



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

Thursday, December 12, 2024 – 6:00 p.m.

Rent Stabilization Board Conference Room A – 2000 Center Street, Suite 400, Berkeley
Teleconference location: 1418-A 67th Street, 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/87975053025?pwd=508JpAG7YWuafG2KaLbe6yZRJ8lxr.1>. 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: 879 7505 3025 and Passcode: 522350. 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 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 4:00 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

Thursday, December 12, 2024 – 6:00 p.m.

Rent Stabilization Board Conference Room A – 2000 Center Street, Suite 400, Berkeley

Teleconference location: 1418-A 67th Street, 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 the minutes of the October 10, 2024 meeting (See attached).
5. Public Comment
6. Discussion and possible action regarding the promulgation of new regulations to implement Measure BB (See attached).
7. Discussion and possible action regarding the ability of tenants to request bulky waste pick-up.
8. Discussion and possible action regarding future agenda items
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

Thursday, October 10, 2024 – 5:30 p.m.

Rent Stabilization Board Conference Room A – 2000 Center Street, Suite 400, Berkeley

Teleconference location: 1418-A 67th Street, Berkeley, CA

Minutes – Unapproved

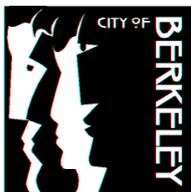
1. Roll call: General Counsel Brown opened the meeting at 5:35 pm.
Members Present: Alpert, Kelley, Martinac (present at 5:42 pm), and Mizell.
Staff Present: M. Brown, and O. Ehlinger.
2. Land Acknowledgment Statement: The recording of the Land Acknowledgment Statement was played.
3. Approval of the agenda: Motion to approve the agenda. Roll call. Carried: 3-0-0-1
4. Approval of the minutes of the September 5, 2024 meeting: Motion to Approve the Minutes as Drafted. Roll call vote. Carried: 3-0-0-1.
5. Public Comment: Anna Rossi from Shelter in Peace spoke on a transitional housing proposal.
6. Discussion and possible action to recommend that full Board approve publication of the 2025 Annual General Adjustment at the October 17, 2024 meeting: The Committee discussed the item and staff report. Motion to recommend that full Board approve publication of the 2025 Annual General Adjustment at the October 17, 2024 meeting. Roll call vote. Carried: 4-0-0-0.
7. Discussion and possible action to recommend that full Board approve the 2024 Annual Inflationary Adjustment of the Owner Move-In and Ellis Act Relocation Assistance payments at the October 17, 2024 meeting: The Committee discussed this item. Motion to recommend that full Board approve the 2024 Annual Inflationary Adjustment of the Owner Move-In and Ellis Act Relocation Assistance payments at the October 17, 2024 meeting. Roll call vote. Carried: 4-0-0-0.
8. Discussion and possible action regarding adding an official comment period for representatives of the City of Berkeley employee unions at regular Board meetings: The Committee discussed this item. Motion to adopt proposed amendment to the Rent Stabilization Board Meeting Procedures in the attached staff report with language changes as suggested by the Committee. Roll call vote. Carried: 4-0-0-0.

9. Discussion and possible action regarding the agency's practices for gathering data on Berkeley rental housing from City of Berkeley departments: Board Staff Attorney Oliver Ehlinger offered a brief verbal report. The Committee discussed this item and took no action.
10. Discussion and possible action regarding future agenda items: The Committee discussed this item and took no action.
11. Confirm next meeting date: The Committee agreed to meet on Thursday, November 7, 2024 at 6:00 p.m.
12. Adjournment: Motion to Adjourn. Roll call vote. Carried: 4-0-0-0. Meeting adjourned at 6:05 p.m.

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

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

Internal



Rent Stabilization Board
Legal Department

MEMORANDUM

DATE: December 12, 2024

TO: Honorable Members of the LIRA Committee

FROM: Matt Brown, General Counsel

SUBJECT: Draft Initial Regulations Implementing Measure BB

On December 5, 2024, the Alameda County Registrar certified the count for the 2024 General Election; Measure BB passed by approximately 6% of the vote. Staff has prepared an initial draft of regulations that would be necessary to implement the portions of Measure BB that become effective 10 days after Council confirms the result of the election at its meeting on December 10. These regulations vary slightly from the version attached to the November 25 agenda packet.

Staff's intention is to gather input from the LIRA Committee regarding these regulations at this meeting and present these regulations to the full Board at its meeting on December 19, 2024 meeting of the full Board.

Regulation	Page Number	Nature of Update
403.5	2	Citations only
410	4	New Regulation
411	6	New Regulation
503	7	Citations only
506	9	Citations only
520	10	Citations only
523	11	Citations only
801	12	Substance and Citations
807	15	Regulation deleted
808	17	Citations only
880	18	Citations only
883	19	Citations only
1000	23	Substance and Citations
1001	24	Citations only
1012	25	Substance updated
1013	26	Citations only
1016	36	Citations only
1209.5	37	New Regulation
1262	38	Citations only
1269	39	Substance Updated
1274	43	Citations only
1300	44	Citations only
1301	45	Citations only
1311	47	Citations only
1312	48	Substance Updated
1380	49	Citations only
1381	50	Citations only
1382	51	Citations only
1383	52	Citations only

403.5 Rooming House; definition**

(A) Background and Purpose. Since the Board passed Regulation 403 in 1998 a number of questions have arisen regarding the definition of “rooming house.” The Board has always defined a rooming house to mean a building with at least five rooms that are rented to at least five individuals with at least five separate leases. This Regulation is meant to clarify the specific requirements to be considered a rooming house. Since 1998, the Board has intended to make this definition consistent with the definition of “rooming house” in the City’s Zoning Ordinance (Berkeley Municipal Code Section 23F.04.010) and this continues to be the Board’s intention.

This regulation will lower the number of rooms required for a rental unit to qualify as a rooming house in multi-unit properties. Units in multi-unit properties with four or more rooms will qualify as rooming houses (assuming the other conditions are satisfied). This does not stray from the definition of rooming houses in B.M.C. 23F.04.010 as there will still be five or more rooms on the entire property.

Unlike other group living arrangements where the remaining tenants choose tenants to replace those who vacate the unit, rooming houses allow the landlord or his agent to maintain control over who rents each room/unit within the rooming house. A landlord may not, however, rent an entire property under a single lease as a means to avoid registering the unit as a rooming house. The Board will examine whether the landlord is renting to a household or group living arrangement conceived and brought together by the occupants when determining whether a unit qualifies for any claimed exemption.

(B) Rooming House. For purposes of this subchapter, a rooming house shall consist of a rental unit on a property which property contains at least five rooms rented individually to at least five tenants under separate rental agreements. Each room in a rooming house must be individually registered with the Board as a separate rental unit. Each time a tenant permanently surrenders possession of a rental unit in the rooming house, the landlord is entitled to a vacancy rent adjustment subject to the restrictions of Chapter 10 of these regulations. The landlord or his agent shall maintain control over who occupies the various rental units within the rooming house as they become vacant. Use of a single lease will not convert a rooming house into a group living arrangement if the landlord or his agent maintains control over tenant replacement.

(1) Single Family Homes A single family home must contain at least five separately rented rooms to be considered a rooming house.

(2) Multi-Unit Properties A unit within a multi-unit property may be rented as a rooming house provided the rental unit to be rented as a rooming house contains at least four separately rented rooms.

(3) A landlord may not compel the tenants or sub-tenants to sign separate agreements in order to qualify as a rooming house if a single lease agreement remains in effect, or the tenants are living under a group living arrangement as defined by Chapter 10 of these regulations. If the tenants and landlords agree, however, the parties may voluntarily choose to convert their tenancy from a group living arrangement with one lease agreement to a rooming house with multiple agreements if the unit otherwise qualifies.

(C) Exemption under B.M.C. 13.76.050F. (Owner-occupied duplex). If a property owner otherwise qualifies for an exemption under B.M.C. Section ~~13.76.050F.~~ **13.76.050.C.9**, the property owner is entitled to claim that exemption if the other unit on the property contains four or fewer separately rented rooms.

(D) Disputes regarding rooming house designation. A tenant who claims that a rental unit must be registered as a rooming house under this regulation may obtain review of the unit's status by filing a tenant petition for rent withholding for non-registration as outlined in Regulation 522. A landlord or tenant who disputes the landlord's eligibility to establish the rental unit's initial rental rate as allowed by the Costa-Hawkins Rental Housing Act (Civil Code Section 1954.50, et seq.) under this regulation may file a petition under Regulation 1018.

