



Rent Stabilization Board
Legal Unit

DATE: April 21, 2022

TO: Honorable Members of the Rent Stabilization Board

FROM: Matthew Siegel, Staff Attorney *MS*

SUBJECT: Adopting a Summer Rental Period Registration Fee for Sororities and Fraternities for the 2022/23 Registration Year

Recommendation

That the Board adopt Resolution 22-09 to authorize a Summer Rental Period registration fee of \$70.00 as well as procedures for sororities and fraternities for the pending 2022/23 registration year. Under the proposed resolution, qualifying sororities and fraternities shall be eligible to participate in a revised registration process which shall include a prorated registration fee for summer rentals provided that the following conditions are met: 1) a contact person/liason must be provided for all future Board-related matters; 2) any participating sorority or fraternity must be in good standing with the registration requirements of the ordinance; 3) All qualifying sororities and fraternities must meet the requirements for sorority or fraternity status as determined by the Rent Board; and 4) Participating sororities and fraternities must comply with registration procedures as will be developed by the Agency.

At its March 29, 2022 committee meeting, the Budget & Personnel Committee approved the continuance of the \$70 Fraternity/Sorority Summer Registration Fee. The attached Resolution, which has been continually been re-adopted since 2010 is attached.

Background

In late 2009/early 2010 our agency was made increasingly aware that many fraternities were and had been renting out some of their rooms during the summer to non-members to support their budgets and operating costs. We discovered that this practice was, in fact, widespread. Since units that are not expressly exempted under the ordinance must be registered we were compelled to investigate the matter. Our investigation confirmed that fraternity houses have routinely been renting to non-members, particularly during the summer months.

Because the Board believed that most fraternities were unaware of their obligation to register these seasonal/summer units, the Board authorized an Amnesty Program in November 2010 for chapters that had been renting out rooms to non-members on a seasonal or summer basis. The

Amnesty Program was successful in its goal of resolving prior years registration fees owed the agency as the Board collected \$49,583 in past due registration fees from twenty-two (22) chapters. In addition, through the Amnesty Program, staff was able to make positive contacts with various members of the fraternity community including property owners, property managers, student representatives and UC Berkeley staff.

At the conclusion of the Amnesty Program fourteen lawsuits were filed in Superior Court against those property owners and chapters that had not availed themselves of the Amnesty Offer. All of those cases resolved via settlement.

Between 2010 and 2016, the Board, annually adopted resolutions continuing the practice of allowing a limited summer rental program, provided specific conditions were met and adhered to.

Measure AA

The passage of Measure AA in 2016 codified the determination that a room rented in a fraternity or sorority would be exempt from the ordinance only if it is occupied by a member of the fraternity or sorority and that the property is owned by the chapter or an entity whose sole purpose is the maintenance of the chapter.

Board Regulations 520 and 808 were adopted in 2017 to implement the fraternity/sorority registration process. Regulation 520 codifies the language in Measure AA setting out the terms for exemption for a fraternity/sorority room and Regulation 808 codifies the ability of the Board to set and charge an annual reduced registration fee for rooms rented out by chapters to non-members on a seasonal basis.

Summer Registration Process

As a result of the Amnesty Program, staff had numerous discussions with representatives of the Greek community regarding our agency's registration process. These talks, which covered the unique needs and concerns of fraternities, were with chapter presidents, students, property managers, members of the Fraternity Alumni Council (FAC), the FAC as a group, alumni representatives, and attorneys representing a consortium of chapters. This process enabled all stakeholders to be educated on the rights and responsibilities of the Greek community as it related to rent control and housing.

After numerous committee meetings and Board presentations, the Board approved, via resolution, a Summer Registration Process for fraternities at its May 14, 2012 meeting. The pilot summer registration process for fraternities required chapters to:

- 1) Pay a reduced, pro-rated fee of \$50 per unit for summer rentals;
- 2) Fill out Registration Forms specifically tailored to summer rentals and;
- 3) Provide the Board with a permanent contact person/liaison.

For the 2012/13 year, the agency collected \$9,520.00 in registration fees from the various fraternities representing the registration of one hundred seventy six (176) units. As part of the registration process, staff conducted unannounced inspections of four chapters to ensure that Fraternity Summer Registration Forms were placed in the room as mandated by the Board's prior resolution. Forms were in place for these chapters.

