

Berkeley Tenants Union

2022 Blake Street, Berkeley, CA 94703
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Respected Planning Commissioners:

We hope you will consider these points regarding the draft Housing Element.

► Demolition Ordinance (BMC 23C.08)

Preserve Rent Controlled Housing!

The Demolition Ordinance is referred throughout the Housing Element as a key to various goals. However, there are also implication in the draft HE that the Ordinance should be changed.

The most important thing about our Housing Element is that it continue to reflect Berkeley's fundamental values. Many of these values were codified by the voters in the 1973 in the Neighborhood Preservation Ordinance. This was the ordinance that established use permits, and strict prohibitions on demolition.

In 2013, we had a lot of public discussion about the Demo Ordinance. We want to remind you that the Planning Commission, Housing Advisory Commission, and Rent Board all agreed that keeping the requirement that rent controlled housing be replaced with permanently affordable housing was key. Council received letters from the Sierra Club, Berkeley NAACP, Berkeley Neighborhoods Council, the Berkeley Architectural Heritage Association and the East Bay Community Law Center calling for the same thing – and BTU turned in a petition with hundreds of names.

Additionally, there are real-life problems with enforcement. One of those problems is that the law requires not only that rent controlled units be replaced with permanently affordable housing, but also that they be *in really bad shape* in order to tear them down. This has left many properties vacant and some still rented but in extreme disrepair. For example, there is an 18-unit building on Durant street where the owner's own filing for a Demo permit calls the building "severely distressed" yet they signed leases with new tenants *after* they made that filing, essentially renting out apartments they deemed uninhabitable. Should owners who don't keep up their building be rewarded by being allowed to build five stories of fancy new top-dollar housing?

We ask that the Planning Commission stand with us in ensuring preservation of all units – we need to keep buildings safe and comfortable, and Berkeley can't afford to lose the rent controlled housing we have now. Rent control is an affordable housing program that works, as you can see by the chart on pages 34 and 35 of the HE that give market rents for new tenancies in rent controlled units and the rents in new buildings which are exempt from controls. **In four years, market rents in older controlled buildings went up by 14% while rents in new buildings (\$2239 for a studio!) went up 31%.** Thus preserving older housing stock is important to maintaining the possibility of lower rents even post-vacancy decontrol.¹

Please explicitly state that you still support the model of destroying rent controlled units only in extreme circumstance, and only then if they are replaced with

¹ At the time the Rent and Demolition Ordinances were created, rents in empty units were still regulated. Before the state-mandated vacancy decontrol, the rent was always the rent, but now, a new rent can be set with a new tenancy. This is why it's important you notice the rents being compared are not rents for long-term tenants, but rents for new tenants.

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permanently affordable housing and with all sitting tenants protected. This will guide staff not only with the Housing Element, but also with work on their upcoming nexus study recommendations about fees.

► Affordable Housing Mitigation Fee

This impact fee should be high enough to actually mitigate the needs created by new development.

The Housing Element's discussion of the Affordable Housing Mitigation Fee is limited, yet the fee is mentioned throughout the document as an important part of the plan to address the need for housing for moderate and low-income renters.

BTU agrees with the conclusion that the AHMF is not a "constraint on housing development in Berkeley" (Page 62) – just after the fee was implemented, Berkeley began to experience a time of unprecedented development. However, there is some history we want all Planning Commissioners to be aware of, and to consider when drafting the HE and when commenting on the upcoming nexus study.

The report doesn't really discuss what this fee is intended to mitigate: every 10 market rate units generate the need for one lower-income unit to house neighbors to serve the new residents coffee and clean their toilets. (Affordable Housing Fee Nexus Study, October 2010, Page 20). Thus this fee addresses the affordable housing needs generated by new development and does nothing to address the needs for affordable housing generated by an out-of-control market, an aging population, or any other factor. It is important to keep that in mind.

Although this draft doc explains that the fee was based on a nexus study, it doesn't say the nexus study said that **\$34,000 is the fee actually required** to keep pace with new affordable housing needs, or that the Housing Commission and Rent Board recommended a fee of \$28K. In fact, Council adopted a fee of \$28K in October of 2012 –but the Housing Element refers to the fees as \$20,000 (Page 69) because Council voted to extend developers a "discount" in February 2013 and renewed the lower fee just a few months ago.

Although the specific amount of the AHMF is outside of the scope of the Housing Element, we ask the Planning Commission to stand with us in expressing concern for this loss of funding for affordable housing. We hope you will examine how much money the city is losing – after all, **the impact the fee mitigates remains the same, so affordable housing is not keeping pace with the demand for it generated by new development.** Setting a goal in the HE to have the impact fee actually mitigate the needs created by new development would be smart.

Indexing the fee to building costs or some other reasonable measure should be considered as well.