[Effective Date: Nov. 21, 2011.]

410. Government-subsidized Rental Units

(A) Background and Purpose. Berkeley Municipal Code section 13.76.050.A provides that all provisions of the Rent Stabilization Ordinance apply to any residential rental unit that is rented or available for rent. It is the intent of the Board that all provisions of the Rent Stabilization Ordinance apply to any government-owned or government-subsidized rental unit to the fullest extent possible allowed under federal and state law. To the extent that federal and state law purport to exempt any rental unit from any provision of the Rent Stabilization Ordinance, it is the intent of the Board that such exemption be applied as narrowly as possible.

(B) Fully-Covered Units. Tenancies in rental units subject to the following government subsidies are subject to all provisions of the Rent Stabilization Ordinance, unless another independent grounds for full or partial exemption applies:

- (1) Housing Choice Voucher Program;
- (2) Veterans Affairs Supportive Housing Program;
- (3) Low-income Housing Tax Credits;
- (4) HOME Investment Partnership Act;
- (5) Shelter Plus Care Program;
- (6) City of Berkeley Housing Trust Fund; or
- (7) any subsidy not explicitly exempted from local price control by federal or state law.

Additionally, rental units owned by government agencies or entities shall be Fully-Covered Units, including entities organized under California Government Code section 6500 et. seq., unless another independent grounds for full or partial exemption applies.

(C) Partial Exemption by Federal Regulation. Title 24, Part 246 of the Code of Federal Regulations sets forth the determination of the federal Department of Housing and Urban Development that certain government-subsidized projects are exempt from any local ordinance that purports to regulate the rents of such projects. It is the intent of the Board that any rental unit in projects under the coverage of Title 24, Part 246 of the Federal Code of Regulations shall be Partially-covered units as defined in Berkeley Municipal Code section 13.76.040.J and Berkeley Municipal Code section 13.76.050.B.3.

Accordingly, tenancies in rental units subject to the following government subsidies are Partially Covered Units, unless another independent grounds for a full exemption applies:

- (1) Rent Supplement Program;
- (2) Section 8 Loan Management Set Aside converted from a prior Rent Supplement Contract; or
- (3) Project-based Section 8.

Separately, Title 24, Section 891.185 of the Code of Federal Regulations sets forth the determination of the federal Department of Housing and Urban Development that projects which the Department of Housing and Urban Development provides project assistance to under the Section 202 Program of Supportive Housing for the Elderly or the Section 811 Program of Supportive Housing for Persons with Disabilities are exempt from any local ordinance that purports to regulate the rents of such projects. It is the intent of the Board that any rental unit in projects which the Department of Housing and Urban Development provides project assistance to under the Section 202 Program of Supportive Housing for the Elderly or the Section 811 Program of Supportive Housing for Persons with Disabilities shall be Partially-covered units as defined in Berkeley Municipal Code section 13.76.040.J and Berkeley Municipal Code section 13.76.050.B.3.

It is the intent of the Board that no provision of the Rent Stabilization Ordinance shall apply in a manner that either improperly regulates the rents of rental units in such projects identified in this section or that in any way delays, prevents or interferes with the implementation of any increase in rental charges approved by the Department of Housing and Urban Development.

(D) Multiple Subsidies Applied to a Rental Unit. In the instance where a tenancy in a rental unit is subject to more than one government subsidy, the rental unit will be a Partially-Covered Unit if any subsidy applied to the unit is set forth in subsection (C).

411. Property Management Company; definition

For the purposes of Berkeley Municipal Code section 13.76.135, a property management company is any entity which provides any of the following services to a record owner of a residential rental unit in the City of Berkeley:

- (1) New tenant intake, including marketing, establishing and maintaining any waiting list, determination of applicant eligibility, applicant screening, and tenant selection;
- (2) Lease execution, including explaining the lease and all attachments;
- (3) Collection of rent and any charges in addition to rent;
- (4) Lease enforcement, including executing terminations of tenancy;
- (5) Performance of maintenance or repairs on a unit, including subcontracting with other services to perform such maintenance;
- (6) Communication with current tenants regarding concerns and request arising from their tenancy; or
- (7) Any activities necessary to maintain compliance with laws and ordinances regarding the rental of residential property units.

503. Definition of Principal Residence**

(A) Background and Purpose. Like many of the exemptions listed in Berkeley Municipal Code Section 13.76.050, the exemptions identified in Berkeley Municipal Code Sections ~~13.76.050F~~.13.76.050.C.4 and ~~13.76.050G~~.13.76.050.C.9 (Sections ~~5(f)~~ 5(C)(4) and ~~5(g)~~ 5(C)(9) of the Ordinance) are transitory. A landlord may not claim an exemption pursuant to Sections ~~5(f)~~ 5(C)(4) or ~~5(g)~~ of the Ordinance unless the landlord occupies a unit on the property as his/her principal residence at the time the landlord asserts or claims the exemption.

(B) “Person” limited to “natural person.” Only a natural person may claim principal residence in a unit when claiming an exemption under Sections ~~5(f)~~ 5(C)(4) or ~~5(g)~~ 5(C)(9) of the Ordinance. For purposes of this Regulation, “person” shall mean only a “natural person.” A successor in interest is not entitled to the exemptions in either Sections ~~5(f)~~ 5(C)(4) or ~~5(g)~~ 5(C)(9) of the Ordinance merely because a previous landlord claimed entitlement to one of these exemptions. A bank, corporation, or other business entity may never claim a unit as exempt under Sections ~~5(f)~~ 5(C)(4) or ~~5(g)~~ 5(C)(9) of the Ordinance as such entities are not natural persons. A natural person who has granted the subject property into a revocable living trust may claim principal residence only as follows:

- (1) The person claiming principal residence is both the grantor and the trustee of the revocable living trust, or
- (2) The grantor has named another natural person as trustee but has retained oversight over the amount of rent charged at the property and any decision to evict any tenant from the property.
- (3) A natural person who is the sole surviving beneficiary of a revocable living trust for which all grantor(s)/trustee(s) are deceased may claim principal residence.
- (4) All applicable criteria set forth in Subsections C and D shall apply equally to natural persons claiming principal residence pursuant to a revocable living trust as if they were owners of record. The Board may require appropriate documentation, including but not limited to an affidavit signed under penalty of perjury and/or a Certification of Trust for the purpose of establishing exemption.

(C) Principal residence, as used in Sections ~~5(f)~~ 5(C)(4) and ~~5(g)~~ 5(C)(9) of the Ordinance, is that dwelling place where the person actually resides a majority of the time. For the purpose of this Ordinance, a person may have only one principal residence.

(D) In the determination as to the principal residence status of the dwelling place, the following factors shall be considered:

- (1) whether the person carries on basic living activities at the dwelling place;
- (2) whether the person maintains another dwelling and, if so, the amount of time that the person spends at each dwelling place;
- (3) whether the person has filed for and obtained a homeowner's exemption for the dwelling place;
- (4) whether the person is a registered voter at the dwelling place;
- (5) other relevant factors.

[Effective Date: 11/26/80; renumbered 04/09/99; added new Sections A and B, and enumerated sub-section identifiers of new Section D (previously A through D) 06/17/13; amended Section B to make clear that properties held in certain types of revocable living trusts will qualify for exemption when applicable criteria is met; sunset provision identified in Section E – 9/19/19; 10/21/21: Eliminated Section E.]

506. Changes in Status of Transient Unit**

If a unit becomes subject to the provisions of the Ordinance by virtue of Regulation 505, it shall be registered within 60 days as set forth in Section ~~8(I)~~ 8(J) of the Ordinance. If thereafter the unit becomes vacant and is rented to a transient, it shall be exempt for the period of time of such transient occupancy.

During such period of exemption, the provisions of the Ordinance relating to limitations on rents and eviction controls shall not apply. When the unit is again occupied by a nontransient, the rent must revert to the level which would have been lawful under the Ordinance had the unit continuously been occupied by a nontransient. A unit which is subject to the Ordinance need only be registered once each year regardless of the number of times its status changes.

[Effective Date: 10/27/82; renumbered 04/09/99.]

520. Exemption for Fraternities and Sororities**

(A) Background and Purpose. The Rent Board has long exempted rental units in properties owned by fraternities and sororities (or companies that manage units occupied by active members of these organizations). Tenants who live in these units that are not active members of fraternities and sororities, however, are not exempt from any section of the Rent Ordinance. The Board recognizes that many of these rental units are occupied seasonally (typically during the summer months) by non-members and has charged the landlord a partial Registration Fee required by B.M.C. 13.76.080. This regulation clarifies this exemption and identifies the tenants that are covered by the Rent Ordinance.

