



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

Monday, April 3, 2023

5:30 p.m.

Rent Stabilization Board Law Library – 2001 Center Street, 2nd floor, Berkeley, CA 94704

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION.

For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

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/81340716120?pwd=elpLOTBiRkRrVElQOWFnODh2d0k5QT09>. . 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 1-669-900-6833 and enter Webinar ID: 813 4071 6120 and Passcode: 866547. 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 for the Committee's consideration and inclusion in the public record, 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 3:30 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 apply for both in-person attendees and those participating 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

Monday, April 3, 2023 – 5:30 p.m.

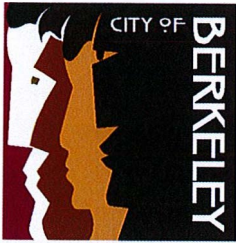
Rent Stabilization Board Law Library – 2001 Center Street, 2nd floor, Berkeley, CA 94704

AGENDA

1. Roll call
2. 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.
3. Approval of the agenda
4. Approval of minutes from the February 6, 2023 meeting (Attached to agenda)
5. Public Comment
6. Discussion and possible action to recommend that full Board approve changes to Regulations 883 and 884 (See attached Staff 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 future agenda items
 - ➔ Expansion or extension of certain City services to all residents (Commissioner Kelley)
 - ➔ Potential Rules and/or Regulations for digital or keyless entry (Commissioner Kelley)
 - ➔ Potential Regulation regarding Occupancy Subleases (Commissioner Johnson/Alpert)
 - ➔ Inventory of Proposed Amendments to the Ordinance (Commissioner Alpert)
 - ➔ Potential items for the 2024 ballot initiatives (Commissioner Alpert)
9. Confirm next meeting date
10. Adjournment

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

COMMITTEE: Soli Alpert, Andy Kelley (Chair), Ida Martinac, Nathan Mizell



Rent Stabilization Board

RENT STABILIZATION BOARD

LEGISLATION, IRA / AGA & REGISTRATION COMMITTEE MEETING

Monday, February 6, 2023 – 5:30 p.m.

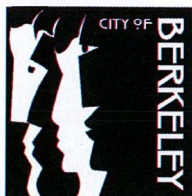
Minutes – (Unapproved)

1. **Roll call:** Matt Brown called Roll at 5:37 p.m.
Members Present: Alpert, Kelley, Martinac and Mizell.
Staff Present: M. Brown, A. Eberhart, O. Ehlinger and D. Williams.
2. **Approval of the agenda:** M/S/C (Alpert/Mizell) Motion to approve the Agenda. Roll call vote. YES: Alpert, Kelley, Martinac and Mizell; NO: None; ABSTAIN: None; ABSENT: None; Carried: 4-0-0-0.
3. **Land Acknowledgment Statement:** The Recording of the Land Acknowledgment Statement read by Executive Director Williams was played before Item #2.
4. **Approval of minutes from the September 21, 2022 meeting (Attached to agenda):** M/S/C (Alpert/Kelley) Motion to approve the September 21, 2022 committee meeting minutes. Roll call vote. YES: Alpert, Kelley, Martinac and Mizell; NO: None; ABSTAIN: None; ABSENT: None; Carried: 4-0-0-0.
5. **Public Comment:** None
6. **Election of Committee Chair:** Recommendation to elect Commissioner Kelley as Chair of the Committee, Commissioner Kelley accepted. M/S/C (Alpert/Kelley). Motion to nominate Commissioner Kelley as Chair of the Committee. Roll call vote. YES: Alpert, Kelley, Martinac and Mizell; NO: None; ABSTAIN: None; ABSENT: None. Carried: 4-0-0-0.
7. **Discussion and possible action to recommend that full Board approve changes to Regulations 525, 1205, 1210 (See attached Staff Report):** M/S/C (Alpert/Martinac) Motion to recommend that the full Board approve staff recommendations for changes to Regulation 525, 1205 and 1210. Roll call vote. YES: Alpert, Kelley, Martinac and Mizell; NO: None; ABSTAIN: None; ABSENT: None; Carried: 4-0-0-0.
8. **Discussion and possible action regarding preparing agency for the expiration of the current eviction moratorium and possible action to recommend that full Board request that City Council extend protections:** M/S/C (Alpert/Martinac) Motion to place an Action Item on the February 16th Rent Board Agenda discussing support for an additional Step-down period following the lifting of the current Eviction Moratorium. Roll call vote. YES: Alpert, Kelley, Martinac and Mizell; NO: None; ABSTAIN: None; ABSENT: None; Carried: 4-0-0-0.

