

Rent Stabilization Board

September 21, 2012

Foreman Russell G. Miller
2011-2012 Alameda County Civil Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, CA 94612

Dear Mr. Miller:

Enclosed is a copy of the official response of the Berkeley Rent Stabilization Board to the report and recommendations of the 2011-2012 Alameda County Civil Grand Jury Final Report. This response was approved by the Board at its meeting of August 20, 2012 and includes our response to Recommendations 12-10 through 12-14 as requested.

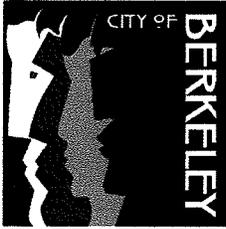
Sincerely,

A handwritten signature in cursive script that reads "Lisa Stephens".

Lisa Stephens
Chair, Berkeley Rent Board

Cc Members of the Berkeley Rent Board
Jay Kelekian, Executive Director

2125 Milvia Street, Berkeley, CA 94704
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Rent Stabilization Board

September 21, 2012

Honorable C. Don Clay
Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, CA 94612

Dear Judge Clay:

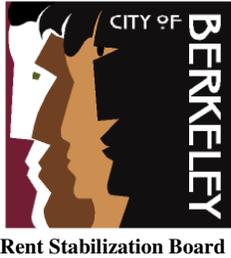
Enclosed is the original copy of the official response of the Berkeley Rent Stabilization Board to the report and recommendations of the 2011-2012 Alameda County Civil Grand Jury Final Report. This response was approved by the Board at its meeting of August 20, 2012 and includes our response to Recommendations 12-10 through 12-14 as requested.

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Berkeley Rent Stabilization Board Response to the Alameda County Civil Grand Jury 2011-12 Final Report

The Alameda County Civil Grand Jury reviewed the Berkeley Rent Stabilization Board's budget, fees and personnel procedures and issued a Final Report with recommendations. We are required to respond to these recommendations by September 24, 2012. This response was approved by the Board at its meeting of August 20, 2012 and we request that it be posted on the Civil Grand Jury web site along with the report and recommendations.

Civil Grand Juries can play an important role in our democracy by reviewing the activities of public agencies and acting as "watchdog" to ensure that those agencies are not abusing the public's trust. From the outset of this review the Rent Board's Chair and Executive Director cooperated fully and provided extensive written documentation to support their verbal testimony. We would have welcomed a critical, fact-based analysis of the Rent Board's charge under the City Charter: the administration of the Rent Stabilization and Eviction for Good Cause Ordinance. Unfortunately this Grand Jury missed such an opportunity, and has instead issued a report that ignores significant evidence substantiating our effective enforcement of Berkeley's rent and eviction laws, choosing to mask a disagreement about policy as a critique of administration. Even more troubling for an official document from a public body, the report relies on inaccuracies, half-truths and innuendo to give a veneer of plausibility to its claims.

It is important to point out that despite a nine-month investigation, **the Civil Grand Jury found nothing illegal or unethical**, nor did it find that any of the Board's activities were outside the scope of the Ordinance. The Rent Stabilization Board, as elected representatives accountable to the citizens of Berkeley, has made policy decisions to fully and effectively enforce the Rent Stabilization and Eviction for Good Cause Ordinance. We carefully oversee the work of the staff to ensure that our policies are carried out. Our staffing levels and costs are in line with those of cities with a similar form of rent control -- Santa Monica, West Hollywood and East Palo Alto. It is evident that the Civil Grand Jury disagrees with Berkeley Rent Board policies. In effect they argue that the Board's faithful implementation of the ordinance's mission itself demonstrates a lack of "effective oversight and accountability".

Finally, what is most disturbing are the references by the Grand Jury to “**potential** for misuse” or “**perceptions** of impropriety”. Anyone can make unfounded accusations and create a “perception” problem. The Civil Grand Jury’s inaccurate and often superficial review of these issues contributes to these “perceptions of impropriety” instead of providing a balanced presentation of the facts.

In the following pages we first provide a summary overview of our response, then respond in detail to the description and analysis presented in the report, and conclude with responses to the specific recommendations made in the report. We also attach a report “Rent Stabilization and Eviction for Good Cause in the 21st Century”, which contains a detailed history of Rent Board administration, finances and staffing.

Summary

Accountability and Oversight

- The elected Board is accountable to the voters, who have repeatedly supported full enforcement of the Rent Stabilization and Eviction for Good Cause Ordinance.
- The Board carries out extensive review of the administration of the Ordinance and does so transparently and in public. Board meetings are televised (with transcription), broadcast on radio and web cast to maximize total transparency and accessibility.
- The Board has six standing committees that regularly hold public meetings with staff to provide effective review and oversight.
- The Board participates in the City of Berkeley's annual outside audit, which is carried out by an auditor selected by the City Manager and City Council.
- The Executive Director receives regular feedback on his performance from individual board members and the Chair, and has been formally evaluated by the full board three times since his hire.

Balancing the Interests of Tenants and Owners

- The purpose of the Ordinance is to create a reasonable balance between the interests of landlords and tenants in Berkeley, in an unbalanced housing market where the median market rent is nearly double the median rent for U.S. metropolitan areas.
- Most of the annual registration fee of \$194 **has been passed on to tenants** by including fee increases in the annual rent ceiling increase allowed on January 1st of each year.
- The vast majority of both tenants and landlords (regardless of their opinion about the law) believe that the services they receive from the Rent Board staff are fair and professional.
- Like most independent agencies, the Board has a lobbyist to represent its interests in Sacramento and has had one since 1984, including during the period when the majority of the Board were people supported by landlord organizations.

Effectiveness, Cost and Efficiency

- The Rent Board receives over 10,000 client contacts annually. Due to the foreclosure crisis and the incentive that vacancy decontrol has created to evict long-term tenants in order to bring in new tenants at market rent, the demand for the Rent Program's good cause for eviction counseling services has **increased** at the same time as the demand for individual rent hearings has decreased.
- Studies have shown that Berkeley gains far better compliance with its ordinance than cities such as Los Angeles, San Francisco and Oakland, which charge much lower fees because they operate on a complaint-only basis. Rent programs in these cities do not require rent registration, do not verify rents, do not do extensive outreach and education, and provide a significantly lower level of service. They also have economies of scale due

to their much larger tenant populations and their programs receive more support from other city departments funded by tax payers.

