



Rent Stabilization Board

## RENT STABILIZATION AND EVICTION FOR GOOD CAUSE IN THE 21<sup>ST</sup> CENTURY

August 20, 2012

### Introduction

This report explains how the Berkeley Rent Stabilization Board has adapted to the passage of vacancy decontrol and is working to ensure continued and effective enforcement of rent regulations and good cause for eviction in the 21<sup>st</sup> Century.

*Section One* reviews the purposes of the Rent Board and the scope of the Board's mandate, which is to implement an ordinance designed to help level the playing field and ensure fair treatment for both landlords and tenants in a region where tenants, who are mostly low-income, have little market power.

*Section Two* compares the strong, active enforcement approach utilized by Berkeley, West Hollywood and Santa Monica with the more passive, complaint-driven enforcement approach utilized by Los Angeles, Oakland and San Francisco and shows that Berkeley's active enforcement is both more effective and more costly than complaint-driven programs.

*Section Three* describes the administrative structure of the Rent Stabilization Program and its relationship with other City departments.

*Section Four* gives an historical overview of changes in the Program's budget, fees and staffing from its inception to the present day, showing how staffing gradually declined as a result of vacancy decontrol and then stabilized in response to increased demands resulting from changes in the program environment, most notably the current recession.

*Section Five* describes the effort underway for the past several years to reorient Program activities to better meet the evolving needs of tenants and property owners under current conditions. These include a stronger emphasis on educating property owners and tenants about good cause for eviction, a greater emphasis on dispute resolution, strengthened interdepartmental coordination and improved administrative capacity and use of modern information technology. All of these efforts have received broad public support.

## I. Purposes and Scope of the Berkeley Rent Stabilization Program

The Berkeley Rent Stabilization Program implements the Rent Stabilization and Eviction for Good Cause Ordinance passed by the voters in June 1980 and is governed under Article 17 of the Berkeley City Charter, “Elected Rent Stabilization Board”, passed by voter initiative in November 1982. The Ordinance (Berkeley Municipal Code Section 13.76) states:

“The purposes of this chapter are to regulate residential rent increases in the city of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the city with regard to low and fixed income persons, minorities, students, handicapped, and the aged.”

The Rent Stabilization and Eviction for Good Cause Ordinance responds to a severe and longstanding housing market failure in Berkeley and in the surrounding Bay Area. In a genuinely competitive market with adequate supply that increases as demand increases, competition would hold rents down to the minimum necessary to cover the costs of operating and maintaining housing and providing a modest profit. Instead, for the past thirty years Bay Area rents have been based on scarcity in a market where supply has failed to increase with demand, making them among the highest rents in the United States. Under such circumstances, tenants are easily taken advantage of unless protected by strong and effective regulation.

The Ordinance also falls within Berkeley’s tradition of demanding equal rights for all, providing tenants in good standing with a level of security in their homes that is nearly equivalent to that available to homeowners with fixed-rate mortgages. Berkeley’s voters have affirmed their continuing support for rent stabilization and eviction for good cause many times over the years, for example by strengthening the limits on owner move-in evictions in 2000 and adopting additional amendments proposed by the elected Rent Board in 2004.

Berkeley’s current system of rent regulation can best be described as “vacancy decontrol – recontrol”. In 1980 the voters established a strong form of rent regulation called “vacancy control”, which set base rents and allowed increases without regard for changes in tenancy. In 1995 the state legislature overrode the will of the voters of Berkeley and passed the Costa Hawkins Act, which allows the landlord to set the initial rent of a new tenancy, a system called “vacancy decontrol”. Once the unit is re-rented it is again controlled for the duration of the tenancy, with limits set on future increases in order to provide stability and security to the new tenant. Vacancy decontrol began on January 1, 1999 after a three-year phase-in period.

The good cause for eviction provisions of the ordinance govern nearly the entirety of the approximately 27,000 rental units in Berkeley, while the rent stabilization provisions apply to

approximately 21,000 units in multi-family properties built before 1980. About 19,000 of these units are required to register at any given time and the other 2,000 units are temporarily exempt. The most common reason for temporary exemption is that the unit is rented to a tenant who participates in either the Section 8 Portable Voucher or Shelter Plus Care programs. Permanently exempt units include those built after 1980 and most single-family and condominium units.

The Berkeley Rent Board is now responsible for administering rent regulations for two parallel sets of tenancies: “old rent control” tenancies in units that have never received a vacancy increase and newer tenancies in units that have had a vacancy increase bringing the unit to market rent. At this point slightly more than 80% of stabilized units have turned over at least once since January 1, 1999 and have tenancies that began at market rent under the vacancy decontrol – recontrol rules.