The pilot program was renewed for the 2013/14 registration year. For the 2013/14 year, the agency collected \$8,144 in registration fees from the various fraternities representing one hundred sixty (160) units. Four chapters claimed full exemption and one chapter failed to make any payments. Two chapters paid summer registration fees approximately two weeks late.

For the 2014/15 registration year, the agency collected \$8,076 in registration fees from the various chapters representing one hundred forty six (146) summer rental units and four full-time units. In addition to the \$8,076 in fees collected, the agency also collected \$9,506 in full-time registration fees due to two chapters having been suspended and renting to other tenants and one house being sold to private ownership and being rented as a rooming house.

Two chapters paid late but received Administrative Waivers. These chapters were notified of the ramifications should they continue to pay late in the future. One chapter remained in arrears for non-payment and was sued as part of our annual Small Claims Court efforts.

For the 2015/16 registration year, the agency collected \$8,786 in registration from the various chapters representing one hundred forty six (146) units.

For the 2016/17 registration year, the seasonal fee was increased to \$60 per room and the agency collected \$15,424 in registration fees from twenty-three (23) chapters representing nineteen (19) full-time units and one hundred eighty one (181) summer rental units.

For the 2017/18 registration year, the seasonal fee was increased to \$70 per room. The agency has collected \$11,600 in registration fees from one hundred forty (140) units representing eighteen (18) chapters. Two rooms were registered as "full-time" rentals. Two chapters paid full registration fees totaling \$8,370 due to their renting their houses to other chapters.

For the 2018/2019 registration year, the seasonal fee remained at \$70 per room. The agency has collected \$13,543 in registration fees and penalties from one hundred sixty-nine (169) units representing eighteen (18) chapters, Full registration fees totaling \$14,147 were paid for 57 units whose chapters chose to rent the houses out full-time to other chapters.

For the 2019/20 registration year, the seasonal fee remained at \$70 per room. The agency collected \$14,259 in registration fees and penalties from twenty-one (21) chapters registering one hundred sixty (160) rooms. Four chapters paid the full registration fees for their house since those chapters rented out their houses to other fraternities. These fees totaled \$16,250 and represents sixty-five (65) units.

For the 2020/21 registration year, the seasonal fee remained at \$70 per room. The agency collected \$7,490 in registration fees from twenty (20) chapters registering one hundred seven

(107) rooms. Four chapters paid full registration fees for either the entire property or some of the units on the property for fifty-four (54) units totaling \$13,440. Nine chapters claimed no summer rentals and two chapters failed to provide registration fees or forms. In total, the agency collected \$20,930 for the 2020/21 Summer Fraternity Registration.

For the current 2021/22 registration year, the seasonal fee remained at \$70 per room. The agency collected \$7,280 in registration fees from eighteen (18) chapters registering one hundred four (104) rooms. Six chapters registered a total of forty-four (44) rooms as fully rent-controlled and paid \$11,000 in registration fees. In total, the agency collected \$18,280 in registration fees. Thirteen (13) chapters claimed all rooms were exempt. Two chapters failed to report or file any fees or forms and one chapter was late in payment. These three chapters are under review.

Registration for Sororities

As the initial research, review and compliance activities with fraternities wound down in 2012, the Board made clear that staff was to begin communications with the various sororities. Commencing in January 2013, staff began this process.

Staff identified thirteen sorority chapters that owned and operated houses in Berkeley. As a result of staff review and investigation it was confirmed that no houses rented rooms to non-members. To determine the exempt status of sororities, staff corresponded with each chapter representative as well as conducted site inspections. As a result of these efforts, staff obtained declarations from chapter representatives affirming that no rooms/units were rented to non-sorority members.

Based on staffs' findings that no sororities are being rented to non-members, staff recommended reviewing their status every three years. Staff randomly contacted several chapters during 2015/16 and again during 2018/19 and have confirmed that their houses either remained closed down for the summer or exclusively reserved for their members. Staff will conduct additional similar random checks periodically in the future.