- Berkeley's registration fee is within the range of the other California cities with strong enforcement policies: Santa Monica, East Palo Alto and West Hollywood.
- The staff at the Rent Board has **decreased** since the passage of vacancy decontrol in 1995, going from 27 to between 19 and 21 FTE during the past few years.
- The annual registration fee of \$194 per unit is 1.25% of the \$15,750 average annual rent per unit.
- We are fortunate that while tax limitations and recession are crippling many local government services, the Berkeley Rent Board is able to charge adequate fees to ensure that the Rent Stabilization and Good Cause for Eviction Ordinance is properly enforced at a time when foreclosures and the recession have increased demand for our services.

Personnel Issues

- All Rent Board employees except the Executive Director are hired through the City's civil service system, which is administered by the Human Resources Department. Despite inaccurate claims to the contrary by the Grand Jury, the Human Resources Department ranks job applicants by their qualifications. Each employee hired or promoted is interviewed and ranked by a professional panel and the most qualified candidate is recommended to the Director for selection.
- The Rent Board follows all City civil service rules and personnel procedures. Employee classifications and pay are set by the Human Resources Department following the requirements of the union contracts and other city policies.
- The elected Board's compensation has not increased in 25 years, since 1987. The current board has instituted new policies that tie compensation directly to attendance.
- The Executive Director's pay is within the City's range established for heads of similar sized departments and is also similar to what rent program directors are paid in other cities.

Responses to Specific Recommendations

- The Board intends to fully and effectively enforce the Ordinance. While we are constantly looking at ways to improve our operations, we will not give priority to cost reduction over effective enforcement.
- The Board will commission an outside expert or peer review by staff of another rent stabilization program to review the appropriateness of its workload and staffing, using effective enforcement as the standard for evaluation.

- The Board already passed most of the registration fee through to tenants in the Annual General Adjustment process.
- Salaries at the Rent Board are already set by the Human Resources Department based on the City's civil service system and union contracts, with two exceptions: the Board members and the Executive Director.
 - Board compensation has not changed since 1987. We do not plan to lower it.
 - When the current Executive Director leaves, the Board will set the salary of the new Executive Director at the level necessary to attract and retain an executive with the highest possible qualifications.
 - The Board will ask the City Council for a review of all executive compensation citywide.
- Board will conduct an annual review in addition to the full-scale performance review of the Executive Director that the Board already conducts every three years.

Detailed Response

I. Purposes of the Rent Stabilization and Eviction for Good Cause Ordinance

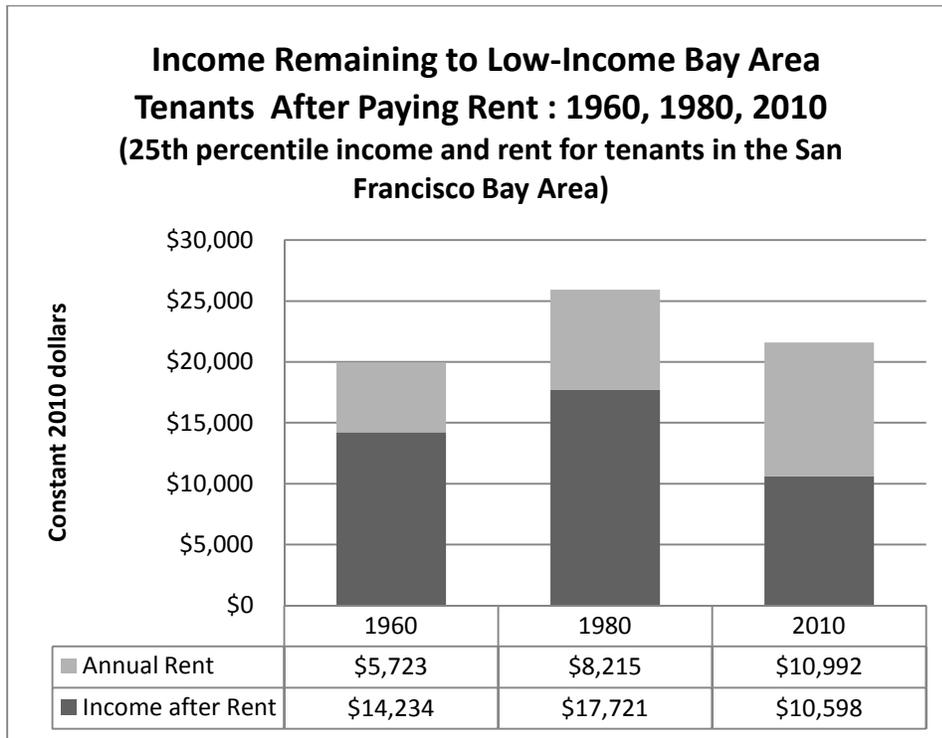
A discussion of the purpose of the ordinance and the circumstances under which the ordinance was passed and continues to operate is essential when evaluating the work of the Berkeley Rent Stabilization Board.

In 1980 the citizens of Berkeley and a number of other cities passed rent stabilization and eviction for good cause ordinances to create more balance between the interests of landlords and tenants in a rental housing market that was in crisis and remains so today. The rental housing market in the central Bay Area is dysfunctional and has an extreme shortage of housing affordable to low-income people. In a well-functioning rental housing market, if rents increase the supply also increases. This competition holds rents down to the minimum necessary to provide housing at a reasonable profit, thereby providing a balance between landlords and tenants. In the Bay Area it does not work that way. Market rents in the Bay Area have risen much faster than the rate of inflation since 1980 and much faster than tenant incomes. Many tenants pay the maximum they can afford and beyond.

Housing is unlike other consumer goods because it combines a building and the underlying land. No one can sell automobiles or groceries in Berkeley or elsewhere in the Bay Area for substantially more than their price in Modesto, California or Portland, Oregon. However, since no one can bring additional building sites into Berkeley to put apartment buildings on, land values rise continually, and the difficulty of building on the small number of “in-fill” sites further drives up the cost of construction. The result of rising land and construction costs is that, although there are many different landlords in Berkeley, the rental housing market is characterized by scarcity rather than effective competition. As a result, rental property owners in Berkeley and the central Bay Area receive rents that are substantially greater than what is necessary to operate and maintain rental housing and make a normal rate of profit in doing so. (This does not mean that every individual owner is making a high rate of profit. Investors pay a price for rental housing based on current and expected future rent levels and some purchase properties at prices that result in a negative cash flow in the expectation of future gains.)

