


Office of the City Attorney

October 6, 2016

To: Berkeley Neighborhoods Council

From: Zach Cowan, City Attorney 

Re: Inquiry Concerning Measures DD and AA

This memorandum responds to a letter from the Berkeley Neighborhoods Council (BNC) concerning Measures AA and DD. The letter was dated September 4, 2016, but was e-mailed and received on October 4, 2016. Although it was addressed to (among others) the City Attorney, it was not e-mailed to this office, but was provided courtesy of Councilmember Worthington. If BNC wishes to send e-mail to this office, it may be addressed to attorney@cityofberkeley.info.

BNC's first question concerns a discrepancy between the ballot label and the impartial analysis for Measure DD. The ballot label correctly refers to Measure DD as applying to gross receipts from three or more residential rental units. The impartial analysis refers to "five or more residential rental units". The letter is correct that these statements cannot be reconciled. The impartial analysis is incorrect, as can be determined from reading the text of Measure DD. Unfortunately this error was only caught recently, too late for the analysis to be fixed.

The second question concerns who is protected from Owner Move-in (OMI) evictions under Measure AA. The following response was provided by counsel for the Rent Stabilization Board.

Measure AA would clarify current OMI protections by removing the word "rental" from one of the clauses identifying the number of units a landlord must own in order to avoid tenant protections. There remain, however, limitations on the number of OMIs that a landlord may perform on a single property, as well as protections related to relocation to vacant units.

The first two examples below address how Measure AA would modify the Ordinance if adopted by the voters. The final example describes a protection that will remain unchanged.

1. Where a landlord owns three or fewer residential units in Berkeley with no vacancies, none of that landlord's tenants are protected against an OMI eviction. In other words, the landlord may select any tenant household to evict for owner or qualifying relative occupancy in accordance with existing rules and restrictions for all OMI evictions.
2. Where a landlord owns four or more residential units in Berkeley, a tenant who has resided on the property for at least five years is protected against an OMI if that tenant is either 60 years old or older, or if the tenant is "disabled" under state law.
3. Where a landlord owns five or more residential rental units in Berkeley, any tenant household that has resided on the property for five years or more is protected against an OMI.

We hope this answers the BNC's questions.

cc: Mayor and City Council
Dee Williams-Ridley, City Manager
Jovan Grogan, Deputy City Manager
Mark Numainville, City Clerk
Matt Brown, Rent Stabilization Board