

## CHAPTER 10. ESTABLISHMENT OF BASE RENT CEILING AND POSTING

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1000. Base Rent Determination for Previously Exempted Units

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:

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

(B) 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. of the Ordinance.

[Effective Date: July 13, 1983]

1001. Base Rent Determination for Previously 5F Exempted Units

If a unit has been exempted from coverage by virtue of any of the exemptions set forth in Section 5 of the Ordinance and is in a three or four unit building which was previously exempted under Section 5.f. prior to July 1, 1982, the lawful base rent and lawful current rent ceiling shall be determined as follows:

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

(B) The lawful current rent 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. of the Ordinance.

[Effective July 13, 1983]

1002. Base Rent Determination for Previously Exempted Units

Nothing in Regulation 1000 or 1001 shall preclude the landlord from petitioning for an individual rent adjustment to recover capital improvements or other expenses incurred subsequent to the enactment of the Ordinance and prior to the time the unit became covered.

[Effective July 13, 1995]

1003. Base Rent and Current Lawful Rent Ceilings for Rental Units Occupied by Group Living Arrangements

(A) The base rent and current rent ceiling for each rental unit occupied by a group living arrangement shall be determined in accordance with Section 13.76.100.A. of the Berkeley Municipal Code. The total rent charged the residents of each rental unit shall not exceed that which is lawful for the unit.

(B) If one or more residents of the group living arrangement have leased or rented the entire unit from the owner or landlord and sublets portions of the premises to other residents, the total rent demanded, received or collected by the sublessor shall not exceed that which is actually and lawfully due and payable to the owner or landlord of the premises. If the sublessor demands, receives or collects rent in excess of that actually due the owner or landlord, the sublessor shall be responsible to the subtenants for all such overcharges. If the sublessor acts as the agent or employee of the owner or landlord in demanding, receiving or collecting rent in excess of that lawfully due, or acts as a conduit for the transfer of such rent overcharges to the owner or landlord, said owner or landlord shall be responsible for all such overcharges.

(C) Where there is a group living arrangement, the lawful maximum rent ceiling for each subtenant shall be presumed to be an amount substantially proportional to the space occupied by the subtenant. This presumption may be overcome by evidence of the relative amenities of the rooms and/or any special obligations of the sublessor.

(D) Overcharge awards shall be calculated upon the actual rent charged/collected and not the overall rent ceiling for the unit when they differ.

[Amendment effective May 9, 1997; Amended paragraph (C) on October 19, 2015, to make clear that the Board will review the lawful maximum rent and not rent ceiling for subtenants and added paragraph (D) regarding calculating rent overcharges]

1004. Provision of Certificate of Permissible Rent Level

(A) Upon the request of the landlord or the tenant, the Board shall provide the landlord and the current tenant with a certificate of current permissible rent level (maximum lawful rent ceiling) of the rental unit. A fee in an amount necessary to cover the costs of issuing the certificate shall be charged for each request for a certificate. The certificate shall be issued to the landlord and the tenant within five (5) business days from the date of request unless there is a petition for individual rent adjustment for the unit pending on the date the request for certificate is filed. Where a petition for individual rent adjustment is pending on the date the request for certificate is filed, the request for certificate shall be consolidated with the individual rent adjustment petition pursuant to Regulation 1212 and determined pursuant to the procedures of Chapter 12.

(B) Where the rental unit has previously been certified, either by means of an Individual Rent Adjustment (IRA) decision, or a Certificate of Permissible Rent Level, the determination of permissible rent level shall be made in accordance with Regulation 1005. In such case, the requesting party shall mail a copy of the Request for Certificate of Permissible Rent Level to the other party. The Request and the proof of service shall be filed with the Board within ten (10) days of the date of service.

(C) Where the rental unit has not been previously certified, the determination of permissible rent level shall be made in accordance with Regulation 1006. In such case, the requesting party shall personally serve a copy of the Request For Certificate of Permissible Rent Level on the other party. If the Request cannot with reasonable diligence be personally delivered, the Request may be served by leaving a copy at the person's home with a competent member of the household and thereafter mailing a copy to the person at the address. The Request and the proof of service shall be filed with the Board within ten (10) days of the date of service.

(D) The permissible rent levels stated in the certificate reflect the permanent rent ceilings for a rental unit and are binding and conclusive unless appealed pursuant to Regulation 1007 or redetermined pursuant to Regulation 1009. Notwithstanding the issuance and finality of a Certificate of Permissible Rent Level, the certified rent levels are subject to temporary adjustment pursuant to Regulation 1269(B).

[Effective Date: March 11, 1988; as amended April 7, 2000, May 3, 2004 adding (D), June 21, 2004 changes to (A), December 16, 2013 changes to (D).]

1005. Determination of Permissible Rent Level Where a Prior Certification Has Been Issued

(A) Extent of Review. Where the rental unit has previously been certified, either by means of an Individual Rent Adjustment (IRA) decision, or a Certificate of Permissible Rent Level and an initial rent has not been established following a post-December 31, 1998 vacancy since the previous certification, the review to determine the current permissible rent level shall include the following:

(1) The review shall begin with the most recent certified rent, which shall be controlling and not subject to challenge in an appeal of the Certificate.

