



**RENT STABILIZATION BOARD
Regular Meeting**

Thursday, May 18, 2023 – 7:00 p.m.

School District Board Room – 1231 Addison Street, Berkeley, CA 94702

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/88524276546?pwd=bjBTVjNYcGtGbFQ3Wl0VUttK0hqUT09>. 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 1-669-444-9171 and enter Webinar ID: 885 2427 6546 and Passcode: 056490. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

To submit a written communication for the Board's consideration and inclusion in the public record, please email amueller@cityofberkeley.info with the Subject line in this format: "RENT BOARD MEETING PUBLIC COMMENT ITEM." Please observe a 150-word limit. **Email comments must be submitted to the email address above by 5:00 p.m. on the day of the meeting in order to be included.**

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This meeting will be conducted in accordance with Government Code Section 54953, 54956, 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, at (510) 981-7368 (981-RENT). The Rent Board 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.

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RENT STABILIZATION BOARD

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AGENDA

*Times allotted for each item are approximate and may be changed at the Board's discretion during the course of this meeting.

1. **Roll call** – 1 min.*
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. – 2 min.*
3. **Approval of Agenda** – 1 min.*
4. **Public Comment** – 2 min. per speaker for *non*-agendized items*
5. **Public Comment** – 2 min. per speaker for items on the agenda*
6. **CONSENT ITEMS** – 1 min.*
 - a. Approval of the April 20th regular meeting minutes
7. **ACTION ITEMS**
from Board Members, Committees, Executive Director or Staff

Public comment will also be heard prior to the Board's vote on each action item listed below – 1 min. per speaker

- a. Chair Update (Chair Simon-Weisberg) – 5 min.*

- b. Discussion and possible action to recommend that the Board adopt Proposed Amendments to Regulations 525 [Procedure for Challenging Tenant in Occupancy Status], 1205 [Filing the Petition], and 1210 [Notices to Opposing Parties and Board] – *First Reading* (LIRA Committee) – 15 min.*
- c. Discussion and possible action to recommend that the Board adopt Proposed Amendments to Regulations 883 [Waiver of Penalties and Interest on Delinquent Registration Fees] and 884 [Other Waiver Requests] to streamline the waiver process – *Second Reading* (LIRA Committee) – 5 min.*
- d. Discussion and possible action to recommend that the Board send a letter of support for Assembly Bill 1218 (Lowenthal) - Development projects: demolition of residential dwelling units (LIRA Committee) – 10 min.*
- e. Recommendation to adopt Resolution 23-12 authorizing the Executive Director to amend the staffing model to add an Assistant Management Analyst in the Finance Unit for the 2023-2024 fiscal year (Budget & Personnel Committee) – 10 min.*

8. INFORMATION, ANNOUNCEMENTS AND ARTICLES/MEDIA

from Board Members, Committees, Executive Director or Staff

NOTE: The Board may vote to move Information Items to the Action calendar.

- a. Eviction Moratorium outreach update (Public Information Unit Manager) – 5 min.*
- b. Copy of April Eviction Moratorium mailing to Berkeley property owners, managers, and tenants (Executive Director) – 2 min.*
- c. Update on Rent Board staff outreach at the April 22nd Berkeley Bay Festival at the Berkeley Marina (Public Information Unit Manager) – 2 min.*
- d. Copy of April 24, 2023 letter to Assemblymember Bonta conveying the Board’s support for Assembly Bill 846 (Chair Simon-Weisberg) – 1 min.*
- e. May 10, 2023 *Berkeleyside* article by Supriya Yelimeli titled, “Berkeley’s eviction moratorium is ending. Here’s what you need to know” (Executive Director) – 1 min.*
<https://www.berkeleyside.org/2023/05/10/berkeleys-eviction-moratorium-is-ending-heres-what-you-need-to-know>
- f. Date to submit agenda topics/items for June’s regular Rent Board meeting: **Monday, June 5th by 5:00 p.m.** (Board Secretary) – 1 min.*

9. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

- a. Budget & Personnel Committee (Commissioner Walker, Chair) – 5 min.*
Next regularly-scheduled meeting: Thursday, June 1st at 5:30 p.m.

