Rent Stabilization Ordinance Amendments
November 8, 2022, Ballot Measure

Measure that amends Chapter 13.76 – Four amendments

"To allow rent control to apply to newly constructed units where state and local law do not prohibit rent control, and specifically to units built as the result of demolition of previously rent-controlled units; allow increased occupancy of rental units without the threat of eviction, eliminate provision allowing city council to exempt units from rent control if city's vacancy rate exceeds 5% over a six-month period; and increase eviction protections for certain landlord owner-occupied properties."

Question to Voters

"Shall the measure amending the Rent Stabilization and Eviction for Good Cause Ordinance to allow rent control to apply to new construction built as a result of demolition of rent-controlled units, where not prohibited by state law; allow a greater number of occupants per rental unit; eliminate a provision allowing the City Council to exempt units from rent control if the citywide vacancy rate exceeds 5% over six months; and limit evictions for certain landlord-occupied properties be adopted?"

Change #1: B.M.C. 13.76.040 Definitions (R)

"R. Notwithstanding any other provision in this ordinance, and to the extent that state or local law does not prohibit a local jurisdiction from regulating the rent on a residential rental unit, such units shall not be exempt as 'newly constructed units' and, unless otherwise exempt, shall be covered by all provisions of this chapter. This includes, but is not limited to, any residential rental units created as a result of demolition or replacement where such demolition or replacement is affected via the creation of a "housing development project" as defined in the Housing Crisis Act of 2019 (Senate Bill 330)."

In Layman's Terms

Senate Bill 330 limits local laws over housing developments, including the city's ability to to reduce the permitted density on property designated for residential uses, absent a concurrent density increase on other property. In the case where rent-controlled units are demolished, to make way for new construction (which could mean increased density on that parcel) the city wants to be able to control the rents of those "new" units.

They believe they can do this by way of SB 330 because it states that a unit is not exempt from rent control under Costa Hawkins, "where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 of Division 1 of Title 7 of the Government Code." This part of Government code speaks to financial assistance given to the developer though such things as density bonuses. They see this as a legal right for the city to establish the initial and all subsequent rental rates.

POSSIBLE IMPACT

Rent control hurts new development. We saw this in the Twin Cities recent enactment of rent control on *all properties including new construction.* All of a sudden development stopped in that city and now they are scrambling to fix it. Because what developer would want to spend thousands of dollars to create a brand-new unit, only to have the rent controlled to a rate at which you couldn't cover your costs?

QUESTIONS?

- Is the intention to control the rent of ALL units on the parcel, regardless of how many rent-controlled units were demolished?
- Is the intention to control the rent of its first tenancy *after* the new unit comes on the market?
- Why does the city want to control rents on new construction knowing that new development's viability is dependent on the ability to set the rent to market and be exempt from rent control for a period of time?
- Would there be a way for new development to "opt out" of rent control?

CHANGE #2: B.M.C. 13.76.040 DEFINITIONS (F) AND (N)

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). However, the exemption of such rental units shall be limited to their exemption from the terms of 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. 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.

N. A rental unit in a residential property containing only a Single-Family Dwelling (as defined in Subtitle 23F.04 of the Zoning Ordinance) and one 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 (13.76.050N) 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. However, the exemption of such rental units shall be limited to their exemption from the terms of 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.

In Layman's Terms

The exemption from Just Cause for Eviction protections for owner-occupied two-unit parcels will be taken away. Section R speaks to Golden Duplexes and Section F speaks to Accessory Dwelling Units (ADUs). Currently, certain units identified as Golden Duplexes and certain ADUs, do not require an owner who lives in one of the units to adhere to the cities Just Cause for Eviction controls. They can terminate the tenancy (according to state law) with proper notice and if they no longer want to have the tenancy. Reasons for not having the tenancy could include a bad relationship with the tenant or the need to return the unit for personal use. Currently, those owners are required to give at least 60 days' notice to a tenant (before the lease term ends) if they do not want to renew the lease.

This proposal would change that ability to terminate the tenancy and now require the owner to have "good cause" to terminate the tenancy. "Good cause" as defined by the current ordinance does not include, "I'm not getting along with the tenant and my life is miserable" or "I need that second unit to house my caretaker for my health issues."

Possible Impact

The inability to more easily terminate the tenancy of someone that is difficult to live with is, is scary for most owners. In this scenario, the owner lives on the property and shares common spaces with the tenant. Time and time again, constituents have spoken that they will no longer rent if it is too difficult to end the tenancy of a difficult tenant. We anticipate a loss of these units as tenancies end and owners choose not to re-rent. We also anticipate a backslide of the creation of new Accessory Dwelling Units.

Questions?