► Accessory Dwelling Units

Develop policy to make existing units safe and legal!

BTU supports easing restrictions on accessory dwelling units. We believe the best landlords are the ones who live right next door to their tenants. However, we were disappointed when discussions about "illegal units" were taken off the table early in the

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ADU discussions. New units will not be under rent control, but there are currently at least 2000 and maybe as **many as 4,000 units** which are under rent control but not permitted per City records.

Making unpermitted units legal would protect rent-controlled housing stock, because right now owners have been using the unpermitted status of units as a means to eviction of long-time renters in garage/basement style units and particularly in units where commercial space has been used as residential for decades. In April 2014, San Francisco began a program to legalize their rent controlled units which do not have permits. Using their plan as a model could be a good goal for Berkeley.

► Code Enforcement and the Rental Housing Safety Program

Increase proactive inspections; allow anonymous complaints.

Habitability issues are the number two problem faced by Berkeley tenants today. For example, the Rent Board's tenant survey in 2009 found 18% of renters reported having problems with their heat! As Berkeley rental housing stock ages, the need for maintenance and repairs increases.

We are happy to see the draft Housing Element calls for expanding proactive inspections by code enforcement. The report says an average of 266 inspections have been performed a year. At that rate, it would take **218 years** to inspect each of Berkeley's 49,454 housing units! While inspecting each unit may not really be necessary, with complaint-driven inspections at an equally low number, the odds of getting in trouble with Code Enforcement are just too low (less than a 1% chance of inspection in any given year) to motivate absentee owners and corporate investors to keep Berkeley apartments in reasonable condition.

A major goal for Berkeley Tenants is to get the City to institute anonymous code enforcement complaints. Tenants are afraid to report landlords. They often ask BTU to make a report for them, but even the Rent Board does not currently accept third-party complaints.

Additionally, we would like to suggest the City require landlords to actually turn in their Schedule A under the RHSP to the City, instead of relying on complaints from tenants who do not receive a form.

► Inclusionary Units: Below-Market Rentals

Policy H-3 B. Monitor units funded by the Housing Trust Fund or that were created by the Inclusionary Ordinance to ensure long-term health, safety, and affordability of these units.

Safety and Repairs: According to the July 2013 *Update on Monitoring Inclusionary Housing Rental Units*, staff relies on an annual report from owners to check rents, repair and rehabilitation plans, and marketing efforts. We could find no more recent report, but at that time there were 25 sites with 306 BMR units, and staff had **proactively inspected only 3 of the 25 sites** from 2009 to 2013. We urge you to add concrete goals for inspection of the units to the Housing Element. An annual monitoring fee could be charged.

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Marketing and Selection of Tenants: Additionally, Berkeley Tenants Union hears all the time from desperate seniors and other at-risk populations who are looking for stable housing, but these tenants must visit each of the 25 sites, fill out separate applications, and monitor their status on separate waiting lists. BTU was pleased with Councilman Arreguin's 2013 suggestions regarding **establishing a central wait list** with the city or at a nonprofit, but we have not heard of any progress on that common-sense suggestion. Please consider adding it to the HE.

Finally, we wanted to make a couple quick points in relation to what was reported from the February 4 Planning meeting:

► Condo Conversions

Reading between the lines, it seems like the Housing Element may be calling to relax restrictions on condo conversions. Please remember, **most condo conversions are lost rent controlled units!** Berkeley has decent protections for sitting tenants, but as long as state law remains the same, we can't get back the rent controlled units we lose. We do not want to roll back tenant protections at a time when San Francisco, Oakland, Richmond and even San Jose are tightening their protections for renters.

► Vacation Rentals Take Away Housing

Most vacation rentals are whole apartments that could and should be going to people who live or work in Berkeley. We currently have laws prohibiting such rentals, but the laws are not enforced. **BTU advocates proactively enforcing a ban on renting out whole units to tourists.** We hope the lure of tax money from vacation rentals will not persuade Council to legalize short-term rentals when we need that housing so desperately! Rooms in someone's home, or renting out your own home while on vacation, that might be one thing – but about 300 units in Berkeley are on sites like Air BnB and Home Away at any given time. That's a lot of homes to lose to illegal short-term rentals when we are having a housing crisis!

Commissioner Mathews was quoted as saying tenants could profit from vacation rentals, but that is not so. No rent controlled tenant can sublet at more than the proportional fair share of the controlled rent, making typical vacation rental rates illegal for even market-rate rent controlled tenants. Additionally, it is rare to find a lease that allows subletting. In fact, both landlords and tenants who rent on vacation sites cause problems for the others who live in the building, with guests coming and going at odd hours and unknown people in secured common spaces. And of course, since all vacation rentals are illegal in Berkeley right now, tenants could be evicted simply for breaking the law.

Sincerely,
Berkeley Tenants Union
Katherine Harr, Secretary