Approximately 3,500 households have tenancies that began prior to January 1, 1999 and most of these have rents that are based on the original (usually 1980) base rent plus allowable annual and individual rent adjustments. There are also a small number of units within this group that received additional increases during the 1996 – 98 phase-in period. The rent ceilings for these long-term rent-controlled tenants are usually from 30% - 40% below the current market rent. According to the Rent Board’s 2009 tenant survey, the great majority of the tenants who fall under “old rent control” are low-income and 37% of these households include a resident who is disabled, elderly or both. Even with rents substantially below the current market rate, 42% are paying over 30% of their income for rent and the majority would be hard put to afford other housing in Berkeley. (For more details, see Berkeley Rent Stabilization Board, *Report on the April – May 2009 Survey of Tenants of Registered Rental Units*, March 15, 2010, available on the Rent Board web site under Research Reports.)

By way of comparison with other housing programs, the Berkeley Housing Authority assists approximately 1,900 tenants with Section 8 vouchers or certificates and the City’s non-profit housing organizations have, over the past forty years, developed an inventory of about the same number of units of subsidized housing (with about 300 units that fall in both groups) for a total of about 3,500 assisted households. Meanwhile, taking both old and new tenancies, Berkeley has more than 8,000 low-income **non-student** tenants living in the private rental housing market who are provided with protection and stability by the Rent Stabilization and Eviction for Good Cause Ordinance. In addition, thousands of students and middle-income tenants also benefit from clear rules and a more level playing field between landlords and tenants.

The Rent Board has an important role in monitoring evictions as well as rents. Although evictions are carried out through the courts, the Rent Board is notified of all eviction actions and monitors them to ensure that they involve valid causes for eviction and to ensure that vacancy increases are not granted in cases that fall under the exceptions in the Costa Hawkins Act. The Board also administers the requirements of both the state Ellis Act, for owners evicting their

tenants to go out of the rental business, and the corresponding local Ellis Ordinance, which provides a timeline and relocation payments to any tenants.

Eviction monitoring is particularly important for units occupied by long-term tenants, since vacancy decontrol can create a major economic incentive to vacate such units and restart the rent at current market levels. The Rent Board's 2010 economic study demonstrated that, as a result of vacancy decontrol and the continued high demand for rental units in Berkeley, most landlords have received major increases in rents. On an annual basis rents in Berkeley are more than \$100 million higher than they would have been if vacancy control had remained in place or if rents at the beginning of rent control had simply increased at no more than the rate of inflation, as they would have in a more competitive housing market. This additional \$100 million in annual rental income, virtually all of which goes into net operating income, has increased the value of Berkeley's rental properties by over one billion dollars. It has not, however, increased Berkeley's tax revenues by very much, since most rental properties have not turned over since vacancy decontrol and they retain the much lower property tax rates mandated by Proposition 13. (For more details, see Berkeley Rent Stabilization Board, *The Effects of Rent Stabilization and Vacancy Decontrol on Rents, Rental Property Values and Rent Burdens in Berkeley, California*, April 19, 2010, available on the Rent Board web site under Research Reports.)

## II. The Value of a Strong Regulatory System

Broadly speaking, there are two models of how to approach regulation of the landlord-tenant relationship; passive enforcement and active enforcement. The passive enforcement approach makes information available but does not collect systematic information regarding current rents and enforces regulations only in response to complaints, which usually find their way to the regulatory agency only in egregious cases or where tenants have contact with an advocacy organization. The active enforcement approach uses extensive outreach to inform tenants and owners about their rights and obligations under the law and regulations, maintains full and accurate records through reporting requirements for initial rents and eviction proceedings, ensures information provided by owners is also sent to current tenants for review, provides mediation and dispute resolution services and actively enforces the law and program regulations when it finds violations.

Berkeley is a city whose voters demand active enforcement. The Berkeley Rent Stabilization Program has 21 employees and an adopted budget for the 2011/2012 fiscal year of \$3,950,000, mostly from annual registration fees of \$194 per unit. Santa Monica, another high enforcement city, has an adopted 2011/2012 revenue budget of \$4,716,000, mostly from registration fees of \$156 per unit. Its 27 employees oversee 26,500 rent stabilized units.

By way of contrast, the City of Los Angeles runs a rent stabilization program with lower-level enforcement. Its ordinance applies to approximately 450,000 units, which are overseen by a staff

of 77 employees. An annual registration fee of \$18.71 per unit generates most of the program's revenue of \$8,772,000. Similarly, the Oakland Residential Rent Adjustment Program, which also takes a lower-level enforcement approach, has responsibility for regulating approximately 58,000 units with a staff of eight and budgeted revenue of \$1,891,000 from a per unit fee of \$30.