Conclusion

For the most part, chapters have paid registration fees and filed Unit Status and/or Registration Forms. While staff has provided a moderate level of assistance to the various chapter representatives, a vast majority of chapters have been able to register their houses with little or no assistance. A discreet minority of chapters however have provided more of a challenge with late payment and/or failure to timely file the required forms. While staff is engaged in compliance efforts with these chapters, the reduced fee assessed has covered the costs of operating the summer rental program. As allowed by law, the attached resolution continues the program initially started in 2012 and staff proposes maintaining the seasonal registration fee at \$70.

We believe the proposed Resolution is the most fair and equitable way for the Board to address the matter of registering any possible sorority or fraternity summer rentals. For the majority of the Board's registration year, fraternities operate rental units that have been conditionally exempted from rent and eviction controls. While the non-member students who occupy these

units are fully protected by rent and eviction controls during the summer, they uniformly vacate at the end of the summer break. Fraternities consistently rent these units at below market rents, and imposing a full fee and registration reporting requirement for such a short tenancy represents a substantial burden for an organization that exists for the sole purpose of maintaining the chapter/house. This process not only covers our costs to administer the program but also increases the likelihood that tenants renting these units will be timely informed of their rights.

Name and Telephone Number of Contact Person:

Matthew Siegel, Staff Attorney (510) 981-4930

RESOLUTION 22-09

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/23 FISCAL YEAR

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, for over thirty-six years neither fraternities nor sororities were expressly exempt from the provisions of the Rent Stabilization Ordinance; and,

WHEREAS, as early as 1982, the City Attorney crafted legal opinions for the Rent Board and City Council that confirmed the applicability of the ordinance to fraternities and sororities due to their similarity to rooming houses; and,

WHEREAS, the Board did not charge a number of fraternities for Registration Fees before the 2012/2013 fiscal year, because the Board was not made aware that fraternities were routinely renting to non-members during the summer months; and,

WHEREAS, when the Board became aware of these summer rentals, the Commissioners authorized an amnesty program wherein the fraternities were only charged fees for three years and all penalties were forgiven; and

WHEREAS, by Resolution 12-07, the Board initiated a pilot program during the 2012/2013 fiscal year to charge all qualifying fraternities \$50 per unit for summer rentals to non-members in order to meet the anticipated costs for implementing services related to this discreet group of summer fraternity rentals; and

WHEREAS, Board staff was largely successful in registering fraternities' summer tenancies; and,

WHEREAS, before the 2013/2014 fiscal year, staff investigated summer rentals in sororities and found that the vast majority of sorority rooms did NOT qualify as controlled rental units; and,

RESOLUTION 22-09

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/2023 FISCAL YEAR (Page 2)

WHEREAS, the Board adopted Resolution 13-04 on May 13, 2013, which made clear that the Board wishes to continue to charge a reduced fee for summer rentals in fraternities and wishes to extend the same option to sororities should they decide to provide housing to non-member summer tenants; and,

WHEREAS, the Board adopted similar resolutions in 2014, 2015, 2016, 2017, 2018, 2019, 2020 and 2021, which made clear that the Board wishes to continue to charge a reduced fee for summer rentals in fraternities and wishes to extend the same option to sororities should they decide to provide housing to non-member summer tenants; and,

WHEREAS, with the passage of Measure AA, fraternities and sororities are now exempt under the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance (B.M.C. 13.76.050M) as long as a rental unit or room is rented to an active member of the chapter and that chapter owns the fraternity or sorority where the member is residing; and,

WHEREAS, on April 24, 2017, the Board adopted Rent Board Regulation 520 specifying that rental units located within a fraternity or sorority that is occupied by a non-member is subject to all sections of the Rent Control Ordinance and that tenants who occupy rental units for only part of the year in such chapters shall be considered "authorized seasonal rentals" and those rooms/units shall be charged a reduced registration fee; and,

WHEREAS, on April 24, 2017 the Board adopted Rent Board Regulation 808 specifying that an "authorized seasonal rental" of a fraternity or sorority is a rental that occurs during the summer months and that the Board is authorized to charge a reduced registration fee for these rentals and said fee shall be set when the Board sets its annual fee for all units; and

RESOLUTION 22-09

ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/2023 FISCAL YEAR (Page 3)

WHEREAS, on May 15, 2017 the Board set the summer rental fee at \$70 per unit; and

WHEREAS, on May 7, 2018 the Board set the summer rental fee at \$70 per unit; and

WHEREAS, on April 18, 2019 the Board set the summer rental fee at \$70 per unit; and

WHEREAS, on April 30, 2020 the Board set the summer rental fee at \$70 per unit; and

WHEREAS, on May 6, 2021 the Board set the summer rental fee at \$70 per unit for the current 2021/22 fiscal year; and

WHEREAS, on March 29, 2022 the Budget & Personnel Committee recommended the summer rental fee be maintained at \$70 per unit.

