



DATE: January 15, 2026

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the LIRA Committee
By: Matt Brown, General Counsel

SUBJECT: Recommendation to adopt Regulation 1283 (Individual Rent Adjustment for Certain Government-Subsidized Tenancies) – Second Reading

Recommendation

That the full Board adopt Regulation 1283 (Individual Rent Adjustment for Certain Government-Subsidized Tenancies) as approved at first reading by the full Board at its December 18, 2025 meeting.

Background

After hearing comment from several stakeholders the LIRA Committee asked staff to prepare a regulation that would allow landlords of fully covered units rented under certain subsidy programs to raise the rent ceiling to the maximum amount allowed by that subsidy program.

Prior to the amendment of the Rent Stabilization Ordinance at the November 2024 General Election (Measure BB), many subsidized rental units were exempt from the rent control and registration sections of the Ordinance through a specific exemption for units leased to tenants assisted under the Section 8, Shelter Plus Care, or other similar federally funded rent subsidy programs. Under these programs, the tenant household's portion of rent is generally 30% of their income. The total rent for the unit (often called the contract rent) is set based on the federal Department of Housing and Urban Development's (HUD) rent reasonableness market comparison process and may be increased annually by an amount based on HUD's Fair Market Rent calculations. The subsidizing agency pays the landlord the difference between the tenant household's portion of rent and the contract rent.

After the Berkeley voters adopted Measure BB, the Ordinance no longer exempts a rental unit solely because it is rented under the Section 8 or Shelter Plus Care programs. Therefore, many rental units in these programs are now fully covered by the Ordinance and subject a rent ceiling. Under Berkeley Municipal Code section 13.76.110, the rent ceiling for a fully covered unit increases annually at a rate of 65% of the change in the Consumer Price Index for the San Francisco-Oakland-San Jose Region. In many years, this rate is lower than the annual rate of increase in HUD's Fair Market Rent calculations. Therefore, the landlord of a fully covered property rented in these subsidy programs may have a rent ceiling which is lower than the maximum contract rent the subsidy program would allow. Stakeholders voiced the concern that this may disincentivize landlords from participating in these programs.

At its July 22, 2025 meeting, the Committee discussed this topic and received input from the public. The Committee directed staff to draft a proposed regulation which allows landlords of fully covered rental units in the Section 8 Housing Choice Voucher Program and the Shelter Plus Care Program to petition for a rent ceiling increase to the applicable subsidy program maximum contract rent. A landlord would only be eligible for this rent ceiling increase if the landlord has fully registered the property, the rental unit meets applicable habitability standards, and any rent ceiling increase would not increase the tenant household's portion of rent.

Staff engaged with the Berkeley Housing Authority, which administers the Section 8 Housing Choice Voucher, and the City's Health, Housing, and Community Services Department, which administers the Shelter Plus Care Program, to determine each agency's process for evaluating a participating landlord's request for a contract rent increase. Although these programs have similar essential elements, there are operational differences between the two. These differences affect which how landlord would be able to prove their eligibility for this process.

At its October 9 meeting, the LIRA Committee reviewed staff's initial draft of proposed Regulation 1283. The Committee received a comment from an affordable housing provider who requested that the process be expanded to include Project-based vouchers. The Committee directed staff to discuss this potential addition with the affordable housing provider. Staff engaged with landlords who rent subject to Project-based vouchers and with the Berkeley Housing Authority. Staff determined that rent increases for Project-based vouchers are substantially similar to those for Housing Choice vouchers; therefore, the inclusion of Project-based vouchers would not change the intent of this process. Staff updated the draft language accordingly.

At its December 3 meeting, the Committee reviewed staff's draft again. The Committee moved to bring this proposed regulation to the full Board with two additions. First, the Committee asked staff to add to the draft approved at the December meeting an explicit reference that the regulation applies to rental unit rented under the Veterans

Affairs Supportive Housing (“VASH”) voucher program.

Second, the Committee asked for options expanding a tenant’s right to object to a rent increase petition on the grounds that the tenant had experienced a loss of services or harassment. Staff raised that doing so would likely alter the intended streamlined character of the proposed regulation and place the Board’s hearing examiner in the position of adjudicating whether prohibited harassment has occurred. State law limits the agency, when acting in its quasi-judicial capacity, to awarding only restitutive “damages” in the form of rent ceiling decrease.¹ Therefore, the Board does not have a practice of evaluating tenant claims of harassment.