(2) The most recent certified rent shall be increased by the amount of subsequent Annual General Adjustments for each year in which the property was in substantial compliance with the registration requirements if the Board has no information establishing that the landlord was otherwise ineligible for the Annual General Adjustments in question. In situations where the property was not in substantial compliance with the registration requirements or where the Board has information establishing that the landlord was otherwise ineligible for any Annual General Adjustment, the adjustment for the year(s) in question shall be disallowed when computing the permissible rent level. For purposes of this regulation, a property shall be considered in substantial compliance with the registration requirements if all registration fees and penalties have been paid and the initial registration statement states the name and address of the landlord and managing agent and the information is timely provided upon request of the Board.

(3) Any Individual Rent Adjustment(s) which has been granted shall be taken into account when computing the permissible rent level. All determinations made in such IRA hearings, or in any rent withholding for nonregistration-hearings, shall be controlling and the results reached in said proceedings shall not be altered or superseded.

(4) If the current tenancy began between January 1, 1996 and December 31, 1998, the permissible rent level shall include any adjustments lawful under Regulation 1013(B) that are reflected on vacancy registration forms filed with the Board.

(B) Notification Concerning Determination.

In addition to the Certificate of Permissible Rent Level, the Board shall provide the landlord and tenant with a notice containing the following information:

(1) Notice of the prior certification and that the prior certification is binding and cannot be challenged in an appeal of the Certificate;

(2) The specific dollar amount of the permissible rent level for each year from the date of the most recent certified rent to the present;

(3) Notice that the landlord's eligibility for the annual general adjustments subsequent to the most recent Certified rent is subject to appeal by either party, and that the Board has made no attempt to determine the landlord's eligibility for the various annual general adjustments, except insofar as eligibility depends upon registration of the property. The notice

shall set forth the various eligibility conditions for the Annual General Adjustments and also state that if such ineligibility continues for an entire calendar year, the landlord permanently loses the annual general adjustment pursuant to Section 13.76.110(H) of the Ordinance; and

(4) Notice that unless a timely Appeal of Certificate of Permissible Rent Level is filed, the rent level identified in the Certificate shall become the final permissible rent level (maximum lawful rent ceiling), subject to re-determination only pursuant to Regulation 1009. The time period and procedure for filing such an appeal shall be clearly set forth.

[As Amended March 3, 1986; March 11, 1988; December 27, 1998; and April 7, 2000]



1006. Determination of Permissible Rent Level Where No Prior Certification Has Been Issued or an Initial Rent Has Been Established Since the Last Certification

(A) Extent of Review. Where the rental unit has not previously been certified or, on or after January 1, 1999, an initial rent has been established since the last certification, the Executive Director, or his or her designee, shall review the rent registration forms, other information contained in the property files, the Hearings Unit files and any other information available to the Board for the purposes of determining the permissible rent level (maximum lawful rent ceiling) for the rental unit. The review shall include the following:

(1) The rent in effect on December 30, 1979 shall be determined from the registration forms and other information available to the Board.

(2) The December 30, 1979 rent shall be compared with the rent reported to be in effect on May 31, 1980 to insure that the May 31, 1980 rent does not exceed that charged on December 30, 1979 by more than the maximum 5% increase permitted under Ordinance No. 5212-N.S. If the May 31, 1980 exceeds the 5% increase permitted under Ordinance No. 5212-N.S., the apparent base rent for purposes of this regulation shall be deemed to be the December 30, 1979 rent plus 5%. For all other units, except units for which an initial rent was established after January 1, 1999, the apparent base rent ceiling for purposes of this regulation shall be deemed to be the May 31, 1980 rent. For units that had an initial rent established on or after January 1, 1999, the base rent ceiling shall be the initial rent as reported on the most recent vacancy registration form filed with the Board.

(3) In circumstances where the initial registration statement or vacancy registration form is not substantially completed, the landlord shall be notified that the property is not properly registered and that the Board is unable to determine the permissible rent level without the missing information. An initial registration statement shall be considered substantially completed when it contains all the information required by Section 13.76.080 with the exception of subsections (3), (9), (10) and (11). The landlord shall be required to furnish the missing information, including evidence of the rent which was actually charged on the date(s) specified. Said evidence shall consist of a lease or rental agreement in effect on the date in question, a copy of a rent receipt, books of account or other documents clearly establishing the rent in effect on the date in question. If the landlord is unable to furnish satisfactory evidence, the landlord shall complete a declaration form substantially equivalent to that which is required under Regulation 801(B), which sets forth the rent the landlord reasonably believes to have been in effect on the date(s) in question and includes the basis for the landlord's belief that the rent in effect was the amount claimed by the landlord. A landlord who supplies the requested information, and who otherwise was in substantial compliance with the registration requirements, shall not be held to be unregistered for purposes of this regulation in determining eligibility for the various annual general adjustments.

(4) The base rent ceiling as determined above shall be increased by the amount of subsequent Annual General Adjustments for each year in which the property was in

substantial compliance with the registration requirements if the Board has no information establishing that the landlord was otherwise ineligible for the Annual General Adjustments in question. In situations where the property was not in substantial compliance with the registration requirements or where the Board has information establishing that the landlord was otherwise ineligible for any Annual General Adjustments, the adjustment for the year(s) in question shall be disallowed when computing permissible rent level. For purposes of this regulation, "substantial compliance" shall be determined by Regulation 801(G).

(5) If the property first came under coverage by virtue of the provisions of the Tenant's Right Amendment Act of 1982 (Measure G) the permissible rent level shall be determined as set forth above, except that the starting point for all calculations shall be the rent in effect on December 31, 1981.

(6) Any Individual Rent Adjustment(s) which has been granted shall be taken into account when computing the permissible rent level. All determinations made in such IRA hearings, or in any rent withholding for non-registration hearings, shall be controlling and the results reached in said proceeding shall not be altered or superseded.

