



Rent Stabilization Board
Office of the Executive Director

MEMORANDUM

DATE: July 15, 2021

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the Budget & Personnel Committee MB
By: Matt Brown, Acting Executive Director

SUBJECT: Proposed Resolution 21-19 to establish an amnesty period of 90 days for fully covered units and 120 days for Measure MM units to automatically waive penalties associated with late payment of Registration Fees for those landlords that were not able to pay the fees due to financial hardship associated with COVID-19 and for first-time registration of Measure MM units without consideration of COVID-19 financial hardship

Recommendation:

That the Board adopt proposed Resolution 21-19 to authorize an amnesty period through September 30, 2021, for fully covered rental units in which staff shall waive penalties for all rental units where a landlord failed to pay the Fiscal Year 2021/2022 Registration Fee by July 1, 2021, if the landlord alleges financial hardship associated with the COVID-19 pandemic. The proposed Resolution would also authorize an amnesty period through October 31, 2021, for landlords of partially covered rental units required to register their rental units for the first time due to the passage of Measure MM. The Budget & Personnel Committee reviewed this proposal at its June 8, 2021 committee meeting and voted to recommend that the Board adopt it.

Background and Need for Rent Stabilization Board Action:

The Rent Board is a Special Fund Department and collects the vast majority of its revenue from Registration Fees. Chapter 6 of the Rent Ordinance provides that “[t]he board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the board.”¹ Chapter 8 of the Rent Ordinance establishes the rules for collection of annual Registration Fees. All fees are due on July 1 of each calendar year. If a fee

¹ Berkeley Municipal Code (BMC) Section 13.76.060N.

is not paid on or before July 1, it is declared delinquent and assessed a 100% penalty. Landlords have the option to request that the Board waive all or part of the penalty upon showing of good cause for late payment.²

When adopting the budget last year, the Board anticipated some short-term gaps in revenue collection associated with the COVID-19 pandemic and subsequent shelter-in-place orders issued by the City, county, and state. The Board's budget adopted on June 18, 2020, anticipated that the agency would collect slightly less revenue from Registration Fees than in years past, and while the Board collected more fees than anticipated, there were a number of accounts that remained delinquent following the July 1st payment deadline.

Proposal for Fully Covered Units

The Board adopted Resolution 20-14 last year which established an amnesty period for landlords affected by the COVID-19 pandemic who failed to timely pay their Registration Fees. The amnesty program last year was very successful and allowed staff to settle delinquent accounts for 310 rental units and collect over \$75,000 in Registration Fees.³ The proposal this year for fully covered units mirrors the amnesty program that the Board adopted last year.

Given the impact of the continuing shelter in place orders (some of which have recently been lifted), staff has received a number of communications from landlords expressing concerns that they would have trouble paying the Board's Registration Fee due to ongoing vacancies. There have been a number of landlords who have informed staff that they are unable to fill many of their units (particularly in properties near the campus).

Typically, the Board has forgiven the vast majority of penalties for landlords who fail to pay their Registration Fees on time under its two-tiered waiver process. The Board adopted Regulation 883 that allows staff to administratively waive penalties on delinquent accounts in accordance with a schedule that factors in how many times the landlord has paid late during the previous six years – the fewer times a landlord has paid late, the greater amount of penalty may be administratively waived. The elected Commissioners do not review these cases; Regulation 883 grants staff the authority to waive a certain amount of penalties based on the schedule. Landlords have until August 31 (60 days from the date the fee is due) to avail themselves of the administrative waiver process established by Regulation 883.

The second mechanism for landlords to apply for a waiver of penalties is to establish good cause for failure to pay the Registration Fee on time.⁴ Landlords must apply to the Board for a discretionary waiver under the terms established by Regulation 884. The elected Commissioners review each individual case and determine whether to grant the landlord's request to waive all or part of the penalty.

² BMC Section 13.76.080F.

³ It is important to note that Registration Unit staff spends a significant amount of time on compliance efforts each year following the July 1st deadline, so not only did the amnesty period allow for the collection of important revenue for the agency, it also eased some of staff's burden as it relates to processing delinquent accounts.

⁴ BMC Section 13.76.080F.

While the Rent Ordinance is a voter-adopted initiative, and the 100% penalty on delinquent accounts for Registration Fees is hard-coded in the Ordinance, Commissioners have regularly articulated that compliance is more important than imposing a punitive application of the law. For that reason, the Board has generally waived a majority of the penalties when landlords apply for discretionary waivers.