At First Reading of this regulation during the Regular Board meeting on December 18, 2025, the Board accepted an amendment from Chair Alpert which would require a landlord petitioning for a rent increase under this regulation to additionally certify that there is no active legal action or judgment arising from tenant claims of harassment under Berkeley’s Tenant Protection Ordinance. Chair Alpert’s amendment would not require the hearing examiner to make a finding on alleged harassment; rather the hearing examiner would only determine whether there exists a current claim in which the tenant has alleged harassment or a judgment in the tenant household’s favor. Both are matters of public record.

The Board voted to adopt Regulation 1283 as approved by the LIRA Committee, with Chair Alpert’s amendment. Prior to Second Reading, staff made non-substantive edits to Chair Alpert’s amendment (Subsection B(5) of Regulation 1283) to clarify citations to the Tenant Protection Ordinance.

The text of Regulation 1283 as approved by the Board at First Reading on December 18, 2025, with staff’s non-substantive edits appears below:

1283. Individual Rent Adjustment for Certain Government-Subsidized Tenancies

(A) Purpose. The purpose of this regulation is to allow qualifying landlords of rental units under the Section 8 Voucher Program (which includes the Housing Choice Vouchers, Project-based vouchers, and the Veterans Affairs Supportive Program [“VASH”]) and the Shelter Plus Care Program to raise the rent ceiling of such units to the maximum rent permitted by the government agency which administers each program.

Under both the Section 8 Voucher and the Shelter Plus Care programs, tenant households select and rent units that meet program housing quality standards. Once

¹ See *McHugh v. Santa Monica Rent Control Board* (1989) 49 Cal.3d. 348; *Larson v. City and County of San Francisco* (2011) 192 Cal.App.4th 1263

the administering government agency (the public housing authority or “PHA” for the Section 8 Voucher Program and the “recipient” for the Shelter Plus Care program) approves a tenant household’s unit and tenancy, the PHA or recipient contracts with the owner to make rent subsidy payments on behalf of the family. Across all three programs, the PHA or recipient may not approve a tenancy unless the rent is reasonable. The “contract rent” is the total rent paid to the landlord which is the sum of the tenant household’s portion and the PHA or recipient’s portion.

Subsidies in these programs are based on a local “payment standard” that reflects the cost to rent a unit in the local housing market. If the rent is equal or less than the payment standard, the tenant household pays 30 percent of its monthly income for rent; the subsidy from the PHA or recipient adjusts to make up the difference to the contract rent. Therefore, the contract rent can increase and not affect the tenant household’s portion of rent, so long as the contract rent remains below the payment standard.

Before this Chapter was amended in the November 2024 General Election, rental units under the Section 8 Voucher Program and the Shelter Plus Care Program were exempt from the Registration, Rent Ceiling, and Rent Adjustment sections of this Chapter. This exemption applied if the rent demanded did not exceed the authorized Payment Standard, which, for purposes of the prior exemption, was the maximum monthly rental assistance potentially available to an assisted household before deducting the household share of income paid for rent and utilities as established by the Berkeley Housing Authority.

Following the November 2024 amendment to this Chapter, rental units under the Section 8 Voucher Program and the Shelter Plus Care Program are now subject to Sections 10, 11, and 12 of the Ordinance, unless they qualify as Partially covered as set forth in Berkeley Municipal Code section 13.76.050.B. or Fully exempt units as set forth in Berkeley Municipal Code section 13.76.050.C. As a result, landlords of these rental units may only increase the contract rent to the rent ceiling, which increases as set by the annual general adjustment. The rent ceiling for a rental unit participating in these programs may be lower than the local payment standard or HUD Fair Market rent, if these two measures increase at a greater rate than the annual general adjustment. However, if the contract rent remains at or below the payment standard or HUD Fair Market rent, the tenant’s portion of rent would be no different than if the contract rent were set at the rent ceiling.

The Board received community comment that restricting the increase in contract rents to the annual general adjustment may disincentivize landlords from participating in these programs but that allowing the contract rent to reach the payment standard or fair market rent would not increase the tenant household’s portion. Therefore, the Board promulgated this regulation to allow a rent ceiling increase to qualifying rental

units that reflects the allowable contract rent increases to landlords participating in these programs.

(B) Qualifying Units and Allowable Rent Increase A rental unit is a qualifying unit if it is a Fully covered Unit under Berkeley Municipal Code section 13.76.050.A and is currently rented under the Housing Choice Voucher Program, the Project-based Voucher Program, or the Shelter Plus Care Program.