(7) If the current tenancy began between January 1, 1996 and December 31, 1998, the permissible rent level shall include any adjustments lawful under Regulation 1013(B) that are reflected on vacancy registration forms filed with the Board.

(B) Notification Concerning Determination.

In addition to the Certificate of Permissible Rent Level, the Board shall provide the landlord and tenant with a notice containing the following information:

(1) The specific dollar amount of the permissible rent level for each year from 1980 to and including the current permissible rent level;

(2) Notice that the Board has not made any attempt to inquire into whether or not the landlord has substantively complied with the provisions of Measure I and Ordinance No. 5212-N.S. Such notification shall clearly set forth the provisions of Measure I and Ordinance No. 5212-N.S. which affect the lawful base rent ceiling pursuant to Berkeley Municipal Code Section 13.76.100. It shall further specifically set forth the computational steps necessary to determine the lawful base rent ceiling and rent ceilings. The notice shall further advise that if the landlord or tenant wishes to contest the base rent ceiling or the lawful rent ceilings, a timely appeal must be filed;

(3) The notice shall also state that the Board has made no attempt to determine the landlord's eligibility for the various general adjustments or for establishing an initial rent under Regulation 1013, except insofar as such eligibility depends upon registration of the property. The notice shall set forth the various eligibility conditions for the Annual General

Adjustments and also state that if such ineligibility continues for an entire calendar year, the landlord permanently loses the annual general adjustment in question pursuant to Section 13.76.112.(H) of the Ordinance.

(4) Notice that unless a timely Appeal of Certificate of Permissibly Rent Level is filed, the rent level identified in the Certificate shall become final permissible rent level (maximum lawful rent ceiling), subject to redetermination only pursuant to Regulation 1009. The time period and procedure for filing such an Appeal shall clearly set forth; and

(5) Notice that if the unit is vacant, or becomes vacant during the appeal period, that the landlord must so notify the Board.

[Effective Date: March 11, 1988; amended December 27, 1998]

1007. Appeal of Certificate of Permissible Rent Level

The landlord or tenant may appeal the determination of the permissible rent level stated in the certificate within fifteen (15) calendar days from the date of the issuance, or within twenty (20) days if the Certificate is mailed. A fee in the amount listed in the Board's fee schedule shall be paid for the appeal. The appeal must be on a Rent Board form and must state the factual basis for contesting the certificate of permissible rent level. The appeal shall be heard by a hearing examiner and a decision issued within sixty (60) days following the date of filing of the appeal. The decision of the hearing examiner shall be the final decision of the Board. The Board, however, retains the right to review the hearing examiner's decisions on its own motion for the 90 day period after the decision of the hearing examiner. Where the final decision on appeal changes the amount of permissible rent level stated in the original Certificate, a revised Certificate of Permissible Rent Level shall be issued.

[Amended effective: March 20, 1992]

1008. (RESERVED)

1009. Basis for Re-determination of Permissible Rent Level

The permissible rent level reflected in the certificate is the final decision of the Board unless appealed pursuant to Regulation 1007. A landlord or tenant who wishes to contest the permissible rent level after the appeal period has expired shall file a statement of the basis for re-determination on a Board form in addition to the Appeal. The permissible rent level may be re-determined only upon a showing of (a) fraud or misrepresentation, including the Board's failure to accurately reflect a prior certification or individual rent adjustment decision, (b) a failure to receive notice as required by law, or (c) where a vacancy occurred during the appeal period. A landlord's failure to provide full and accurate information on a Vacancy Registration form regarding the circumstances of the termination of a prior tenancy constitutes intentional misrepresentation.

[Effective Date: March 11, 1988, amended May 3, 2004 adding the last sentence to (c).]

1010. (RESERVED)

1011. Annual Notification of Apparent Lawful Rent Ceiling - **\*\*REPEALED 12/19/97\*\***

By November 15 of each calendar year, except calendar years 1992, 1994 and 1995, the Board shall mail a Notice of Apparent Lawful Rent Ceiling to all landlords and tenants of registered rental units in the City of Berkeley. The notice shall contain the following information:

- (A) The most recent lawful rent ceiling certified by the Board for the rental unit;
- (B) The apparent current lawful rent ceiling for the rental unit based on annual general adjustment orders issued by the Board since the most recent certification for the rental unit;
- (C) An explanation of the conditions which a landlord must satisfy in order to be eligible for annual general adjustments; and
- (D) An explanation of the right to obtain from the Board a binding certification of the lawful rent level for the rental unit.

A copy of the annual notification of apparent lawful rent ceiling will be placed in the Rent Stabilization Program property file.



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) 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.

(D) 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.

[Amended May 31, 1991 and December 27, 1998]

1013. Vacancy Rent Adjustment - Page 1

(A) New Maximum Allowable Rent

(1) Pursuant to Section 1954.50, et seq. of the Civil Code, the landlord may establish the lawful maximum allowable rent for any controlled rental unit consistent with this regulation. The new rent level shall thereafter become the maximum lawful rent ceiling for the unit for all purposes including, but not limited to, the computation of all future rent adjustments. The unit shall otherwise remain controlled by all other regulations of the Rent Board.

(2) In this Regulation the terms “new rent level,” “new rent ceiling” and “initial rental rate” refer to the rent established by the landlord for a tenant whose tenancy becomes effective after January 1, 1996. For tenancies commencing on or after January 1, 1999, the “initial rent” for a rental unit shall be the monthly market rent established by the parties at the commencement of the most recent tenancy. Where the rental agreement includes periods for which the tenant pays reduced, discounted or “free” rent, the “monthly market rent is calculated as the average of the monthly payments made during the initial term of the agreement or, in the case of a month-to-month tenancy, during the first twelve months of the tenancy.

