



RENT STABILIZATION BOARD
LEGISLATION, IRA / AGA & REGISTRATION COMMITTEE MEETING

Wednesday, September 21, 2022

4:30 p.m.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE.

Pursuant to Government Code Section 54953(e)(3), City Council Resolution 70,030-N.S., and Berkeley Rent Stabilization Board (Rent Board) Resolution 21-29, this meeting of the Rent Board's **Legislation, IRA/AGA & Registration Committee** (Committee) will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Resolution and the findings contained therein that the spread of COVID-19 continues to be a threat to the public health and that holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies. Therefore, **there will not be a physical meeting location available.**

To access this meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device by clicking on this URL: <https://us06web.zoom.us/j/81735314336?pwd=cmJ3TW9ucWNGK0hpaWQ5Nk84NFc3Zz09>. If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "Rename" to rename yourself to be anonymous. To request to speak, use the "Raise hand" icon by rolling over the bottom of the screen.

To join by phone: Dial 1-408 638 0968 and enter Webinar ID: 817 3531 4336 and Passcode: 563060. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Committee Chair.

To submit an e-mail comment to be read aloud during Public Comment, email mbrown@cityofberkeley.info with the Subject line in this format: "PUBLIC COMMENT ITEM FOR LIRA COMMITTEE". Please observe a 150-word limit. Time limits on public comments will apply. Written comments will be entered into the public record. **Email comments must be submitted to the email address above by 2:30 p.m. on the day of the Committee meeting in order to be included.**

Please be mindful that this will be a public meeting and all rules of procedure and decorum will apply for meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with Government Code Section 54953 and all current state and local requirements allowing public participation in meetings of legislative bodies. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to DéSeana Williams, Executive Director of the Rent Board, at 510-981-7368 (981-RENT). The Committee may take action related to any subject listed on the Agenda.



Rent Stabilization Board

RENT STABILIZATION BOARD

LEGISLATION, IRA / AGA & REGISTRATION COMMITTEE MEETING

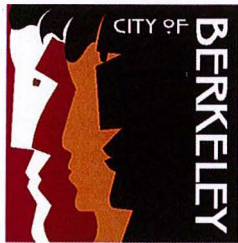
Wednesday, September 21, 2022 – 4:30 p.m.

AGENDA

1. Roll call
2. Approval of the agenda
3. Land Acknowledgment Statement: The Berkeley Rent Stabilization Board recognizes that the rental housing units we regulate are built on the territory of xučyun (Huchiun-(Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's landlords and tenants have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878 and since the Rent Stabilization Board's creation in 1980. As stewards of the laws regulating rental housing, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today.
4. Approval of minutes from the March 9, 2022 meeting (Attached to agenda)
5. Public Comment
6. Chair Report
7. Discussion and possible action regarding sanction options for failure to produce Vacancy Registration Forms for current tenancies (See attached staff report)
8. Discussion and possible action regarding possible changes to Rent Board Regulations authorizing penalty waiver process
9. Discussion and possible action regarding preparing agency for the expiration of the current eviction moratorium
10. Discussion and possible action regarding LIRA Committee Work Plan
11. Discussion and possible action regarding future agenda items
12. Confirm next meeting date
13. Adjournment

STAFF CONTACT: Matt Brown, General Counsel (510) 981-4930

COMMITTEE: Soli Alpert, Xavier Johnson, Andy Kelley (Chair), Leah Simon-Weisberg



Rent Stabilization Board

RENT STABILIZATION BOARD

LEGISLATION, IRA / AGA & REGISTRATION COMMITTEE MEETING

Wednesday, March 9, 2022 – 5:00 p.m.