Qualifying units shall be eligible to an increase in rent ceiling under this regulation up to the maximum contract rent permitted by the government agency which administers the program if all the following conditions are met:

(1) The rent ceiling increase is reasonable as determined by:

(a) The Berkeley Housing Authority in accordance with 24 CFR 982.507(a)(2)(i) for Housing Choice Voucher tenancies or 24 CFR 983.303 for Project-based Voucher tenancies; or

(b) The City of Berkeley Health, Housing and Community Services Department in accordance with 24 CFR 582.305(b) for Shelter Plus Care tenancies.

(2) For Housing Choice Voucher and Project-based Voucher tenancies, the rent ceiling increase will not lead to an increase in the Family Share of the contract rent as defined in 24 CFR 982.515 and 24 CFR 983.353 respectively.

If the tenant in qualifying rental unit is subject to a change in the Family Share for reasons not related to a landlord's petition under this section, the rental unit shall still be eligible for a rent ceiling increase.

(3) The rental unit is in compliance with the implied warranty of habitability. Such compliance means the unit substantially complies with:

(a) Housing Quality Standards, as defined in 24 CFR 982.401 and 24 CFR 981.301;

(b) the City of Berkeley's building, housing and health codes which materially affect the health and safety of tenant; and

(c) applicable state law, including but not limited to Civil Code section 1941.1 and Health and Safety Code section 17920.3.

(4) The landlord is in full compliance with the registration requirements as defined in Berkeley Municipal Code section 13.76.080 and corresponding regulations for all Berkeley rental property subject to the Ordinance. A landlord is not in compliance with registration requirements for purposes of this section if the landlord is delinquent on registration fees or penalties for any property in the City of Berkeley.

(5) The tenant has not brought a civil action under Berkeley Municipal Code section 13.79.060.H.1 that alleges the landlord has violated Berkeley Municipal Code section 13.79.060.C and which remains pending at the time of the filing of a petition under this section; nor has a court issued a judgment finding the landlord violated Berkeley Municipal Code section 13.79.060.C.

(C) Petition and Process

(1) Landlords of qualifying units may petition for individual rent adjustments pursuant to this section on a form prescribed by the Board. The petition must be accompanied by supporting documentation establishing the rental unit's eligibility for a rent increase. The petition shall be served on tenants pursuant to Regulation 1205(B)(1).

(2) The petition may be accompanied by a form prescribed by the Board and signed by all tenants in the rental unit that indicates all tenants have agreed to the contract rent increase, are informed that such an increase will not affect the tenant household's portion of the rent and waived their right to a hearing. If the petition is not accompanied by such a form, the Board shall notify each tenant as set forth in Section (C)(3) of this regulation.

(3) The Board shall notify each tenant of a unit subject to a petition under this section following receipt of the petition. The notice shall state that the tenant has a right to object to the petition, and that if the tenant does not object within the time allowed, or the tenant's objection does not specify one or more grounds listed in section (D), the rent for the tenant's unit may be increased by the applicable amount under subsection (B) of this regulation, based on the information in the landlord's petition and the Board's files without further hearing.

(4) No rent increase pursuant to this regulation shall be effective until approved by the appropriate government agency and properly noticed under state law.

(D) Grounds for Tenant Objection. Tenants subject to petitions under section (C) may file objections with the Board within 15 working days of the date the Board gives notice that the petition has been filed. The Board shall not charge a fee to file tenant objections. Such objections must be made on the grounds that the rental unit does not meet one or more of the eligibility factors set forth in section (B) of this regulation.

(E) Successor Administering Agencies and Potential Future Recodification. At the time of the adoption of this Regulation, the public housing agency which administers the Housing Choice and Project-based voucher programs within the City of Berkeley is the Berkeley Housing Authority.

At the time of the adoption of this Regulation, the Recipient, as defined by the 24 CFR section 582.5, of the Shelter Plus Care grant within the City of Berkeley is the City of Berkeley through the Health, Housing, and Community Services Department.

This regulation shall apply to the processes and rent reasonableness determinations of any successor public housing agencies or recipients.

The Board intends this regulation to apply to the Housing Choice Voucher, Project-based Voucher, VASH, and Shelter Plus Care programs, including in the event the governing regulations for these programs are recodified, if such recodification is nonsubstantive in effect.

Fiscal Impact

None.

Conclusion

The LIRA Committee recommends that the full Board adopt Regulation 1283 on second reading.

Name and Telephone Number of Contact Person

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