The differences in information outreach, rent registration and enforcement generate measurable differences in results. The City of Los Angeles' survey of tenants in 2007-2008 and found that 27% of tenants reported current rents that were more than 105% of what they should have been based on the tenants' initial rent and the increases allowed under the L.A. rent stabilization ordinance. (Economic Roundtable, *Economic Study of the Rent Stabilization Ordinance (RSO) and the Los Angeles Housing Market*, 2009, available at the L.A. Housing Department web site). By contrast, a 2009 survey of tenants in Berkeley found that 7% of pre-1999 tenants and 5% of tenants who moved in after 1998 reported a rent that was over 105% of the legal rent ceiling. (Berkeley Rent Stabilization Board, *Report on the April – May 2009 Survey of Tenants of Registered Rental Units*, March 15, 2010, available on the Berkeley Rent Stabilization Program web site). The Berkeley survey overstates the overpayment rate because it did not try to take into account legal "separate agreement" payments, such as for parking or storage space, which tenants may have considered part of the rent. Even so, it is clear that rent violations are quite rare in Berkeley and fairly common in Los Angeles. This is certainly related to the fact that Berkeley requires landlords to report the initial rent for all new tenancies and mails out an annual statement to all tenants with their legal rent ceiling. In contrast, Los Angeles does not require rent reporting and their consultants recommended that they consider doing so.

The Los Angeles study also found that 37% of tenants in stabilized units did not know that their rents were regulated. The Berkeley study found that 27% of tenants in stabilized units did not know, although only 3% of long-term Berkeley tenants did not report knowing that their rent was controlled. This reflects the particular challenge that Berkeley has in reaching the high-turnover student sector within its tenant population. After receiving the results of the survey, Berkeley has taken several measures to improve its outreach to college students.

The Los Angeles ordinance is currently the subject of major ongoing controversy and protests from tenants because its provisions allow landlords a minimum annual increase of 3% on sitting tenants, while over the past several years the rate of inflation has been much less than that. In contrast, Berkeley's ordinance does not allow a minimum annual increase if there is no inflation.

It is not a coincidence that the high-enforcement cities in California were originally cities with strong vacancy-control rent regulations, while the low-enforcement cities always allowed decontrol on vacancy. Vacancy control systems had to track the legal rent for each unit, and could easily continue the practice after the state mandated vacancy decontrol. In addition, since Berkeley has a database with the addresses of all rent stabilized units, it is able to send regular mailings to all landlords and tenants informing them of their rights and obligations under the law.

### III. Structure of the Rent Stabilization Program

The elected Rent Stabilization Board hires the Executive Director, who hires all other staff and manages the Program. The Rent Stabilization Program budget for the 2011/2012 fiscal year, adopted last June, budgeted for 21.15 full-time equivalent staff (FTE) divided into four units: Registration and Public Information (9.35 FTE), Hearings (2.35 FTE), Legal (3.50 FTE) and Administration/Policy (4.25 FTE). The Board also funds 1.1 FTE in the City's Information Technology Department and allows for some temporary assistance up to 0.6 FTE. (Minor changes are made throughout the year. The numbers used in this report always refer to the initial adopted budget unless otherwise specified.)

The **Registration unit** handles the annual payment of registration fees for approximately 19,000 units, as well as requests for waiver of penalties for late payments, registration of approximately 4,500 new rents established after a change in tenancy each year, annual verification of approximately 2,000 units with temporary exemptions and verification of changes in exemption status. The unit staff calls landlords with past histories of late payment in advance of each year's due date to help them avoid penalties. We are not aware of any other agency (public or private) that goes to these lengths to avoid assessing a penalty. If a penalty is assessed, the Board processes several hundred requests a year to have the penalty reduced or forgiven entirely based upon good cause, with some relief being granted in over 90% of the cases.

The **Public Information unit** (PIU) conducts extensive outreach to inform landlords and tenants of their rights and obligations through regular mailings, newsletters and other media. It holds monthly informational meetings at libraries and senior centers and does workshops for landlords and tenants. For example, in each of the past two years it held a workshop on eviction procedures for landlords to ensure that owners who needed to engage in this process knew how to do it correctly. PIU staff recently held another workshop specifically for small property owners. Each workshop was attended by more than 50 owners, who expressed appreciation for the comprehensive presentations. PIU contacts new owners of Berkeley rental property and sends information packets to new tenants. It sends information on the eviction for good cause requirements to tenants who have received a three-day eviction notice. PIU responds to over 10,000 inquiries/client contacts from the public annually, and when landlords or tenants bring in specific situations the staff follows through advising one or both parties until the situation is resolved. Although the Rent Program's current software does not provide detailed statistics, we know that volume of inquiries and counseling has increased substantially over the past three years as the economic situation has worsened.

Staff is allocated as needed between the Registration and Public Information units, with a total of 9.35 FTE budgeted.

The **Hearings unit**, with 2.35 FTE (including 1.85 Hearing Examiners), deals with situations in which conflict has arisen between a landlord and a tenant. In 2010 its staff held hearings on 104 petitions for rent reductions or rent increases. In addition, the Hearings and Public Information units jointly conduct a mediation program and held 134 mediations in 2010. Hearings staff also carry out occasional special projects.