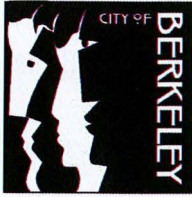
Minutes – (*Unapproved*)

1. **Roll call:** Matt Brown called Roll at 5:03 p.m.
Members Present: Alpert, Johnson, Kelley and Simon-Weisberg.
Staff Present: M. Brown, M. Siegel and D. Williams.
2. **Approval of the agenda:** M/S/C (Johnson/Simon-Weisberg) Motion to approve the Agenda. Roll call vote. YES: Alpert, Johnson, Kelley and Simon-Weisberg. NO: None; ABSTAIN: None; ABSENT: None; Carried: 4-0-0-0.
3. **Land Acknowledgment Statement:** Committee Chair Kelley read the Land Acknowledgment Statement.
4. **Approval of minutes from the February 9, 2022 meeting (Attached to agenda):** M/S/C (Simon-Weisberg/Johnson) Motion to approve the February 9, 2022 committee meeting minutes. Roll call vote. YES: Alpert, Johnson, Kelley and Simon-Weisberg. NO: None; ABSTAIN: None; ABSENT: None; Carried: 4-0-0-0.
5. **Public Comment:** None.
6. **Chair Report:** None.
7. **Discussion and possible action regarding potential 2022 ballot initiatives to amend the Berkeley Rent Ordinance (See attached staff report):** M/S/C (Johnson/Alpert) Motion to Recommend to the full Board Staff recommendations, incorporating comments and language from the Committee. Roll call vote. YES: Alpert, Johnson, Kelley and Simon-Weisberg. NO: None; ABSTAIN: None; ABSENT: None; Carried: 4-0-0-0.
8. **Discussion and possible action regarding future agenda items:** The Committee agreed to discuss these items at the next meeting.
 - ➔ Potential Regulation regarding Occupancy Subleases (Commissioner Johnson)
 - ➔ Potential items for the 2022 ballot initiatives (Commissioner Alpert)

9. **Confirm next meeting date:** The Committee agreed to meet on Tuesday, April 5, 2022 at 5:00 p.m.
10. **Adjournment:** M/S/C (Simon-Weisberg/Johnson) Motion to Adjourn. Roll Call vote YES: Alpert, Johnson, Kelley and Simon-Weisberg; NO: None; ABSTAIN: None; ABSENT: None. Carried 4-0-0-0. Meeting adjourned at 6:30 p.m.

STAFF CONTACT: Matt Brown, General Counsel (510) 981-4930

COMMITTEE: Soli Alpert, Xavier Johnson, Andy Kelley (Chair), Leah Simon-Weisberg



Rent Stabilization Board
Legal Department

MEMORANDUM

DATE: September 21, 2022

TO: Honorable Members of the Legislation/IRA/AGA/Registration Committee

FROM: Matt Brown, General Counsel *MB*
Ollie Ehlinger, Staff Attorney
Hannah Kim, Staff Attorney

SUBJECT: Sanction Options for the Failure of an Owner of a Fully-Covered Unit to Produce Tenancy-Related Information, such as Vacancy Registration

Issues:

1. Can the Rent Board prevent a landlord from implementing Annual General Adjustments (AGAs) for failure to completely register a rental unit through its failure to fill out an Initial Registration Statement (IRS) or Vacancy Registration (VR) form?
2. Can a tenant withhold rent when their landlord fails to fill out an IRS or VR form?
3. Can the Rent Board assess a monetary penalty against landlords that have failed to timely fill out an IRS or VR form?

Background:

Commissioners have expressed interest in determining if the Board can impose sanctions on fully-covered landlords that fail to accurately update tenancy information beyond initial registration, most specifically VR forms. Because Rent Board data relies on voluntary reporting of information, the failure of a landlord of a fully-covered property to report all tenancy-related information may cause the Rent Board to have inaccurate information regarding tenancies at that owner's property. For instance, if a landlord fails to file a VR form for a new tenancy in a fully-covered unit, the Rent Board would not be aware of the new Costa-Hawkins rental adjustment for that unit. The Rent Board's data for that unit would reflect a rent ceiling based on the last tenancy the owner properly reported to the Rent Board.

