



Rent Stabilization Board
Legal Department

DATE: January 16, 2025

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 substantive changes to the following existing Regulations to incorporate Rent Stabilization Ordinance amendments from Measure BB: 801 [Proper Filing of the Rent Registration Statement], 1000 [Base Rent Determination for Previously Exempted Units], 1012 [Separate Agreements], and 1269 [Change in Space or Services]– Second Reading

Recommendation

That the full Board adopt the following substantive changes to existing Regulations 801 [Proper Filing of the Rent Registration Statement], 1000 [Base Rent Determination for Previously Exempted Units], 1012 [Separate Agreements], and 1269 [Change in Space or Services] to incorporate Rent Stabilization Ordinance amendments from Measure BB. The full Board unanimously approved these changes at its meeting on December 19, 2024.

Background

On December 5, 2024, the Alameda County Registrar certified the count for the 2024 General Election. Measure BB, which incorporates a number of substantive changes to the Rent Ordinance, passed. Staff has prepared an initial draft of new regulations and updates to initial regulations that are necessary to implement the portions of Measure BB that become effective on December 20, 2024, 10 days following Council’s action to confirm the result of the election at its meeting on December 10, 2024. This memo addresses the proposed substantive amendments to existing regulations; a separate memo introduces proposed new regulations.

1. Regulation 801 [Proper Filing of the Rent Registration Statement]

Measure BB amended Berkeley Municipal Code section 13.76.080 to include a requirement that a landlord provide each new tenant a disclosure notice regarding tenants’ rights under the Rent Stabilization Ordinance (“Ordinance”) and any exemption from the Ordinance which the landlord claims. If the rental unit is on a property with an interior common area, the landlord

must also post the relevant notice in that space. In order to fully complete registration for a rental unit, the landlord must indicate on each new tenancy registration form that they have provided this notice.

The proposed amendments to Regulation 801 clarify three aspects of the provision of this disclosure notice. First, the proposal updates Regulation 801(A)(1) to make explicit that registration of a rental unit is not complete until the landlord completes an affidavit that they provided the disclosure notice to new tenants. Second, the proposal adds a new section (Regulation 801(G)) to clarify that, in a property with both Fully Covered and Partially Covered units and an interior common space, a landlord may satisfy the posting requirement by posting both applicable notices in the common space. Third, Regulation 801(G) states that the requirement to provide this notice to tenants will be subject to the “substantial compliance” standard for all regulation requirements. As set forth in state law, a landlord subject to a local system of price control is in compliance with the registration requirements of that system if 1) the landlord has made a good faith effort to comply with the requirements; and 2) the landlord has timely cured any defect in their registration upon notice from the Board. Therefore, the Board cannot sanction a landlord who substantially complies with the requirement to provide this disclosure notice to new tenants.

The proposed amendments to Regulation 801 also include citation changes in Regulation 801(D) to reflect the reorganization of the Just Cause for Eviction section of the Ordinance. These changes are not substantive.

The proposed text of Regulation 801 is below. Additions are in red text; deletions are in strikethrough.

801. Proper Filing of the Rent Registration Statement

(A) A rental unit is properly registered in accordance with Section 8 of the Rent Stabilization Ordinance if the landlord or landlord's representative has:

(1) Filed with the Board completed registration statements, on forms provided by the Board, including all of the information required for the individual units and the information concerning all the covered units in the same property and **an affidavit that the landlord has provided the notice required under Berkeley Municipal Code section 13.76.080.D;**

(2) Paid to the City of Berkeley all required registration fees and penalties due for the unit and all the covered units in the same property; and

(3) Fully completed registration for all covered units on the same property parcel.