(B) Exemption under B.M.C. ~~13.76.050M.~~ 13.76.050.C.5 Rental units – as defined by Regulations 403 and 403.5 – occupied as a primary residence by a member of a fraternity or sorority in which the fraternity or sorority owns the rental unit (or a unit owned by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority’s rental units) are exempt from Berkeley Municipal Code Chapter 13.76.

(C) Rental units not subject to exemption under B.M.C. ~~13.76.050M.~~ 13.76.050.C.5 Rental units located within a property as defined by subparagraph (B) that are occupied by a tenant who is not an active member of a fraternity or sorority are subject to all sections of Berkeley Municipal Code Chapter 13.76 including Section 13.76.080, Rent Registration.

Tenants who occupy rental units for only part of the year in properties primarily occupied by fraternities and sororities shall be considered “authorized seasonal rentals” as further defined in Regulation 808. Tenants who occupy authorized seasonal rentals shall have the same rights and responsibilities as a tenant who occupies any another rent-controlled unit not subject to an exemption identified in B.M.C. 13.76.050. The Board shall charge a reduced registration fee, however, for these authorized seasonal rentals as defined by Regulation 808.

[Adopted April 24, 2017.]

523. When Exemption Must Be Claimed or Verified**

(A) Where the claimed exemption is based upon the grounds set forth in subsections ~~C., E., F. and G.~~ **C.2, C.3, C.4, and C.6** of Section 5 of the Rent Ordinance [B.M.C. §§13.76.050], the exemption need not be claimed or verified each year. However, if the facts that gave rise to the exemption cease to exist, the landlord shall register the unit in accordance with Section ~~8.i.~~ **8.j** of the Ordinance within 60 days after the unit becomes subject to the Ordinance.

(B) Where the claimed exemption is based upon subsections ~~B. C.1 or D.~~ of Section 5 of the Rent Ordinance [B.M.C. §§13.76.050], the exemption must be claimed and verified on an annual basis.

(C) Where the claimed exemption is based upon subsection ~~B.1~~ of Section 5 of the Rent Ordinance [B.M.C. §§13.76.050]., the exempt status of the unit need only be claimed and verified once.

(D) Where the claimed exemption is based upon Regulation 508, the Board will determine the exemption before July 1 of each year, by referring to the Vacancy Registrations filed with the Board, and will notify the landlord and the tenant. Either party can object to the determination by following the procedure set forth in Regulations 521 or 522.

(E) Nothing in this Chapter shall prevent the Executive Director or his or her designee from investigating and reviewing the status of any unit claimed to be exempt or previously found to be exempt if there is reason to believe that the claimed exemption is not supported by the facts or has been obtained as a result of falsely supplied information.

[Effective Date: 05/23/84; amended & renumbered 04/09/99.]

801. Proper Filing of the Rent Registration Statement

(A) A rental unit is properly registered in accordance with Section 8 of the Rent Stabilization Ordinance if the landlord or landlord's representative 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 and **an affidavit that the landlord has provided the notice required under Berkeley Municipal Code section 13.76.080.D;**

(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.

(B) A landlord who asserts that they are unable to supply required information may request review of their registration status by the Rent Stabilization Board Executive Director or the Executive Director's designee. The Executive Director or designee shall determine whether good cause exists to find the landlord properly registered notwithstanding the lack of required information. The request for review shall be made on a form approved by the Executive Director and shall include, without limitation, a declaration under penalty of perjury fully describing the landlord's efforts to obtain the missing information. The Executive Director may specify the nature and extent of the efforts, and documentation thereof which is required. The landlord shall serve a copy of the request for review on all current tenants in the property and known prior tenants who resided in the premises during the time period for which the information is missing. A proof of service by mail on said tenants shall accompany the request for review. The tenants may submit in writing to the landlord any relevant information concerning the request for review within ten (10) days of the date of service of the request upon them. A copy of this information submitted to the landlord shall be filed with the Board. It shall be accompanied by a proof of service by mail upon the landlord. The Executive Director or designee shall determine whether or not the inability to provide the required information resulted from circumstances beyond the control of the landlord. If it is determined that the landlord was not at fault and that the missing information cannot now be produced nor reasonably reconstructed from any available information, the landlord may be found to be properly registered notwithstanding the lack of information. If the reason for the unavailability was within the control of the landlord, no relief shall be granted unless the landlord demonstrates that he or she has otherwise substantively complied with the Ordinance and that the landlord has made all reasonable efforts to obtain or reconstruct the information which is unavailable. A copy of the determination shall be mailed to the landlord and to the tenants of the affected property. The Board may establish an appropriate fee for the filing of a request for review of registration status. No rent withholding petition for non-registration shall be acted upon while a request for review is pending.

(C) In designating a rental unit as properly registered, the Board's intent is to facilitate the rent registration and individual adjustment of rent ceiling processes and the dissemination of information regarding the registration of rental units. Such designation shall not be construed as the Board's certification of the lawful base rent, current lawful rent ceiling or any other information provided on the rent registration statement. Nothing in this Regulation shall preclude the Board nor any person from challenging the accuracy of any information provided in any registration statement or declaration in the context of any proceeding or action.

(D) As used in this Regulation, "rent registration statement" shall include the initial registration statement, any required annual registration statement, any vacancy registration form required under Regulation 1013(K) and any supplemental registration statement approved and required by the Board. For units covered by B.M.C. ~~13.76.050~~**13.76.050.B.1** and B.M.C. ~~13.76.050~~**13.76.050.C.8**, "rent registration statement" shall include the "Registration Statement for Partially Covered Units", all required "Tenancy Registration Forms For Partially Covered Units" and any other supplemental or additional registration forms the Board requires. This subsection is intended to clarify the existing requirements concerning filing of initial, annual, vacancy and supplemental registration statements.

(E) When the Board determines that it is reasonably necessary to carry out the purposes of the Ordinance, the Board may require landlords to furnish information missing from any initial or annual registration statement or to complete a supplemental registration statement approved by the Board. This may include information which was requested on the 1980-81 registration statement but which was not required by this regulation, or specifically enumerated in the Ordinance at the time the registration statement was filed but which the Board finds it necessary for proper administration of the Ordinance. Any such request for information request for completion of a supplemental registration statement shall be responded to within a reasonable time period to be determined by the Board. If the landlord is unable to supply the information requested, the landlord shall comply with subsection (B). Any request for review pursuant to subsection (B) shall be made within the time specified by the Executive Director. If the landlord does not respond to the request or request review of his or her registration status within the specified time, the landlord may subsequently be held to be unregistered thereafter notwithstanding the fact that the landlord would have otherwise been deemed to have been properly registered under the law and regulations existing at the time the statement which omitted the requested information was originally filed. Any such determination of non-registration shall be prospective only.

(F) Nothing in the subsection (E), above, shall be construed to relieve any landlord of the duty to fully register all his or her covered units and to supply all requested information merely because the Board has not advised landlord of any information which may be omitted by the landlord from the initial, annual or any supplemental registration statements.

(G) *Notice at Commencement of Tenancy (Berkeley Municipal Code section 13.76.080.D)*

(1) The obligation of the landlord to timely provide the Notice at Commencement of Tenancy shall be subject to the provisions of subsection (H) of this regulation.

(2) In the property which is subject to the requirement to post the Notice at Commencement of Tenancy which contains both Fully Covered and Partially Covered units, a landlord may comply with the requirement to post by posting copies of the Notice at Commencement of Tenancy applicable to both Fully Covered and Partially Covered units.

~~(G)~~ (H) A landlord shall be found in substantial compliance with registration requirements of the Ordinance and Regulation when:

(1) The landlord has made a good faith effort to comply with the Ordinance and regulation concerning registration sufficient to reasonably carry out the intent and purpose of the Ordinance and Regulations; and

(2) The landlord has cured any defect in compliance in a timely manner after receiving notice of a deficiency from the Board.

[Regulation 801 revised in its entirety effective April 13, 1983; Subsection 801(G) adopted March 3, 1986; amended November 21, 1986; Subsections 801 (A), (B), (E) and (F) amended effective June 6, 1997; Subsection (D) amended December 27, 1998; Subsection (D) amended January 20, 2022 to make clear that landlords must file certain registration statements for partially covered units.]