May 4th agenda

- b. Eviction/Section 8/Foreclosure Committee (Commissioner Elgstrand, Chair) – 5 min.*
Next regularly-scheduled meeting: Tuesday, June 13th at 6:00 p.m.

- c. Legislation, IRA/AGA & Registration Committee (LIRA Committee)
(Commissioner Kelley, Chair) – 5 min.*
Next regularly-scheduled meeting: Tuesday, June 6th at 5:30 p.m.

May 2nd agenda

- d. Outreach Committee (Vice-Chair Alpert, Chair) – 5 min.*
Next regularly-scheduled meeting: Monday, June 12th at 5:30 p.m.

May 8th agenda

- e. 4 x 4 Joint Task Force Committee on Housing: City Council/Rent Board – 5 min.*
(Mayor Arreguín and Chair Simon-Weisberg, Co-Chairs)
Next regularly-scheduled meeting: TBA

May 2nd agenda packet

- f. Ad Hoc Committee on Environmental Sustainability (Commissioner Martinac, Chair) – 5 min.*
Next meeting date: Wednesday, June 7th at 5:30 p.m.

May 3rd agenda

- g. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District
(Chair TBA) – 1 min.*
Next meeting date: Monday, May 15th at 5:30 p.m.

May 15th agenda

- h. Updates and Announcements – 5 min.*

- i. Discussion of items for possible placement on future agenda – 5 min.*

10. ADJOURNMENT

COMMUNICATIONS DISCLAIMER:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.



RENT STABILIZATION BOARD

Regular Meeting

Thursday, April 20, 2023 – 6:30 p.m.

School District Board Room – 1231 Addison Street, Berkeley, CA 94702

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6:30 p.m.

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Minutes - *Unapproved*

1. **Roll call** – Chair Simon-Weisberg called the meeting to order at 6:33 p.m.
Commissioners present: Alpert, Elgstrand, Johnson, Kelley, Marrero, Martinac, Mizell, Walker, Simon-Weisberg
Staff present: Bethany, Brown, Bursell, Cole, Dahl, Eberhart, Ehlinger, Mueller, Williams
2. **CLOSED SESSION** – Pursuant to California Government Code Section 54956.9(a), the Board convened in closed session for an update on litigation:

Athan Magganas and Maxaco, LLC v. City of Berkeley Rent Stabilization Board
(Alameda County Superior Court Case #22CV011758)

Potential litigation: *Alan Wofsy & Associates, a California corporation (dba Hearst Commons), on behalf of itself and all others similarly situated v. City of Berkeley Rent Stabilization Board* (unfiled)

Williams, et al. v. Alameda County, Alameda County Board of Supervisors, City of Oakland, Oakland City Council (United States District Court for the Northern District of California Case # 3:22-cv-01274-LB) – amicus brief

Upon return from closed session, the Chair announced that the Board approved a motion to begin prelitigation in the *Alan Wofsy & Associates, a California corporation (dba Hearst Commons), on behalf of itself and all others similarly situated v. City of Berkeley Rent Stabilization Board* case. No other reportable action was taken.

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.

The Land Acknowledgement Statement was read aloud.

4. Approval of Agenda

M/S/C (Kelley/Alpert) APPROVE THE AGENDA WITH THE FOLLOWING CHANGES: MOVE ACTION ITEMS 9.c. AND 9.d. TO CONSENT. Voice vote. Carried: 9-0-0-0.

5. Introduction of Rent Board staff: Shamika Cole and Kaleia Bethany introduced themselves to the Commissioners.

6. Public Comment – *non*-agendized items. There were no speakers.

7. Public Comment – items on the agenda. There were no speakers.

8. CONSENT ITEMS

Action items 9.c. and 9.d. were moved to Consent by a prior vote of the Board.