(B) A landlord who asserts that they are unable to supply required information may request review of their registration status by the Rent Stabilization Board Executive Director or the Executive Director's designee. The Executive Director or designee shall determine whether

good cause exists to find the landlord properly registered notwithstanding the lack of required information. The request for review shall be made on a form approved by the Executive Director and shall include, without limitation, a declaration under penalty of perjury fully describing the landlord's efforts to obtain the missing information. The Executive Director may specify the nature and extent of the efforts, and documentation thereof which is required. The landlord shall serve a copy of the request for review on all current tenants in the property and known prior tenants who resided in the premises during the time period for which the information is missing. A proof of service by mail on said tenants shall accompany the request for review. The tenants may submit in writing to the landlord any relevant information concerning the request for review within ten (10) days of the date of service of the request upon them. A copy of this information submitted to the landlord shall be filed with the Board. It shall be accompanied by a proof of service by mail upon the landlord. The Executive Director or designee shall determine whether or not the inability to provide the required information resulted from circumstances beyond the control of the landlord. If it is determined that the landlord was not at fault and that the missing information cannot now be produced nor reasonably reconstructed from any available information, the landlord may be found to be properly registered notwithstanding the lack of information. If the reason for the unavailability was within the control of the landlord, no relief shall be granted unless the landlord demonstrates that he or she has otherwise substantively complied with the Ordinance and that the landlord has made all reasonable efforts to obtain or reconstruct the information which is unavailable. A copy of the determination shall be mailed to the landlord and to the tenants of the affected property. The Board may establish an appropriate fee for the filing of a request for review of registration status. No rent withholding petition for non-registration shall be acted upon while a request for review is pending.

(C) In designating a rental unit as properly registered, the Board's intent is to facilitate the rent registration and individual adjustment of rent ceiling processes and the dissemination of information regarding the registration of rental units. Such designation shall not be construed as the Board's certification of the lawful base rent, current lawful rent ceiling or any other information provided on the rent registration statement. Nothing in this Regulation shall preclude the Board nor any person from challenging the accuracy of any information provided in any registration statement or declaration in the context of any proceeding or action.

(D) As used in this Regulation, "rent registration statement" shall include the initial registration statement, any required annual registration statement, any vacancy registration form required under Regulation 1013(K) and any supplemental registration statement approved and required by the Board. For units covered by B.M.C. ~~13.76.050I~~ **13.76.050.B.1** and B.M.C. ~~13.76.050O~~ **13.76.050.C.8**, "rent registration statement" shall include the "Registration Statement for Partially Covered Units", all required "Tenancy Registration Forms For Partially Covered Units" and any other supplemental or additional registration forms the Board requires. This subsection is intended to clarify the existing requirements concerning filing of initial, annual, vacancy and supplemental registration statements.

(E) When the Board determines that it is reasonably necessary to carry out the purposes of the Ordinance, the Board may require landlords to furnish information missing from any initial or annual registration statement or to complete a supplement registration statement approved by the Board. This may include information which was requested on the 1980-81 registration statement but which was not required by this regulation, or specifically enumerated in the

Ordinance at the time the registration statement was filed but which the Board finds it necessary for proper administration of the Ordinance. Any such request for information request for completion of a supplemental registration statement shall be responded to within a reasonable time period to be determined by the Board. If the landlord is unable to supply the information requested, the landlord shall comply with subsection (B). Any request for review pursuant to subsection (B) shall be made within the time specified by the Executive Director. If the landlord does not respond to the request or request review of his or her registration status within the specified time, the landlord may subsequently be held to be unregistered thereafter notwithstanding the fact that the landlord would have otherwise been deemed to have been properly registered under the law and regulations existing at the time the statement which omitted the requested information was originally filed. Any such determination of non-registration shall be prospective only.

(F) Nothing in the subsection (E), above, shall be construed to relieve any landlord of the duty to fully register all his or her covered units and to supply all requested information merely because the Board has not advised landlord of any information which may be omitted by the landlord from the initial, annual or any supplemental registration statements.

(G) *Notice at Commencement of Tenancy (Berkeley Municipal Code section 13.76.080.D)*

(1) The obligation of the landlord to timely provide the Notice at Commencement of Tenancy shall be subject to the provisions of subsection (H) of this regulation.

(2) In the property which is subject to the requirement to post the Notice at Commencement of Tenancy which contains both Fully Covered and Partially Covered units, a landlord may comply with the requirement to post by posting copies of the Notice at Commencement of Tenancy applicable to both Fully Covered and Partially Covered units.

(GH) A landlord shall be found in substantial compliance with registration requirements of the Ordinance and Regulation when:

(1) The landlord has made a good faith effort to comply with the Ordinance and regulation concerning registration sufficient to reasonably carry out the intent and purpose of the Ordinance and Regulations; and

(2) The landlord has cured any defect in compliance in a timely manner after receiving notice of a deficiency from the Board.