The Ordinance and Regulations provide for a penalty for unpaid registration fees and sanctions of denied AGAs and reduced rent ceilings for unregistered properties. The Board has not extended these sanctions to the failure to file VR forms.

However, a California state law, known as the Petris Act, limits actions that an agency that implements a rent stabilization program can take to sanction owners not in compliance with program requirements. This memo evaluates the Board's current registration requirements and sanctions for non-compliance; how the Board could extend such sanctions to include tenancy-related information beyond initial registration; and whether an extension of sanctions would violate the Petris Act.

1. Registration Requirement:

The Ordinance requires all landlords with properties rented or available to rent for residential use to register their properties with the Rent Board. Berkeley Municipal Code (BMC) sections 13.76.050, 13.76.080. However, the Ordinance only empowers the Board to assess a penalty on owners who fail to pay the annual registration fee.¹ BMC section 13.76.080F. The Ordinance also states that a landlord who has failed to register a covered unit completely by July 1 is not eligible to increase the rent under the AGA. BMC section 13.76.110D(4).

BMC section 13.76.060P allows the Board to require a landlord to "provide current information supplementing their registration status." Regulation 801 specifically defines a "complete" or "proper" registration. Section(A) states that a rental unit is properly registered only when the landlord 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;
- (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.

Regulation 801(D) defines a "rental registration statement" to include all of the following:

- (1) the initial registration statement;
- (2) any required annual registration statement;
- (3) any vacancy registration; and
- (4) any supplemental registration statement approved and required by the Board.

Despite references to "annual" or "supplemental" registration statements in Regulation 801(D), there does is no policy to require additional information from a landlord beyond the initial

¹ While the Ordinance makes clear that landlords are not in compliance with the Registration requirements until all required information is provided to the Board, the Ordinance only imposes monetary penalties for failure to timely pay Registration Fees.

registration statement and vacancy registration forms, when applicable.

Regulation 1013(K) requires that a landlord who rents a unit to a new tenant after 1996 (and thus able to charge a "new" market rent) file a VR form within 15 days of the commencement of the new tenancy. Regulation 1013(K)(3) reiterates that failure to file the VR form renders the unit unregistered. Thus, any fully-covered unit that has been subjected to a Costa Hawkins increase that the owner failed to report to the Rent Board through a VR form is unregistered under the Regulations, even if the owner has continued to pay the annual registration fee.

There is no current policy or practice to sanction a landlord for failure to file a VR form. A review of agency hearing decisions that were available electronically revealed only a 2016 hearing examiner's order requiring an owner to file a VR for a 2011 vacancy. Order Requesting Additional Information, *Lawrence v. Trunzo* (Rent Board April 12, 2016) L-4217. Although the parties resolved this matter through a stipulation, the agreement did not include any sanction for the landlord's failure to file a VR. *Id.*, Decision Pursuant to Agreement of the Parties.)

2. Current State of Registration Sanctions:

As discussed above, the Board may assess a penalty equal to 100% of the registration fee upon a landlord who fails to pay the registration fee (adding an additional 100% penalty for each 6-month period that the fee and penalty remain unpaid). BMC section 13.76.080F.

Current regulations permit a tenant to petition to withhold rent prospectively when the tenant alleges the landlord has not registered the unit. Regulations 1501, 1527. Prior to any hearing on a petition alleging the landlord has not registered the unit, the Board must provide a landlord "a description of the actions the landlord must take to register and the penalties for continued non-compliance." Regulation 1503. If a landlord complies with registration requirements prior to a hearing on a petition to withhold rent, the Rent Board must dismiss the petition. Regulation 1528. If the hearing examiner finds that the landlord has failed to register the unit, the hearing examiner must order the landlord to register and authorize the tenant to withhold rent. Regulation 1529. The tenant is able to withhold 50% of the current rent until the owner registers the unit; if the owner registers the unit after 60 days from the order, the tenant is able to withhold 100% of the rent. Regulation 1531.