The global pandemic and resulting widescale economic shutdown caused by the spread of the novel coronavirus COVID-19 has caused a number of unexpected vacancies in rental property. Landlords have expressed to the elected Commissioners and staff alike that they are experiencing economic difficulties due to the vacancies. Moreover, it is safe to assume that landlords have similarly experienced other economic hardships associated with the pandemic and resultant shelter-in-place orders.

Berkeley's City Council granted tenants financially impacted by the global pandemic eviction relief through the COVID-19 Emergency Response Ordinance (BMC Section 13.110), initially adopted on March 17, 2020, and amended several times since. This and subsequent state legislation protect tenants from eviction for nonpayment of rent if the tenant was financially impacted by the shelter-in-place orders, had to care for dependents, or became ill due to COVID-19 during the local State of Emergency.

The proposed Regulation would allow landlords of fully covered units an amnesty period to pay their Registration Fees if they failed to pay them by July 1, 2021. The amnesty period would extend to September 30, 2021 – all penalties for late payment of fees for Fiscal Year 2021/2022 would be waived.

In order to qualify for waiver of penalties under the current proposal, landlords would have to declare under penalty of perjury that the reason they did not pay the Fiscal Year 2021/2022 Registration Fee by July 1, 2021, arose from any of the following financial impacts caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, including:

- A material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work; or
- A material decrease in household income caused by caregiving responsibilities; or
- A material decrease in business income caused by a reduction in opening hours or consumer demand; or
- Material out-of-pocket medical expenses.

As it did last year, this proposal will grant relief to a number of landlords who have been financially affected by the COVID-19 pandemic and its resultant shelter-in-place orders from Registration Fee penalties hard-coded in the Rent Ordinance. Moreover, this proposal will relieve staff and the Board from reviewing a number of waiver applications that would likely be granted. Therefore, this proposal also promotes administrative efficiency.

Proposal for Measure MM Units

The Board began notifying landlords of Measure MM units in February of this year and has continued to attempt to communicate with them since our initial communications. There have been some issues with the data that we received regarding the pool of eligible units, and Registration Unit staff have been surprised to receive regular contact from landlords that the information we have is incorrect. As of the drafting of this memo, there is not reliable information regarding the number of delinquent Measure MM accounts (Registration staff are still processing a number of payments), but we believe there will be a substantial number of units that remain unregistered after the July 1st deadline.

Given that this is the first time the vast majority of Measure MM landlords have had to register their rental units and given that compliance efforts are very time-consuming for staff, we recommend granting a 120-day amnesty period for these landlords that would extend through October 31, 2021. Furthermore, we recommend that this amnesty period not be connected to any COVID-19 impact. The goal for these units is to register as many as possible, so that we are able to start providing important enhanced services and gather critical information regarding the tenancies in these units.

Regulation 883

If the Board adopts this proposal, Resolution 21-19 will also extend the deadline established by Regulation 883 from August 31, 2021, to September 30, 2021, for fully covered units and to October 31, 2021, for partially covered units subject to Measure MM registration requirements. This way, landlords will be able to choose the previously-established option to have penalties administratively waived (without having to declare COVID-19 impact) under the same timeframes as proposed for the COVID-19 hardship waivers and Measure MM first-time registration waivers. Maintaining two different timelines would be administratively complicated and difficult to explain to landlords who may otherwise be eligible for the standard waiver process.

Conclusion

Landlords have been economically affected by the impacts of the COVID-19 pandemic and the resultant shelter-in-place orders; particularly as it relates to their ability to collect rents from tenants who may be unable to pay during this time. In order to encourage landlords to comply with the registration requirements of the Rent Ordinance and in recognition of the economic impact of the current health crisis, the committee should recommend this proposal to allow landlords relief from penalties that they would otherwise owe under the requirements of the ordinance.

Furthermore, for Measure MM units, the information the agency used to contact potential landlords has been somewhat unreliable, and a number of landlords remain out of compliance with the initial Registration Fee. An amnesty program will aid the agency's efforts to register more units and ensure we have the most reliable information in order to communicate with this community regarding the rights and responsibilities associated with the Rent Ordinance.

The Budget & Personnel Committee reviewed this proposal on July 8, 2021, and recommended that the Board adopt it.

Proposed Resolution 21-19 is attached.