~~807. — Exemption from Registration for units with tenants receiving monthly assistance through the Section 8 Program or the Shelter Plus Care Program or equivalent rent subsidy program~~

~~(A) — Purpose. Under the Ordinance (BMC 13.76.050.D) units are exempt from rent registration and related rent ceiling requirements when they are occupied by tenants who receive monthly rent subsidies through the Section 8, Shelter Plus Care or equivalent federally funded program, but only so long as the rent demanded does not exceed the payment standard. The exemption is intended to encourage landlords to rent to tenants receiving such assistance, and the purpose of the limitation on the exemption is to provide tenants in these programs with protections equivalent to those of unsubsidized tenants so that their rents cannot be raised above the payment standard unless the increase conforms with the Annual General Adjustments allowed under the ordinance.~~

~~These regulations clarify when a unit qualifies for and no longer qualifies for the exemption. They specify that a unit no longer qualifies for exemption when the landlord raises the rent above the payment standard. They further specify that the exemption continues to apply if the landlord has not raised the rent to bring it over the payment standard but instead the BHA has lowered the payment standard below a rent that originally qualified the unit for exemption.~~

~~(B) — Applicable Payment Standard: Definition. The applicable payment standard is the maximum rental assistance that the Housing Authority can provide to a household based on the number of bedrooms that the tenant household qualifies for:~~

~~a. — If an owner accepts an initial rent based on the payment standard for fewer bedrooms than the rented unit contains, the applicable payment standard shall continue to be based on the same number of bedrooms unless the Housing Authority qualifies the tenant to receive subsidy based on a larger number of bedrooms.~~

~~b. — If the Housing Authority approves an initial rent above the payment standard, that initial rent shall be considered the applicable payment standard for that unit until it is equaled or exceeded by the payment standard set by the Housing Authority.~~

~~— (C) — Units Qualifying for Exemption. As long as the rent is no higher than the payment standard the unit qualifies for exemption from Section 13.76.080 Rent Registration, 13.76.100 Establishment of Base Rent Ceiling and Posting, Section 13.76.110 Annual General Adjustment of Rent Ceilings and Section 13.76.120 Individual Adjustment of Rent Ceilings. The unit will no longer qualify for these exemptions if the rent is increased to a level above the payment standard.~~

~~If, however, the payment standard is lowered so that a previously agreed upon rent that was originally within the payment standard is now above the payment standard, the unit will continue to qualify for exemption from Section 13.76.080 Rent Registration, 13.76.100 Establishment of Base Rent Ceiling and Posting, Section 13.76.110 Annual General Adjustment of Rent Ceilings and Section 13.76.120 Individual Adjustment of Rent Ceilings.~~

~~[Adopted: 07/19/13]~~

808. Registration Fee for Authorized Seasonal Rentals in Fraternities and Sororities**

(A) **Definition.** As defined by Regulation 520, an “authorized seasonal rental” is a rental unit occupied by a tenant who is not an active member of a fraternity or sorority in a property owned and operated by the fraternity or sorority (or a unit owned by an entity whose sole purpose is the maintenance and operation of the fraternity or sorority’s rental units) for only part of the year. The vast majority of authorized seasonal rentals occur during the summer months when the University of California Berkeley has its summer session. As defined in this regulation, “authorized seasonal rentals” shall have no relation to “short-term seasonal rentals” as defined in Regulation 1014.

(B) **Reduced Registration Fee for Authorized Seasonal Rentals.** The Board charges landlords an annual registration fee pursuant to B.M.C. ~~13.76.080D.~~ **13.76.080.G** set in accordance with B.M.C. 13.76.060N. Rental units operated as authorized seasonal rentals shall be charged a reduced Registration Fee set by the Board when it passes its annual registration fee for all units. The Board shall publicize the fee and identify all properties subject to the reduced fee for authorized seasonal rentals. The fee shall be paid no later than July 1 of each year and shall be subject to all penalties (proportionally reduced based on the total amount of the fee) as defined in B.M.C. 13.76.080, et seq.

[Adopted April 24, 2017.]

880. Registration Fee Due Date**

Pursuant to Sections 6(n) and 8(dg) of the Rent Stabilization Ordinance, the Board establishes an annual per unit registration fee to cover the Board's reasonable expenses. The fee shall be paid no later than July 1 of each year. The fee is considered paid on the date it is received in the Board office, or the bona-fide post-mark date, whichever is earlier.

[Effective Date: 10/02/80; amended 06/06/97, 05/07/99, 05/08/03 eliminating actual fee amount]

883. Waiver of Penalties and Interest on Delinquent Registration Fees**

A landlord who is assessed a penalty pursuant to Regulation 881 may request that 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(~~g~~) 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 shall 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 shall be waived only while the legal opinion is pending. If the landlord raised the issue requiring legal determination, penalties shall be waived only from the date of the first written contact with the Board in which the issue was raised.

Waiver of penalties shall 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 shall 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 September 30th of the same year (within 90 days of the July 1st due date), and all other balances due are paid within that time. In such case, the Executive Director shall, 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 shall, except as provided in subsection (M) 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 shall 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 shall be evaluated pursuant to Regulation 884(B).

(J) The waiver request was filed following the referral to and initiation of legal action by the Rent Board to recover unpaid registration fees. In such case, the Executive Director shall, 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 current tenant at the property or relating to the current tenancy, 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 shall waive the penalties in accordance with the following schedule:

1. The rent ceiling reduction order or order to register is active - 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 greater than one 1 year but less than 3 years before the request - 60% of penalties waived;
4. The landlord complied with the Board's order greater than 3 years but less than 5 years before the request- 80% of penalties waived.

In such cases where there is a dispute regarding compliance with an active rent ceiling reduction order or order to register, the request shall be considered by the Board as a discretionary waiver.

(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 shall, upon receipt of proof of such construction or rehabilitation, waive 100% of the penalties for the period in which the units were not available for rent. In order to qualify for this waiver, the construction or rehabilitation must be fully permitted by the appropriate City of Berkeley department.

(M) The payment schedules in subsections (H) through (L) above shall 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 shall apply the subdivision which allows for the greater penalty waiver. This subdivision shall not apply to a waiver request that arises under section (K)(1), where the property is subject to an active rent ceiling reduction or rent withholding order.

[Regulation 883 amended by the addition of (G) effective 1/12/83; amended by deleting "and interest" and by the addition of (H), effective 6/6/97 and as amended 3/20/98; amended August 21, 2000 by adding the last sentence to H; amended 6/24/03 with addition of (I) and other various changes; amended July 20, 2009 change in (H) first sentence added *without deliberate delay*, by *August 30* instead of *September 30* and fee is due within *60 days* instead of *90*; amended December 13, 2010, by revising (H) to add *and all other balances due are paid within the 60 days* and define landlord for the purposes of this regulation, adding (J) and references to it in (H) and (I), and making various other changes; amended November 21,

2011 by deleting reference to automatic waivers for late payment of fees for a previously non-exempt unit; amended May 18, 2023 by adding “[a]dditionally, 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)” to the first paragraph, by changing the first sentence in (H) from August 30th to September 30th and from 60 days to 90 days, by deleting (J) and adding the language “The waiver request was filed following the referral to and initiation of legal action by the Rent Board to recover unpaid registration fees. In such case, the Executive Director shall, 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”, by adding (K), (L), (M), and (N), and by changing “will” to “shall” throughout the regulation.]

1000. Base Rent Determination for Previously Exempted Units

(A) If a unit has been exempted from coverage by virtue of any of the above exemptions set forth in Section 5 of the Ordinance (except the exemption for owner-occupied 3- and 4-unit building which formerly existed pursuant to Section 5.f.) and loses its exempt status the lawful base rent and lawful current rent ceiling shall be determined as follows:

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

(2) The lawful current ceiling shall be the lawful base rent, adjusted by the amount of the annual general adjustments approved by the Board to date provided that the landlord is in compliance with the provisions of the annual general adjustment orders and registers the unit as required by Section 8.i.j of the Ordinance.

(B) In the instance where a rental unit was exempted from Section 10 of the Ordinance prior to December 20, 2024 under an exemption arising from a government-subsidy or government ownership of the rental unit, the base rent shall be the full or contract rent of the unit at that time. This subsection shall apply to the tenancies and rental units set forth in Regulation 410(B).

(C) When the current tenancy in such a rental unit commenced prior to the application of a government subsidy, subsection (B) shall prevail over any previously existing base rent ceiling. In the event that the tenancy continues after the government subsidy lapses, terminates, or discontinues, the base rent from the commencement of the tenancy shall be re-instated, and the rent ceiling shall be determined as set forth in subsection (A).