9. **Discussion and possible action regarding LIRA Committee Work Plan:** The Committee agreed to review its annual calendar and deadlines at the next meeting.
10. **Discussion and possible action regarding future agenda items:** The Committee agreed to discuss these items at the next meeting.
 - ➔ Expansion or extension of certain City services to all residents (Commissioner Kelley)
 - ➔ Potential Rules and or Regulations for digital or keyless entry (Commissioner Kelley)
 - ➔ Potential Regulation regarding Occupancy Subleases (Commissioner Johnson/Alpert)
 - ➔ Inventory of Proposed Amendments to the Ordinance (Commissioner Alpert)
 - ➔ Potential items for the 2024 ballot initiatives (Commissioner Alpert)
11. **Confirm next meeting date:** The Committee agreed to meet next on Monday, March 6, 2023 at 5:30 p.m.
12. **Adjournment:** M/S/C (Mizell/Alpert) Motion to Adjourn. Roll call vote. YES: Alpert, Kelley, Martinac and Mizell; NO: None; ABSTAIN: None; ABSENT: None; Carried: 4-0-0-0. Meeting adjourned at 6:37 p.m.

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

COMMITTEE: Soli Alpert, Andy Kelley (Chair), Ida Martinac and Nathan Mizell



**Rent Stabilization Board
Legal Unit**

DATE: April 3, 2023
 TO: Honorable Members of the LIRA Committee
 FROM: Matt Brown, General Counsel ^{MB}
 Ollie Ehlinger, Staff Attorney
 SUBJECT: Proposed amendments to Regulations 883 and 884 to streamline the waiver process.

Recommendation

That the LIRA Committee recommend the full Board adopt the attached updates to Regulations 883 and 884.

Background

The Ordinance requires landlords to fully pay annual registration fees on all rental properties on or before July 1 of each year. Following the July 1 deadline, the Board assesses a 100% penalty on all delinquent registration fees.¹ For all delinquent accounts, the Board assesses a further 100% penalty for unpaid registration fees every six months thereafter.

While the Ordinance does not allow the Board to waive the collection of registration fees, it provides broad authority to allow for waivers of penalties assessed for late payment. Regulations 881, 883, 884, and 885 govern the waiver process. The Board's goal for the waiver process has historically been compliance rather than punishment. By creating a system where owners with delinquent accounts may come current with fees and penalties without extreme sanction, the Board hopes to incentivize owners to make timely payments in the future. Moreover, the Board understands that there is a net benefit to having more properties properly registered.

Regulations 883 and 884(C) govern ministerial waivers: waiver requests where, because of the reason for late payment provided by the owner, the regulations empower Rent Board staff to determine the appropriate amount of the penalty to waive. Ministerial waivers include requests for waiver that arose from staff errors, waiver requests for registration fees the owner pays within 60 days of the due date, waiver requests from new owners of Berkeley rental property, and a catch-all category based on the owner's payment history. Ministerial waivers provide staff a set schedule as a guide to waive various penalties. For instance, Regulation 883(D) allows staff to waive 100% of penalties for a previously registered property which Rent Board staff erroneously failed to bill. Regulation 883(H) applies to owners who fully pay their registration fee within a 60-day period after the due date, and provides staff a schedule to waive penalties, based on the owner's payment history.

¹ BMC Section 13.76.080F.

Regulation 884(B) contains the provisions for discretionary waivers: waiver requests which require Board staff to weigh a list of factors and provide a recommended waiver amount for Board consideration. Regulation 884(B) does not provide staff with guidance on how to weigh each factor when providing a recommendation to the Board. Therefore, when drafting recommendations to the Board for discretionary waivers, staff must undertake a more extensive, holistic review of the property, and in some cases the owner. For instance, Regulation 884(B)(4) states that one of the factors to be considered when evaluating a discretionary waiver is that two or more of the rental units at the property are not available for rent. Regulation 884(B)(4) does not state how unavailable units affect an owner's waiver request or how to evaluate the unavailable units compared to other factors in the regulation.

