



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

**Monday, July 24, 2023 – 5:30 p.m.**

**Rent Stabilization Board Law Library – 2001 Center Street, 2<sup>nd</sup> floor, Berkeley**

**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/83605652249?pwd=Y1BZd2lBYlZZZVNmaFpUMzIzanBrdz09>. 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: 836 0565 2249 and Passcode: 680092. 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 email comment for the Committee's consideration and inclusion in the public record, email [mbrown@berkeleyca.gov](mailto:mbrown@berkeleyca.gov) 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 at the posted location(s). 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.



**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location. To request disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist at (510) 981-6418 (voice) or (510) 981-6347 (TDD) at least three (3) business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Rent Stabilization Board

## **RENT STABILIZATION BOARD**

### **LEGISLATION, IRA / AGA & REGISTRATION COMMITTEE MEETING**

**Monday, July 24, 2023 – 5:30 p.m.**

**Rent Stabilization Board Law Library – 2001 Center Street, 2<sup>nd</sup> floor, Berkeley**

#### **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 May 2, 2023 meeting (Attached to agenda)
5. Public Comment
6. Discussion and possible action regarding sanction options for failure to produce Vacancy Registration Forms for current tenancies (See attached staff report)
7. Discussion and possible action regarding the status of changes to Regulations 525, 1205, and 1210 that the LIRA Committee approved but the full Board did not
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

Tuesday, May 2, 2023 – 5:30 p.m.

**Rent Stabilization Board Law Library – 2001 Center Street, 2<sup>nd</sup> floor, Berkeley**

#### **Minutes – (Unapproved)**

1. Roll call: Matt Brown called Roll at 5:31 p.m.  
Members Present: Alpert, Martinac and Mizell. Commissioner Kelley was absent, Commissioner Alpert Chaired the meeting.  
Staff Present: M. Brown, O. Ehlinger and H. Kim. Guest B. Augusta.
2. Land Acknowledgment Statement: The Recording of the Land Acknowledgment Statement was played.
3. Approval of the agenda: M/S/C (Mizell/Martinac) Motion to approve the agenda. Voice Vote. Carried: 3-0-0-1.
4. Approval of minutes from the April 3, 2023 meeting (Attached to agenda): M/S/C (Mizell/Martinac) Motion to approve the April 3, 2023 Committee Meeting Minutes. Voice Vote. Carried: 3-0-0-1.
5. Public Comment: No Public Comment
6. Discussion and possible action regarding sanction options for failure to produce Vacancy Registration Forms for current tenancies (See attached staff report): General Counsel Brown and Staff Attorney Ehlinger gave a brief presentation and took questions from the Committee. Staff will provide an additional report at a future meeting.
7. Discussion and possible action regarding recommending that the full Board take positions on various state legislative bills (See attached staff report): M/S/C (Alpert/Mizell) Motion to recommend that the full Board take a position of Support on AB 1218 (Replacement Units Bill), No Position on AB 1317 (Unbundling Parking Bill) and that the Board Consider SB 423, Social Housing and Sequel Bills as a category. Voice Vote. Carried: 3-0-0-1.
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)
  - ➔ Discussion & Possible Revision to Public Comment Procedures (Commissioner Alpert)

9. Confirm next meeting date: The Committee agreed to meet on Tuesday, June 6, 2023 at 5:30 p.m.
10. Adjournment: M/S/C (Alpert/Martinac) Motion to Adjourn. Voice Vote. Carried: 3-0-0-1. Meeting adjourned at 6:39 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: July 24, 2023

TO: Honorable Members of the LIRA Committee

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

SUBJECT: Proposed methods to increase compliance with the vacancy registration form requirement.

### **Recommendation**

That the LIRA Committee instruct staff to develop a method to require landlords of fully-covered rental units to periodically certify that Vacancy Registration (VR) forms for current tenancies are filed. This would allow the Board to revoke the ability of a non-compliant landlord to apply the Annual General Adjustments (AGAs) for the period in which the landlord did not file a VR form.

### **Background**

Commissioners have expressed interest in determining if the Board can impose sanctions on landlords of fully-covered rental units 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 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 – not only would this affect the data the Board maintains, but it also affects the information staff is able to provide to the public regarding their rights and responsibilities as they relate to various landlord-tenant issues.

Prior to the state legislature adopting Costa-Hawkins, Berkeley maintained a system of vacancy control in which all rent levels were established as of June 1980. Rents could be raised periodically pursuant to annual adjustments ratified by the Board. Following the passage of Costa-Hawkins, the Board adopted Regulation 1013 to implement the new form of vacancy decontrol mandated by state law. Berkeley maintained its registration component of the Ordinance. The Board made clear that landlords are required to file new VR forms with current tenancy information within 15 days of the inception of each new tenancy.<sup>1</sup> Moreover, the Board clarified that landlords would not be in compliance with Chapter 8 of the Ordinance (Rent

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<sup>1</sup> Regulation 1013(K)

Registration) if they failed to properly re-register a unit with current tenancy information.<sup>2</sup>

Legal staff reviewed the ability of the Board to sanction a landlord for failure to file a VR form and discussed this topic with the LIRA Committee at its September 21, 2022 and April 3, 2023 meetings. Under the Ordinance and the Board's regulations, a property is not in full compliance with the Ordinance's registration requirement if the landlord has failed to file a VR form. However, the Ordinance only authorizes the Board to assess penalties for the failure to timely pay registration fees; it does not authorize the Board to assess monetary penalties for other registration deficiencies.