(3) Required provisions in rental agreements that contain periods for which the tenant pays reduced, discounted or “free” rent.

When the written rental agreement includes periods for which the tenant pays reduced, discounted or “free” rent, the rental agreement must include a clause identifying what the rent ceiling will be following the expiration of the initial term of the tenancy; or, in the case of a month to month tenancy, after the first twelve months of the tenancy. The rent ceiling shall be calculated in accordance with the averaging requirements as set forth in Section 1013(A) (2) herein.

This statement must be in at least fourteen point font and in close proximity to the space reserved for the tenant’s signature.

The provisions of 1013(A) (3) described herein shall become effective for initial rental agreements entered into no sooner than fifteen days after the date this regulation becomes effective.

(B) Vacancy Rent Levels

(1) Commencing January 1, 1996, a landlord may establish the initial rent rate for all new tenancies consistent with Civil Code Section 1954.50, et seq., and any Board regulations enacted consistent therewith, except where any of the following applies:

(a) (i) The previous tenancy has been lawfully terminated by the landlord pursuant to Civil Code Section 1946, unless the tenancy was terminated prior to December 31, 1994 pursuant to Berkeley Municipal Code section 13.76.130A.9. in order for the landlord to

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recover possession of the unit for his or her own use and occupancy as his or her principal residence or for use and occupancy as a principal residence by the landlord's spouse, child or parent and the landlord or relative thereafter resided continuously at the unit for at least two years; or

(ii) The previous tenancy has been lawfully terminated upon a change in terms of tenancy noticed pursuant to Civil Code Section 827, except a change permitted by law in the amount of rent or fees or resulting from the owner's termination of or failure to renew a contract or recorded agreement with the Berkeley Housing Authority or any other governmental agency that provided for a rent limitation to a qualified tenant of the unit. A tenancy shall be presumed to have terminated upon a change in terms of tenancy if the tenant(s) vacate(s) the rental unit within twelve months of the landlord's unilateral change in the terms of the lease. Absent a showing by the landlord that the tenant(s) vacated for reasons other than the change in the terms of the lease, the initial rental rate for the new tenancy shall be no greater than the most recent rent ceiling (prior to the new tenancy).

(b) The new tenancy began within three years of the date that the owner terminated or failed to renew a contract or recorded agreement with the Berkeley Housing Authority or any other governmental agency that provided for a rent limitation to a qualified tenant of the unit, unless, for tenancies established after January 1, 2000, the new tenancy is exempted from this limitation pursuant to Civil Code Section 1954.53(a)(1)(B). During the three year period, the rental rate for any new tenancy established in that vacated unit shall be at the same rate as under the terminated or nonrenewed contract or recorded agreement, increased by any subsequently authorized Annual General Adjustments.

(c) The landlord has otherwise agreed by contract with the City of Berkeley or any other public entity to limit or otherwise restrict rent levels in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of title 7 of the Government Code.

(d) The dwelling or unit has been cited in an inspection report by the appropriate government agency as containing serious health, safety, fire or building code violations, as defined by Health & Safety Code Section 17920.3 excluding those caused by disasters, for which a citation was issued at least 60 days prior to the date of the vacancy, and the cited violation had not been abated when the prior tenant vacated and had remained unabated for at least 60 days, unless the time for correction was extended by the agency that issued the citation.

(e) The prior tenant vacated the property as a proximate result of the conduct by the landlord which constitutes acts prohibited by law, or which constitutes constructive eviction or a breach of the covenant of quiet enjoyment of the property.

(f) The prior tenant was the spouse, child or parent of a landlord who recovered

possession of the unit pursuant to Berkeley Municipal Code section 13.76.130.A.9b.

(g) The initial rental rate as described in this section shall not, until January 1, 1999, exceed the amount calculated pursuant to subdivision (2) below. Nothing herein, however, shall prevent a landlord from charging a new rent level which is less than any preexisting rent ceiling.

(2) Before January 1, 1999, no landlord may set an initial rent level except upon the occurrence of a voluntary vacancy, abandonment, or an eviction for non-payment of rent, and an initial rent level may be set at an amount no greater than:

(a) Fifteen percent (15%) more than the rent in effect for the immediately preceding tenancy, or

(b) Seventy percent (70%) of the prevailing market rents in effect at the time of the beginning of the new tenancy for comparable units as established by HUD Fair Market Rents (FMRs) or,

(c) The lawful rent ceiling.

(d) Fifteen percent (15%) more than the rent in effect for the immediately preceding tenancy plus increases in the lawful rent ceiling for which the landlord became eligible but which were not implemented because the tenancy ended in December and the new tenancy began in January of the following year.

(3) As used in this subsection, the term "rent in effect" shall mean the last rent actually paid by the last tenant to occupy the unit and pay rent.

(4) The rent increases authorized by subsection (B)(2) shall not occur more than twice for any unit between January 1, 1996 and December 31, 1998. Where the initial rent imposed by a landlord on or after January 1, 1996 is no more than the rent in effect for the immediately preceding tenancy, the initial rent shall not count as one of the two increases authorized by this subsection. Nothing contained herein negates the obligation contained in Subsection (K) of this Regulation to register all new tenancies which commence after January 1, 1996.