Once staff receive a waiver, they review the supporting materials to determine if a discretionary category applies to the request. In that case, the staff prepare an analysis of the request under the factors laid out in Regulation 884(B) and make a recommendation to the Board. If no discretionary categories apply to the waiver, the staff investigate the waiver request as a ministerial waiver.²

Proposed Regulatory Changes

Rent Board staff has identified a few areas in which the waiver process could be improved to promote fairness and administrative efficiency. First, staff has fielded multiple waiver requests from owners who, upon the denial of an initial waiver, assert new and previously undisclosed grounds for a waiver on a subsequent waiver request. Currently, the Regulations do not contain any clear direction regarding the finality of decisions regarding waivers for the Board or staff. The proposed regulations indicate that waiver determinations are final, and no additional requests for waiver may be submitted for the same penalty.

Second, with the inclusion of Measure MM units in the billing cycle, staff finds it necessary to increase the period in which an owner can make full payment for registration fees and request a waiver from 60 days to 90 days. With the increase in units for which Board currently collects registration fees, registration staff currently spend the month of July processing registration payments. Extending this deadline allows registration staff extra time to thoroughly review all accounts as well as pursue informal collection efforts which often lead to increased compliance without a complicated waiver process.³

Third, the proposed regulations narrow the scope of factors staff must consider for a discretionary waiver recommendation. To the extent possible, the proposed regulations remove factors from discretionary review and place them into the ministerial review. This allows staff to more quickly review a greater amount of waiver requests. To effectuate this, the proposed

² In very simple cases where Board staff is able to waive a significant majority or all of the penalty, staff will process the waiver request using the regulatory ministerial relief outlined in Regulation 883. For example, if a landlord has paid the fee late only once in the past six years, staff has the authority to waive 100% of the penalty without having the Board review the application for waiver.

³ For the last several years, the Board has adopted an amnesty period to allow the staff to work with the landlord community to address delinquent accounts. Adding 30 days to the process outlined in Regulation 883(H) will provide a more workable framework for dealing with these penalties and hopefully increase compliance without having to process so many discretionary waiver requests.

regulations create new subsections in Regulation 883.

- Proposed Regulation 883(J) applies to waiver requests filed after the Rent Board has started legal action to collect fees and penalties; the corresponding factor in the current discretionary waiver process is Regulation 884(B)(2). The schedule in this proposed subdivision matches the Board's internal policy for settlement of accounts during a small claims or superior court collection action. Adding this subdivision would prevent a landlord from receiving a larger penalty waiver than that landlord would be entitled to by settling their court case with the Board.
- Proposed Regulation 883(K) applies to waiver request filed for a property subject to a rent ceiling reduction or a rent withholding order; the corresponding factor in the current discretionary waiver process is Regulation 884(B)(5). The schedule in this proposed section incentivizes landlords to quickly comply with hearing orders and encourages compliance with the Ordinance and often times helps to ensure that units are brought to acceptable levels of code compliance with habitability issues.
- Proposed Regulation 883(L) applies to waiver request for properties with two or more units not available for rent; the corresponding factor in the current discretionary waiver process is Regulation 884(B)(4). The schedule in this proposed section matches staff's current recommendations for units unavailable due to permitted rehabilitation work.

The proposed additions to Regulation 883 also include the introduction of subparagraph numbering for the existing schedules in Regulation 883, in order to improve readability.

Additionally, the proposed regulations remove certain discretionary waiver factors. The Proposed regulations remove current Regulation 884(B)(3), the discretionary waiver factor for a landlord who has tried to perform a no-fault eviction since 1999. Staff's rationale for removing this factor is that this factor requires a search through the eviction history of all a landlord's property since 1999 and creates an administrative burden. Moreover, this provision was first introduced in 2003 when Costa-Hawkins vacancy increases were relatively new and might have been more indicative of a landlord's increased rental income and thus ability to pay a penalty.

The proposed regulations remove current Regulation 884(B)(9) which allows landlords to assert that they have received foreclosure paperwork as good cause for failing to pay their Rent Board registration fees. Staff's rationale for removing this factor is that inclusion of it may incentivize a property owner delinquent on their mortgages not to attempt to bring their property accounts current if their mortgage delinquency may be factored against granting them a waiver.