- This proposal only impacts owner-occupied, two unit parcels. Why are we making it difficult for those owners to terminate a tenancy in which the co-habitation has not worked?
- We just went to the voters on the ADU exemptions in 2018. Why are we back at this again when the voters already spoke?

Additional Questions?

- How were the Golden Duplex and ADU amendments to the ordinance brought forth? What legislative path did they take? Who weighed in on these amendments?

Change #3: B.M.C. 13.76.060 Rent Stabilization Board (Q)

~~Q. Decontrol: If the annual average vacancy rate for all rental units in the city of Berkeley exceeds five percent over a six-month period, the city council is empowered, upon request by the board, at its discretion and in order to achieve the purposes of this chapter, to exempt rental units covered by this chapter from Sections 13.76.080, 13.76.100, 13.76.110 and 13.76.120 of this chapter. In determining the vacancy rate for the city of Berkeley the board and the city council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection Q coverage shall be reimposed if the city council finds that the average annual vacancy rate has thereafter fallen below five~~

~~percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection Q the board shall hold at least two public hearings.~~

In Layman's Terms

Removes City Council's authority to decide to remove rent control for rent-controlled units when the city's rental vacancy rate exceeds 5% over a six-month period. With this modification, any change to rent control on rent-controlled units would have to go to the voter.

Possible Impact

Little to none. We have had an over 5% vacancy rate during the pandemic and there was no appetite for City Council to remove rent control per the current ordinance.

Change #: B.M.C. 13.76.130 Good cause required for eviction

A. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this chapter unless said landlord shows the existence of one of the following grounds:

c. The number of tenants and subtenants actually occupying the rental unit does not exceed the maximum number of occupants legally allowed under Section 503.2 of the Uniform Housing Code as incorporate by California Health & Safety Code Section 17922, except where prohibited by law.

(i) The tenant has made a written request to the landlord to either sublet the unit and/or add additional occupants, and the landlord has failed to respond in writing within fourteen (14) days of the tenant's request; or

(ii) The proposed new subtenant has, upon the landlord's written request, completed the landlord's standard form application or 19 provided sufficient information to allow the landlord to conduct a standard background check, including references and credit, income and other reasonable background information, and the proposed new subtenant or additional occupant meets the landlord's customary occupancy qualifications and has not refused the landlord's request to be bound by the terms of the current rental agreement between the landlord and the tenant; or

(iii) The landlord has not articulated in writing a well-founded reason for refusing consent. A landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some or all of the rent to the landlord.

e. Where a landlord can establish that the proposed additional occupant presents a direct threat to the health, safety, or security of other residents of the property, the landlord shall have the right to deny the proposed tenant's occupancy.

f. Before initiating an action to recover possession based on the violation of a lawful obligation or covenant of tenancy regarding subletting or limits on the number of occupants in the rental unit, the landlord shall serve the tenant a written notice of the violation that provides the tenant with a minimum

of fourteen (14) days to cure the violation. The notice must also inform the tenant(s) of their right to add subtenants and/or add additional occupants pursuant to this section.

In Layman's Terms

Current law states that an owner may determine max occupancy of the unit at the beginning of the tenancy. It is codified in the lease by stating the maximum number of occupants allowed to treat the unit as their primary place of residence.

Currently, if a tenant asks to add a roommate to the unit (in which it exceeds the maximum occupancy stated in the lease), the owner can deny them. And if the tenant adds that roommate anyway, the owner can evict the tenant for that action because it is a violation of the lease to exceed the maximum occupancy stated in the lease.

This change in law would say that an owner *could not* terminate a tenancy if the additional occupants exceed the maximum number stated in the lease, so as long as the total occupancy level does not exceed "two people per bedroom plus one." (Under Uniform Housing Code, a three-bedroom unit can have up to 7 people living in it, for example.)

An owner would no longer be able to petition for a 10% increase in rent due to the additional occupants of the unit.

Possible Impact

The greater number of bedrooms per unit, the greater impact this will have on a neighborhood. Mini Dorm ordinance be damned, this could turn a five-bedroom house into an 11-person home. It does go against the intention of the Mini Dorm Ordinance.

Questions?

- Does the section that states, "a landlord's reasonable denial may not be based on the proposed occupant's lack of credit worthiness or income if that occupant will not be legally obligated to pay some of all of the rent to the landlord" mean that a subtenant who does not directly pay rent to the landlord, does not have to meet the owner's credit or income requirements?
- Does this mean an owner has to allow for a subtenant who may not be financially capable of paying the rent?
- Does this mean a five-bedroom home could have a max occupancy of 11 people?
- How does this impact the Mini Dorm Ordinance regulatory language?
- Will the owner still be permitted to raise the rent 10% to account for the new occupants above the original maximum occupancy stated in the lease?
- How will this impact current leases where the owner has already set the maximum number of occupants?