Current regulations also permit a tenant to petition for a rent rebate and rent withholding when the tenant alleges the landlord has charged more rent than allowed by the Ordinance. Regulations 1501, 1543. The hearing examiner must determine the proper base rent ceiling, the maximum lawful rent on the date of the petition, and the amount of unlawful rent that the tenant paid. Regulation 1545. The hearing examiner can order both rent withholding until the owner charges the lawful rent and that the owner refund any unlawful rent to current and former tenants. *Id.* However, in cases where the hearing examiner finds a rent ceiling violation resulting from non-registration, the hearing examiner must calculate the lawful rent to include AGAs the landlord would have been eligible for if the landlord establishes a good faith error lead to the non-registration. Regulation 1546.

3. Applicability of California Civil Code section 1947.7:

California Civil Code section 1947.7 (part of the Petris Act) provides a safe harbor provision for owners in rent stabilization jurisdictions. A local agency enforcing a rent stabilization ordinance may not assess a penalty or any other sanction for noncompliance upon a landlord who "substantially complies" with the rent control ordinance. Civil Code section 1947.7(b). "Substantial compliance" for the purposes of determining whether a local agency may sanction an owner has two components: first, that the "the owner.... has made a *good faith* attempt to comply with the ordinance, charter, or regulation sufficient to reasonably carry out the intent and purpose of the ordinance, charter, or regulation, but is not in full compliance;" and second, that the owner "has, after receiving notice of a deficiency from the local agency, cured the defect in a timely manner." (*emphasis added*) *Id.* Regulation 801(G) requires the Rent Board follow the section 1947.7 standard for substantial compliance when determining whether a landlord has registered their units.

Section 1947.7(g) narrows the scope of information a local agency may require of an owner; it states that a local agency may request an owner provide information regarding a tenant, but that the agency may only compel the owner to provide the tenant's name. However, the Board is likely able to compel a landlord to provide most information in the Board's VR forms because this information, the rental amount and services provided, is not the tenant's personal information.

As discussed below, current Board practice with regards to sanctioning owners who fail to comply with initial registration requirements do not violate section 1947.7. Extending these practices to sanction landlords who fail to report other required tenancy-information (such as vacancy registration) likewise would not violate section 1947.7, assuming the Board gave landlords more explicit notice that the failure to turn in a VR form puts the landlord out of compliance with registration requirements.

Analysis:

A. The Petris Act does not inherently prevent the Board from sanctioning owners for failing to provide tenancy-related information.

1. The Rent Board can prevent a landlord from implementing AGAs during the period of non-compliance when they fail to completely register a rental unit by not providing the Board with tenancy-related information.

The Petris Act allows a local agency to both prohibit a landlord from assessing rental increases in accordance with the AGA if the landlord is not fully compliant with a rent control ordinance and order a landlord to return any rent collected above the frozen rent level. Civil Code section 1947.7(b). However, once an owner comes into the compliance with the ordinance, the local agency must restore the blocked AGAs prospectively. Civil Code section 1947.7(c). The Board may use denial of AGAs to sanction landlords for failure to register rental units, assuming compliance with the other aspects of the Petris Act, because the registration requirement is a core

part of the Berkeley Ordinance.

The Board may then also extend this sanction to the failure to provide updated tenancy information, such as a VR. Regulation 801(D) and 1013(K) establish that a unit without timely VRs is not “fully” or “completely” registered, as defined in Regulation 801. Additionally, the information that the Board seeks through VR forms is required “to carry out the intent and purpose” of the Ordinance as required by Section 1947.7 because this information is necessary to ensure the Rent Board can accurately determine rent levels. *See* BMC 13.76.060F

2. Section 1947.7 does not prevent the Rent Board from issuing an order allowing a tenant to withhold rent prospectively if a landlord fails to completely register a rental unit through its failure to fill out an IRS or VR form.

