



Rent Stabilization Board
Legal Department

DATE: December 19, 2024

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 the following new Regulations to incorporate Rent Ordinance amendments from Measure BB: 410 [Government-subsidized Rental Units], 411 [Property Management Company; definition], and 1209.5 [Parties in a Petition Subject to a Tenant-based Government Subsidy] – First Reading

Recommendation

That the full Board adopt the following new Regulations to incorporate Rent Ordinance amendments from Measure BB: 410 [Government-subsidized Rental Units], 411 [Property Management Company; definition], and 1209.5 [Parties in a Petition Subject to a Tenant-based Government Subsidy]. The LIRA Committee reviewed staff's proposed amendments at their December 12, 2024 meeting and unanimously recommended adoption of this proposal.

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 new regulations; a separate memo introduces substantive changes to various existing regulations.

1. Regulation 410 [Government-subsidized Rental Units]

Measure BB removes any exemption for government-owned or government-subsidized properties from the Rent Stabilization Ordinance ("the Ordinance"). After the passage of Measure BB, government-owned or government-subsidized rental units are subject to all provisions of the Ordinance unless another source of law explicitly exempts such units. Newly enacted Berkeley Municipal Code section 13.76.050.B.3 provides that any government-owned or

government subsidized property which is exempt from price-control provisions of the Ordinance will be a Partially Covered unit (subject to the registration requirement and Just Cause for Eviction protections of the Ordinance). Such Partially Covered government-subsidized units will be eligible for the Board's mediation and counseling services in most cases.

Proposed Regulation 410 establishes which government-subsidy programs currently present in Berkeley exempt rental units subject to that subsidy from local price-control regulations. These units will be Partially Covered. Most of these exemptions are set forth in Title 24, Part 246 of the Code of Federal Regulations. Additionally, Proposed Regulation 410 clarifies that, when a rental unit is subject to multiple subsidy programs, if federal regulation exempts any subsidy program from price control regulations, the rental unit will be Partially Covered.

The text of proposed Regulation 410 is below.

410. Government-subsidized Rental Units

(A) Background and Purpose. Berkeley Municipal Code section 13.76.050.A provides that all provisions of the Rent Stabilization Ordinance apply to any residential rental unit that is rented or available for rent. It is the intent of the Board that all provisions of the Rent Stabilization Ordinance apply to any government-owned or government-subsidized rental unit to the fullest extent possible allowed under federal and state law. To the extent that federal and state law purport to exempt any rental unit from any provision of the Rent Stabilization Ordinance, it is the intent of the Board that such exemption be applied as narrowly as possible.

(B) Fully-Covered Units. Tenancies in rental units subject to the following government subsidies are subject to all provisions of the Rent Stabilization Ordinance, unless another independent grounds for full or partial exemption applies:

- (1) Housing Choice Voucher Program;
- (2) Veterans Affairs Supportive Housing Program;
- (3) Low-income Housing Tax Credits;
- (4) HOME Investment Partnership Act;
- (5) Shelter Plus Care Program;
- (6) City of Berkeley Housing Trust Fund; or
- (7) any subsidy not explicitly exempted from local price control by federal or state law.

Additionally, rental units owned by government agencies or entities shall be Fully-Covered Units, including entities organized under California Government Code section 6500 et. seq., unless an independent grounds for full or partial exemption applies.

(C) Partial Exemption by Federal Regulation. Title 24, Part 246 of the Code of Federal Regulations sets forth the determination of the federal Department of Housing and Urban Development that certain government-subsidized projects are exempt from any local ordinance that purports to regulate the rents of such projects. It is the intent of the Board that any rental unit in projects under the coverage of Title 24, Part 246 of the Federal Code of Regulations shall be Partially-covered units as defined in Berkeley Municipal Code section 13.76.040.J and Berkeley Municipal Code section 13.76.050.B.3.

Accordingly, tenancies in rental units subject to the following government subsidies are Partially Covered Units, unless another independent grounds for a full exemption applies:

- (1) Rent Supplement Program;
- (2) Section 8 Loan Management Set Aside converted from a prior Rent Supplement Contract; or
- (3) Project-based Section 8.