The **Legal unit**, with 3.5 FTE, is responsible for advising the Board and Executive Director on all legal matters, similar to how the City Attorney advises the City Council and City Manager. The Legal Unit also handles collection of unpaid registration and penalty fees, reviews hearings unit decisions that are appealed to the Board and responds to writs and lawsuits filed against the Board. In 2010 the unit filed in small claims court against 140 properties and subsequently had to file liens with the County on 40 of these properties. When banks foreclose on a property and fail to pay fees, leaving them to an often unknowing new owner, the Legal unit will join with the new owner in pursuing payment from the bank.

The **Administrative/Policy unit**, with 4.25 FTE, includes the Executive Director and Deputy Director, who are responsible for providing leadership and managing the agency under the general direction of the elected Board, drafting and maintaining the annual budget, hiring and promotions, grievances and disciplinary actions and maintaining effective relations with other elected officials, heads of other City departments and the public. The unit is also responsible for office administration, staffing meetings of the Board and its eight committees, and conducting research and analysis and producing reports.

**Other City departments** carry out several administrative support functions, although the City Charter does not require the Rent Board to use them. They include the City Auditor, Finance/Treasury, City Clerk, Human Resources, and an outside auditor selected by City. With the exception of the Executive Director, who is hired directly by the elected board with the assistance of an executive search firm, all personnel matters are conducted in consultation with the Human Resources Department in strict conformance with their procedures. The Executive Director hires and promotes staff through the City of Berkeley's civil service process. The City's Human Resources Department handles the outreach, determines eligibility for the list and ranks the candidates. All top candidates and others from within the City system are interviewed by a panel that provides recommendations to the Executive Director. Over the past five years all permanent staff hired by the Rent Board were ranked in the "most highly qualified" group by the HR Department and received the highest ranking by the professional review panel conducting the job interviews. The educational qualifications of the last nine people hired or promoted over the past several years are as follows: one person with a Ph.D. and one with a master's degree in city planning, two people with master's degrees in public administration, four people with law degrees and one with community college coursework.

All Rent Program positions except that of the Executive Director are defined within the City's job classification system. When the new position of Deputy Director was created, for example, it

was reviewed not only by the Rent Board but also by the City's Personnel Commission and then approved by the City Council. The Rent Program Executive Director is co-signatory with the City Manager on all relevant union contracts and normally participates in contract negotiations as part of the management team. Employees at the Rent Program have seniority rights within the City system as a whole. The grievance and disciplinary procedures are defined by the union contracts and the Rent Program does what all other City departments do and follows the advice of the Human Resources Department and the Labor Relations Coordinating Committee.

Rent Program staff, like all City staff, is paid through the City Auditor's payroll unit. The Finance Department handles the Rent Program's banking functions. Purchasing is conducted under the advice of the Finance Department, following standard City bidding and RFP procedures, with the exception that the Rent Program staff may, with approval of the Executive Director, take advantage of cost savings from, for example, obtaining more bids than the City normally requires or by using an immediate credit card payment to obtain a lower cost.

The Rent Program originally hired its own Information Technology staff, but now contracts with the Information Technology Department for IT services. This arrangement both provides more comprehensive service and greater flexibility as needs change. Replacement of the Rent Program's obsolete software is being conducted under the advice of the IT Department to maximize compatibility between software used by the Rent Program and other City departments. This contract is budgeted at 1.1 FTE for the current fiscal year. It is anticipated that once the new system is fully in place the allocation for these services will be reduced.

#### IV. Berkeley Rent Program Annual Budgets, An Overview of Changes from 1980 - 2012

Table 1 below shows changes in the Rent Stabilization Program finances and staffing over time. After each several years of data there is an explanation of major issues and changes. Some of the information is not readily available for the years before 1988-89, but later reports provided historical data on annual registration fees going back to the beginning of the agency in 1980 and on staffing FTEs (full-time equivalents) going back to 1985. The adopted budget is given starting in 1988-89 and actual expenditures since 1980-81, rounded to the nearest \$1,000. Data for the years before 1988-89 has not been verified using the original budget reports.

When the agency began in 1980/81 the initial budget and staffing was completely unrealistic. The agency needed to determine which units were covered and which were exempt and register initial base rents for covered units while dealing with a deluge of lawsuits and concerted refusal to comply with the law. The owners of thousands of units tried to prevent the agency from carrying out its mission by refusing to pay fees or register base rents, forcing the City Council to lend money to support the program. In 1982 a voter initiative increased penalties for late payment and empowered the Board to place liens on properties whose owners failed to pay. Compliance increased substantially the following year.

Santa Monica passed its ordinance in 1979 and began rent registration with an annual fee of \$12.50 per unit, which may have provided the model for Berkeley's starting point of \$12. Two years later, in 1981, the Santa Monica fee was set at a more realistic \$72 per unit. Berkeley was several years slower in coming to this realization, with the fee reaching \$60 in 1985 under the first elected Rent Board.