Just as section 1947.7 would not prevent the Rent Board denying AGAs retroactively, section 1947.7 would also allow the Rent Board to order rent withholding on this basis that the landlord has failed to file a VR form. A tenant must bring a petition under Regulation 1501 for failure to register the unit. As noted, under Regulations 801D and 1013K, a unit without a VR form would be technically unregistered. The pre-hearing notice provision in Regulation 1503 and the phased-in withholding time period after the hearing examiner’s order in Regulation 1531 would provide notice of the deficiency in registration status to the landlord and satisfy section 1947.7 (*See Minelian v. Manzella* (1989) 215 Cal.App.3d 457, 462-64: A landlord cannot claim “substantial compliance” after disregarding a hearing examiner’s order to re-register a unit, although the Court did not rule on whether rent withholding for failure to register even constitutes a “sanction” under section 1947.7).

As with the retroactive AGA penalty, Board materials should make clear that failure to file a VR form constitutes a failure to register.

3. The Ordinance does not currently allow the Board to assess a fine on an owner for registration deficiencies other than failure to pay the annual fee, but Section 1947.7 would not prevent the Rent Board from assessing a fine upon an owner that fails to provide tenancy-related information.

Courts reviewing rent stabilization agency sanctions have found that an administrative agency may impose fines or penalties to “induce compliance with their regulatory authority” but may not impose penalties that produce arbitrary or disproportionate results. *McHugh v. Santa Monica Rent Control Board* (1989) 49 Cal.3d 348, 378-379. However, a fine levied against an owner that makes no attempt to come in compliance with a rent control ordinance does not violate section 1947.7. *Village Trailer Park, Inc. v. Santa Monica Rent Control Bd.* (2002) 101 Cal.App.4th 1133, 1147.

Currently, the Ordinance authorizes the Board to assess a penalty only when a landlord does not pay their registration fee. BMC 13.76.060F(16); 13.76.80F. Because this is the only monetary sanction authorized by the Ordinance, the Board could not via regulation fine an owner for failure to provide registration information. To levy such a fine, the Board would need to receive

authority through a voter approved amendment to the Ordinance.

B. The Board must make explicit to owners that providing tenancy-related information is a registration requirement to ensure that any sanction practice complies with the Petris Act.

As discussed above, the Petris Act prohibits the Board from sanctioning a landlord for failing to comply with registration requirements unless and until the landlord receives “notice of a deficiency” and fails to correct the defect in a timely matter. Therefore, to establish that a landlord is out of compliance with registration requirement beyond payment of the registration fee and initial registration, the Board may need to make explicit that the VR form is a required component of a complete or full registration.² The owner of a registered unit who is current on all fees may plausibly claim they did not have notice of the requirement to report all tenancy-related information.

The Board might accomplish providing notice to landlords that a unit without a VR is not fully registered by requiring landlords to affirmatively certify the Rent Board’s current data on a landlord’s individual rent levels is accurate. If the Board requires landlords to make this certification (either electronically through the Rent Registry or via returning a form sent out with the annual billing statement or notice of AGA), the Board should make clear that the statement is meant as notice of deficiency within the meaning of Section 1947.7(b). The Board should also set specific time period for certifying correct information or correcting outdated information in order. Regulation 801(D) empowers the Board to require a “supplemental registration statement;” therefore, such additional statements are likely within the Board’s current authority.

Review of Measures to Sanction Owners for Failure to Provide Tenancy-Related Information in Other Agencies:

Other local agencies that sanction owners for failure to provide tenancy-related information appear to do so in two ways: monetary penalties and/or denial of annual rent increases. However, other rent stabilizations ordinances and regulation have more explicit “re-registration” requirements than Berkeley, which compel landlords to update tenancy-related information annually, as opposed to only upon a vacancy or the loss of an exemption.