Berkeley’s voters attempted to prevent these unnecessary increases in the rents of existing rental housing by passing a strong rent control ordinance in 1980, the “Rent Stabilization and Eviction for Good Cause Ordinance”. This ordinance established 1980 rents as the baseline and provided for rent increases necessary to cover increases in operating expenses, the cost of capital improvements necessary to maintain the property and an inflation adjustment to maintain the landlord’s profit. The ordinance allowed rent increases roughly equal to the rate of inflation as measured by the Consumer Price Index. The California legislature partially overrode Berkeley’s rent ordinance in 1999 by requiring that landlords be allowed to set the initial rent for new

tenancies without limitations, resulting in increases that far exceed the rate of inflation when new tenants move in. Rents in newly rented Berkeley apartments now average over \$1,400 a month compared with the national metropolitan average of \$713 reported by the Census Bureau’s American Community Survey. Berkeley’s rents continue to rise despite California’s economic difficulties and high unemployment rates.



Sources: Bureau of the Census, Bureau of Labor Statistics

Fully 37% of the long-term Berkeley tenants who have remained in the same apartment since 1998 are elderly or disabled and 65% are low-income. Their rents have increased with inflation and would be considered high in many other cities in the United States. Their rents are considered low in the Bay Area only because we are so used to a broken market with rents among the highest in the United States. Rent stabilization is a response to this broken market and allows these low income tenants to remain in their homes and in Berkeley.

For more recent tenants Berkeley now has what can be described as a “vacancy decontrol – reconrol” system of rent regulation. Rents start at the market rate but the Ordinance still provides the new tenants with stability and predictable rents. It limits increases after tenants move in and requires that evictions take place only for a specified good cause, such as non-payment of rent, damaging an apartment or violating the lease. There is substantial evidence that housing security and stability are important factors not only in tenants’ quality of life but in their

health. In addition, more stable tenants have a greater stake in the community and create more stable neighborhoods. Our mission as a Board is to implement the Ordinance that serves this important purpose in our community.

II. Effectiveness, Cost and Efficiency in Enforcing the Ordinance

1. Fees are higher in Berkeley than in Los Angeles because Berkeley's program is more effective and this has higher costs.

The Civil Grand Jury asserts that the Rent Board “must reduce the high rental registration fees” and follow the example of the larger cities of Los Angeles, San Francisco and Oakland, all of which charge much lower fees. The City of Los Angeles has approximately 450,000 rent stabilized apartments and its rent stabilization program has a staff of 77 people, funded with a fee of \$19 per unit. This is one staff person for every 6,500 units. The City of Oakland rent adjustment program has approximately 58,000 rent stabilized apartments and a program staff of seven, which is one staff person for every 8,000 units, funded with a fee of \$30 per unit. Applied to Berkeley these comparisons would suggest a staff of three people to administer the ordinance for Berkeley's 19,000 registered units rather than a staff of 19. Santa Monica, the City whose ordinance is most similar to Berkeley's, has 28,000 rent stabilized units and a staff of 27, but according to this comparison it should have a staff of four.

There are three major reasons for the dramatic differences between Los Angeles, Oakland and San Francisco on the one hand, and Berkeley and Santa Monica on the other. First, Berkeley and Santa Monica are cities with active enforcement of their rent ordinances, while the larger cities have complaint-based programs. Second, the larger cities provide legal, accounting and other services to their programs using staff from other Departments, so that the staffing levels reported are not fully comparable and other revenue sources fund more of the real cost of their operations. Third, the larger cities have greater economies of scale than smaller cities.

There are two main types of rent regulation in California. One group of cities does active enforcement: Berkeley, East Palo Alto, Santa Monica and West Hollywood. The other group of cities does more passive, complaint-based enforcement: Los Angeles, Oakland, San Francisco, and San Jose. Active enforcement costs more and results in a higher level of compliance with the law. Berkeley's voters have consistently supported a strong, fair system of rent regulation and they have supported the measures necessary to fully enforce it.

The Civil Grand Jury report makes no effort to evaluate what is actually required in order to effectively implement Berkeley's Rent Stabilization and Good Cause for Eviction Ordinance and it ignores the evaluation studies done by the City of Berkeley, the City of Los Angeles and by

academic researchers. Proper enforcement requires rent registration and verification, which Berkeley does. The larger cities don't do that. They do limited outreach, and instead rely on tenant complaints about rent violations to enforce their ordinances.

A recent study commissioned by the City of Los Angeles reported that more than one quarter of all rent stabilized tenants in Los Angeles, well over 100,000 tenant households, had been subject to rent increases over the legal limit. The report recommended that Los Angeles consider requiring rent registration as Berkeley does.¹ In contrast, Berkeley's recent study found that at most five percent of all tenants were paying an amount over the registered rent ceiling.² The Civil Grand Jury chooses as its model a system that allows tens of thousands of tenants to be overcharged and uses this as the basis for arguing that Berkeley's administrative costs are excessive. Ongoing education, rent registration and verification all add to the cost of our program, but it costs tenants far more when they are overcharged. Likewise, lack of adequate information and education is potentially very costly to owners. As it was explained to the Civil Grand Jury, more outreach is provided to owners than to tenants to help them avoid inadvertent violations of the law, resulting in penalties, and potential rent overcharges, or have otherwise allowable evictions blocked due to non-compliance with the law.

As the table below shows, Berkeley's fees fall within the normal range for the other California cities that have strong enforcement policies: East Palo Alto, Santa Monica and West Hollywood.

Table: Registered Units, Per Unit Fees and Staff in Cities with Strong Enforcement Policies

City	Registered Units	Per Unit Fees	Staff
East Palo Alto	1,900	\$234	2 plus assistance from other City departments.
Berkeley	19,000	\$194	19
Santa Monica	28,000	\$156	27
West Hollywood	15,000	\$120 plus in-kind General Fund support	9 plus assistance from other City departments.

¹ Economic Roundtable, *Economic Study of the Rent Stabilization Ordinance (RSO) and the Los Angeles Housing Market*, 2009, pp. 5, 12, 127.

² Berkeley Rent Stabilization Board, *Report on the April – May 2009 Survey of Tenants of Registered Rental Units*, March 15, 2010, pp. 21-22.

The staffing for both East Palo Alto and West Hollywood is significantly understated, in the same way that it is understated for the larger cities. In the case of East Palo Alto more than half of the budget supports purchase of services from consultants and other City Departments, including the City Attorney's Office and the Finance Department. In the case of West Hollywood, similar services are provided by other departments and by the administration of the larger Department in which the Rent Stabilization Program is located, but these services are provided using General Funds, which thus subsidize operation of their Program resulting in a lower user fee. Berkeley and Santa Monica are the only two cities in which the rent stabilization program has its own attorneys. This is because for Berkeley, as the City Attorney ruled in 1992, the interests of the elected Rent Board may not always coincide with the interests of the elected City Council, so that separate attorney's offices are necessary to avoid potential conflicts of interest.

