good Cause Required for Eviction. For purposes of Section 13.76.130.A.2, the client's continued eligibility for participation in the treatment, recovery, therapy, sanctuary or shelter program shall be deemed a material term of the client's rental agreement with the program's operator.

M. A rental unit or room which is rented by an active member of a fraternity or sorority recognized by the University of California Berkeley, or a rental unit or room which is rented by an active member of a fraternity or sorority identified by Rent Board Resolution. To qualify for the exemption, the rental unit must be owned by the fraternity or sorority or by an entity whose sole purpose is the maintenance and operation of the fraternity or

sorority's rental units for the benefit of the members in order to provide housing to said members at cost.

N. A rental unit in a residential property containing a lawfully established and fully permitted Accessory Dwelling Unit where the landlord also occupies a unit in the same property as his/her principal residence. This subsection shall only apply to properties containing a single Accessory Dwelling Unit, shall only apply to units compliant with all applicable requirements of Chapter 23C.24 ("Accessory Dwelling Units"), and shall only apply to tenancies created after November 7, 2018.

Section 3. Section 13.76.100 of the Berkeley Municipal Code is amended to read as follows:

13.76.100 Establishment of base rent ceiling and posting.

A. Base Rent Ceiling. Upon adoption of this chapter, no landlord shall charge rent for any rental unit covered by the terms of this chapter affecting rents in an amount greater than the lawful rent which was actually due and payable on, or last preceding, May 31, 1980, under the periodic term of the rental agreement, in accordance with the provisions of the Temporary Rent Stabilization Ordinance, No. 5212-N.S., except as permitted by the board under Sections 13.76.110 and 13.76.120 of this chapter. Such lawful rent in effect on May 31, 1980, is the base rent ceiling and is a reference point from which the rent ceiling shall be adjusted in accordance with Sections 13.76.110 and 13.76.120. For such rental units where no rent was in effect on May 31, 1980, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on May 31, 1980, or during the six months preceding that date and no other rent has been certified or determined by the board after hearing, the base rent ceiling shall be the first periodic rent charged following May 31, 1980.

B. Posting. The board may establish reasonable rules and regulations for the posting of rent ceiling and other relevant information to further the purposes of this chapter.

C. Previously Exempt Units. For rental units specified in Section 13.76.050.F., the base rent ceiling shall be the rent in effect on December 31, 1981. For such rental units where no rent was in effect on December 31, 1981, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on December 31, 1981, or during the six months preceding that date and no other rent has been certified or determined by the board after hearing, the base rent ceiling shall be the first periodic rent charged following December 31, 1981.

D. Vacancy Rent Increases Preserved. This subdivision shall apply to the extent that state law no longer mandates that a landlord may establish the initial rental rate for any tenancy in a unit that is otherwise subject to a residential rent control ordinance. For such rental units where the landlord lawfully established a new initial rent under the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50 et seq.), the Base Rent Ceiling shall be the most recent lawfully established periodic rent. For such rental units that were exempt from rent stabilization pursuant to the Costa-Hawkins Rental Housing Act, the Base Rent Ceiling shall be the most recent lawfully established periodic rent.

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE ___

This measure was placed on the ballot by the City Council.

Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76) requires landlords to register rental units, limits how much landlords can increase rents on many rental units, and provides that certain tenants may only be evicted for good cause. Berkeley's Ordinance is currently limited by a state law known as the Costa-Hawkins Rental Housing Act. Costa-Hawkins bars cities from establishing or limiting rents for single-family homes or newly built housing completed on or after February 1, 1995, or earlier if the city had previously adopted a local exemption for newly constructed units, and from regulating how much rent landlords may charge tenants moving into vacant rental units.

A statewide initiative on the November 6, 2018 ballot, Proposition 10, would repeal Costa-Hawkins and allow local governments to adopt laws governing a landlord's right to establish and increase rents on newly built housing, notwithstanding the date of construction. Existing Berkeley law does not specify what will happen to rent increases imposed under state law in the event that California voters approve Proposition 10.

This proposed measure would amend Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance to account for the potential repeal or amendment of Costa-Hawkins. If state law changes to remove current limits on Berkeley's Ordinance, this measure would do the following:

1. Berkeley's rent stabilization and registration requirements would begin applying to newly built housing twenty years after that housing is built. For the first twenty years, newly built housing would be exempt from these requirements. This differs from current City law, which permanently exempts all housing completed on or after June 30, 1980, from rent stabilization and registration requirements.
2. This measure would preserve rent increases that were legally imposed on new tenants moving into vacant rental units while Costa-Hawkins was in effect. This would not significantly change the way rent control is implemented in Berkeley, but ensures that existing lawful rent increases remain in effect if state law changes.

In addition, this measure would exempt a rental unit in a residential property that contains a single Accessory Dwelling Unit from rent stabilization and limitations on the reasons for evicting tenants, if the owner resides on the property, and the Accessory Dwelling Unit is lawfully established and fully permitted. The exemption would not apply to tenancies created before November 7, 2018. This amendment would take effect regardless of whether Costa-Hawkins is repealed.

s/FARIMAH BROWN
Berkeley City Attorney

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CITY OF BERKELEY
CITY CLERK DEPARTMENT

ARGUMENT IN FAVOR OF MEASURE Q

Jesse Arreguin
Author



Vote Yes on Measure Q to keep rent control fair for everyone.

Berkeley and the entire state is facing a housing affordability crisis. Rents continue to increase and more renters are facing displacement. We need a balanced housing policy, that encourages new construction and protects sitting tenants.

Measure Q would ~~protect landlords from~~ ^{prevent} unfair rent rollbacks, give tenants in buildings from the 1980s and 1990s rent control protections, and homeowners would be incentivized to build new Accessory Dwelling Units (ADUs) to address the housing shortage.

Proposition 10 on the November ballot would repeal the Costa-Hawkins Rental Housing Act and expand rent control protections for tenants. To prepare for the potential passage of Prop 10, the City Council placed Measure Q on the ballot. Measure Q provides clarity and sets a fair standard that whatever the rent is at the time Prop 10 passes will be the rent ceiling going forward.

Newly constructed buildings are exempt from rent control, but buildings built in the '80s and '90s aren't "new" anymore. If Prop. 10 passes, Measure Q would give much-needed rent control to tenants in all buildings over 20-years old. It will also continue Berkeley's long-standing policy of permitting rent control, but not hindering new construction.

The housing shortage is critical, and we need more units, including Accessory Dwelling Units. We also need multi-generational housing opportunities. Measure Q would exempt lawfully established ADUs from rent controls, and also exempt the main house if the owner resides in their ADU. This will allow owners to age in place and increase housing opportunities.

Berkeley deserves clarity about the effects of Prop 10, a fair standard for new construction, and incentives for homeowners to build additional housing units.

Please join the Mayor, City Councilmembers and the League of Women Voters in supporting Measure Q.

/s/ Jesse Arreguin, Berkeley Mayor ~~Formerly~~ ~~Rent Stabilization~~ ~~Board~~ ^{PA}

/s/ Sophie Hahn, Berkeley City Council member

/s/ Lisa Stephens, Chair, Berkeley Rent Stabilization Board,
2008 - 2014

/s/ Tirien Steinbach, Executive Director,
East Bay Community Law Center

/s/ David A. Blake, Small Berkeley Landlord