(C) Single Family Residences

(1) For purposes of this Regulation, a single family residence is defined as a unit that is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d) or (f) section 11004.5 of the Business and Professions Code.

1013. Vacancy Rent Adjustment - Page 4

(2) Commencing January 1, 1996, with regard to a single-family residence that has not been rented since May 31, 1980, the landlord may establish the initial and all subsequent rental rates for all new tenancies.

(3) Commencing January 1, 1996, the landlord may establish the rent level for a new tenancy in a single-family residence consistent with subsection (B) of this regulation.

(4) Commencing January 1, 1999, the landlord may establish the initial and all subsequent rental rates of a single-family residence for all new tenancies except where:

(a) The preceding tenancy has been terminated by the landlord by notice pursuant to Section 1946 of the Civil Code or has been terminated upon the change in terms of tenancy noticed pursuant to Section 827 of the Civil Code.

(b) The landlord has otherwise agreed by contract with the City of Berkeley or any other public entity to limit or otherwise restrict rent levels in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of title 7 of the Government Code.

(c) The dwelling or unit contains serious health, safety, fire or building code violations, excluding those caused by disasters, for which a citation has been issued by the appropriate governmental agency, and which citation has remained unabated for six months or longer preceding the vacancy.

(d) The dwelling or unit is a condominium that has not been sold separately by the subdivider to a bona fide purchaser for value.

(5) The landlord may establish the initial and all subsequent rental rates pursuant to this subsection for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy was created between January 1, 1996 and December 31, 1998.

(D) Rent Defined

(1) For purposes of this regulation, "rent" is defined as the rent in effect for the immediately preceding tenancy which did not exceed the lawful rent ceiling.

(2) For the purpose of this Regulation, the term "rent" does not include any fees or charges paid by the tenant to the landlord pursuant to a lawful separate agreement between the tenant and the landlord as defined in Regulation 1012.

(3) The rent level established by the landlord pursuant to this Regulation shall become the new rent ceiling for the unit.

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(E) Landlord Defined

“Landlord,” as used in this regulation, means an owner of record, lessor, or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

(F) Prevailing Market Rents

(1) “Prevailing Market Rents” are defined as the rental rate that would be authorized for comparable units pursuant to 42 U.S.C.A. 1437(f), as calculated by the United States Department of Housing and Urban Development (HUD) pursuant to Part 888 of Title 24 of the code of Federal regulations. For purposes of this regulation, of the prevailing market rents shall be referred to as HUD FMRs (“fair market rents”), and include the cost of utilities except telephone.

(2) “Comparable units” for the purpose of this subsection is defined as those rental units that have the same number of bedrooms. A "bedroom" shall include a room intended for sleeping which conforms to the provisions of Chapter 5 of the Uniform Housing Code, being not smaller than seventy (70) square feet in floor area with a ceiling height not less than seven (7) feet six (6) inches

(3) The Board shall obtain copies of the FMRs, issued by HUD and make them available to the public.

(G) Voluntary Vacancies

(1) For the purposes of this Regulation, “voluntary” shall mean the independent choice of the tenant, without intimidation, pressure, or harassment.

(2) Non-Voluntary Vacancy

(a) A vacancy resulting from harassment, threats to withdraw the property from the rental market pursuant to the Government Code Section 7060-7060.7 (Ellis Act), or notices of any kind that negligently or intentionally misrepresent to the tenant that he or she is required to vacate the controlled unit shall not be considered voluntary.

(b) “Harassment” shall be defined as a knowing and willful act or course of conduct directed at a specific tenant or tenants which:

(i) Would cause a reasonable person to fear the loss of use and occupancy of a residential unit or part thereof, or of any service, privilege or facility connected with such use and occupancy, including any housing service within the meaning of the Rent Ordinance Section 4(C), without legitimate reason or legal justification;

(ii) Materially interferes with a tenant’s peaceful enjoyment of the use and

occupancy of a residential rental unit.

(c) A single act may constitute harassment for purposes of determining whether a vacancy was voluntary. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Acts constituting harassment include, but are not limited to the following:

(i) Eviction on the grounds of owner or relative occupancy pursuant to Rent Ordinance section 13(A)(9) or (10), which is not in good faith.

(ii) The threat or repeated threat to evict a tenant in bad faith, under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;

(iii) Reduction in housing services under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;

(iv) Reduction in maintenance or failure to perform necessary repairs or maintenance under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;

(v) Abuse of the landlord's right of access into a residential unit within the meaning of California Civil Code §1954;

(vi) Verbal or physical abuse or intimidation;

(d) A vacancy occurring as result of the filing of a Notice of Intent to Withdraw under Government Code Section 7060-7060.7 (the Ellis Act) shall not be considered voluntary.

(e) A tenancy and subsequent vacancy created as a sham shall not be considered voluntary. A sham tenancy may be presumed where the occupant did not have a bona fide landlord-tenant relationship with the landlord, or occupied the property for less than four (4) months and principally for the purpose of vacating the property to establish eligibility for vacancy-related increase.

(H) Eviction for Nonpayment of Rent

Eviction for "non-payment of rent" is defined as the action to terminate a tenancy due to the tenant's failure to pay the rent to which the landlord is entitled under the rental housing agreement and existing law pursuant to Rent Ordinance section 13(A)(1) and/or paragraph (2) of Civil Code Section 1161.

(I) Abandonment

For purposes of this section "abandonment" is defined as the tenant's independent choice,

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without intimidation, pressure, or harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the landlord terminates the tenancy pursuant to Civil Code Section 1951.3.