Finally, larger cities also have greater economies of scale. For example, it takes the same amount of work to produce or update an informational brochure explaining the process to apply for a rent increase or decrease under the provisions of a municipal ordinance and to post the information to a web site regardless of the number of units the ordinance applies to. When the report points out that "other cities with significantly more units manage rent control with lower fees", the fact that they have "significantly more units" is an important part of the explanation for their lower fees. In addition, both Santa Monica and West Hollywood have larger buildings and this reduces the regulatory cost per unit. More than other cities, Berkeley has many units in smaller buildings (1-5 units), which increases administrative costs.

The Berkeley Rent Stabilization Board has made a policy decision to charge fees sufficient to enable it to fully and fairly enforce the Rent Stabilization and Eviction for Good Cause Ordinance. The Grand Jury report says that "the board needs to reprioritize services and to reduce costs not only in its administration but in services to the citizens of Berkeley" (p.73). Since the costs of Rent Board administration are the costs of the services provided by the Rent Board, it appears that the Grand Jury wants the Rent Board to reduce the fees by adopting different policies that would reduce the quality of outreach and enforcement of the ordinance, giving owners and tenants less assistance in understanding the requirements of the ordinance and making it more likely that some will violate the law. This is not a simple concern with administrative efficiency, but a call for substantive policy change and one that we find unacceptable.

2. The Board has reduced staff since vacancy decontrol

The Civil Grand Jury report uses Berkeley's initial 1980 registration fee of \$12 per unit to assert that Rent Board fees, currently \$194 per unit, have increased exorbitantly. As the Executive Director explained to Grand Jury, the initial fee was set far too low to meet the requirements of

the agency. Santa Monica, which provided significantly better administration of its ordinance in the early years, raised its fee from \$12.50 in 1979 to \$72 per unit in 1981. The voters frustration with the inability of the Board appointed by the City Council to adequately enforce the law with a fee set far too low led to creation of the elected Board in November 1984. The elected Board raised the fee to a more realistic \$60 per unit in 1985. At its peak staffing in 1986/87, the Rent Stabilization Program had 36 full-time equivalent staff (FTE). In 1995, the year vacancy decontrol was passed by the legislature; the Rent Board had 27 FTE. In recent years we have had between 19 and 21 FTE, despite the Civil Grand Jury report's claim that we have not reduced our activities (p. 65).

The Grand Jury report claims, without substantiation, that vacancy decontrol has so greatly reduced the staffing needs of the Rent Stabilization Program that further reductions should be made. In the real world, to take only one example, vacancy decontrol changed the nature of the problems faced by tenants in Berkeley by providing a major incentive for landlords to push out long-term, rent stabilized tenants and replace them with new tenants who would then pay current market rents, instead of the former tenants much lower stabilized rent. In addition, the foreclosure crisis has increased the number of threats to terminate tenancies in distressed properties, even though foreclosure is not a good cause for eviction in Berkeley. This has greatly increased the need for Rent Board action to ensure tenants are aware of and capable of exercising their rights to eviction for good cause. While vacancy decontrol may have reduced the need for extensive hearings on issues such as rent increases for capital improvements, it has increased the need for effective outreach, counseling and education regarding good cause for eviction.

The Civil Grand Jury report summarily dismisses our responsiveness to changing conditions by saying that the Rent Board "re-invented itself, adjusting to the changes to sustain its operations" as if the Board made up the problem of improper evictions by landlords eager for vacancy rent increases so that we would have an excuse to hire more staff. We do not agree. Such evictions are devastating to those tenants who suffer them, especially since many of these tenants are elderly or disabled. For this reason, in 2000 the voters passed amendments to the ordinance that limit the ability of rental property owners to evict elderly, disabled and long-term tenants for purposes of owner-occupancy. This added to the enforcement work of the agency.

The Grand Jury fails to acknowledge the actual changes in staffing levels that resulted from decontrol. For example, the Board has had as many as 6.85 FTE Hearing Examiners on staff. In 1995 (the earliest year we were able to get an accurate count of the number of hearings held), the Board had 4.6 FTE Hearing Examiners and conducted 485 hearings. In 2011, the number of Hearing Examiners was reduced to 1.85 FTE and 215 hearings and/or mediations were conducted. Similarly, in 2002 the Board had three attorneys - a Chief Counsel and two individuals at the Staff Attorney III level. The combined cost for these three positions would be roughly \$475,000 at current salaries. In 2011 and 2012, the Board has had three attorneys, but

one is a Staff Attorney III and two are at the entry-level Staff Attorney I. The combined 2011 salary cost for the new staff serving in adjusted classifications is roughly \$325,000, a savings of \$150,000 per year.

It is true that the costs of operation of the Rent Board have increased since 1995 despite the decreases in overall staffing, the decreases in the number of hearing officers (a highly paid position that requires California Bar membership) and the use of lower-paid staff attorney positions. This is because four-fifths of the Rent Board budget goes to staff salaries and benefits and these have increased substantially over the years for reasons that are largely beyond the control of the Board. Rent Board staff, with the exception of the Executive Director, are employees of the City of Berkeley and are covered by the various union contracts and personnel agreements for unrepresented employees negotiated by the City Manager and approved by the City Council. The cost increases are due in part to the contracts negotiated by the City, in part to the increased funding requirements for contractually required pensions due to the effects of the recession on pension fund investment returns, and in part due to the increased cost of health insurance. The Rent Board also signs the union contracts, but does this after they are agreed on between the unions and the City Council. The negotiations are controlled by the City Manager, under the policy direction of the City Council. (In 2008, the Board recommended a 0-1% salary increase in union negotiations; the Council agreed to 5% and the Board deferred to the Council.)

3. The Board hires staff with the necessary qualifications.

According to the report, the Rent Board has too many attorneys and their number should be reduced. The report provides no basis for this view and ignores the fact that good quality legal advice helps prevent lawsuits and improves the ability of other staff to assist the public. Instead, the report picks out an isolated comment from the testimony – that among their other duties legal staff “advises other staff to not give legal advice” – and uses this to ridicule the role of attorneys at the Rent Board. This is part of a pattern in the Grand Jury report in which isolated statements and/or facts are taken out of context and misused to place the Board in an unfavorable light, while other more favorable facts are largely omitted. The Grand Jury also may have been unaware that in 1991 the City Attorney determined that the Board must maintain their own legal staff.