- a. Approval of the March 16th regular meeting and public hearing minutes
- b. Proposal to approve staff recommendations on the following requests for waivers of late registration penalties (Executive Director/Registration Unit Manager)

Ministerial Waivers

Property Address

893 NEILSON
1230 BURNETT
1305 KAINS
455 ARLINGTON
1136-1138 KEELER
1737 PARKER
2303-2309 CALIFORNIA
1505-1507 DERBY
1767 EUCLID #1
2217 8TH ST
1560 SCENIC

Discretionary Waivers

Waiver No. Property Address

W5079 2225 8TH

W5080 2601 COLLEGE AVE #203
W5081 2304 DERBY

M/S/C (Alpert/Johnson) APPROVE ALL CONSENT ITEMS AS WRITTEN, INCLUDING ACTION ITEMS 9.c. AND 9.d. Voice vote. Carried: 9-0-0-0.

9. ACTION ITEMS

from Board Members, Committees, Executive Director or Staff

Public comment will also be heard prior to the Board's vote on each action item listed below. There were no speakers.

Action items 9.c. and 9.d. were moved to consent by a prior vote of the Board.

- a. Chair Update (Chair Simon-Weisberg) – No update.
- b. Special presentation on housing legislation by Brian Augusta, Rent Board Legislative Advocate – Mr. Augusta presented and took questions from the Board.
 - (1) State Legislative Report with discussion and possible Board action regarding several state legislative bills

M/S/C (Kelley/Marrero) SEND A LETTER OF SUPPORT FOR THE FOLLOWING BILLS: ASSEMBLY BILL (AB) 846 (BONTA), SUPPORT RENT INCREASE CAP FOR LOW-INCOME HOUSING TAX CREDIT PROPERTIES FOR INCREASES OF UP TO 3%; SENATE BILL (SB) 712 (PORTANTINO), PROVIDED THAT THERE ARE NO ADDITIONAL STORAGE CHARGES; SB 567 (DURAZO); SB 594 (DURAZO); SB 569 (GLAZER); AND AB 1620 (ZBUR). Voice vote. Carried: 9-0-0-0.

- c. Recommendation to adopt Resolution 23-10 authorizing the pass-through of a portion of the Fiscal Year 2023-2024 registration fee for fully-controlled rental units to certain tenants (Executive Director) – MOVED TO CONSENT BY A PRIOR VOTE OF THE BOARD.
- d. Recommendation to adopt Resolution 23-11 authorizing the Executive Director to increase the purchase order with ACRO Service Corporation by an additional amount not to exceed \$40,000 for full-time temporary support for administrative tasks related to changes to the Eviction Moratorium (Executive Director) – MOVED TO CONSENT BY A PRIOR VOTE OF THE BOARD.
- e. Recommendation to adopt proposed amendments to Regulations 883 and 884 to streamline the waiver process – *First reading* (LIRA Committee)

M/S/C (Mizell/Kelley) ADOPT THE PROPOSED AMENDMENTS TO

REGULATIONS 883 AND 884 AS WRITTEN. Voice vote. Carried: 9-0-0-0.

- f. Update and possible action on the waiver recommendation for Discretionary Waiver Number W5078 for 1951 Chestnut Street (Registration Unit Manager)

M/S/C (Simon-Weisberg/Kelley) ADOPT THE STAFF RECOMMENDATION FOR WAIVER W5078. Voice vote. Carried: 9-0-0-0.

10. INFORMATION, ANNOUNCEMENTS AND ARTICLES/MEDIA

from Board Members, Committees, Executive Director or Staff

**ALL ITEMS BELOW WERE BRIEFLY MENTIONED OR DISCUSSED.
UNDERLINED ITEMS HAVE ADDITIONAL COMMENTS.**

- a. Eviction Moratorium Communication Plan update (Website, Tenant/Landlord mailing/Workshop) – *Verbal* (Executive Director)
- b. Updated Commissioner attendance at Board and Committee meetings, including unanticipated remote participation, through the 1st quarter of 2023 (Board Secretary)
- c. Date to submit agenda topics/items for May’s regular Rent Board meeting: **Monday, May 8th by 5:00 p.m.** (Board Secretary)

11. COMMITTEE/BOARD MEETING UPDATES AND ANNOUNCEMENTS

- a. Budget and Personnel Committee (Commissioner Walker, Chair) – Committee Chair Walker did not have an update, but mentioned the next meeting date. Next regularly-scheduled meeting: Thursday, May 4th at 5:30 p.m.
- b. Eviction/Section 8/Foreclosure Committee (Commissioner Elgstrand, Chair) – Committee Chair Elgstrand reported that the Committee adopted its workplan. Next regularly-scheduled meeting: Tuesday, June 13th at 6:00 p.m.