Lastly, the proposed regulation includes an additional factor in weighing discretionary waivers, based on staff's current experience. Proposed Regulation 884(B)(6) allows the Board to consider a landlord's history of responsiveness to Rent Board staff during collection efforts when making a determination on their waiver request. Registration staff spend significant time attempting to communicate with landlords who owe penalties, so that the Board is able to offer the most generous path to resolving these accounts. Landlords who consistently fail to communicate should not be given preference when waiving penalties.

To extent that these proposed regulations direct more wavier requests into ministerial review

with set schedules, the regulations still allow for Board review of waiver requests with unique facts. Proposed Regulation 883(M) allows the Executive Director to deviate from the schedules in subsections (H) through (K) if “the interests of justice require.” Additionally, Proposed Regulation 884(B)(7) allows the Executive Director to suggest a waiver amount for discretionary waivers in the interest of justice, which will provide staff the flexibility needed to address the range of reasons for nonpayment that owners provide.

In circumstances where any of the ministerial categories conflict, the proposed regulations state the Executive Director will apply the greater penalty waiver, which is consistent with the Board goal of compliance.

Conclusion

This staff report is submitted for the LIRA Committee’s consideration based on staff review of the waiver process. The proposals are particularly timely in that, if adopted prior to July 1, the regulatory amendments will help guide staff and the Board in processing registration fee penalties that come due for the 2023/2024 Fiscal Year. Staff believe the proposed amendments equitably address the goals of administrative efficiency and fairness to the landlord community while at the same time preserving the Commissioners’ broad authority to address cases that require discretionary review.

Attached is a draft of the proposed amendments to Regulations 883 and 884. Additions are underlined. Deletions are marked by strikethrough.

Financial Impact

Unknown. It is anticipated that this proposal will reduce the amount of time staff spends on waivers. These proposed regulatory changes should not significantly impact the amount of penalties the Board or staff waive but will hopefully increase compliance with the Ordinance.

Name and Telephone Number of Contact Person

Matt Brown, General Counsel (510) 981-4930

Attachments:

1. Proposed Amendments to Regulation 883
2. Proposed Amendments to Regulation 884

883. Waiver of Penalties and Interest on Delinquent Registration Fees

A landlord who is assessed a penalty pursuant to Regulation 881 may request the Board to waive all or part of the penalty by showing good cause for the delinquent payment. In order to implement the provisions of Section 8(f) of the Rent Stabilization Ordinance, the Board has determined that the following circumstances constitute good cause for waiver of penalties. When substantial delays in billing or delays in reconciling accounts are attributable to City staff, the penalties otherwise due will be waived. Additionally, when a landlord discovers that they failed to pay registration fees through their inadvertence and promptly makes full payment of registration fees, penalties may be waived or reduced as set forth in subsections (H)-(L). The Rent Board Executive Director, or his or her designee, is empowered to waive late payment penalties under the following circumstances:

(A) An invalid or erroneous account number was assigned, which resulted in billing errors or improper crediting of payments by the landlord.

(B) The landlord was billed for a fewer number of units because of errors in property records maintained by the City where the error was not attributable to information supplied by the landlord. The penalties are waived only for unbilled units; the billed units should be paid on time.

(C) The billing address of the landlord has not been corrected after the owner had notified the Board in writing of a change of address.

(D) A previously registered property was not billed as a result of staff error.

(E) A property account was erroneously closed for reasons not attributable to the landlord, and the account is subsequently reopened and billed.

(F) The determination of whether or not the property was subject to the Ordinance required an analysis by Rent Board legal staff. Penalties will be waived only while the legal opinion is pending. If the landlord raised the issue requiring legal determination, penalties will be waived only from the date of the first written contact with the Board in which the issue was raised.

Waiver of penalties will not be granted if the legal staff determines that the issue raised is already settled and/or has no substantial merit. If the legal issue was raised by Rent Board staff, the waiver period commences on the date on which the legal opinion was requested by the staff.

In all situations in which a legal opinion was requested, the waiver period terminates when the landlord is notified of the legal determination regarding the status of his/her property. In all cases in which a waiver is granted pursuant to the provisions of this subsection, penalties will again accrue if the bill is not paid within 30 days after the error has been corrected and the landlord has been notified of the determination of the status of his/her property under the Ordinance.

(G) Other errors in billing or reconciling accounts are directly attributable to Rent Board or City staff.