The Rent Board public information and counseling staff handle over 10,000 inquiries from the public annually. The most common complaints about the Program in late 2002 were that the counseling was “biased”, “inconsistent” and “unreliable.” In response, since 2004, one entry-level attorney has been assigned to the Public Information Unit to serve as an “attorney of the day.” This is to provide initial and ongoing training to counselors, respond to difficult and more complex cases and provide immediate quality control. In light of the complexity of landlord-tenant laws and regulations these essential functions are best provided by people with legal

training. Training for a newly hired counselor lasts between 4 and 6 months before the counselor is no longer shadowed by the staff attorney or unit supervisor. Complaints about the quality of counseling are now rare and customer satisfaction surveys of owners and tenants indicate that citizens are now pleased with the service they receive from the Board's Public Information Unit.

It is worth noting that the salary differential is only \$500 – \$900 per month between a Community Service Specialist II (the classification used for Housing Counselors) and a Staff Attorney I. We have an appropriate number of attorneys on staff in the appropriate classifications to meet our needs at a reasonable cost.

III. Accountability and Oversight

The voters altered the City Charter to create an elected Rent Board to increase transparency and accountability to the voters because they believed the appointed Board was not sufficiently carrying out the intent of the Ordinance. (The Grand Jury report states that the voters created an elected Board to provide “stricter enforcement of the registration fee”, but increased enforcement measures were part of initiative Measure G, passed in June 1982, while the elected Board was the purpose of Measure N, passed in November 1982.)

The Rent Board takes its mission seriously and has an active committee structure that provides regular and ongoing oversight of staff efforts. Board committees include Budget & Personnel; Eviction, Foreclosure & Section 8; Individual Rent Adjustment/Annual General Adjustment/Habitability; Outreach; Waivers; Safe & Sustainable Housing; and an Ad Hoc Committee on Smoke-Free Housing. Each Rent Board member typically attends 25 - 40 publicly noticed meetings a year. The Board places an emphasis on transparency and accessibility to the public. Regular meetings of the full Board are televised with closed captioning, broadcast on radio and live webcast (webcasts are also archived for convenient home viewing). The Board could reduce costs by being less transparent but feels public accessibility in viewing their government in action is a civic priority.

The Budget and Personnel Committee reviews and discusses **all** changes to the staffing model before forwarding them onto the full Board for final approval. When appropriate under the law, the Board meets in closed session to discuss personnel matters. The Chair and other Board members provide informal feedback and direction to the Executive Director on a regular basis and the Board conducts a detailed formal evaluation of the Director every two to three years. The Grand Jury report did not mention that, similar to other departments in the City, the Rent Board's financial practices are reviewed annually by an independent outside auditor, selected by the City Manager. The report and findings of the outside auditor are forwarded to the Board as part of their oversight function and was provided to the Grand Jury.

In addition, the Board has periodically commissioned studies of the effectiveness of the program, who it is serving and how well it is meeting its objectives. Although they were ignored by the Grand Jury report, these studies have resulted in new initiatives to improve program implementation. A recent survey of tenants analyzed the nature of the tenant population assisted by rent regulation and how well they are served by the program. This study found that new residents of Berkeley were often unaware of their rights and led the Board to work with staff through the Board's Outreach Committee to develop better ways of informing new residents. A recent economic study determined that the rental property owners who own buildings where there has been no turnover since vacancy decontrol (only 400 units out of 19,000) might not be receiving a fair return on their investment. In response, the Board's Individual Rent Adjustment Committee worked with staff to develop a new regulation that will allow these owners an additional rent increase. These are examples of real program evaluation and real accountability.

The Civil Grand Jury report's evidence for a lack of accountability is no more than a disagreement with the policies that this Board has established to give priority to effective enforcement of the ordinance and to charge the fees necessary to do so. The Civil Grand Jury characterizes the current situation as "an era where most governmental entities must control costs". We would characterize this as an era when reduced revenues due to tax limitations and economic recession are crippling local government services. We are fortunate that the Berkeley Rent Board is able to charge adequate fees and ensure that the Rent Stabilization and Good Cause for Eviction Ordinance is properly enforced rather than joining the long list of crumbling public institutions.

When the foreclosure crisis reached Berkeley, the Board directed staff to do outreach to tenants being threatened with illegal eviction by banks and other lenders who routinely tried to empty out buildings after foreclosure and to the lenders who were engaged in this illegal activity. This helps tenants remain in their homes. Keeping people in their homes helps to keep neighborhoods stable by preventing vacant buildings and blight. It has also helped some owners negotiate agreements with their lenders, once the lenders understood that they could not take the easy path and would have to undertake the responsibilities of being a landlord if they carried out the foreclosure. The Board now receives regular reports from staff on outreach to troubled rental properties. Similarly, in the case of two recent apartment building fires, the Board directed staff to do outreach to the displaced tenants. Board staff were then asked by other City departments to coordinate all tenant outreach, since we had experienced counseling staff and were better equipped to do this. The Board received regular reports from staff and responded with additional policy guidance as issues arose. These are examples of the Board exercising its policy-making role, providing direction to staff, ensuring that staff carries out its directions and using the resources necessary to meet the needs of citizens of Berkeley.

IV. Balancing the Interests of Tenants and Landlords

1. Most of Berkeley's registration fees are passed through to tenants.

The Civil Grand Jury mistakenly states that only \$48 of the \$194 per unit annual registration fee is passed through to tenants. In reality, virtually the entire fee has been passed on to tenants through increases in allowable rent ceilings or through vacancy increases. The pass-through process has changed over the years, so this point requires a detailed explanation of the different time periods and the different categories of tenant.

From 1980 through 2004, the Board did an annual analysis of all cost increases incurred by property owners and this cost study served as the basis for determining the Annual General Adjustment (AGA), which is the annual increase in allowable rent ceiling that takes effect every January 1st. All increases in the Registration Fee were included in this calculation. The initial annual fee set in 1980 was \$12 per unit and by 2005 the fee had increased by \$142 to \$154 per unit. **All of these increases in fees were included in the annual cost studies and all cost increases were passed through in the AGA.** At a minimum, then, a total of \$142, which is 78% of the fee increases and 73% of the current \$194 per unit fee has been passed through to tenants in the year after each increase. The amount reaches \$182 and the percentage pass-through is 94% for those owners that take the additional \$48 direct pass through described below.