Name and Telephone Number of Contact Person:

Matt Brown, Acting Executive Director (510) 981-7368
Rent Stabilization Board

RESOLUTION 21-19

ESTABLISHING AN AMNESTY PERIOD TO WAIVE FISCAL YEAR 2021/2022 REGISTRATION FEE PENALTIES FOR LANDLORDS OF FULLY COVERED UNITS WHO WERE FINANCIALLY IMPACTED BY COVID-19 OR THE RESULTANT SHELTER-IN-PLACE ORDERS AND FOR MEASURE MM LANDLORDS WITHOUT CONSIDERATION OF COVID-19 FINANCIAL IMPACT

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley (the “Board”) as follows:

WHEREAS, in November of 2020 the Berkeley voters adopted Measure MM which, with few exceptions, now requires landlords of rented single family homes, condominiums, and units that qualify as new construction under the definition of B.M.C. Section 13.76.050I. to register their rental units; and

WHEREAS, the vast majority of landlords of rental units covered by Measure MM have never had to register their units with the Rent Board; and

WHEREAS, Board staff has endeavored to communicate with Measure MM landlords beginning in February of this year, but many landlords remain out of compliance at least partly due to the fact that the Board received somewhat unreliable information regarding the units that needed to be registered; and

WHEREAS, on May 6, 2021, the Board adopted the 2021/2022 Registration Fee of \$250 for all fully covered units and \$150 for almost all Measure MM units that are required to be registered; and

WHEREAS, it is hard-coded in the Rent Ordinance (Berkeley Municipal Code (BMC) Section 13.76.080F.) that the annual Registration Fee is due on July 1st of each calendar year, and there is a 100% penalty for failure to timely pay; and

RESOLUTION 21-19

ESTABLISHING AN AMNESTY PERIOD TO WAIVE FISCAL YEAR 2021/2022 REGISTRATION FEE PENALTIES FOR LANDLORDS OF FULLY COVERED UNITS WHO WERE FINANCIALLY IMPACTED BY COVID-19 OR THE RESULTANT SHELTER-IN-PLACE ORDERS AND FOR MEASURE MM LANDLORDS WITHOUT CONSIDERATION OF COVID-19 FINANCIAL IMPACT (Page 2)

WHEREAS, BMC Section 13.76.080F. gives the elected Commissioners authority to waive penalties associated with late payment of annual Registration Fees when landlords can show good cause for failure to timely pay; and

WHEREAS, in 1983 the Board adopted Rent Board Regulation 883 which grants Board staff the authority to administratively waive penalties based on a schedule that takes into account how many times the landlord has paid late over the previous six years if landlords pay the Registration Fee by August 31st of each year; and

WHEREAS, all landlords are still entitled to file a waiver application to the elected Board to have the Commissioners review and determine whether there was good cause for late payment of the Registration Fee; and

WHEREAS, the Board generally waives a majority of the Registration Fee penalties when reviewing discretionary waivers and has most often taken the position that encouraging compliance is more important than imposing statutory penalties; and

WHEREAS, the global pandemic and resulting widescale economic shutdown caused by the spread of the novel coronavirus COVID-19 has caused a number of unexpected vacancies in rental property; and

WHEREAS, Landlords have expressed that they are experiencing economic difficulties due to the vacancies, and it is safe to assume that landlords have similarly experienced other economic hardships associated with the pandemic and resultant shelter-in-place orders; and

RESOLUTION 21-19

ESTABLISHING AN AMNESTY PERIOD TO WAIVE FISCAL YEAR 2021/2022 REGISTRATION FEE PENALTIES FOR LANDLORDS OF FULLY COVERED UNITS WHO WERE FINANCIALLY IMPACTED BY COVID-19 OR THE RESULTANT SHELTER-IN-PLACE ORDERS AND FOR MEASURE MM LANDLORDS WITHOUT CONSIDERATION OF COVID-19 FINANCIAL IMPACT (Page 3)

WHEREAS, Berkeley's City Council granted tenants relief through the COVID-19 Emergency Response Ordinance (BMC Section 13.110) which protects tenants from eviction for nonpayment of rent if the tenant has been financially impacted by the shelter-in-place orders, had to care for dependents, or became ill due to COVID-19 during the local State of Emergency; and

WHEREAS, a complete waiver of Fiscal Year 2021/2022 Registration Fee penalties shall be granted if landlords of fully controlled units pay the fee by September 30, 2021, and if they declare that under penalty of perjury that they have been financially impacted by the COVID-19 pandemic or any resultant shelter-in-place orders that may have impacted their business or household income; and

WHEREAS, the Board will extend the waiver period established in Regulation 883 from August 31, 2021, to September 30, 2021, for fully controlled units and from August 31, 2021, to October 31, 2021 for Measure MM units so that the deadline to pay Registration Fees and have penalties administratively waived is the same for both the amnesty period established this year and the long-standing administrative waiver procedures outlined in Regulation 883.