(J) No Rent Increase for Existing Tenants

The maximum lawful rent ceiling for any controlled rental unit that is occupied by an existing tenant shall not be increased under the provisions of this Regulation, while said tenant occupies his or her unit.

(1) For purposes of this Regulation, "existing tenant" refers to all persons who are defined as "tenants" pursuant to Rent Ordinance section 4(I), i.e. any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

(2) No tenant occupying a controlled rental unit, who has the right to occupancy of a controlled rental unit, shall have his or her rent increased pursuant to this Regulation or Civil Code §1954.50, et seq. Pursuant to section 13(A)(2) of the Rent Ordinance, no tenant shall be required to vacate a controlled rental unit as a result of a covenant or condition in a rental agreement requiring the tenant to surrender possession.

(K) Registration after January 1, 1996

Pursuant to sections 6(F)(17), 6(P) and 8 of the Rent Ordinance, any landlord who rents a unit to a new tenant after January 1, 1996, shall re-register the unit with the Board within fifteen (15) days of the re-rental of the unit. This provision does not apply to a sublet where there is no rent increase or to a short-term seasonal rental, as defined in Regulation 1014, if the rent for the short-term seasonal rental is less than the rent for the immediately preceding tenancy.

(1) The re-registration shall be filed upon a form, entitled "Vacancy Registration Form" provided by the Board. The Board shall approve such form by Resolution and the contents of the form may be changed from time to time.

(2) The landlord shall provide all information required by the form.

(3) Failure of the landlord to properly re-register a unit pursuant to this regulation shall result in the property being deemed not to be in compliance with section 8 of the Rent Ordinance

(L) Amenities

Until January 1, 1999, the base amenities shall remain the same for any unit as those provided on May 31, 1980, or the first rental date thereafter, or as otherwise determined by final Board



decision.

(M) Increase and Decrease Petitions

Nothing in this Regulation prohibits tenants or landlords from filing rent decrease or increase petitions pursuant the Board's regulations.

(N) Fraud or Intentional Misrepresentation

Any increase in the maximum allowable rent authorized pursuant to this regulation that is obtained by fraud or misrepresentation by the landlord or his or her agent, servant, or employee shall be void.

(O) Subletting

(1) An owner may increase the rent by any amount allowed by Civil Code section 1954.50 et seq., and subsection (B) of this Regulation, to a sublessee or assignee where the original occupant or occupants who took possession pursuant to the rental agreement with the owner, no longer permanently reside there. The term "original occupant" as used herein is defined in Regulation 409. Within fifteen (15) days of any rent increase pursuant to this Subsection (O)(1), a Vacancy Registration form described in Subsection (K) shall be filed with the Board.

(2) Where one or more of the occupants of the premises pursuant to the agreement with the owner provided for above, remains an occupant in lawful possession of the dwelling or unit, this subdivision shall not apply to partial changes in occupancy of a dwelling or unit made with the consent of the owner. Nothing contained in this subsection shall establish or create any obligation of an owner to permit or consent to a sublease or assignment.

(3) Acceptance of rent by the landlord shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment, or as a waiver of an owner's rights to establish the initial rental rate, unless the landlord has received written notice from the tenant that is a party to the agreement and thereafter accepted rent. The landlord's right to establish the initial rent shall not be waived if, after receiving written notice that the last original occupant has vacated the premises, the landlord agrees in writing with any tenants still occupying the unit that the landlord's right to establish the initial rental rate, consistent with Civil Code section 827, shall be extended for up to six months following receipt of the notice.

(4) A landlord may not unilaterally impose or require an existing tenant to agree to new material terms of tenancy or a new rental agreement, unless the provisions are substantially identical to the prior rental agreement.

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(5) Where the landlord initially rents a rental unit to a tenant and authorizes more than one tenant to occupy the unit, but fails to place the name of more than one tenant on the lease, all tenants who occupy the unit within one month, with permission of the landlord, express or implied, shall be considered to be original occupants.

[Effective January 1, 1996; amended May 27, 1997, August 22, 1997 and March 20, 1998; addition of (O)(5) effective October 23, 1998; addition of (G)2(f) effective December 27, 1998; addition of (1)(a)(ii) and deletion of (G)2(f) effective March 5, 1999; (B) and (O) amended August 20, 1999; (B)(1)(a)(ii), (B)(1)(b) through (f) amended February 11, 2000; addition of (C)(d) amended January 7, 2002; amended March 18, 2002 changed (B)(1)(g) and inserted a new (B)(1)(f); amended February 20, 2003 added last two sentences to (A)(2); removed definition of “original occupant” from Section (O)(1) and placed it in Regulation 409 – 9/19/19; amended April 15, 2021 added 1013(A)(3)]

1014. Short-term Seasonal Rentals

(A) A short-term seasonal rental refers to a rental unit that is rented pursuant to a written rental agreement for a tenancy beginning between May 15, 1998 and July 15, 1998 that does not exceed three months.

(B) The purpose of this regulation is to allow landlords to rent units during the summer of 1998 at a rent lower than the unit would command during the academic year without suffering a reduction of the maximum allowable rent obtainable when the summer rental terminates. Without this regulation, landlords might elect to keep units vacant during the summer rather than suffer a permanent rent reduction in the fall.

(C) The landlord of a short-term seasonal rental that is rented for an amount less than the immediately preceding tenancy shall not be required to re-register the rental unit pursuant to Regulation 1013(K) until the termination of the short-term seasonal rental.