**Table 1: Rent Board Budget History** (see Appendix for full table without breaks for commentary)

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
1980 – 1981		\$12		\$322,000
1981 – 1982		\$12		\$354,000
1982 – 1983		\$30		\$553,000
1983 – 1984		\$30		\$647,000
1984 – 1985	NA	\$30		NA
1985 – 1986	31.5	\$60		\$1,043,000

In 1986 the legislature passed the Petris Act, requiring rent control agencies to certify rent ceilings by the end of the following year. Staffing reached its peak in FY 1986-87 as the Agency hired more staff in a final effort to clarify the base rents for as many units as possible before the deadline.

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
1986 – 1987	36.0	\$60		\$1,404,000
1987 – 1988	31.5	\$80	NA	\$1,311,000
1988 – 1989	31.5	\$80	\$1,861,000	\$1,642,000
1989 – 1990	32.93	\$100	\$2,220,000	\$1,873,000
1990 – 1991	33.63	\$100	\$2,180,000	\$2,676,000
1991 – 1992	28.35	\$136	\$2,385,000	\$2,147,000
1992 – 1993	29.65	\$125	\$2,510,000	\$2,400,000
1993 – 1994	26.2	\$125	\$2,400,000	\$2,410,000
1994 – 1995	26.9	\$115	\$2,345,000	\$2,290,000

In the November 1990 elections a new majority gained control of the Rent Board. They cut programs and staff and approved major rent increases in response to *Searle v. City of Berkeley Rent Stabilization Board*. The City Council filed suit against the elected Board arguing that the increases were larger than legally necessary. At that point the Rent Board attorneys and a legal secretary (3.5 FTE) were moved from the City Attorney's Office to the Rent Board to eliminate

the resulting conflict of interest. The Rent Board majority changed again in the November 1994 elections, but in 1995 the state legislature passed legislation mandating vacancy decontrol. The Costa Hawkins Act created a three-year phase-in period from 1996 to 1998 in which landlords could receive a 15% vacancy increase and full vacancy decontrol began on January 1, 1999.

As vacancy decontrol went into effect the number of rent increase petitions filed by landlords declined, as did the level of litigation. In FY 1996/97 Rent Program staff included a Chief Legal Counsel, two Staff Attorney positions and 4.6 Hearing Examiners. By FY 2002/03 the Chief Legal Counsel was eliminated and there were 2.3 Hearing Examiners. (See Table 3 for detailed information on changes in the hearings unit.)

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
1995 – 1996	26.6	\$125	\$2,410,000	\$2,266,000
1996 – 1997	26.6	\$112	\$2,308,000	\$2,278,000
1997 – 1998	24.6	\$112	\$2,387,000	\$2,405,000
1998 – 1999	24.6	\$112	\$2,417,000	\$2,234,000
1999 – 2000	23.7	\$124	\$2,412,000	\$2,299,000
2000 – 2001	22.2	\$124	\$2,457,000	\$2,286,000
2001 – 2002	22.3	\$124	\$2,602,000	\$2,464,000
2002 – 2003	22.3	\$124	\$2,769,000	\$2,676,000
2003 – 2004	21.3	\$136	\$2,992,000	\$2,751,000

In November 2004 voters passed Measure O which was jointly sponsored by the Rent Board and the Berkeley Property Owners Association. It set the Annual General Adjustment in rent at 65% of the increase in the Consumer Price Index rather than according to an annual cost study conducted by an outside consultant. With the onset of the financial crisis and recession in 2008 there was an upsurge in demand for counseling that has continued for the past 3+ years.

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
2004 – 2005	20.3	\$136	\$3,155,000	\$2,857,000
2005 – 2006	19.3	\$154	\$3,236,000	\$2,967,000
2006 – 2007	19.3	\$154	\$3,290,000	\$3,107,000
2007 – 2008	19.3	\$170	\$3,525,000	\$3,313,000
2008 – 2009	19.3	\$170	\$3,517,000	\$3,546,000
2009 – 2010	20.4	\$194	\$3,995,000	\$3,496,000
2010 – 2011	20.95	\$194	\$3,950,000	\$3,648,000
2011 – 2012	20.55	\$194	\$3,950,000	

Fully 79% of the Rent Program budget is for staff salaries and benefits. Over the past ten years staffing has remained largely level (or decreased slightly) but expenditures have increased substantially. This reflects the contracts negotiated by the City of Berkeley with its employee unions, especially the rapid increases in benefit costs resulting from the increased cost of health insurance and increased contributions to pension plans. For example, in FY 2002/2003 with a stock market boom under way and CalPERS reporting the pension plan fully funded as a result, employee benefits were budgeted at 25% of employee salaries. Today, with increased pension and health insurance costs, employee benefits are 55% of salary. In other words, \$600,000 of the FY 2011/12 budget is the result of the increased benefits ratio. Without that change, the increase in the budget since 2002/2003 matches the rate of inflation in the Bay Area.