(H) The late payment of a fee due on July 1st is made, without deliberate delay, by ~~August 30th~~ September 30th of the same year (within ~~60~~ 90 days of the July 1st due date), and all other balances due are paid within that time. In such case, the Executive Director will, except as provided in subsection (J) below, waive the penalties based on the landlord's payment history for the property in accordance with the following schedule:

1. For the first late payment within the prior six years, - 100% of penalties waived;
2. For the second late payment within the prior six years, - 90% of penalties waived;
3. For the third late payment within the prior six years - 75% of penalties waived;
4. For the fourth late payment within the prior six years - 55% of penalties waived;
5. For the fifth late payment within the prior six years - 30% of penalties waived;
6. For the sixth late payment within the prior six years - waiver denied.

For the purposes of this subsection (H), "landlord" means the current property owner. However, if the landlord was not a bona fide purchaser for value, this definition includes the immediate predecessor owner.

(I) A new owner with no other residential rental property in Berkeley was unaware of the property registration requirements of the Rent Ordinance and registered the property within 12 months of acquiring title to the property. In such case, the Executive Director will, except as provided in subsection (J) below, waive the penalties in accordance with the following schedule:

1. The property contains 1 or 2 rental units - 100% of penalties waived;
2. The property contains 3 to 5 rental units - 90% of penalties waived;
3. The property contains 6 to 10 rental units - 75% of penalties waived;
4. The property contains 11 to 20 rental units - 50% of penalties waived;

If a property covered by the above schedule is registered between 12 and 24 months after the new owner acquired title, the percentage of penalties waived will decrease by 10%. Waiver requests for new owners of property containing more than 20 units or of properties that were not registered within 24 months of acquiring title will be evaluated pursuant to Regulation 884(B).

This subsection (I) does not apply if a prior owner incurred penalties that are outstanding and subject to review under any circumstance listed in Regulation 884(B), except subsections 884(B)(5) and (B)(6).

(J) The waiver request was filed following the referral to or initiation of legal action by the Rent Board to recover unpaid registration fees. In such case, the Executive Director will,

except as provided in subsection (M) below, waive the penalties in accordance with the following schedule:

1. The waiver request was filed during the period when the property was identified for additional collection efforts by Rent Board staff but prior to the filing of a complaint in small claims or Superior Court- 50% of penalties waived;
2. The waiver request was filed after the filing of a complaint in small claims or Superior Court but before the date of a small claims trial or dispositive motion or hearing- 40% of penalties waived.

(K) Within the past 5 years, as the result of a petition filed by a tenant at the property, the Board has reduced the rent ceiling at the property or issued an order to the landlord to register the property. In such case, the Executive Director will, except as provided in subsection (M) below, waive the penalties in accordance with the following schedule:

1. The rent ceiling reduction or Order to Register is active at the time of the waiver request- waiver denied;
2. The landlord complied with the Board's order within the past year- 40% of penalties waived;
3. The landlord complied with the Board's order between 1 and 3 years before the request - 60% of penalties waived;
4. The landlord complied with the Board's order between 3 and 5 years before the request- 80% of penalties waived.

(L) Two or more rental units on the property were not available for rent due to substantial construction or rehabilitation. In such case, the Executive Director will, upon receipt of proof that such construction or rehabilitation is fully permitted, waive 100% of the penalties for the period in which the units were not available for rent. If a landlord is unable to provide proof of permitted rehabilitation or construction work rendering the unit unavailable for rent, the Executive Director may waive up to 50% of the penalties upon receipt of other proof that the unit was unavailable for rent.

(J) (M) The payment schedules in subsections (H) and through (I L) above will not apply if the Executive Director, or his or her designee, recommends that the Board review the request under Regulation 884(B) because the interests of justice require that a greater or lesser amount be waived.

(N) If two or more of the above categories apply to a waiver request, the Executive Director will apply the subdivision which allows for the greater penalty waiver.

Proposed Amendments to Regulations 883 and 884
 April 3, 2023
 Page 8

884. Other Waiver Requests

(A) Waiver requests for good cause that do not meet the criteria enumerated in Regulation 883 will be referred to the Executive Director for review. The Executive Director, or his or her designee, will evaluate the request and determine if it should be reviewed ministerially by staff, or on a discretionary basis by the full Board. The Board will examine whether there is good cause to waive some or all of the penalties. If the landlord's request does not arise under the circumstances set forth in subsections (H) through (L) of Regulation 883, the Executive Director, or their designee, may forward waiver requests to the Board for discretionary review, when the Executive Director recommends that the Board review the request.