RESOLUTION 21-19

ESTABLISHING AN AMNESTY PERIOD TO WAIVE FISCAL YEAR 2021/2022 REGISTRATION FEE PENALTIES FOR LANDLORDS OF FULLY COVERED UNITS WHO WERE FINANCIALLY IMPACTED BY COVID-19 OR THE RESULTANT SHELTER-IN-PLACE ORDERS AND FOR MEASURE MM LANDLORDS WITHOUT CONSIDERATION OF COVID-19 FINANCIAL IMPACT (Page 4)

NOW, THEREFORE, BE IT RESOLVED, the Board hereby establishes that Board staff may waive all penalties associated with late payment of the Fiscal Year 2021/2022 Registration Fee for fully controlled units under the following conditions:

1. Landlords must declare under penalty of perjury that the reason they did not pay the Fiscal Year 2021/2022 Registration Fee by July 1, 2021, arose from any of the following financial impacts caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, including:
 - A material decrease in household income caused by layoffs or a reduction in the number of compensable hours of work; or
 - A material decrease in household income caused by caregiving responsibilities; or
 - A material decrease in business income caused by a reduction in opening hours or consumer demand; or
 - Material out-of-pocket medical expenses.
2. Staff shall be granted the authority to waive the penalties upon receipt of the landlord's declaration under penalty of perjury of COVID-19 financial impact (the elected Board will not have to review these claims); and
3. Landlords must pay the Fiscal Year 2021/2022 Registration Fee by September 30, 2021, in order to avail themselves of the complete waiver established by this Resolution; and

BE IT FURTHER RESOLVED, the Board hereby establishes that Board staff may waive all penalties associated with late payment of the Fiscal Year 2021/2022 Registration Fee for Measure MM units if landlords pay the Registration Fee by October 31, 2021; and

RESOLUTION 21-19

ESTABLISHING AN AMNESTY PERIOD TO WAIVE FISCAL YEAR 2021/2022 REGISTRATION FEE PENALTIES FOR LANDLORDS OF FULLY COVERED UNITS WHO WERE FINANCIALLY IMPACTED BY COVID-19 OR THE RESULTANT SHELTER-IN-PLACE ORDERS AND FOR MEASURE MM LANDLORDS WITHOUT CONSIDERATION OF COVID-19 FINANCIAL IMPACT (Page 5)

BE IT FURTHER RESOLVED, Landlords shall continue to have the option to have their Registration Fee penalties administratively waived pursuant to Rent Board Regulation 883 which establishes a schedule that takes into consideration how many times the landlord has paid late over the previous six years and has nothing to do with waiving penalties pursuant to a COVID-19 claim of financial impact or any other reason for late payment; and

BE IT FURTHER RESOLVED, that the Board hereby extends the timeframe for administrative waiver of Registration Fee penalties articulated in Rent Board Regulation 883 to September 30, 2021, for fully controlled rental units (allowing for a 90-day waiver period rather than the 60-day waiver period established in the regulation); and

BE IT FURTHER RESOLVED, that the Board hereby extends the timeframe for administrative waiver of Registration Fee penalties articulated in Rent Board Regulation 883 to October 31, 2021, for Measure MM rental units (allowing for a 120-day waiver period rather than the 60-day waiver period established in the regulation).

BE IT FURTHER RESOLVED, that, other than extending the timeframe for waiver of penalties for the Fiscal Year 2021/2022 Registration Fee for all units that are required to be registered, Rent Board Regulation 883 shall operate as adopted.

**ESTABLISHING AN AMNESTY PERIOD TO WAIVE FISCAL YEAR 2021/2022
REGISTRATION FEE PENALTIES FOR LANDLORDS OF FULLY COVERED UNITS
WHO WERE FINANCIALLY IMPACTED BY COVID-19 OR THE RESULTANT
SHELTER-IN-PLACE ORDERS AND FOR MEASURE MM LANDLORDS WITHOUT
CONSIDERATION OF COVID-19 FINANCIAL IMPACT (Page 6)**

Dated: July 15, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
Matt Brown, Acting Executive Director