April 11th agenda

- c. Legislation, IRA/AGA & Registration Committee (LIRA Committee) (Commissioner Kelley, Chair) – Committee Chair Kelley mentioned the regulation changes passed on first reading earlier, and said that the Committee will be looking at legislative and Ordinance improvements. Next regularly-scheduled meeting: Tuesday, May 2nd at 5:30 p.m.

April 3rd agenda

- d. Outreach Committee (Vice-Chair Alpert, Chair) – Committee Chair Alpert discussed the eviction moratorium outreach plan, and said the Committee is

expecting an update on the tenant survey results and will further discuss tracking and metrics.

Next regularly-scheduled meeting: Monday, May 8th at 5:30 p.m.

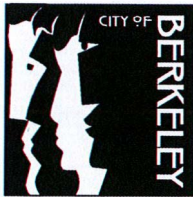
April 10th agenda

- e. 4 x 4 Joint Task Force Committee on Housing: City Council/Rent Board – Chair Simon-Weisberg mentioned the next meeting date.
(Mayor Arreguín and Chair Simon-Weisberg, Co-Chairs)
Next regularly-scheduled meeting: Tuesday, May 2nd at 3:00 p.m.
- f. Ad Hoc Committee on Environmental Sustainability (Chair TBA)
Next meeting date: Wednesday, May 3rd at 5:30 p.m.
- g. 2 x 2 Committee on Housing: Rent Board/Berkeley Unified School District (Chair TBA) – The Executive Director will confirm the first meeting date, which will likely be in early May.
Regularly-scheduled meeting date: TBA
- h. Updates and Announcements – Commissioner Elgstrand mentioned that it's likely that the Land Use Committee will discuss the Tenant Habitability Plan and Relocation Ordinance at a May 1st meeting. Chair Simon-Weisberg announced ACE outreach in Sacramento around trying to amend AB 1482. Commissioner Marrero mentioned supporting the Pajaro community. Executive Director Williams gave a reminder that the Rent Board will have a table at the Bay Festival on April 22nd.
- i. Discussion of items for possible placement on future agenda

12. ADJOURNMENT

M/S/C (Alpert/Kelley) ADJOURN THE MEETING. Voice vote. Carried 9-0-0-0.

The meeting adjourned at 9:27 p.m.



Rent Stabilization Board
Legal Department

DATE: May 18, 2023

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the LIRA Committee
By: Matt Brown, General Counsel *MB*
Hannah Kim, Staff Attorney

SUBJECT: Proposed Amendments to Regulations 525 [Procedure for Challenging Tenant in Occupancy Status], 1205 [Filing the Petition], and 1210 [Notices to Opposing Parties and Board] – First Reading

Recommendation

That the full Board adopt the following proposal to amend Regulations 525,¹ 1205,² and 1210³ to allow for service of various petition documents via email. The LIRA Committee reviewed staff's proposed amendments at their February 6, 2023 committee meeting, and recommended adoption of the attached amendments.

Background

The City Manager, acting as the Director of Emergency Services, declared a local State of Emergency based on COVID-19, which the City Council ratified on March 10, 2020. Staff began remote work and many tenants and landlords more frequently used email for communications with staff and other parties, including submitting petitions and notices pursuant to Regulations 525, 1205, and 1210.

After over three years of such practices, the Rent Board staff concludes that permitting email service pursuant to certain guidelines (e.g. verifying validity of an email address) reflects

¹ Regulation 525 outlines the procedure for challenging tenant(s) occupancy status.