In November 2004, the voters approved a measure that eliminated the annual cost study and instead set the AGA at 65% of the increase in the Consumer Price Index. This change took effect beginning with the January 1, 2006 AGA. Since that change, the Board has increased fees from \$154 in July 2005 to \$170 in July 2007 to \$194 per unit in July 2009 for a total increase of \$40. This \$40 is the only fee increase that was not passed through to all tenants in the following year. It has, however, been passed through to tenants in apartments that have never received a vacancy increase. The Board allows owners to increase rents by \$4 per month (\$48 a year) for tenants whose units have never received a vacancy increase, generally tenants in place since 1998 or prior. This amount includes the \$40 registration fee increase plus a portion of the City's per unit fees for housing code enforcement. This means that for units occupied by long-term tenants in place since 1998 or earlier the Board has passed through to the tenant all increases in registration fees. This is everything except for the initial \$12 fee and amounts to 94% of the total fee.

As mentioned above, starting in January 2006 the AGA rent increase has been set based on the increase in the Consumer Price Index rather than on a cost study and it no longer takes increases in the fee directly into account. This formula was mutually agreed on by the Rent Board and the Berkeley Property Owners Association (BPOA) in settlement of a lawsuit by the BPOA, so it

seems reasonable to assume that the BPOA deemed this increase, along with periodic vacancy increases, to be sufficient to cover most normal increases in costs.

Representatives of the Berkeley Property Owners Association have recently argued that even if the previous tenant's rent included a full pass-through of all registration fees and even if the new tenant's rent is substantially higher than the previous rent due to vacancy decontrol, the owner should be able to pass through the full amount of the registration fee to the new tenant in addition to their new, higher rent. In the first quarter of 2012 the mean rent ceiling for apartments that have never received a vacancy increase was \$778 compared with a mean rent ceiling of \$1,402 for apartments that have received a vacancy increase. So even though the rent of the tenant paying \$778 a month includes a pass-through of most of the registration fee, the argument made by the property owner advocates is that the next tenant who moves in and pays a rent of \$1,402 a month should have an additional \$16 a month added to their costs to cover the registration fee. There is no justification for this under the rent ordinance. In fact, this is contrary to what proponents of decontrol argued at the time the state legislature was considering vacancy decontrol, when they said the increased rents at the start of new tenancies would cover all prior and anticipated cost increases.

The Berkeley Rent Ordinance entitles the owner to a rent sufficient to provide for cost increases and a reasonable profit based on the 1980 base rent. According to the 1980 Census the median contract rent in Berkeley was \$223 (adjusted for inflation this would be \$647 in 2011 dollars), while in 2011 the median contract rent for all apartments under rent stabilization was \$1,200 and for those that had received a vacancy increase it was \$1,404. By any measure, market rents in Berkeley have gone up by far more than is necessary to provide a fair return on investment. Thus, under the ordinance, owners whose apartments have turned over in recent years have received all necessary cost increases including the increases necessary to cover registration fees. There is no basis in the ordinance to allow an additional pass-through of registration fee increases for these apartments when vacancy decontrol has already allowed the owner to pass this cost on to the tenant. If any owner has a legal rent ceiling that is lower than the amount necessary to pass through the registration fee along with all other operating costs and still receive a fair rate of return on their investment they are entitled to ask the Rent Board for a rent increase and can even pass through any reasonable costs for professional assistance in going through this process.

The Grand Jury report proposes that Berkeley adopt the pass-through approach used in Santa Monica. The Santa Monica Rent Control Board has always allowed owners to pass through the registration fee to tenants and **excluded the fee from the base rent and from its annual cost studies**. This system was effectively the same as Berkeley's when both cities had vacancy control. In Santa Monica the amount of the rent used for registration fees was separately labeled while in Berkeley increases in the fee were simply added to the allowable rent ceiling. There is a

substantial difference between the two now that vacancy decontrol allows owners to increase rents to market for new tenancies. Under vacancy decontrol, the Santa Monica pass-through allows the registration fee to be added to the tenant's rent even when that rent has been raised to a point that is higher than is necessary to cover all cost increases and provide a fair return on the owner's investment. That is why the Santa Monica Board is reconsidering its pass-through policies. As a recent Santa Monica Board report states: "Since vacancy decontrol, owners have had the freedom to negotiate market-rate rents that cover all of their costs and provide a fair return. It is not necessary to supplement such income with additional charges to the tenant to maintain this balance."³

Staff in Santa Monica inform us that their system is now being abused by landlords who fail to inform tenants of the registration fee and then add it to the agreed upon rent after the tenant moves in. Any prospective tenant should have a full understanding of the monthly payments they will make to the landlord for renting an apartment and these costs are properly designated as the rent, regardless of what the landlord uses the money for.

There is nothing that currently prevents any Berkeley landlord from starting new tenancies by using a lease that designates \$16 of the monthly rent as a monthly payment for the registration fee. For example, instead of leasing a unit for \$1,400 monthly, the owner could lease it for \$1,384 plus \$16 for the registration fee, for a total of \$1,400 or, if they feel they can get more from the tenant then they could set the rent at \$1,400 plus \$16 for the registration fee for a total of \$1,416 monthly. In either case the total amount would become the new base rent for purposes of calculating future rent increases during that tenancy. The only part of registration fees that could not be passed through in this way would be increases in the fee that take place during a tenancy, when increases are limited by the annual increase formula.

The Grand Jury argues that passing the fee through to the tenant separately would "create a potential check on excessive increases in the registration fee because the tenants would share more of the burden". This argument seems political rather than economic. Even though all fee increases have already been passed through to the long-term tenants, who pay an average of \$778 a month in rent, the Civil Grand Jury, like the Berkeley Property Owners Association, maintains that the fee should be added to the monthly rent of the newer tenants who are paying an average of \$1,402 a month. Berkeley's Rent Stabilization Ordinance sets a standard for a reasonable rent, and by that standard most Berkeley tenants are already burdened by rents far in excess of what the owner needs to recover the registration fee and other operating costs for their apartments.

³ Santa Monica Rent Control Board, "The Impact of Market-Rate Vacancy Increases: Year 13, 1999 – 2011", February 1, 2011, p.24

2. The Board is responsive to landlord concerns.

Contrary to the picture provided by the Civil Grand Jury, the Rent Board pays close attention to the quality of its work with owners and managers of rental property. The nine-member Board is representative of Berkeley’s renter/owner demographics. Four members of the Board are tenants, one is a co-habitant in a single family dwelling and four are property owners including two landlords, which is a greater proportion of landlords than are in the general population. The two landlords are both small property-owners who owner-occupy one unit and rent out another. This is similar to the vast majority of Berkeley landlords, who rent out one to four units, although the majority of the units and all of the larger buildings are owned by a small number of landlords who have 15 units or more.