[Effective Date: July 13, 1983]

1001. Base Rent Determination for Previously ~~5.F.C.9~~ Exempted Units**

If a unit has been exempted from coverage by virtue of any of the exemptions set forth in Section 5 of the Ordinance and is in a three or four unit building which was previously exempted under Section ~~5.f.~~5.C.9 prior to July 1, 1982, the lawful base rent and lawful current rent ceiling shall be determined as follows:

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

(B) The lawful current rent ceiling shall be the lawful base rent, adjusted by the amount of the annual general adjustments approved by the Board to date provided that the landlord is in compliance with the provisions of the annual general adjustment orders and registers the unit as required by Section 8.i.j of the Ordinance.

[Effective July 13, 1983]

1012. Separate Agreements

(A) All housing services held out for use and included in the base rent ceiling or, for tenancies beginning on or after January 1, 1999, the most recent initial rent or that were granted in a decision on a rent adjustment petition are considered regulated housing services and shall continue to be provided to tenants in the manner in which they were previously provided. Other housing services are considered unregulated housing services and may be the subject of separate agreements when such agreements conform to conditions set out below.

(B) Separate agreements between owners and tenants are permissible when the agreement is in writing in a document separate from the rental agreement and the agreement meets all of the following criteria:

- (1) The agreement to pay a separate fee for unregulated housing services must not be a condition of tenancy;
- (2) The terms of the separate agreement must be commercially reasonable;
- (3) The tenant's termination or breach of the separate agreement may not be grounds for eviction.

(C) After February 6, 2024, a utility service may not be the subject of a separate agreement. For purposes of this section and Berkeley Municipal Code section 13.76.100.E, a utility service includes: electricity, water, sewer, gas, and waste management.

(D) Owners and tenants may, if they wish, convert unregulated housing services covered by separate agreements to regulated housing services by stipulation in an Individual Rent Adjustment Petition filed with the Board, by appropriate reference to Regulations 1229 and 1269.

(E) Separate agreements may be terminated by either party upon thirty (30) days written notice. Notice of termination of an agreement for rental of furniture, however, may not be given less than thirty (30) days after the agreement was signed by the parties.

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

1013

(A) New Maximum Allowable Rent**

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

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

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

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

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

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

(B) Vacancy Rent Levels

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

(a) (i) The previous tenancy has been lawfully terminated by the landlord pursuant to Civil Code Section 1946, unless the tenancy was terminated prior to December 31,

1994 pursuant to Berkeley Municipal Code section 13.76.130A.9.8 in order for the landlord to recover possession of the unit for his or her own use and occupancy as his or her principal residence or for use and occupancy as a principal residence by the landlord's spouse, child or parent and the landlord or relative thereafter resided continuously at the unit for at least two years; or

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

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

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

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

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

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

possession of the unit pursuant to Berkeley Municipal Code section 13.76.130.A.98b.

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

(h) Tenant's Request to Move to an Accessible Unit.

(i) A landlord must permit a tenant who is not subject to eviction for nonpayment and who has a permanent physical disability as defined in subdivision (m) of Section 12926 of the Government Code and that is related to mobility to move to an available comparable or smaller unit on an accessible floor of the property.

(ii) A landlord subject to subsection (i) shall comply with any requirement to engage in an interactive process with the tenant, including Sections 12177 to 12180, inclusive, of Title 2 of the California Code of Regulations and shall allow the tenant to retain their rental agreement at the same rental rate and terms of the existing agreement if all of the following apply:

- A) The move is determined to be necessary to accommodate the tenant's physical disability related to mobility.
- B) There is no operational elevator that serves the floor of the tenant's current dwelling or unit.
- C) The new dwelling or unit is in the same building or on the same parcel with at least four other units and shares the same owner.
- D) The new dwelling or unit does not require renovation to comply with applicable requirements of the Health and Safety Code.
- E) The tenant provides the owner a written request to move into an available comparable or smaller unit located on an accessible floor of the property prior to that unit becoming available.

(iii) For purposes of this section, "comparable or smaller unit" means a dwelling or unit that has the same or fewer bedrooms and bathrooms, square footage, and parking spaces as the unit being vacated.

(iv) This section shall not apply if the owner, or their spouse, domestic partner, children, grandchildren, parents, or grandparents, intend to

occupy the available comparable or smaller unit located on an accessible floor of the property.

- (v) Any security deposit paid by the tenant in connection with their rental of the dwelling or unit being vacated shall be handled in accordance with California Civil Code Section 1950.5 upon the tenant's move pursuant to this paragraph.
- (vi) This section shall not apply unless all of the tenants on the lease agree to move to the available comparable or smaller unit located on an accessible floor of the property pursuant to the request of the tenant with the physical disability.
- (vii) This paragraph shall not be construed to prevent owners of residential real property from granting reasonable accommodations to change housing units and retain the existing lease at the same rental rate.

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

- (a) Fifteen percent (15%) more than the rent in effect for the immediately preceding tenancy, or
- (b) Seventy percent (70%) of the prevailing market rents in effect at the time of the beginning of the new tenancy for comparable units as established by HUD Fair Market Rents (FMRs) or,
- (c) The lawful rent ceiling.
- (d) Fifteen percent (15%) more than the rent in effect for the immediately preceding tenancy plus increases in the lawful rent ceiling for which the landlord became eligible but which were not implemented because the tenancy ended in December and the new tenancy began in January of the following year.

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

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

Subsection (K) of this Regulation to register all new tenancies which commence after January 1, 1996.

(C) Single Family Residences

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

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

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

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

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

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

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

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

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

(D) Rent Defined

(1) For purposes of this regulation, "rent" is defined as the rent in effect for the

immediately preceding tenancy which did not exceed the lawful rent ceiling.

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

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

(E) Landlord Defined

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

(F) Prevailing Market Rents

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

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

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

(G) Voluntary Vacancies

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

(2) Non-Voluntary Vacancy

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

(b) “Harassment” shall be defined as a knowing and willful act or course of

conduct directed at a specific tenant or tenants which:

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

(ii) Materially interferes with a tenant's peaceful enjoyment of the use and occupancy of a residential rental unit.

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

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

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

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

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

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

(vi) Verbal or physical abuse or intimidation;

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

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

(H) Eviction for Nonpayment of Rent

Eviction for "non-payment of rent" is defined as the action to terminate a tenancy due to the

tenant's failure to pay the rent to which the landlord is entitled under the rental housing agreement and existing law pursuant to Rent Ordinance section 13(A)(1) and/or paragraph (2) of Civil Code Section 1161.

(I) Abandonment

For purposes of this section "abandonment" is defined as the tenant's independent choice, without intimidation, pressure, or harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the landlord terminates the tenancy pursuant to Civil Code Section 1951.3.

(J) No Rent Increase for Existing Tenants

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

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

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

(K) Registration after January 1, 1996

Pursuant to sections 6(F)(~~17~~15), (16), 6(P) and 8 of the Rent Ordinance, any landlord who rents a unit to a new tenant after January 1, 1996, shall re-register the unit with the Board within fifteen (15) days of the re-rental of the unit. This provision does not apply to a sublet where there is no rent increase or to a short-term seasonal rental, as defined in Regulation 1014, if the rent for the short-term seasonal rental is less than the rent for the immediately preceding tenancy.

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

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

(3) Failure of the landlord to properly re-register a unit pursuant to this regulation shall

result in the property being deemed not to be in compliance with section 8 of the Rent Ordinance

(L) Amenities

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

(M) Increase and Decrease Petitions

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

(N) Fraud or Intentional Misrepresentation

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

(O) Subletting

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

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

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

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

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

[Effective January 1, 1996; amended May 27, 1997, August 22, 1997 and March 20, 1998; addition of (O)(5) effective October 23, 1998; addition of (G)2(f) effective December 27, 1998; addition of (1)(a)(ii) and deletion of (G)2(f) effective March 5, 1999; (B) and (O) amended August 20, 1999; (B)(1)(a)(ii), (B)(1)(b) through (f) amended February 11, 2000; addition of (C)(d) amended January 7, 2002; amended March 18, 2002 changed (B)(1)(g) and inserted a new (B)(1)(f); amended February 20, 2003 added last two sentences to (A)(2); removed definition of “original occupant” from Section (O)(1) and placed it in Regulation 409 – 9/19/19; amended April 15, 2021 added 1013(A)(3); amended May 16, 2024 by adding (B)(1)(h)-(e).]