² Regulation 1205 outlines the procedure for filing rent increase petitions relating to regulations: 1214, (Advisory Implementation), 1262-1265 (Maintenance of Net Operating Income), 1267 (Capital Improvement), 1268 (Recent Rent Changes), 1269 (Change in Space or Services/Code Violations), 1270 (Increase in Occupancy), 1276 (Debt Service), 1278 and 1278.5 (Restoration of Annual General Adjustment), and 1280 (Historically Low Rent), 702 (Payment of Interest on Security Deposit), 1269 (Change in Space or Services/Code Violations), 1270 (Occupancy Level), 1271 (Overcharges) and Rent Withholding Petitions pursuant to Chapter 15.

³ Regulation 1210 outlines the procedure for noticing opposing parties as well as the Board.

the Rent Board’s current best practices⁴ and should continue irrespective of a State of Emergency based on COVID-19.

A number of other California rent control jurisdictions have similarly changed their regulations and procedures to allow for increased digital communication during the administrative petition process in lieu of requiring only hard copies through personal delivery or U.S. mail.

The LIRA committee reviewed and approved these proposed amendments at its meeting on February 6, 2023.

Proposed Amendments

Regulation	Issue	Proposed Fix
525	Reg. 525 does not allow for email service of petitions relating to challenging tenant occupancy status.	Explicitly allow for email service in accordance with Regulations 1205 and 1210.
1205	Reg. 1205 does not allow for email service of rent increase petitions.	Explicitly allow for email service if the serving party confirms the validity of the email address.
1210	Reg. 1210 does not allow for email service of notices to opposing parties and the Rent Board staff.	Explicitly allow for email service unless a party provides notice on a Board-approved form that it declines to receive service in such manner.

Regulation 525

Staff recommends amending **Regulation 525(A)** as follows:

“(A) The landlord of any rental unit who seeks a determination that the unit is not being occupied by a tenant in occupancy may file a petition on a form provided by the Board. The petition shall include a brief explanation of the basis for the petition, including a statement that the unit is not occupied by any subtenants. (See Regulation 1013 (O) and California Civil Code Section 1954.53 (d) et. seq. for the status of units occupied by subtenants, where the original occupant(s) no longer permanently reside(s) in the unit.) Proof that the petition has been served on all tenants claiming a right to possession of the unit shall be submitted with the petition. Service shall be *in accordance with Regulations 1205 and 1210* ~~by personal service or service by~~

⁴ Email service allows Rent Board staff to review, respond to, and manage petitions and notices in a much more efficient manner than US Mail alone.

~~mail to the unit and any other address provided to the owner by the tenant in writing.~~ Concurrent with or anytime after the filing of the petition, the landlord may give legal notice of a rent increase that exceeds the limitations of Berkeley Municipal Code Sections 13.76.110 and 13.76.120, however, the noticed increase shall remain inoperative until a decision is rendered on the landlord's petition."

Regulation 1205

Staff recommends amending **Regulation 1205(A)(3)** to include the following italicized language:

"The landlord shall file with the Board the petition, copies of the documentation required by Regulation 1201 and by the Regulation pursuant to which the Petition is filed, and a proof of service by first-class mail, *by email if the landlord confirms on a Board-approved form that the respondent's email address is valid*, or in person of the petition and documentation on each affected tenant. The landlord may also file an Agreement of Parties and/or Waiver of Right to Hearing."

In addition, staff recommends amending **Regulation 1205(B)(3)** to include the following italicized language:

"The tenant shall file with the Board the petition, copies of the documentation required by Regulation 1201 and by the Regulation pursuant to which the petition is filed, and proof of service by first-class mail, *by email if the tenant confirms on a Board-approved form that the respondent's email address is valid*, or in person of the petition and documentation."

Should the Board adopt these proposed amendments, staff will prepare the Board-approved form, which will be included in the petition packet.

Regulation 1210

Staff recommends amending **Regulation 1210(A)** to include the following underlined and italicized language:

"Manner of Notice. Notice(s) to opposing parties shall be served by first-class or certified mail, *email*, or by personal service on the party or the party's representative of record. Personal service shall be performed according to state law. Notices to the Board shall include a proof of service that proper notice was given to the opposing parties, by means of a written declaration by the server under penalty of perjury, stating the names and addresses of parties served and the date and manner of such service, *unless service was by email, in which case the parties served may be identified as the recipients in the email header.*"

In addition, staff recommends amending Regulation 1210 to add **Section 1210(D)**, which will state:

“(D) Email. Where the Board or a party is required to serve a document under this Chapter, service may be affected by email delivery unless a party provides notice on a Board-approved form that it declines to receive service by email. A party may not decline to be served by email if the party uses email for serving documents.”