The decision the Board reaches for each waiver request shall be final, and the Board shall not further review waiver requests associated with the same penalty.

(B) Discretionary Waivers. The determination of good cause for a waiver of penalties depends on the totality of the circumstances in the following categories:

(1) The good cause asserted in the waiver request is a death or illness in the landlord's family and the landlord provides sufficient documentation to support their request;

~~(2) The waiver request was filed following the initiation of legal action by the Rent Board to recover unpaid registration fees;~~

~~(3) Rent Board records indicate that, on or after January 1, 1999, the landlord requesting the waiver had served a notice of termination of tenancy pursuant to Civil Code section 1946, 1946.1, or 1954.535, or a notice of intent to withdraw accommodations pursuant to Berkeley Municipal Code section 13.77.050 (Ellis Act);~~

~~(4) Two or more rental units at the property for which the waiver is requested are not available for rent;~~

~~(5) A tenant at the property for which the waiver is requested filed an Individual Rent Adjustment or Rent Withholding petition during the prior five years;~~

~~(6) The landlord requesting the waiver owns or manages 11 or more rental units;~~

~~(7) The landlord requesting the waiver was not the owner of the property when the penalty first accrued;~~

~~(8) The penalty has accrued because registration fees have not been paid for three or more fiscal years;~~

~~(9) A notice of default or notice of sale for the property has been recorded~~

~~with the county recorder's office pursuant to Civil Code section 2924, within the past five years;~~

~~(45)~~ The landlord has paid late each year for the prior five years;

(6) The landlord has a record of failing to respond to or engage with attempts by Rent Board staff to resolve account delinquencies.

~~(47)~~ The Executive Director, or his or her designee, recommends that the interests of justice require that a greater or lesser amount be waived.

~~(48)~~ The property is on the inventory of potentially hazardous soft story buildings, as defined in the Soft Story Ordinance (Berkeley Municipal Code Chapter 19.39), but the landlord is not in compliance with that ordinance. For the purposes of this Regulation, compliance with the Soft Story Ordinance means that the landlord has notified tenants and posted a notice as required by B.M.C. section 19.39.060, and submitted an Initial Screening and seismic engineering evaluation report as required by B.M.C. section 19.39.070, by the applicable deadline under B.M.C. section 19.39.090.

(C) Ministerial Waivers. For all other waiver requests, the landlord's recent payment history will determine penalties using the following schedule:

First late payment within the prior five years -	100% of penalties waived;
Second late payment within the prior five years -	80% of penalties waived;
Third late payment within the prior five years -	60% of penalties waived;
Fourth late payment within the prior five years -	40% of penalties waived.
Fifth late payment within the prior five years -	the waiver request will be decided by the full Board in accordance with Regulation 884(B)(10).

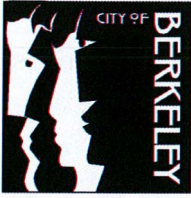
(D) For the purposes of this Regulation 884, "landlord" means the current property owner. However, if the landlord was not a bona fide purchaser for value, this definition includes the immediate predecessor owner.

(E) Where a waiver of penalties paid to the Board is granted in whole or in part, the amount of the waiver will be credited to the landlord's account to offset future registration fees unless the Executive Director, upon written request of the landlord, determines that there is good cause to issue a refund.

(F) A waiver of penalties granted under this regulation is conditional upon payment of the balance due within the time period designated by the Executive Director or the full Board.

[Amended February 5, 1999; amended August 21, 2000 by changing the initial review of requests for waiver of late registration penalties from a Board Commissioner to a Hearing

Examiner and setting forth grounds for waiver of late registration penalties as listed in A through F; amended June 24, 2003, eliminating former A – F and adding (B) 1 - 8 and various other changes; amended December 13, 2010, by clarifying the Executive Director’s role in (A), eliminating service of a 3-day notice as triggering a discretionary waiver in (B) 3, adding (B) 9 – 11, establishing a new schedule in (C), defining landlord for this regulation in (D), and making various other changes. Amended July 30, 2012 by adding subsection (12) to Section (B), which adds compliance with Soft Story Ordinance as criterion for discretionary waiver requests.]



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.