It should be noted that the problem of increasing pension costs is the result of the investment strategy chosen by the California Public Employees Retirement System, not the pensions themselves. CalPERS did not set aside adequate reserves for an eventual market downturn, and undercharged the State and local governments during a decade of high stock-market returns. It is as if local governments had borrowed against their pension obligations during the stock-market boom of the 2000s and now have to repay the money. If pension costs had been correctly estimated, then personnel costs would have been higher during that period and the Rent Board would have charged higher fees. In effect, landlords are now paying higher fees to make up for the unrealistically low fees charged in earlier years.

#### V. Meeting the Challenges of the 21<sup>st</sup> Century

Our agency changes to meet the evolving needs of the community we serve. What is often not understood is that, while Costa-Hawkins largely eliminated the need for hundreds of administrative hearings to determine building-by-building fair return requirements, the Rent Board's other responsibilities have remained intact and in some cases have increased in scope and importance.

##### *Eviction for Good Cause*

With the passage of Costa-Hawkins the number of hearings has decreased but the financial incentive for an owner to evict a long-term tenant in good standing has increased dramatically. In the first few years of vacancy decontrol we witnessed hundreds of cases of owners attempting to evict tenants without "good cause", so that they could increase the rent paid by a new tenant. This undermines the stated intent as well as the integrity of the Ordinance. The Board responded by increasing outreach and information and ensuring that low-income households had access to eviction defense services from local legal assistance organizations. All new owners and new tenants receive a package of information from the Program concerning our services and the

protections offered under the law. Over the past eight years, all owners and tenants received an informative and easy to read newsletter several times a year. The format has recently changed to a more attention-getting large size postcard focused on one or two topics.

In response to the foreclosure crisis we created a new outreach program to ensure that tenants in foreclosed buildings are aware of their rights. Representatives of lenders routinely demand that tenants in foreclosed buildings leave their homes and threaten them with eviction despite the fact that foreclosure is not a “good cause” for eviction under Berkeley’s Rent Stabilization and Eviction for Good Cause Ordinance. The Rent Program staff obtains information monthly on properties that are declared to be in default or foreclosure and then mails information to all units on these properties informing occupants that if they are a tenant they have a right to remain in their unit. The mailing also provides the tenant with contact information for the Rent Board and legal assistance organizations. Staff at the East Bay Community Law Center and the Eviction Defense Center have informed us that Berkeley tenants are better informed of their rights than tenants in neighboring cities and more likely to contact them if their tenancy is threatened.

#### *Reallocation of staff to dispute resolution*

While the Berkeley Property Owners Association threatens litigation against the Rent Board on a regular basis, the overall level of litigation in Superior Court involving the Rent Board is down and one of the two previous Staff Attorney III positions has been replaced by a Staff Attorney I. Current legal staffing is now one Staff Attorney III and two Staff Attorney I positions. One FTE of the Staff Attorney I position is assigned to the Public Information Unit as “attorney of the day” to provide quality control and assist in responding to particularly difficult questions.

**Table 2: Cases filed in Small Claims Court and Liens filed with Alameda County**

Year	Small Claims Cases	Liens Filed
2007	53	17
2008	84	33
2009	91	29
2010	140	40
2011	133	33

The amount of litigation by the Rent Board for collection of unpaid registration fees has increased over the past several years, with more cases filed in small claims court and somewhat more unpaid judgments that result in the Rent Board filing liens against the property (See Table 2). On average no more than one small claims case a year is denied by the commissioner hearing the case although a few are remanded to the Rent Board for review of newly made claims that the unit is exempt.

The number of Hearing Examiners went from 6.85 in 1991/92 to 4.6 in 1996/97 to 2.3 in 2000/01 was further reduced to 1.85 in the 2011/12 fiscal year (See Table 3). The Rent Program is now placing greater emphasis on providing mediation services to try to resolve landlord-tenant disputes. This reduces landlord-tenant litigation and formal complaints that require hearings and improves landlord-tenant relations generally. Mediation has been particularly effective in assisting owners who are locked into disputes with long-term tenants that might otherwise result in repeated hearings or eviction notices and going to court.