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

A. A landlord who serves a 30-Day Notice of Termination of Tenancy pursuant to Berkeley Municipal Code section 13.76.130.A(9)-8 for the purpose of recovering possession of the unit for his or her own use and occupancy as a principle residence or the principle residence of a relative may rescind the notice or stop eviction proceedings but, if the tenant vacates within one-year of the date of service of the notice, the tenancy is presumed to have been terminated by the owner as a result of the notice. The rental rate for the next tenancy established in the vacated unit shall be no more than the maximum allowed under the Rent Ordinance for the tenant who vacated, plus any subsequent increases authorized by the Rent Board.

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

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

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

[Effective November 19, 2001]

1209.5 Parties in a Petition Subject to a Tenant-based Government Subsidy.

In any tenancy subject a “tenant-based” government subsidy as defined in 24 CFR section 982.1(b), the government agency which administers the subsidy program shall also be a party to any petition pursuant to this chapter.

1262. Base Year Net Operating Income (NOI)**

(A) The base year shall be the calendar year of 1979, or the calendar year of 1981 for rental units specified in Section ~~13.76.050F~~ **13.76.050.C.9** of the Ordinance, except as otherwise provided in subsection (B) below.

(B) If the base year is demonstrated to be inappropriate for reasons other than the way the records are kept for bookkeeping or income tax purposes, the hearing examiner may use another more appropriate calendar year as an alternative base year. An alternative base year selected under this subsection may not be substituted for the actual base year in determining eligibility for an adjustment under subsection (C). However, if a property using an alternative base year is determined to be eligible for base year rent adjustments under subsection (C), the alternative base year gross income shall include the base year rent adjustment as increased by subsequent annual general adjustments. The net operating income for any such alternative base year shall be calculated without taking into account any portion of any rent increases allowable for the property under the 1991 Inflation Adjustment Order (Regulation 1113).

(C) The base year net operating income and current lawful rent ceiling shall be adjusted by the Board if the petitioning party demonstrates, by a preponderance of the evidence, that any of the following circumstances existed:

(1) The landlord's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating such expenses so the base year operating expenses reflect average expenses for the property over a reasonable period of time.

(2) The rent in the base year was exceptionally high or low due to the fact that the rent was not established in an arms-length transaction or was otherwise not set under market conditions.

If the circumstances specified in subsection (C)(2) are demonstrated, base year net operating income shall be adjusted to reflect the rents that would have been received if the base rent had been equal to the prevailing market rent for comparable units. Adjustments of current lawful rent ceilings under this subsection (C) may only be awarded in conjunction with an NOI analysis under Regulation 1264. For future net operating income petitions, the base year net operating income shall include this increase.

[Amended regulation effective December 8, 1995]

1269. Changes in Space or Services

(A) Increase in Space or Services. Rent ceilings may be adjusted upward when there is an increase to the usable space or the housing services beyond that which was provided to a unit on May 31, 1980 or when the base rent was first established.

1. Additional space. Where a landlord adds habitable living space to a unit, other than by merely reconfiguring existing residential rental space, the lawful rent ceiling for such unit shall be permanently increased by 1.042% of the cost of adding such additional space to the existing unit. The supporting documentation must substantiate the nature and cost of the claimed additional space and may include copies of invoices, signed contracts, material and labor receipts, self labor logs, proof of entitlement to skilled labor rate (if claimed), canceled checks or any other items of documentation accepted and used in the normal course of business. Reports which merely summarize or refer to undocumented expenditures are not, by themselves, adequate substantiation. Hearing Examiners shall weigh and evaluate the nature of the documentation submitted as substantiation, and may require additional proof. Evidence of compliance with applicable permit requirements and correction of any cited code violations may also be required.

For increases in space for which on-site construction commenced before April 17, 1995, the owner may elect, as an alternative to the rent adjustment set forth above, a permanent rent increase equal to \$1.00 per square foot of habitable living space added to the unit.

2. Additional services. Where a landlord adds non-habitable space or increases the services provided to a unit, the lawful rent ceiling for such unit shall be increased by an amount representing the market value of the additional space or increased services.

If the additional services and proposed rent adjustment are agreed to in writing by the landlord and tenants, the Board shall approve the proposed rent increase unless it can be shown that the agreement clearly violates the Ordinance. Increases may be denied if a tenant objects and the added space or services do not clearly benefit a majority of the affected tenants. If the additional space or services are subsequently reduced or eliminated, the rent increase authorized herein shall be reduced or terminated. If a rent increase is granted under this subsection, no additional rent increase shall be granted under Regulation 1264 or 1267 for materials or labor involved in providing the space or service. Any increase for an additional bedroom shall result in an increase to the base occupancy level for an additional occupant.

The addition of furniture or furnishings will not be considered an increase in services eligible for a permanent rent increase, but may be the subject of a separate agreement under Regulation 1012.

3. Utilities charged to tenants separately in leases that commenced after February 5, 2024. Berkeley Municipal Code section 13.76.100.E prohibits a landlord from charging a tenant for any utility service separately from the base rent unless such utilities are individually-metered and required under to lease agreement to be in the tenant's name. If a lease entered into on or after

February 6, 2024 charges a tenant for one or more utility services, a landlord may petition under this section to adjust the rent ceiling to include the cost of utilities. Upon sufficient proof of such cost, the Hearing Examiner shall adjust the rent ceiling by an amount equal to the average monthly cost to the unit in question of such utilities in the most recent calendar year. If the landlord is unable to supply the average monthly cost for the unit in question, the landlord may present evidence of a reasonable estimate for the cost of such utilities.

(B) Decrease in Space or Services; Substantial Deterioration; Failure to Provide Adequate Services; Failure to Comply with Codes, the Warranty of Habitability or the Rental Agreement.

1. Decreases in Space or Services. Rent ceilings shall be adjusted downward where a landlord causes a tenant to suffer a decrease in housing services or living space, from the services and space that were provided at the unit on May 31, 1980, or from any additional services or space provided at the beginning of the tenancy pursuant to the rental agreement. For tenancies beginning after January 1, 1999, rent ceilings shall be adjusted downward only where a landlord causes a tenant to suffer a decrease in housing services or living space from that which was provided at the beginning of the tenancy pursuant to the rental agreement. It shall be presumed that any space or service provided at the beginning of the tenancy was provided pursuant to the rental agreement. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the reduction in living space or housing services) by the rent ceiling in effect at the time of the impairment, and for past decreases, multiplied by the period of time the impairment existed. In determining the amount of the downward rent adjustment by the percentage of impairment of use/benefit method, the hearing examiner may consider the reasonable replacement cost of the space or service in question. Any rent ceiling reductions pursuant to this subsection shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the space or service has been restored.

2. Denial of Petitions for Unilateral Removal. The Board will not accept petitions from landlords who seek a rent ceiling decrease for the unilateral removal or reduction of space or services from a tenant's base level space or services. Petitions shall be accepted only when a tenant has expressly agreed in writing to the removal of such space or services. "Base level space or services" are the housing services or living space that were provided at the unit on May 31, 1980, and any additional services or space provided at the beginning of the tenancy pursuant to the rental agreement; except that, for tenancies beginning on or after January 1, 1999, "base level space or services" are the housing services or living space that were provided at the beginning of the tenancy pursuant to the rental agreement.

3. Substantial Deterioration, Inadequate Services. Rent ceilings shall be adjusted downward for any substantial deterioration in a rental unit and/or for any failure to provide adequate housing services occurring during the petitioner's tenancy. The

amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide adequate service) by the rent ceiling in effect at the time of the impairment. For purposes of this subsection, a substantial deterioration means a noticeable decline in the physical quality of the rental unit resulting from a failure to perform reasonable or timely maintenance and adequate housing services means all services necessary to operate and maintain a rental property in compliance with all applicable state and local laws and with the terms of the rental agreement.

4. Code Violations, Breach of the Warranty of Habitability. Rent ceilings shall be adjusted downward for any failure to substantially comply with applicable state rental housing laws, the warranty of habitability or local housing and safety codes. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenants' use of and benefit from the unit (as a result of the violation, breach or failure to comply) by the rent ceiling in effect at the time of the impairment. Where a condition at the rental unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the rent ceiling decrease shall be in an amount that reflects the reduction in value of the premises due to the unsafe or unhealthy condition. A substantial lack of any of the affirmative standard characteristics for tenantability set forth in Civil Code section 1941.1(a) shall be deemed a violation of the warranty of habitability and the rent ceiling shall be decreased by no less than 10% or, for a violation of subsections (2), (3) or (4) of Civil Code section 1941.1(a), no less than 20%, until the condition is corrected, notwithstanding seasonal variations in or an absence of impairment to a tenant's use of or benefit from the unit. The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of tenants (e.g., dangerous window bars, missing smoke detector) shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Board within 35 days of mailing of the hearing examiner's decision unless the landlord establishes that the violation cannot be corrected within that time due to circumstances beyond the landlord's control. For purposes of this subsection, a breach of the warranty of habitability occurs when the rental premises are not in substantial compliance with applicable building and housing code standards, which materially affect health and safety. Minor housing code violations which do not interfere with bare living requirements do not constitute a breach of the warranty of habitability.