(D) Upon re-renting a unit following the termination of a short-term seasonal rental that was rented for an amount less than the immediately preceding tenancy:

(1) the landlord may establish a new initial rent. In establishing the new initial rent, the landlord may treat the rent in effect for the tenancy immediately preceding the short-term seasonal rental as the rent in effect for the immediately preceding tenancy for purposes of Regulation 1013(B); and

(2) the landlord shall be required to reregister the unit pursuant to Regulation 1013(K).

[Effective March 20, 1998.]

1015. Removal of Ellis Act Constraints

(A) The landlord of a rental unit whose tenants were served a Notice of Intent to Remove Accommodations from Rent or Lease pursuant to the Ellis Act (Gov't Code §7060 *et seq.*) may rescind the Notice and request the removal of the constraints put on the property pursuant to Gov't Code Section 7060.2 and Berkeley Municipal Code section 13.77.040. The constraints shall be removed if the landlord establishes that no vacancies occurred, or will occur within a period of one year, as a consequence of the Ellis filing or that there are exceptional circumstances that warrant removing the constraints. The landlord shall supply such information and documentation as the Executive Director or his or her designee may require to investigate the rescission and request for removal of the constraints. The landlord and tenants of all units on the property shall be notified of the determination on the rescission of the Notice of Intent to Withdraw Accommodations from Rent or Lease and/or request for removal of the constraints on the property.

(B) If the Executive Director, or his or her designee, determines that the constraints will not be removed and the landlord disagrees, the landlord may within 15 days of the determination, file a request for hearing on the matter. The hearing shall be conducted in accordance with the rules for hearings set forth in Chapter 12.

(C) If it is ultimately determined that the constraints should be removed, upon receipt of a fee from the landlord in the amount imposed by Alameda County for the recordation of a document, the Board shall have recorded a notice removing the constraints on the landlord's property.

[Effective September 20, 2001.]

1016. Rent Level following an Owner Move-In Notice or Eviction

A. A landlord who serves a 30-Day Notice of Termination of Tenancy pursuant to Berkeley Municipal Code section 13.76.130.A(9) for the purpose of recovering possession of the unit for his or her own use and occupancy as a principle residence or the principle residence of a relative may rescind the notice or stop eviction proceedings but, if the tenant vacates within one-year of the date of service of the notice, the tenancy is presumed to have been terminated by the owner as a result of the notice. The rental rate for the next tenancy established in the vacated unit shall be no more than the maximum allowed under the Rent Ordinance for the tenant who vacated, plus any subsequent increases authorized by the Rent Board.

B. This presumption applies even though the tenant vacates the unit after the notice has been rescinded. A written statement from the tenant that he is leaving of his own volition signed as part of a settlement whereby the tenant is required to vacate the unit is insufficient to rebut this presumption.

C. A landlord may rebut the presumption by requesting a Certificate of Permissible Rent Level and following the procedures in Regulation 1007 for challenging the determination of the permissible rent level stated in the certificate.

D. A written or oral request from a landlord to vacate a unit so the landlord or a relative of the landlord may occupy the unit as his principle residence shall be treated as a Notice to Terminate Tenancy pursuant to Civil Code section 1946 for the purpose of determining the rent level when the unit is subsequently rented.

[Effective November 19, 2001]

## 1017. Temporary Housing for Disaster Victims

(A) This regulation is intended to enable landlords to provide emergency housing to disaster victims, refugees, and tenants displaced by local emergencies without risk of suffering long-term financial disadvantage and to assist such displaced persons in finding temporary housing while coping with the effects of the disaster, refugee crisis, or temporary displacement.

(B) Upon being informed of the following the Board may, by resolution, invoke the provisions of this regulation; said resolution will remain in effect for six months unless either rescinded earlier or extended by the Board:

1. A federal, state, or local disaster has been declared by the appropriate governmental authority and persons displaced by the disaster ("disaster victims") may be in need of temporary housing in Berkeley.
2. A refugee crisis has emerged and displaced refugees may be in need of temporary housing in Berkeley. A refugee, as defined by the United Nations 1951 Refugee Convention and subsequent Protocol, is a person with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it."
3. A tenant or group of tenants currently residing in Berkeley receives written certification by the Building Official, Fire Marshal, or their designee, that as a matter of public health and safety and/or as a matter of habitability, the tenant's rental unit is in such unsafe or unhealthy condition following a fire, earthquake, landslide, or similar local emergency that the tenant cannot or should not reside in the affected rental unit until it has been appropriately repaired.

(C) When the Board is not in session or is otherwise unavailable, the Executive Director, or his or her designee, may intervene on the Board's behalf without prior Board approval, to issue an order temporarily invoking the provisions of this regulation on a form provided by the Board. The order shall detail the nature of the disaster, refugee crisis, or local emergency, and the need for immediate action. The order shall have the same effect as the Board's invocation of the provisions of this regulation as outlined in Paragraph (B), and shall remain in effect until the Board next meets and is able to vote on the matter. The Executive Director or his or her designee shall notify the Board Chair and Vice Chair in writing that an Executive Order under this regulation was issued, and shall attach a copy to the communication.

(D) Notwithstanding any other provisions of these regulations, when a displaced tenant as outlined in section (B) of this regulation, and the landlord of the replacement unit agree in writing for the tenant to rent the unit temporarily at a below-market rental rate, the landlord

may increase the rent to market-level at the end of the temporary period provided that the agreement states the amount of rent that will be charged. The subsequent rent to be charged, as identified in the lease agreement, shall be treated as the initial rent for purposes of Regulation 1013. The temporary period of discounted rent may be extended by mutual agreement at any time. Any agreement entered into pursuant to this regulation must permit the disaster victim, refugee, or temporarily-displaced tenant, to terminate the agreement during the temporary period on notice of no less than 30 days.