As an example of a local agency utilizing monetary penalties: East Palo Alto’s rental stabilization ordinance and regulations empower the local agency to fine an owner that fails to timely provide an initial or annual registration statement. Similar to Berkeley’s Ordinance, East Palo Alto’s Ordinance requires registration of units. East Palo Alto Municipal Code section 14.04.080. However, East Palo Alto requires re-registration “within 30 days of the commencement of a new tenancy for a specific rental unit.” *Id.* at (A). Additionally, East Palo Alto may assess penalties for both failure to pay fees and failure to complete a re-registration

² The Ordinance and Regulations very clearly establish that a unit is not properly registered until a landlord files all required vacancy registration information, but this likely does not satisfy the “notice of deficiency” requirement defined in the Petris Act.

statement. *Id.* at (E). The Rent Stabilization Board Regulations for the City of East Palo Alto allow the East Palo Alto Board to levy a \$25.00 late fee and \$50.00 processing fee for each additional 60 days the registration is delayed per unit. Regulation 600(R)(2)(c).

As an example of a local agency that denies AGAs: West Hollywood's rental stabilization ordinance and regulations empower the local agency to deny annual general increases to a landlord who fails to provide tenancy-related information, and denies a landlord AGAs for failure to both register or reregister a unit. Reregistration requires a landlord to file tenancy information for any new tenancy after January 1, 1996, to capture Costa Hawkins increases. WHMC section 17.28.20(c). Upon coming into compliance with registration or reregistration requirements, a West Hollywood landlord may prospectively apply AGAs denied during periods of non-compliance but must first retroactively refund the difference between the lawful rent and the overcharged rent to the tenant.

The following tables summarize the variation on these two sanction methods used by various rent stabilization agencies.

Fig. 1: Jurisdictions that assess fines for failure to provide registration information.

Jurisdiction	Nature of Penalty	Municipal Code Section/Regulation
East Palo Alto	\$25.00 processing fee, \$50.00 additional fee per 60 days per unit for either late initial or "re-registration."	East Palo Alto Municipal Code sections 14.04.010, 14.04.080; Regulation 600 R
Culver City	Annual "re-registration" of each rental required. Fines up to \$1000.00 authorized.	Culver City Municipal Code sections 15.09.230; 15.09.245.
San Jose	Annual "re-registration" of each rental required. \$100.00 fee for late registration.	San Jose Municipal Code section 17.23.900.
Los Angeles	Requires "renewal" or registration for new tenancy. Penalty of 150% of rental fee for delinquent registration	Los Angeles Municipal Code section 151.15.

Fig. 2: Jurisdictions that prohibit owners from raising rents for failure to provide registration information.

Jurisdiction	Municipal Code Section/Regulation
East Palo Alto	East Palo Alto Municipal Code sections 14.04.010, 14.04.080; Regulation 600 R
West Hollywood	West Hollywood, California Municipal Code section 17.28.040
Union City	Union City Municipal Code section 5.50.090(B)

Fig. 3. Jurisdictions that allow tenants to withhold rent for an owner's failure to provide registration information

Jurisdiction	Municipal Code Section/Regulation
Santa Monica	Regulation Chapter 8, Section 8003(a); Section 810 (a).
West Hollywood	West Hollywood Municipal Code section 17.68.010(b)
Richmond	Regulations 416 (tenant may petition), 418 (Board may petition in lieu of tenant).

Conclusion:

The Rent Board could adapt current regulations and practices that sanction landlords for failure to comply with registration requirements to also sanction landlords for failure to turn in additional tenancy-related information because some additional tenancy-related information, such as the VR form is already included in the definition of a “completely” or “fully” registered unit.

Neither the denial of AGAs during a period of non-compliance nor the authorization of rent withholding nor a fine for failing to produce tenancy related information would violate the Petris Act. However, in order to effectuate a sanction in the first two categories, the Board must clearly provide notice to landlords that failure to provide information beyond initial registration will cause to the landlord to fall out of compliance with registration requirements. Additionally, the Board may not assess a fine for failure to produce tenancy information without a change to the Ordinance approved by the voters.