5. Rent ceiling reductions pursuant to subsections (3) and (4) of this regulation shall be effective from the date the landlord first had notice of the deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the condition for which the reduction was granted no longer exists. A tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the landlord first received notice of the decreased service, deterioration, code or habitability violation. Notice may be actual or constructive. A landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been

disclosed by a reasonable inspection of the premises. A copy of a housing code inspection report from the City of Berkeley department responsible for the residential rental inspection program should be submitted with the petition.

[Effective Date: 08/01/81; subsection (A) amended 05/05/91, 05/08/92, 06/09/95, 04/11/97; subsection (B) amended 04/11/97, 09/09/98, 04/05/99, 08/05/02, 08/18/03, amended subsection (B) and (B)1; subsection (B)2 added 11/18/13; amended subsection (B)4 to refer to correct sections of California State Civil Code section 1941.1 on 12/17/18, amended Section (B)5. to refer only to subsections (3) and (4) – 9/19/19]

1274. Limit on Individual Increases**

(A) Purpose. The purpose of this regulation is to protect tenants from substantial rent increases which are not affordable, and which may force such tenants to vacate their homes and result in consequences contrary to the stated purposes of the Ordinance, namely, to maintain the diversity of the Berkeley community, to preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped and the aged.

(B) Rent Increase Limit. Notwithstanding any other provision of this chapter, the implementation of a rent ceiling increase shall be limited each year as follows:

15% of the rent ceiling on the date the petition is granted, before any awarded increase is added.

If the amount of any rent increase granted under these regulations exceeds this limit, any portion in excess of the annual limit shall be deferred to the subsequent year, to take effect on the anniversary of the decision. Where the subsequent year’s increase exceeds the annual limit, the remainder shall be deferred again, until the entire increase has taken effect.

The rent increase limit of this subsection (B) does not apply to the following situations:

- 1. Annual General Adjustments granted by the Board;
- 2. Landlord and tenant agreements to an increase schedule which exceeds these limits;
- 3. Units which are or become vacant, where the vacancy was voluntary or the result of an eviction for any of the good causes listed in Section 13 of the Ordinance except for 13(a)(87), 13(a)(98), or 13(a)(409);
- 4. Rent increases granted for an increase in the number of tenants under Regulation 1270;
- 5. Temporary rent adjustments granted under Regulation 1281 in cases where the Board finds that a different implementation schedule is appropriate.

[As amended December 26, 1992 and December 5, 1997; amended 9/19/19]

1300. Obligation to Offer Vacated Unit to Tenants**

(A) When the landlord seeks in good faith to recover possession of a rental unit for his or her own use and occupancy as his or her principal residence, or for the use and occupancy as the principal residence of the landlord's child or parent, pursuant to Ordinance 13.a(98) and the person for whose use recovery of the unit is sought already occupies a unit on the same property parcel and said unit will become vacant as a result of the landlord's recovery of possession; the landlord shall accord the tenant(s) who will be displaced by said recovery of possession the right of first refusal to occupy the unit to be vacated by the landlord or the landlord's relative.

(B) Said offer shall be upon substantially the same terms and conditions as the existing rental agreement between the landlord and the tenant(s) and at a rent not in excess of the current lawful rent ceiling for the unit vacated by the landlord or the landlord's relative pursuant to the provisions of the Ordinance and the regulations of the Board.

(C) If the number of persons who may, under applicable state law or local ordinance, lawfully occupy the unit vacated by the landlord or landlord's relative is less than the number of persons currently occupying the unit for which recovery of possession is sought, the landlord may condition the offer of the vacated unit upon the tenant's agreement to reduce the number of occupants to the maximum lawful level. In such circumstances, the determination as to which tenants shall occupy the vacated unit and which shall find other housing shall be made by the tenants themselves. In the event that no agreement can be reached among the tenants, the landlord shall have no obligation to offer the vacated unit to any of the tenants.

[Effective Date: August 24, 1983. Revised 9/6/01 to remove the wording "1301-1309 (Reserved)" from the bottom of the page.]

1301. Determination of the Initial Rent for a Non-Comparable Replacement Unit Required to be Offered to Displaced Tenant Pursuant to Berkeley Municipal Code Section 13.76.130.A.9e8(e).**

(A) Purpose: A landlord seeking to recover possession of a rental unit pursuant to Berkeley Municipal Code section 13.76.130.A.98, for use and occupancy by the landlord or the landlord's spouse, child or parent, must offer the tenant occupying that unit ("the occupied unit") any other dwelling unit owned by the landlord in the City of Berkeley that is available for occupancy as a replacement rental unit. The offer must be made when the landlord first becomes aware of the availability of the unit. Unless it has been cited as unsafe for human habitation by a governmental agency, a dwelling unit is available for occupancy as a replacement unit if it is not the subject of a rental agreement at the time the tenant is served with notice terminating the tenant's tenancy or at any time thereafter until the earlier of the tenant's surrender of possession of the premises or entry of a final judgment awarding possession of the premises to the landlord. The initial rent for the replacement unit shall be based on the current rent of the occupied unit with an adjustment based on differences in the replacement unit's condition, size, services, location, and other amenities.

(B) Procedure: Parties may agree on an initial rent for the replacement unit. If they do not agree, either party may file a petition requesting that the Rent Board determine the initial rent for the replacement unit. The petition shall be on a form approved by the Rent Board and shall be accompanied by (1) a completed Unit Comparison form on which the petitioner shall provide all requested information regarding the condition, size, services location and other amenities of both the occupied unit and the replacement unit and (2) any supporting evidence. The petition must be accompanied by proof that it has been served on the opposing party.

Upon receipt of the petition, the Rent Board shall send a blank Unit Comparison form to the opposing party who shall complete the form and file it with the Rent Board, along with any supporting evidence, within 10 days of the date it was mailed, which shall be clearly stated on an accompanying proof of service. A hearing shall be held on the petition in accordance with Regulation 1221 no later than 15 days from the date that the respondent's completed Unit Comparison form was filed with the Rent Board. The parties may present or may be required by the hearing examiner to provide evidence concerning the value differential of the condition, size, services, location, and other amenities of the two units. The proceedings under this regulation shall be conducted according to all provisions of Chapter 12, Subchapter B, not in conflict with a provision of this regulation.

(C) Standards: The initial rent for the replacement unit shall be the same rental rate per square foot as the rental rate of the occupied unit, with appropriate adjustments based on the fair and reasonable value of the differences, if any, in condition, size, services, location, and other amenities of the two units.

(D) Decision: Within 10 days following the close of the record, the hearing examiner shall issue a written decision containing findings of fact that specify and ascribe a value for each of the

differences between the two units and determine the initial rent for the replacement unit. Notice of the hearing examiner's decision shall be mailed to all parties. The notice shall also state that any party aggrieved by the decision may appeal the decision to the full Rent Board by filing an appeal within 10 days of the date the decision was mailed. The last date for filing an appeal shall be clearly stated on the notice. Any appeal shall be given precedence over other pending appeals and shall be heard and decided as expeditiously as possible.

[Effective Date: September 6, 2001; amended subsection (A) on June 20, 2005 to change the term "*rental unit*" to "*dwelling unit*" add the second sentence and add from Unless..... to.....agency, to the third sentence.]

1311. Alleging Compliance in Complaint**

- (A) In any action to recover possession of a rental unit covered by the Ordinance, except an action to recover possession under subsections 13(a)(~~76~~) and 13(a)(~~810~~), a landlord shall allege in the complaint for possession substantial compliance with the implied warranty of habitability and compliance with Section 10 (Rent Ceiling) of the Ordinance for the rental unit which is the subject of the action to recover possession, and a landlord shall allege in the complaint for possession compliance with Section 8 (Rent Registration) of the Ordinance for all rental units in the property which contains the rental unit which is the subject of the action to recover possession.
- (B) For purposes of this regulation, a landlord shall not be in compliance with Section 8 (Rent Registration) of the Ordinance until they have filed all registration statements as articulated in Regulation 801 including all Vacancy Registration Forms for fully controlled units and Registration Statements and Tenant Registration Forms for Partially Covered Units for all current tenancies.
- (C) A landlord's failure to comply with the requirements of this regulation shall be a defense to any action for possession of a rental unit covered by the Ordinance.