**Table 3: Rent Hearings and Mediations by Calendar Year**

	<u>Hearing</u> <u>Petitions</u>	<u>Landlord</u> <u>Petitions</u>	<u>Tenant</u> <u>Petitions</u>	<u>Appeals</u> <u>to Board</u>	<u>Mediations</u>	Examiner <u>FTE</u>
1992	NA					6.85
1993	NA					5.35
1994	NA	NA	NA			4.6
1995	485	345	128	NA	NA	4.6
1996	381	190	184			4.6
1997	425	192	222	NA	NA	4.6
1998	362	167	191			2.6
1999	364	88	235	NA	NA	3.2
2000	325	75	250			3.2
2001	312	66	245	20	NA	3.3
2002	262	54	204	29		2.3
2003	161	42	111	22	NA	2.3
2004	122	30	78	19		2.3
2005	117	21	89	7	NA	2.3
2006	142	23	103	12	5	2.3
2007	118	29	82	9	16	2.3
2008	152	36	100	9	13	2.3
2009	134	26	98	15	70	2.3
2010	104	22	75	13	135	1.95*
2011	128	25	74	8	83	1.85

Notes: Petition data from 2006 /2010 are based on December 1<sup>st</sup> of the previous year through November 30<sup>th</sup>. Hearings for “Certification”, “Occupancy” and “Exempt Status” are not categorized as landlord or tenant petitions.  
 \* The FY 2009/10 FTE of 2.45 was changed to 1.95 with the loan of 0.5 FTE to the City as a cost saving measure. No statistics on mediations were kept prior to 2006, although a few were done on an informal basis. FTE is for the fiscal year including January-June of the calendar year for which hearing data is given.

One way the Rent Program has reduced costs while helping to maintain staffing in its Hearings Unit is by making Hearing Examiners available to the Berkeley Housing Authority, with their hourly costs reimbursed by the BHA. Over the past five years they have generally done 10 - 20 hearings a year for the BHA. Rent Program Hearing Examiners can also serve as back-up for the City Hearing Examiner when she is away or backlogged, with the hourly costs paid by the City Manager's Office. It is essential for the program to maintain its own staff of experienced Hearing Examiners. The issues are too specialized and specific to the Berkeley ordinance and its implementing regulations for contracting with outside hearing examiners to be successful. Berkeley and several other rent control jurisdictions that have experience with hiring outside hearing examiners have ultimately decided to hire in-house examiners given the complexity of the governing laws and regulations.

The Rent Board has gradually decreased the number of staff and the proportion of higher salaried staff. Its goal has been to prevent or avert conflict through information and counseling rather than adjudication. When there is a dispute staff tries to resolve it with the least conflict possible (voluntary mediation rather than a formal hearing) in order to preserve the relationship between the parties and contain costs.

#### *Interdepartmental Coordination*

The Rent Stabilization Program routinely provides assistance to other departments. Tenant petitions for rent reductions are one of the City's tools for ensuring that landlords correct housing code violations. The Planning Department review of applications for condominium conversion includes a Rent Program staff review of whether there have been evictions on the property of a nature that would disqualify it from conversion under the City's condominium conversion ordinance. The Rent Board is reimbursed for assisting the City with the condominium conversion ordinance. The Auditor's Office uses data on rent ceilings to help track down owners who fail to pay the required percentage of gross rent as business license tax.

The Rent Board is working to improve cooperation with the Planning and Development Department, the Health, Housing and Community Services Department, the Auditor and the IT and Finance Departments. Important issues that involve both the Rent Stabilization Program and the Departments under the City Council include:

- increasing seismic safety in "soft story" buildings, where the ground floor may collapse in a major earthquake;
- improving energy efficiency in rental properties;
- setting conditions for demolition of existing rental housing to allow redevelopment of the site at higher densities, which could displace long-term tenants;

- developing appropriate procedures for dealing with owners of unpermitted units while minimizing harm to their tenants;
- housing code enforcement;
- assisting in developing a smoking ordinance for multifamily properties to ensure that health and safety goals are met without causing improper evictions;
- assisting in extending recycling to multifamily rental buildings;
- assisting in extending disaster preparedness organizing to multifamily buildings;
- improving tax revenue collection through pooling information on rents.
- serving, at the request of the City Manager, as the initial point of contact and counseling for tenants displaced in two major fires concerning their rights as well as possible resources to assist them in their relocation;

In addition, since protection of tenants from improper evictions is an essential part of the mission of the Rent Program, it is important to have procedures that provide an appropriate balance between enforcement of City zoning, housing and other code requirements and protection of tenants so that they can either return to their homes once violations are cleared or have a transition that prevents unnecessary disruption or even homelessness. Over the past decade a series of court decisions have changed the legal landscape in significant ways, with the result that some existing City procedures no longer provide the balance that was originally intended.

Accomplishments so far include passage on November 8, 2011 by the City Council of an updated Relocation Ordinance that was jointly produced by staff from the Rent Program and the Housing Department. Other issues continue to be discussed in the “4 by 4 Committee”, composed of four City Council members and four elected Rent Board commissioners. A proposal to instruct staff to draft revisions to the City’s ordinances governing demolition and removal of existing rental units was discussed in the 4 by 4 Committee and passed unanimously by the City Council on December 6, 2011.