Table: Ownership by Number of Registered Rental Units ⁴		
	Separate Owners	Currently Registered Units
Total	2,792	18,732
Owners with 1-4 units	1,876	4,104
Owners with 5-14 units	635	5,170
Owners with 15-29 units	193	3,996
Owners with 30+ units	88	5,462
Owners with 1-14 units	2,511	9,274
Owners with 15+ units	281	9,458

More than half of staff contacts with clients are with property owners. The Rent Board recently conducted a customer service survey of landlords and found that, regardless of how they may feel about the existence of rent stabilization in Berkeley, they mostly find the Rent Board staff to be responsive, professional and helpful.⁵ Findings from the survey included the following:

- 71% of respondents owned 1 – 4 units in Berkeley.
- 89% reported that the information they received after contacting the Rent Board was very or somewhat useful.
- 93% reported that the staff person they dealt with was “professional and courteous”.

⁴ The number of units owned does not include rental units exempt from registration, such as units rented to tenants with Section 8 vouchers.

⁵ Jay Kelekian, Executive Director, “Customer Service Survey of Berkeley Rental Property Owners and Managers”, Berkeley Rent Stabilization Board, June 18, 2012.

- 58% reported that the staff person they dealt with was “very knowledgeable and able to answer most questions” while another 40% reported that the staff person they dealt with was “somewhat knowledgeable and able to refer me to staff who have answers to my questions”.

This positive response is a tribute to the quality of the Rent Board staff. They work with a large number of small landlords, most of whom manage their property themselves. These owners often need help to ensure that they understand their rights and obligations under the law and how to follow legal requirements. In addition, the staff regularly conducts special workshops and distributes educational materials designed for new owners.

Landlord activists organized a boycott of the payment of registration fees in 1980/81, which resulted in wide spread non-compliance with the law, with more than half of all units going unregistered. In response, the voters amended the Rent Stabilization Ordinance in 1982 by establishing heavy financial penalties for owners who fail to pay their annual registration fees on time. As compliance improved, the Board went back to the voters who amended the Ordinance to reduce the number of penalties assessed each year. While the number of penalties assessed in a year decreased by two-thirds, the initial 100% penalty was retained to discourage another organized boycott. In order to balance the need for compliance with fair penalties for owners based on their individual situation, the Board has established a “waiver” process that greatly reduces the penalties for most owners based on a prior history of timely payments. When a waiver is requested, rarely is the full penalty assessed.

The Grand Jury implies that the waiver process creates the potential for “arbitrary application”. This is not correct. The Board has crafted detailed regulations that govern the late payment penalty/waiver process. Unless a limited number of issues are involved, the detailed guidelines are applied by staff based entirely on past payment history. There is no discretion in this part of the process and all waivers are reviewed by the Director to assure rules are applied correctly. Certain issues can override the detailed guidelines in the name of fairness, especially for owners of a small number of apartments who are self-managing their property. Examples of this include when a late payment or series of late payments are due to illness or death in a family, or when other events in owners’ life have overwhelmed their ability to comply, even with the best of intentions. The Civil Grand Jury may think this is “arbitrary” but we think that as a quasi-judicial body we should examine the totality of the circumstances and be as fair as possible in light of those circumstances. Our work is done in public, with a permanent record of the property owner’s request, our deliberations and our decision available for scrutiny and challenge. Great effort is taken in reviewing these cases and determining what would be a fair reduction in the penalties legally owed based upon the specific unique facts in each case. The Civil Grand Jury prefers to resort once again to innuendo, claiming “potential for misuse and arbitrary application”, rather than examining the evidence.

The Board is in the process of implementing a new software system. One of the planned next steps is creation of a modernized web site that will allow rental property owners to pay registration fees on line and register the rents of new tenancies on line. This will make these requirements much more convenient for owners and, by saving significant staff time, will also hopefully help the Board limit future registration fee increases.

Finally, the Civil Grand Jury claims that the Board has “little accountability to the landlords”. This apparently refers to Berkeley’s landlord organizations, since landlords are not a unified group, and they have diverse views on the policies of the current Board. Based on the Rent Board’s recent survey of landlords, most individual landlords expressed approval of the services provided to them. The Director testified that he receives 2-3 times as many communications from owners than he does tenants praising the efforts of staff. Landlord organizations can and do have a great deal of influence over implementation of the ordinance. First, through the democratic process Berkeley’s landlord organizations are actively involved in supporting and opposing candidates for office and at times a majority of the Board has been elected with their support. Second, landlord organizations regularly support State legislation to impose changes with which the citizens of Berkeley do not agree. Third, landlord organizations have routinely gone to court to challenge Berkeley’s ordinance and its implementation. Even a cursory look at the history of Berkeley’s ordinance will substantiate that landlord organizations have been able to gain major changes in its implementation, most notably with vacancy decontrol. Indeed, the Civil Grand Jury uses vacancy decontrol as a reason that the Board should further reduce its activities at the same time that it claims that landlord organizations lack sufficient influence.

3. The Rent Board’s Legislative Advocate defends Berkeley’s Ordinance.

Any elected body has a responsibility to promote and defend the policies of the city’s or agency’s electorate and to oppose the override by the state legislature of the will of Berkeley’s voters. Most local and independent agencies retain lobbyists, including Alameda County, the City of Berkeley, the Berkeley Unified School District, the East Bay Municipal Utility District and AC Transit. Since 1984, the Rent Board has retained a legislative advocate (lobbyist) in Sacramento to monitor and support or oppose legislation in conformance with the purposes of the Ordinance. This includes the period of time when the majority of the Board were people supported by landlord organizations. The Ordinance and its provisions are under constant attack and have been for 32 years.

The legislation the Board supports is more accurately characterized as “pro-ordinance” rather than “pro-tenant.” While much of the work of the legislative advocate is specifically intended to protect the ordinance, the Board also supports legislation that clarifies the landlord-tenant relationship and promotes the housing policies of the electorate. For example the Board supported: SB 426(Calderon) clarifying that certain problematic behavior by tenants can be

considered a nuisance under state law and thus be grounds for eviction; AB 1679 (Bonilla) allowing landlords and tenants to agree to use email to resolve the amount of the security deposit refund and direct deposit of the security deposit after a tenant vacates(sponsored by the California Apartment Association); SB 1229 (Pavley) prohibiting landlords from requiring de-clawing or de-voicing animals as a condition to rent or remain in a unit; and AB 818 (Blumenfeld) making recycling mandatory in all multi-family housing.

The Berkeley Property Owners' Association, Apartment Association of California Southern Cities, California Apartment Association, California Housing Council, East Bay Rental Housing Association, Northern California Rental Property Association and numerous other Apartment Associations and Boards of Realtors all have lobbyists working in Sacramento to persuade the legislature to override Berkeley's laws, and they report spending over a million dollars year lobbying the State on rental housing issues.