2. Regulation 1000 [Base Rent Determination for Previously Exempted Units]

Measure BB also removes the blanket rent control and registration exemptions for many government-subsidized properties, including many Section 8 or Housing Choice Voucher tenancies. Regulation 1000 clarifies how the Board calculates the base rent for a rental unit which had previously been exempted from the Ordinance. The proposal updates Regulation 1000 for two scenarios unique to government-subsidized properties.

First, proposed Regulation 1000(B) states that the rent ceiling for any government-subsidized property which comes under the price-control provisions of the Ordinance will be the full or contract rent from the unit on December 20, 2024 (the effective date of the Ordinance amendments). A full or contract rent, reflecting an amount close to market rate, is a feature of many government-subsidy programs, where the tenant pays a portion of the contract rent based on the tenant's income and the subsidizing agency pays the owner the difference between the tenant's portion and the contract rent. Because the tenant's portion is calculated under the specific regulations of the subsidy program, the Board does not have the authority to change, cap, or control this amount. The Board's authority is limited to the contract rent, which is generally set forth in a lease agreement between the tenant and the owner of the subsidized property.

Second, proposed Regulation 1000(C) indicates that in tenancies that began prior to the application of a subsidy that exempted the unit from the Ordinance (and thus have a pre-existing base rent), the new base rent for the unit will also be the full or contract base rent on December 20, 2024. However, if the subsidy lapses but the tenant remains in the unit, the prior base rent would be re-instated.

These amendments to Regulation 1000 reflect the Board's current rule that a rent ceiling for a given unit cannot exist until the unit becomes subject to the Ordinance. (*See* Decision of the Hearing Examiner in Petitions L-4260/IRD-134, December 11, 2017, at pages 7-8 [interpreting *Givoni v. Santa Monica Rent Control* (1991) 234 Cal.App.3d 94]).

The proposed text of Regulation 1000 is below.

1000. Base Rent Determination for Previously Exempted Units

(A) If a unit has been exempted from coverage by virtue of any of the above exemptions set forth in Section 5 of the Ordinance (except the exemption for owner-occupied 3- and 4-unit building which formerly existed pursuant to Section 5.f.) and loses its exempt status the lawful base rent and lawful current rent ceiling shall be determined as follows:

(1) The lawful base rent shall be determined in accordance with Section 10.a. of the Ordinance.

(2) The lawful current ceiling shall be the lawful base rent, adjusted by the amount of the annual general adjustments approved by the Board to date provided that the landlord is in compliance with the provisions of the annual general adjustment orders and registers the unit as required by Section 8.i-j of the Ordinance.

(B) In the instance where a rental unit was exempted from Section 10 of the Ordinance prior to December 20, 2024 under an exemption arising from a government-subsidy or government ownership of the rental unit, the base rent shall be the full or contract rent of the unit at that time. This subsection shall apply to the tenancies and rental units set forth in Regulation 410(B).

(C) When the current tenancy in such a rental unit commenced prior to the application of a government subsidy, subsection (B) shall prevail over any previously existing base rent ceiling. In the event that the tenancy continues after the government subsidy lapses, terminates, or discontinues, the base rent from the commencement of the tenancy shall be re-instated, and the rent ceiling shall be determined as set forth in subsection (A).

3. Regulation 1012 [Separate Agreements]

Measure BB alters how landlords may charge tenants for utilities in rent-controlled units. Any lease commencing after February 6, 2024, may charge for utilities only as part of the base rent or if the utility is individually metered and placed in the tenant's name. Therefore, separate agreements for utilities will no longer be permitted, and Regulation 1012 has been updated to reflect this.

The proposed text of Regulation 1012 is below.

1012. Separate Agreements

(A) All housing services held out for use and included in the base rent ceiling or, for tenancies beginning on or after January 1, 1999, the most recent initial rent or that were granted in a decision on a rent adjustment petition are considered regulated housing services and shall continue to be provided to tenants in the manner in which they were previously provided. Other housing services are considered unregulated housing services and may be the subject of separate agreements when such agreements conform to conditions set out below.

(B) Separate agreements between owners and tenants are permissible when the agreement is in writing in a document separate from the rental agreement and the agreement meets all of the following criteria:

- (1) The agreement to pay a separate fee for unregulated housing services must not be a condition of tenancy;
- (2) The terms of the separate agreement must be commercially reasonable;
- (3) The tenant's termination or breach of the separate agreement may not be grounds for eviction.