Should the Board adopt these proposed amendments, staff will prepare the Board-approved form, which will be included in the petition packet.

Conclusion

Staff would like to continue use of email service for petitions and certain notices and recommends the above amendments to memorialize current best practices. Staff has also heard from the public that they appreciate the convenience of allowing for more access to the Board’s services through email.

The LIRA Committee reviewed staff’s proposed amendments at their February 6, 2023 committee meeting, and recommended further changes. Legal staff discussed these changes with Hearings Unit staff who have agreed to implement the changes as proposed by the LIRA Committee in the attached amendments.

Proposed Regulations 525, 1205, and 1210 are attached hereto. Additions are underlined. Deletions are marked with strikethrough text.

Name and Telephone Number of Contact Person:

Matt Brown, General Counsel (510) 981-4930
Rent Stabilization Board

Attachments:

1. Proposed Amendments to Regulation 525
2. Proposed Amendments to Regulation 1205
3. Proposed Amendments to Regulation 1210

525. Procedure for Challenging Tenant in Occupancy Status.

(A) The landlord of any rental unit who seeks a determination that the unit is not being occupied by a tenant in occupancy may file a petition on a form provided by the Board. The petition shall include a brief explanation of the basis for the petition, including a statement that the unit is not occupied by any subtenants. (See Regulation 1013 (O) and California Civil Code Section 1954.53 (d) et. seq. for the status of units occupied by subtenants, where the original occupant(s) no longer permanently reside(s) in the unit.) Proof that the petition has been served on all tenants claiming a right to possession of the unit shall be submitted with the petition. Service shall be ~~by personal service or service by mail to the unit~~ in accordance with Regulations 1205 and ~~any other address provided to the owner by the tenant in writing~~ 1210. Concurrent with or anytime after the filing of the petition, the landlord may give legal notice of a rent increase that exceeds the limitations of Berkeley Municipal Code Sections 13.76.110 and 13.76.120, however, the noticed increase shall remain inoperative until a decision is rendered on the landlord's petition.

(B) Petitions filed under this section shall be expedited so that a hearing on the petition is held within 30 days of filing and a decision rendered within 30 days of the hearing. The parties shall be given at least 15 days notice of the hearing.

(C) Except as provided in subsection (B), proceedings on petitions filed under this section shall be conducted according to all provisions of Chapter 12, Subchapter B. A determination that a tenant is not a tenant in occupancy must be supported by a preponderance of the evidence presented to the hearing examiner. If the owner makes a prima facie showing that the unit is not continuously occupied by the individual as a residence, the burden of proving that the unit is the usual place of return and not a secondary residence or used primarily for commercial, office, or storage, except as provided in Section 524(D), shall shift to the tenant. If the hearing examiner determines that the tenant is not a tenant in occupancy, any rent increase noticed by the landlord shall become effective on the date specified in the notice or the date on which rent is next due following service of the hearing examiner's decision, whichever is later.

[Effective Date: 5/22/03]

1205. Filing the Petition

(A) For rent increase petitions, the following procedure applies:

(1) Rent increase petitions may be filed under the following regulations: 1214, (Advisory Implementation), 1262-1265 (Maintenance of Net Operating Income), 1267 (Capital Improvement), 1268 (Recent Rent Changes), 1269 (Change in Space or Services/Code Violations), 1270 (Increase in Occupancy), 1276 (Debt Service), 1278 and 1278.5 (Restoration of Annual General Adjustment), and 1280 (Historically Low Rent).

(2) A copy of the rent increase petition and, except as provided in Regulation 1267 (Capital Improvements), supporting documentation must be served on the tenants of all units affected by the petition.