Separately, Title 24, Section 891.185 of the Code of Federal Regulations sets forth the determination of the federal Department of Housing and Urban Development that projects which the Department of Housing and Urban Development provides project assistance to under the Section 202 Program of Supportive Housing for the Elderly or the Section 811 Program of Supportive Housing for Persons with Disabilities are exempt from any local ordinance that purports to regulate the rents of such projects. It is the intent of the Board that any rental unit in projects which the Department of Housing and Urban Development provides project assistance to under the Section 202 Program of Supportive Housing for the Elderly or the Section 811 Program of Supportive Housing for Persons with Disabilities shall be Partially-covered units as defined in Berkeley Municipal Code section 13.76.040.J and Berkeley Municipal Code section 13.76.050.B.3.

It is the intent of the Board that no provision of the Rent Stabilization Ordinance shall apply in a manner that either improperly regulates the rents of rental units in such projects identified in this section or that in any way delays, prevents or interferes with the implementation of any increase in rental charges approved by the Department of Housing and Urban Development.

(D) Multiple Subsidies Applied to a Rental Unit. In the instance where a tenancy in a rental unit is subject to more than one government subsidy, the rental unit will be a Partially-Covered Unit if any subsidy applied to the unit is set forth in subsection (C).

2. Regulation 411[Property Management Company; definition]

Measure BB creates an enforceable right for tenants to form associations and confer with landlords on issues related to their rental units. Under the newly enacted Berkeley Municipal Code section 13.76.135, this right applies to all tenants in rental units on “1) parcels that contain ten or more rental units; and 2) parcels that contain between one and nine rental units, so long as the rental units are managed by a property management company.” Section 13.76.135 provides the Board the authority to define “property management company” for the purposes of tenants’

right to organize.

Proposed Regulation 411 defines a property management company as an entity performing any of various tasks related to the renting of residential properties on behalf of the owner of record. The tasks are defined broadly to preserve the hearing examiner's discretion if the question of whether a rental unit is managed by a property management company becomes subject to a Board petition

The text of proposed Regulation 411 is below.

411. Property Management Company; definition

For the purposes of Berkeley Municipal Code section 13.76.135, a property management company is any entity which provides any of the following services to a record owner of a residential rental unit in the City of Berkeley:

- (1) New tenant intake, including marketing, establishing and maintaining any waiting list, determination of applicant eligibility, applicant screening, and tenant selection;
 - (2) Lease execution, including explaining the lease and all attachments;
 - (3) Collection of rent and any charges in addition to rent;
 - (4) Lease enforcement, including executing terminations of tenancy;
 - (5) Responsibility for maintenance or repairs on a unit, including subcontracting to perform such maintenance or repairs;
 - (6) Communication with current tenants regarding concerns and requests arising from their tenancy; or
 - (7) Any activities necessary to maintain compliance with laws and ordinances regarding the rental of residential property units.
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3. 1209.5 [Parties in a Petition Subject to a Tenant-based Government Subsidy]

Because, as discussed above, Measure BB imposes rent control on many government-subsidized units, these units will now have a rent ceiling. Tenants and landlords of those units will become eligible to petition to adjust such rent ceilings.

Under such subsidy programs, the tenant pays a portion of the full rent to the landlord and the agency administering the subsidy pays the remainder. The portion of rent that the tenant owes is generally based on the tenant's income and beyond the Board's authority to adjust. However, an order from the Board's hearing examiner adjusting the rent ceiling in a subsidized tenancy may

impact the amount of rent that the subsidizing agency will owe the landlord. Because the subsidizing agency's legal rights or obligations may be impacted by the Board's petition process, the Board must provide the subsidizing agency a chance to participate in the petition process.

Proposed Regulation 1209.5 clarifies that the subsidizing agency is a party in any petition brought regarding a unit subject to a tenant-based government subsidy. This regulation will require all parties to a petition to serve the subsidizing agency with any documents filed in support of or in opposition to the petition. It will also allow a representative of the subsidizing agency to participate in the hearing on the petition.

The text of proposed Regulation 1209.5 is below.

1209.5 Parties in a Petition Subject to a Tenant-based Government Subsidy.

In any tenancy subject a "tenant-based" government subsidy as defined in 24 CFR section 982.1(b), the government agency which administers the subsidy program shall also be a party to any petition pursuant to this chapter.

Name and Telephone Number of Contact Person

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