[Effective Date: May 13, 1981; Amended 1-20-22 to clarify that a landlord's failure to file registration statements shall be a defense to any action for possession]

1312. Filing of Notices and Complaints with Rent Board**

(A) Pursuant to Ordinance section 13(d), landlords must file with the Board a copy of any notice of termination, notice to quit, and/or summons and complaint, within ~~ten (10)~~ **three (3)** days after the tenant has been served with such notice or summons and complaint. The purpose of this requirement is to provide the Board with information from which it may, among other things: (1) ensure compliance with the "~~good~~ **just** cause" provisions of Section 13(b) of the Ordinance; (2) determine what type of units are being removed from the rental housing stock, e.g., single family homes, condominiums, multi-unit buildings; (3) determine the reasons units are being removed from the rental market, e.g., owner occupancy, Ellis eviction, conversion to condominium, rehabilitation.

(B) A landlord's failure to file any notice of termination, notice to quit, and/or summons and complaint as set forth in Section 13(d) of the Ordinance shall be a defense to any action for possession of a rental unit covered by this Ordinance.

[Effective April 21, 1995]

1380. Evictions for Occupancy by Landlord or Relative**

(A) The landlord shall specifically identify in writing in the notice of termination and in the complaint for unlawful detainer the name(s) and relationship(s) to the landlord of all individual(s) for whom the landlord seeks to recover possession of the property for occupancy as a principal residence. Failure to comply with this requirement shall constitute a defense to the eviction action and shall render the notice of termination legally invalid.

(B) Inclusion of the name(s) and relationship(s) of the person(s) for whom the landlord seeks to recover possession in the notice of termination and the complaint for possession shall be one element to be considered in the determination of whether or not the good faith requirement of Section 13(a)(98) has been met.

(C) If the individual(s), named in the notice of termination, for whom possession was recovered under Section 13(a)(98) occupies the rental unit as his/her/their principal place of residence for a period of less than thirty-six (36) consecutive months following the date that the tenant vacated the unit, there shall be a rebuttable presumption that the eviction was not in good faith.

(D) The requirement that the landlord offer any non-comparable unit owned by the landlord to the tenant if a non-comparable unit becomes available before the recovery of possession of the tenant's unit is an essential element of an eviction for occupancy by the landlord or landlord's relative. A landlord's failure to offer an available non-comparable unit or a landlord's deliberately causing an otherwise available unit to be unfit for human habitation shall each constitute a defense to the eviction action. (This subparagraph is a clarification of existing law and does not constitute a change in the law.)

[Original policy adopted November 20, 1980, amended by rule adopted November 26, 1980, amended September 23, 1998 and October 22, 1999.]

[Reference: See also Ordinance Section 15(b) regarding good/bad faith of landlord.] Amended September 8, 2005 [changing Subsection (C) twenty four (24) to thirty six (36) consecutive months and adding Subsection (D)].

1381. Evictions for Occupancy by Landlord, Lessor, or Relative: Definition of Principal Residence

Regulation 503 shall apply to define principal residence for purposes of Ordinance Sections 13(a)(98) and 13(a)(109).

Regulation 1382. Ownership Interests in Property**

- A. A married couple who together hold at least a recorded 50% ownership interest in a property, as community property or otherwise, satisfies the ownership requirement of Sections ~~13.76.050.H and 13.76.130.A9~~ **13.76.050.C.4, 13.76.050.C.9, and 13.76.130.A8** of the Rent Ordinance.
- B. An unmarried couple in a registered domestic partnership, who together hold at least a 50% recorded interest in a property, satisfies the ownership requirement of Sections ~~13.76.050.H and 13.76.130.A9~~ **13.76.050.C.4, 13.76.050.C.9, and 13.76.130.A8** of the Rent Ordinance.
- C. Other than as set forth in Paragraphs (A) and (B), ownership interests in property may not be combined to satisfy the 50% ownership requirement of Sections ~~13.76.050.H and 13.76.130.A9~~ **13.76.050.C.4, 13.76.050.C.9, and 13.76.130.A8** of the Rent Ordinance.

[Effective date: December 14, 2000]

1383. Owner Move-In and Ellis Act Relocation Assistance Disputes. (B.M.C. 13.76.130.A.98 and 13.77.055)**

A) Scope and Purpose

Berkeley Municipal Code subsections 13.76.130.A.98(p)(iii) (Owner Move-In evictions) and 13.77.055.D.2 (Ellis Act evictions) provide that in the event of a dispute over a tenant's eligibility for relocation assistance, either party may file a Rent Board petition requesting a determination of eligibility or file a claim in a court of competent jurisdiction. This Regulation sets forth the procedures and grounds for a Rent Board petition to determine a tenant's eligibility for relocation assistance and/or seeking release of disputed funds.

In the event that both a Rent Board petition and a claim in a court of competent jurisdiction (lawsuit) are filed regarding the same disputed funds, the Rent Board will proceed only on petitions served *before* service of the lawsuit for release of funds. Petitions served *after* the service of any lawsuit for release of funds will be dismissed without prejudice. In the event that the date of service of the lawsuit is unclear or unavailable to the hearing examiner, the filing dates for the respective proceedings may be used in lieu of the dates of service. An unlawful detainer action shall not stay the Rent Board petition, because state law prohibits the plaintiff in that type of action from recovering disputed relocation funds without filing a separate lawsuit.

Except as provided herein, proceedings on petitions filed under this section shall be taken according to all provisions of Chapter 12, Subchapter B.

(B) Standard Relocation Assistance Disputes.

As provided in subsections 13.76.130.A.98(p)(i) and 13.77.055.D.2, a landlord alleging that the tenant is not eligible for the standard relocation assistance must notify the Rent Board in writing that he/she disputes the tenant's eligibility before the funds are released to the tenant. The sole ground for dispute of release of standard relocation assistance is the duration of the tenancy. A tenant who has not resided in the unit for at least one year as of the expiration date of the Notice Terminating Tenancy is not eligible for the standard relocation assistance.

(C) Additional Relocation Assistance Disputes

As provided in subsections 13.76.130.A.98(p)(ii) and 13.77.055.D, a tenant who is eligible for additional relocation assistance must notify the landlord and the Rent Board in writing that he/she is claiming low-income, disabled, elderly, tenant with minor child status, or a claim that the tenancy began prior to January 1, 1999 within 30 days of receipt of the notice of termination of tenancy. A landlord may dispute a tenant's eligibility for additional relocation assistance. In the event that the landlord disputes the tenant's eligibility or fails to deposit additional relocation funds after notice of a tenant's eligibility, either party may file a petition seeking that the Rent Board determine the tenant's eligibility and/or release the funds.

The grounds for claiming eligibility for additional relocation assistance and for filing a tenant petition for release of disputed additional relocation assistance funds are as follows:

- (1) The tenant's household income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, or as otherwise defined in Health and Safety Code Section 50079.5;
- (2) The tenant is disabled, meaning that he or she has a physical or mental impairment than limits one or more of his or her major life activities within the meaning of the California Fair Housing and Employment Act (Government Code Section 12926);
- (3) The tenant will be sixty years of age or older at the time of the expiration of the notice of termination of tenancy;
- (4) The tenant household includes a minor child under the age of 18 years of age at the time of the expiration of the notice of termination of tenancy; or
- (5) The tenancy began prior to January 1, 1999;

A landlord may file a petition for release of disputed additional relocation assistance funds by alleging that the applicable tenant eligibility claim, as stated above, is false.

(D) Petitions; Notice.

Where a landlord disputes the eligibility of a tenant for relocation assistance either party may petition for release of the funds from escrow. 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.

(E) Evidence in support of petition.

Evidence that a tenant is or is not eligible for additional relocation assistance includes, but is not limited to, documentation of the following:

- (1) Receipt of means-tested government benefits such as CalFresh, Medi-Cal, Supplemental Security Income; documentation of actual income, such as W-2 forms, appropriately redacted tax returns, and/or Social Security payments;
- (2) Correspondence from a medical provider, documentation of receipt of disability-related benefits such as Supplemental Security Income, Social Security Disability Insurance, and/or department of motor vehicles records;
- (3) Birth certificates, passports, and/or Department of Motor Vehicles records;
- (4) School registration paperwork, medical records, caregiver's affidavits, and/or guardianship paperwork;

(5) The original lease agreement and any relevant addenda; correspondence between the parties and/or previous landlords; and/or other circumstantial evidence showing when a tenancy began.

[Adopted April 24, 2017]