(3) The landlord shall file with the Board the petition, copies of the documentation required by Regulation 1201 and by the Regulation pursuant to which the Petition is filed, and a proof of service by first-class mail, by email if the landlord confirms on a Board-approved form that the respondent's email address is valid, or in person of the petition and documentation on each affected tenant. The landlord may also file an Agreement of Parties and/or Waiver of Right to Hearing.

(4) Board staff shall review the petition and supporting documentation for conformance to Board regulations and within five working days shall either mail notice of the petition's unacceptability (pursuant to Regulation 1207) to the landlord, or mail Notice to Opposing Parties to the tenants, as provided in Regulation 1210. For petitions filed pursuant to Regulations 1262-1265 (MNOI), the review period shall be 15 working days. If a petition is unacceptable, the landlord may refile at any time but the Board will administratively close the file after fourteen days. Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor. A landlord may, at any time prior to submission of the matter for an administrative decision, request that a hearing be held.

(5) The notice to the tenant shall include a notice that the tenant has a right to object to the petition, and that if the tenant does not object within twenty days of the mailing of the notice, or if the tenant's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be increased by the applicable amount, based on the information in the landlord's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition.

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 1221, unless no tenant files an objection within the time allowed, the landlord has not requested a hearing and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition

(B) For tenant petitions, the following procedure applies:

(1) Tenant petitions may be filed pursuant to Regulations 702 (Payment of Interest on Security Deposit), 1269 (Change in Space or Services/Code Violations), 1270 (Occupancy Level), 1271 (Overcharges) and Rent Withholding Petitions pursuant to Chapter 15.

(2) A copy of the tenant petition and supporting documentation must be served on the petitioner's landlord.

(3) The tenant shall file with the Board the petition, copies of the documentation required by Regulation 1201 and by the Regulation pursuant to which the petition is filed, and proof of service by first-class mail, by email if the tenant confirms on a Board-approved form that the respondent's email address is valid, or in person of the petition and documentation.

(4) Board staff shall review the petition and supporting documentation for conformance to Board regulations and within five working days shall either mail notice of the petition's unacceptability (pursuant to Regulation 1207) to the tenant, or mail notice to the landlord, as provided in Regulation 1210. If a petition is unacceptable, the tenant may refile at any time but the Board will administratively close the file after fourteen days. Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor.

(5) The notice to the landlord shall include a notice that the landlord has a right to object to the petition, and that if the landlord does not object within twenty days of the mailing of the notice, or the landlord's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be decreased by the applicable amount, based on the information in the tenant's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 1221, unless the landlord does not file objection within the time allowed, the tenant does not request a hearing and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

(C) The time limits set forth in this section will prevail over any other time limits set out elsewhere in these regulations.

[Amendments effective April 11, 1997, January 8, 2000; amended Sections (A)(3) and (B)(3) to make clear that petitioners need only file the petition and need not file two copies of the documentation required by Regulation 1201 – 9/19/19]

1210. Notices to Opposing Parties and Board

(A) Manner of Notice. Notice(s) to opposing parties shall be served by first-class or certified mail, email, or by personal service on the party or the party's representative of record. Personal service shall be performed according to state law. Notices to the Board shall include a proof of service that proper notice was given to the opposing parties, by means of a written declaration by the server under penalty of perjury, stating the names and addresses of parties served and the date and manner of such service, unless service was by email, in which case the parties served may be identified as the recipients in the email header.

(B) Notice after Petition Filed. The Board shall notify the opposing party(ies) of the filing of a petition and send each opposing party a response form that includes notice that the party has a right to object to the petition, a statement of possible objections, notice that the ~~party~~party's failure to object within the time specified may constitute a waiver of the right to have a hearing on objections to the petition, and a brief description of the hearing process.

(C) Other Notices. The Board shall send a copy of all notices, and parties shall send a copy of all documents or communications filed with the Board after the filing of the initial petition, except for documents or communications which are filed during the hearing or are confidential, to each party.

(D) Email. Where the Board or a party is required to serve a document under this Chapter, service may be affected by email delivery unless a party provides notice on a Board-approved form that it declines to receive service by email. A party may not decline to be served by email if the party uses email for serving documents.

[Amendment to section (B) effective January 8, 2000]