#### *Strengthening Internal Capacity*

The Administrative Unit has added a Deputy Director because after the elimination of the Chief Counsel position the agency no longer had a person who could easily step into the shoes of the Executive Director during periods of absence. Ironically, creation of the Deputy Director position was delayed because the Executive Director was unable to attend a City Council meeting due to a family emergency. The Deputy Director is currently overseeing the Rent Program’s policy research and analysis and working with other departments to improve the coordination process on the issues listed above. In another few years, the position will be important in creating a smooth succession when the current Executive Director decides to retire.

The Administration Unit has also revamped the Administrative Staff Assistant position and recruited and hired a replacement and added an Assistant Planner to carry out analytical tasks and assist in working with other Departments.

The Rent Stabilization Program is most of the way through a several years long and much delayed process of improving internal procedures and upgrading Rent Program software for greater efficiency. The Rent Board's Rent Tracking System software, which is 19 years old and now obsolete, is scheduled to be replaced by the end of this year. A substantial amount of funding was added to the FY 2009 – 2010 budget for this project. Delays in carrying it out have resulted in carrying forward much of the money budgeted for the project, so actual expenditures have been substantially lower than budgeted expenditures for the past several years. The new software is expected to make it possible to reduce ongoing staffing in the registration unit, make Rent Board information more accessible and easier to analyze and increase our ability to assist other City departments.

With the new software in place, the Rent Board will be able to dramatically update its use of the web for business and communications. The Rent Board is a high-volume agency, with annual registration of 19,000 units as well as annual notifications of legal rent ceilings, new rent registration of several thousand units every year, and around 10,000 additional client contacts every year with questions and concerns that often required detailed knowledge of the rent ordinance and related City and State laws to resolve. With the new software the Board will be able to construct a web portal that will allow property owners to pay annual registration fees on line, register the initial rents for new tenancies on line and verify that information regarding their units is up to date. In addition, the Board will be able to use social media, such as Facebook, in order to provide information and updates. This will continue and extend the Board's tradition of openness and transparency, currently best exemplified by having its meetings carried by cable TV, radio, and webcast with closed captioning and making agendas and accompanying staff reports available on the web.

**Table 1. Berkeley Rent Program Annual Budgets**

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
1980 – 1981		\$12		\$322,000
1981 – 1982		\$12		\$354,000
1982 – 1983		\$30		\$553,000
1983 – 1984		\$30		\$647,000
1984 – 1985	NA	\$60		NA
1985 – 1986	31.5	\$60		\$1,043,000
1986 – 1987	36.0	\$60		\$1,404,000
1987 – 1988	31.5	\$80	NA	\$1,311,000
1988 – 1989	31.5	\$80	\$1,861,000	\$1,642,000
1989 – 1990	32.93	\$100	\$2,220,000	\$1,873,000
1990 – 1991	33.63	\$100	\$2,180,000	\$2,676,000
1991 – 1992	28.35	\$136	\$2,385,000	\$2,147,000
1992 – 1993	29.65	\$125	\$2,510,000	NA
1993 – 1994	26.2	\$125	\$2,400,000	\$2,410,000
1994 – 1995	26.9	\$115	\$2,345,000	\$2,290,000
1995 – 1996	26.6	\$125	\$2,410,000	\$2,266,000
1996 – 1997	26.6	\$112	\$2,308,000	\$2,278,000
1997 – 1998	24.6	\$112	\$2,387,000	\$2,405,000
1998 – 1999	24.6	\$112	\$2,417,000	\$2,234,000
1999 – 2000	23.7	\$124	\$2,412,000	\$2,299,000
2000 – 2001	22.2	\$124	\$2,457,000	\$2,286,000
2001 – 2002	22.3	\$124	\$2,602,000	\$2,464,000
2002 – 2003	22.3	\$124	\$2,769,000	\$2,676,000
2003 – 2004	21.3	\$136	\$2,992,000	\$2,751,000
2004 – 2005	20.3	\$136	\$3,155,000	\$2,857,000
2005 – 2006	19.3	\$154	\$3,236,000	\$2,967,000
2006 – 2007	19.3	\$154	\$3,290,000	\$3,107,000
2007 – 2008	19.3	\$170	\$3,525,000	\$3,313,000
2008 – 2009	19.3	\$170	\$3,517,000	\$3,546,000
2009 – 2010	20.4	\$194	\$3,995,000	\$3,496,000
2010 – 2011	20.95	\$194	\$3,950,000	\$3,648,000
2011 – 2012	20.55	\$194	\$3,950,000	NA

Detailed information on Berkeley Rent Program annual budgets from the early years is not readily available, but later reports provided historical data on annual registration fees going back to the beginning of the agency in 1980 and on staffing FTEs (full-time equivalents) going back to 1985. The contract with the IT Department is counted as an FTE. Temporary staffing prior to 2009 is not readily available and is excluded to maintain comparability. The adopted budget is given starting in 1989 and actual expenditures since 1991.