(C) After February 6, 2024, a utility service may not be the subject of a separate agreement. For purposes of this section and Berkeley Municipal Code section 13.76.100.E, a utility service includes: electricity, water, sewer, gas, and waste management.

(D) Owners and tenants may, if they wish, convert unregulated housing services covered by separate agreements to regulated housing services by stipulation in an Individual Rent Adjustment Petition filed with the Board, by appropriate reference to Regulations 1229 and 1269.

(E) Separate agreements may be terminated by either party upon thirty (30) days written notice. Notice of termination of an agreement for rental of furniture, however, may not be given less than thirty (30) days after the agreement was signed by the parties.

4. Regulation 1269 [Change in Space or Services]

Again, Measure BB alters how landlords may charge tenants for utilities in rent-controlled units. The new provision of the Ordinance allows landlord to petition to adjust the rent ceiling to include utilities if the lease agreement improperly charges for utilities after February 6, 2024. Proposed Regulation 1269(A)(3) sets forth the general procedure for this type of petition. A landlord would file a petition with the Board for additional services and provide evidence of the average monthly cost for utilities. Upon sufficient proof of the cost of utilities, the hearing examiner may adjust the rent ceiling of the unit to reflect this cost.

The proposed language of Regulation 1269 is below.

1269. Changes in Space or Services

(A) Increase in Space or Services. Rent ceilings may be adjusted upward when there is an increase to the usable space or the housing services beyond that which was provided to a unit on May 31, 1980 or when the base rent was first established.

1. Additional space. Where a landlord adds habitable living space to a unit, other than by merely reconfiguring existing residential rental space, the lawful rent ceiling for such unit shall be permanently increased by 1.042% of the cost of adding such additional space to the existing unit. The supporting documentation must substantiate the nature and cost of the claimed additional space and may include copies of invoices, signed contracts, material and labor receipts, self labor logs, proof of entitlement to skilled labor rate (if claimed), canceled checks or any other items of documentation accepted and used in the normal course of business. Reports which merely summarize or refer to undocumented expenditures are not, by themselves, adequate substantiation. Hearing Examiners shall weigh and evaluate the nature of the documentation submitted as substantiation, and may require additional proof. Evidence of compliance with applicable permit requirements and correction of any cited code violations may also be required.

For increases in space for which on-site construction commenced before April 17, 1995, the owner may elect, as an alternative to the rent adjustment set forth above, a permanent rent increase equal to \$1.00 per square foot of habitable living space added to the unit.

2. Additional services. Where a landlord adds non-habitable space or increases the services provided to a unit, the lawful rent ceiling for such unit shall be increased by an amount representing the market value of the additional space or increased services.

If the additional services and proposed rent adjustment are agreed to in writing by the landlord and tenants, the Board shall approve the proposed rent increase unless it can be shown that the agreement clearly violates the Ordinance. Increases may be denied if a tenant objects and the added space or services do not clearly benefit a majority of the affected tenants. If the additional space or services are subsequently reduced or eliminated, the rent increase authorized herein shall be reduced or terminated. If a rent increase is granted under this subsection, no additional rent increase shall be granted under Regulation 1264 or 1267 for materials or labor involved in providing the space or service. Any increase for an additional bedroom shall result in an increase to the base occupancy level for an additional occupant.

The addition of furniture or furnishings will not be considered an increase in services eligible for a permanent rent increase, but may be the subject of a separate agreement under Regulation 1012.

3. Utilities charged to tenants separately in leases that commenced after February 5, 2024. Berkeley Municipal Code section 13.76.100.E prohibits a landlord from charging a tenant for any utility service separately from the base rent unless such utilities are individually-metered and required under to lease agreement to be in the tenant's name. If a lease entered into on or after February 6, 2024 charges a tenant for one or more utility services, a landlord may petition under this section to adjust the rent ceiling to include the cost of utilities. Upon sufficient proof of such cost, the Hearing Examiner shall adjust the rent ceiling by an amount equal to the average monthly cost to the unit in question of such utilities in the most recent calendar year. If the landlord is unable to supply the average monthly cost for the unit in question, the landlord may present evidence of a reasonable estimate for the cost of such utilities.