The Ordinance currently allows the Board to deny the ability of a landlord to take the AGA if the landlord is out of compliance with any registration requirement, including the requirement to file a VR form for each new tenancy. However, a state law known as the Petris Act<sup>3</sup> 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 manner. Therefore, to establish that a landlord is out of compliance with registration requirements beyond payment of the registration fee and initial registration, the Board must make explicit that the VR form is a required component of a complete or full registration and that the current information the Board retains is incorrect.

The LIRA Committee discussed two options to sanction landlords that fail to file VR forms: (1) amending the Ordinance to allow the Board to levy a fine for failure to file registration forms; and (2) instituting a process where landlords would be asked to certify that they have filed VR forms for all current tenancies. Within its discussion of possible amendments to the Ordinance, the Committee discussed an "open-ended fine" option, which would allow the Board to assess fines for various areas of non-compliance, including failure to file a VR form and a "targeted fine" option, which would limit the Board to assessing a fine for failure to file a VR form.

See below for tentative language and procedures:

### **Possible Ordinance Changes**

In order to implement a "targeted fine," the Board might seek to amend the Ordinance as follows:

#### **Berkeley Municipal Code (BMC) section 13.76.060:**

F. *Powers and duties.* The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

... 16. Charge and collect registration fees, including penalties for late payments—and fines, as set by schedule, for failure to re-register a rental unit within fifteen (15) days of the commencement of a new tenancy.

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<sup>2</sup> Regulation 1013(K)(3)

<sup>3</sup> California Civil Code Section 1947.7

### Section 13.76.080

G. The amount of any registration fee, ~~and~~ penalty, **and fine** imposed by the provisions of this chapter shall be deemed a debt to the city.

**M. Any landlord who rents a unit to a new tenant after January 1, 1996, shall re-register the rental unit with the Board within fifteen (15) days of the commencement of a new tenancy on a form prescribed by the Board. Re-registering the unit shall include providing all current tenancy information as established by the Board's Regulations.**

The Board might seek to amend the Ordinance as follows to permit the Board to issue fines for a wider variety of non-compliance issues:

#### **Berkeley Municipal Code (BMC) section 13.76.060:**

F. Powers and duties. The elected rent stabilization board shall have the power to determine, to arbitrate and to set rent levels, whether through general or individual adjustments, of any unit which has controlled rents under any Berkeley Ordinance, and to administer any Berkeley program which regulates rents and evictions. The board shall have the following powers and duties:

**...17. Charge and collect fines, as set by schedule, for non-compliance with any portion of this Ordinance. Any such fine shall be deemed a debt to the City.**

As a reminder, any option that contemplates amendments to the Ordinance would be delayed until after the next election and assumes that the proposed amendment is adopted by the voters.

#### **Possible Certification Process**

As discussed above, denying AGAs from landlords that fail to file current VR forms can be accomplished using the current powers of the Board. This method would require providing sufficient notice to landlords that filing current VR forms is a necessary requirement of registration. The Board might accomplish this with the following steps:

1. Staff would generate and mail a list of current VR information for each landlord from the Board's database. The mailing would inform landlords that a property is not fully registered under the Ordinance, if the landlord has not filed a VR form for each current tenancy and provide a deadline by which the landlord must file any missing VR forms or forms that contain incorrect information as it pertains to the current tenancy. The notice will explicitly state that the Board considers a landlord out of compliance with the registration requirements of the Ordinance if they have not filed VR forms that reflect the current tenancy information.
2. Staff would also develop a pop-up notification on the online rent registry which would require landlords to certify that the tenancies are current by the deadline specified in the mailing.
3. Upon discovering a tenancy for which the landlord has not filed a VR form after the deadline, staff will inform the landlord that they have not fully registered this property

and must return any AGAs taken on that tenancy from the start date of the tenancy. Staff will also inform tenants of their ability to file a petition for a rent overcharge if the landlord fails to return rental increases pursuant to the removed AGAs.

Please note that these steps are tentative and further consultation with Registration staff is necessary to determine the timeline for this process.

**Financial Impact**

Unknown. The ability to levy fines on landlords is unlikely to generate significant income for the Board, given that such fines will only be permitted after noticed non-compliance, and the amounts of such fines must be reasonable.

Should the Board opt to ask landlords to certify current tenancies, it will incur the cost of mailing. This cost may be mitigated substantially by combining the certification mailing with a mailing the Board already undertakes, such as the notice of the annual AGA.

**Name and Telephone Number of Contact Person**

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