[Effective: October 17, 2005; Amended February 22, 2016.]

**Emergency Regulation 1017.5 [Agreements Regarding Discounted Rent Made During the COVID-19 State of Emergency]:**

A. For tenancies which began on or before September 1, 2020, a landlord and tenant may agree in writing to a temporary rent reduction without reducing the lawful rent ceiling as defined by Chapter 10 of the Rent Stabilization and Eviction for Good Cause Ordinance (BMC Chapter 13.76.100) and accompanying Rent Board Regulations throughout the duration of the local State of Emergency for the COVID-19 pandemic. Written agreements for temporary rent reduction entered into during the local State of Emergency may extend beyond the expiration of the local State of Emergency where the landlord and tenant expressly agree to the duration in writing. The written agreement must include a statement that the reduction is temporary and is unrelated to market conditions, habitability, or a reduction in housing services.

B. If the original rental agreement executed by the landlord and tenant provided for any reduced, discounted, or “free” rent, the provisions of Rent Board Regulation 1013(A)(2) apply. Any subsequent written agreement for rent reduction pursuant to the terms of this regulation shall not adjust the lawful rent ceiling as established by the original rental agreement.

C. Rent that is reduced pursuant to this regulation is deemed permanently waived and may not be demanded as unpaid rent or debt at any time.

D. When the original rental agreement does not include any reduced, discounted, or “free” rent, this emergency regulation supersedes the existing rule that the lawful rent ceiling must be calculated to account for reduced, discounted, or “free” rent during the initial term of the agreement as stated in Rent Board Regulation 1013(A)(2). Apart from enacting an allowance for temporary rent reductions during the local State of Emergency for the COVID-19 pandemic and any extension associated with those reductions, this provision shall have no further effect on B.M.C. Chapter 13.76 or any Rent Board Regulations that establish the underlying law, rules, and procedures for determining a lawful rent ceiling.

[Effective Date: 4/3/2020; Amended on 8/28/20 to adjust the operative date to September 1, 2020, to allow tenancies that began on or before that date to be covered by the provisions of this regulation, and make clear that the agreed-upon reduced rent is deemed permanently waived, so landlords may not later demand it as unpaid rent.]



1018. Initial Rent Determinations

(A) The landlord or tenant of a rental unit who seeks a determination of the landlord's eligibility to establish the initial rental rate for the rental unit as allowed by the Costa-Hawkins Rental Housing Act (Civil Code §1954.50 et seq.) may file a petition on a form provided by the Board. The petition shall include an explanation of the basis for the petition, a statement of the issues for which a determination is sought and supporting documentation. If filed by the landlord, the petition shall include the names and last known address of the most recent former tenants of the unit. Proof that the petition has been served on all other parties to the rental agreement shall be submitted with the petition.

(B) Petitions filed under this section shall be expedited so that a hearing on the petition is held within 30 days of filing and a decision rendered within 30 days of the hearing. The parties shall be given at least 15 days notice of the hearing. A copy of the petition shall be referred to the Board's administrative staff who shall thereafter investigate the basis for the petition and prepare a report stating the findings of the investigation. Such investigation may include inspection of the property, investigation of public records and any other reasonable means of ascertaining the status of the property. The report and any relevant evidence submitted for consideration by Rent Board staff shall be included in the hearing record.

(C) Except as provided in Subdivision (B), proceedings on petitions filed under this section shall be conducted according to all provisions of Chapter 12, Subchapter B. The party filing the petition has the burden of proving the basis for the petition by a preponderance of the evidence presented to the hearing examiner. The decision shall be binding only with respect to the issues actually raised by the petition and any rights established pursuant to this regulation may be redetermined upon a showing of fraud, misrepresentation or concealment of material facts.

(D) A petition filed pursuant to this regulation shall not be a petition to determine whether the unit is the tenant's primary residence as defined in Regulation 524. Among other reasons as defined in paragraph (A) above, petitioner may file pursuant to this regulation to determine that the last original occupant, as defined under Regulation 1013(O), no longer permanently resides in the unit. If the last original occupant no longer permanently resides in the unit, an owner will be eligible for a Costa Hawkins vacancy rent adjustment on any remaining sublessees or assignees pursuant to Regulation 1013(A).

1. When determining whether an original occupant permanently resides in a rental unit, the Board shall only consider whether the tenant permanently resided in the rental unit as of the date of the petition was filed pursuant to this regulation. It shall not be dispositive that an original occupant no longer permanently resides in the rental unit if, at the time the petition is filed, the original occupant is not physically residing in the unit. Permanently residing in a rental unit does not require the original occupant's continuous physical presence in the unit. Evidence that an original occupant resides in more than one rental unit is not dispositive that the original occupant no longer permanently resides in the rental unit in question.

2. Evidence of an original occupant's absence from the rental unit during a period of time prior to the time of filing and unrelated to whether the tenant permanently resides at the rental unit as of the date of filing shall not be considered for the purpose of making a determination under this subsection.

[Effective Date: 07/17/06; Amended 11/14 to add Section (D) to further clarify the way the Board has always interpreted this regulation (the relevant date to determine whether a tenant no longer permanently resides in a unit is the date of filing, and a landlord may not use evidence of past absences unless they are related to whether the tenant is currently residing at the unit.)]

1019 –1099 (RESERVED)