(B) Decrease in Space or Services; Substantial Deterioration; Failure to Provide Adequate Services; Failure to Comply with Codes, the Warranty of Habitability or the Rental Agreement.

1. Decreases in Space or Services. Rent ceilings shall be adjusted downward where a landlord causes a tenant to suffer a decrease in housing services or living space, from the services and space that were provided at the unit on May 31, 1980, or from any additional services or space provided at the beginning of the tenancy pursuant to the rental agreement. For tenancies beginning after January 1, 1999, rent ceilings shall be adjusted downward only where a landlord causes a tenant to suffer a decrease in housing services or living space from that which was provided at the beginning of the tenancy pursuant to the rental agreement. It shall be presumed that any space or service provided at the beginning of the tenancy was provided pursuant to the rental agreement. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the reduction in living space or housing services) by the rent ceiling in effect at the time of the impairment, and for past decreases, multiplied by the period of time the impairment existed. In determining the amount of the downward rent adjustment by the percentage of impairment of use/benefit method, the hearing examiner may consider the reasonable replacement cost of the space or service in question. Any rent ceiling reductions pursuant to this subsection shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the space or service has been restored.

2. Denial of Petitions for Unilateral Removal. The Board will not accept petitions from landlords who seek a rent ceiling decrease for the unilateral removal or reduction of space or services from a tenant's base level space or services. Petitions shall be accepted only when a tenant has expressly agreed in writing to the removal of such space or services. "Base level space or services" are the housing services or living space that were provided at the unit on May 31, 1980, and any additional services or space provided at the beginning of the tenancy pursuant to the rental agreement; except that, for tenancies beginning on or after January 1, 1999, "base level space or services" are the housing services or living space that were provided at the beginning of the tenancy pursuant to the rental agreement.

3. Substantial Deterioration, Inadequate Services. Rent ceilings shall be adjusted downward for any substantial deterioration in a rental unit and/or for any failure to provide adequate housing services occurring during the petitioner's tenancy. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide adequate service) by the rent ceiling in effect at the time of the impairment. For purposes of this subsection, a substantial deterioration means a noticeable decline in the physical quality of the rental unit resulting from a failure to perform reasonable or timely maintenance and adequate housing services means all services necessary to operate and maintain a rental property in compliance with all applicable state and local laws and with the terms of the rental agreement.

4. Code Violations, Breach of the Warranty of Habitability. Rent ceilings shall be adjusted downward for any failure to substantially comply with applicable state rental housing laws, the warranty of habitability or local housing and safety codes. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenants' use of and benefit from the unit (as a result of the violation, breach or failure to comply) by the rent ceiling in effect at the time of the impairment. Where a condition at the rental unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the rent ceiling decrease shall be in an amount that reflects the reduction in value of the premises due to the unsafe or unhealthy condition. A substantial lack of any of the affirmative standard characteristics for tenantability set forth in Civil Code section 1941.1(a) shall be deemed a violation of the warranty of habitability and the rent ceiling shall be decreased by no less than 10% or, for a violation of subsections (2), (3) or (4) of Civil Code section 1941.1(a), no less than 20%, until the condition is corrected, notwithstanding seasonal variations in or an absence of impairment to a tenant's use of or benefit from the unit. The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of tenants (e.g., dangerous window bars, missing smoke detector) shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Board within 35 days of mailing of the hearing examiner's decision unless the landlord establishes that the violation cannot be corrected within that time due to circumstances beyond the landlord's control. For purposes of this subsection, a breach of the warranty of habitability occurs when the rental premises are not in substantial compliance with applicable building and housing code standards, which materially affect health and safety. Minor housing code violations which do not interfere with bare living

requirements do not constitute a breach of the warranty of habitability.

5. Rent ceiling reductions pursuant to subsections (3) and (4) of this regulation shall be effective from the date the landlord first had notice of the deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the condition for which the reduction was granted no longer exists. A tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the landlord first received notice of the decreased service, deterioration, code or habitability violation. Notice may be actual or constructive. A landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been disclosed by a reasonable inspection of the premises. A copy of a housing code inspection report from the City of Berkeley department responsible for the residential rental inspection program should be submitted with the petition.

Name and Telephone Number of Contact Person

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