NOW, THEREFORE, BE IT RESOLVED that for the 2022/2023 registration year, the reduced registration fee for authorized seasonal rentals for qualifying fraternities and sororities shall remain at \$70 per unit for summer rentals to non-members in order to meet the anticipated costs for implementing services related to this discreet group of summer fraternity/sorority rentals; and,

BE IT FURTHER RESOLVED that for purposes of this Resolution, the "Summer Rental Period" shall be May 15, 2022, through August 16, 2022; and,

BE IT FURTHER RESOLVED that if a non-fraternity/non-sorority member remains a tenant during any time outside of the Summer Rental Period, the fraternity/sorority shall be required to pay a full registration fee as defined by Resolution 22-09 for the rental unit; and,

BE IT FURTHER RESOLVED that fraternities and sororities shall be required to submit Fraternity/Sorority Summer Registration Forms for each rental to a non-member living at the chapter during the Summer Rental Period; and,

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ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/2023 FISCAL YEAR (Page 4)

BE IT FURTHER RESOLVED that fraternities and sororities shall post a copy of this Fraternity/Sorority Summer Registration Form in a clearly visible space in the room/unit occupied by the non-member tenant throughout the entirety of the Summer Rental Period; and,

BE IT FURTHER RESOLVED that all fraternities and sororities shall provide a permanent contact person to whom Board staff can send a bill (this person should not be a student, as the Board intends to maintain contact with this representative for all matters related to current and future registration and billing); and,

BE IT FURTHER RESOLVED that, this Resolution incorporates by reference the fraternities listed in Board Resolutions 12-07,13-04, 14-04, 15-03, 16-03, 17-06, 18-07, 19-10, 20-06, 21-08 and the sororities listed in Board Resolution 17-06, 18-07, 19-10, 20-08 and 21-08; and,

BE IT FURTHER RESOLVED that the Board shall revisit the issue of which fraternities and sororities qualify for a reduced Summer Rental Period registration fee should the Board wish to adopt a similar fee in future years; and,

BE IT FURTHER RESOLVED that if another fraternity or sorority not identified by this Resolution submits a claim that it should qualify for the reduced Summer Rental Period registration fee, the fraternity/sorority shall submit its claim to the Board, and staff shall review any such claim and determine its eligibility; such determination may be appealed to the Board as other claims of exemption are reviewed; and,

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ESTABLISHING THE REGISTRATION FEE FOR FRATERNITIES AND SORORITIES FOR THE SUMMER RENTAL PERIOD DURING THE 2022/2023 FISCAL YEAR (Page 5)

BE IT FURTHER RESOLVED that in no case shall a fraternity or sorority be permitted to participate in this program to pay a reduced registration fee for the Summer Rental Period for the 2022/2023 fiscal year unless that fraternity/sorority has fully resolved any past due Board registration fees and is otherwise in compliance with the Rent Ordinance registration requirements; and,

BE IT FURTHER RESOLVED that Board staff shall be empowered to investigate and inspect fraternities and sororities during the Summer Rental Period to ensure they are complying with the terms of this Resolution; and,

BE IT FURTHER RESOLVED that Board staff is authorized to develop rules and procedures to implement the counseling, registration, and services associated with this program; and,

BE IT FURTHER RESOLVED that violations of terms set forth in this Resolution shall require Board staff to charge fraternities and sororities a full registration fee for all units where violations are found and require that Board staff charge penalties allowed by Berkeley Municipal Code Section 13.76.080.

Dated: April 21, 2022

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

YES:
NO:
ABSTAIN:
ABSENT:

Leah Simon-Weisberg, Chair
Rent Stabilization Board

Attest: _____
DeSeana Williams, Executive Director