V. The Rent Board follows all City of Berkeley personnel practices.

1. The Board hires and promotes the most qualified staff

The Grand Jury report is simply wrong when it claims that the City of Berkeley hiring lists are not ranked by applicant qualifications and that this could make it easy for the Executive Director to hire minimally qualified "friends". The standard practice of the City of Berkeley's Human Resources Department is to rank applicants on hiring lists, placing them in three groups, "qualified", "well qualified" and "most qualified". Almost every person hired or promoted by the Executive Director has placed in the "most qualified" group. There have been two or three exceptions over the past decade and each has a specific justification based on the requirements of the position. All selections are reviewed by the Human Resources Department and are subject to challenge by anyone on the list who was not selected. The Grand Jury was informed of these facts, and could easily have verified this by contacting the City's Human Resources Department.

The Executive Director offered to open up his files for every position hired over the previous five years so the Grand Jury's staff could review the process followed and determine that the most qualified person was selected. Regrettably, this offer was declined. Such a review would have determined that without question the staff hired in recent years has extraordinary credentials, many with advanced degrees from prestigious universities. The Grand Jury does not dispute this. Instead, they chose to highlight possible "perceptions of impropriety", buttressed by the factually incorrect claim that there are no rankings, and they use this to imply that the Executive Director **may** not have hired the most qualified people. This amounts to use of innuendo to denigrate the reputation of the highly qualified Rent Board staff, as well as that of the Executive Director and the Board.

Normally the Board is not directly involved in hiring any staff other than the Executive Director, since this would be contrary to the Civil Service system, but in the case of the Administrative Staff Assistant, who directly works with the Board, Commissioner Webster served on the interview panel. She makes the following observation about the process.

“In 2011 I served as a member of the hiring committee to fill the vacated Administrative Staff Assistant position at the Rent Stabilization Board. From an applicant pool of 155 candidates, 43 made the eligibility list; and only five were ranked in the top category and recommended by the city’s Human Resources Department. We interviewed each (top) candidate over the span of a week and deliberated over the varying qualities each applicant would bring to the job. I remember noting at the time how impressed I was with the caliber of the screened applicants sent to us by the City’s HR Dept. The selection process was thorough and followed contractual rules from the inception to the final hire.”

The Grand Jury report singles out for criticism the creation of the Deputy Director position and the accompanying hiring process. Again the Grand Jury states the facts incorrectly. The need for the position of Deputy Director was first identified by the Board in 2006 as a part of the Executive Director’s evaluation, as a response to the heavy demand on the Executive Director and lack of administrative support. At the time, the budget could not support the new position. After retirement of several senior staff in 2009, the Board began the process required for creating any new classification in the City’s Civil Service System, working with the Human Resources Department to develop the job description and getting the approval of the City’s Personnel Board and the City Council. The City Council approved the position and the Board engaged in an open recruitment and selection process. The City’s Human Resource Department conducted an extensive recruitment process and evaluated all candidates, recommending the list of individuals to be interviewed by an outside panel. The panel included a Deputy City Attorney from another city who is familiar with rent control laws and administration, the Chair of the Berkeley Housing Authority appointed by the Mayor, and a member of the Berkeley City Council who is often critical of rent control. Dr. Stephen Barton, the first person hired as Deputy Director, was selected as the most qualified candidate by this panel. Prior to being interviewed by the panel of outside experts, Dr Barton was ranked “most qualified” by the Human Resource Department staff.

Dr. Barton is a widely published, award-winning expert on housing policy and previously served the City with distinction, receiving a City of Berkeley proclamation of thanks from Mayor Bates in July 2007 when he stepped down after nine years as Housing Director. He retired after 15 months in the Deputy Director position but has remained in this position on an hourly basis in retirement and is expected to do so until his current projects are completed and the Board can make a smooth transition to a new Deputy. The report incorrectly claims that after his retirement as Deputy Director he was “rehired as a part-time senior planner”. The Grand Jury report

incorrectly suggests that the Deputy position had the sole purpose of succession planning and that Dr. Barton's retirement indicates that his hiring was "problematic". Dr. Barton was hired because his depth of knowledge of housing policy and City housing programs could facilitate the Rent Board's efforts to better coordinate its work with other City departments. This project was expected to take approximately two years and he has been Deputy Director on a full-time or hourly basis for more than two years now.

2. Claims that the Rent Board does not follow City procedures are false and unsupported by evidence.

The Grand Jury recognizes that all hiring (except the Executive Director) is carried out through the Human Resources Department (p.64) following standard City procedures (p.68) but proceeds to claim that the Human Resources Department does not provide enough oversight of the Rent Board's personnel procedures (p.71) and further claims that the Rent Board "seeks to reap the benefits of being in the civil service system while not applying the city's rules when they determine it benefits them" (p.72). . The report fails to provide a single example to substantiate this claim. Under the current Executive Director the Rent Board has at all times fully applied the City's personnel rules, standards and procedures

The Human Resources Department reviews and approves or disapproves any changes in classifications used by any Department including the Rent Board. New classifications such as the Deputy Director and Administrative Staff Assistant are also reviewed and approved by the Personnel Board and the City Council. The Grand Jury states that "the BRSB and director should heed the advice from the city departments handling personnel, payroll, and finances" (p.69) but again provides not a single example of an occasion when the Board or the Executive Director failed to heed such advice. The Director testified that the City of Berkeley purchasing standards were the minimum standards used and that the Rent Board will receive more bids from vendors than required under standard City practices. In addition, the report says that "Berkeley staff appears to be too deferential to the BRSB when problems are identified" (p.69) but does not specify any of the problems supposedly identified by staff from other departments or provide any explanation why deference would be given.

3. The Executive Director's salary is appropriate.

The Civil Grand Jury is critical of the salary that the Board has negotiated with the Executive Director, stating that he is overpaid in comparison to certain other department directors within the city. This is a simplistic approach that does not reflect the salary-setting process actually used by the City of Berkeley. The report does not look at the salary range and the historical salaries for City of Berkeley department directors in similar-sized departments, nor does it look at the current salaries of rent program directors in other comparable cities, nor does it evaluate

whether the comparisons and considerations the board used at the time the salary was negotiated in 2008 were appropriate. At the time, the Rent Board examined a combination of the Executive Director's length of service to the city and his current job, the previous director's salary, other rent board employees' pay, and the salaries of other city employees with comparable responsibility. The Grand Jury received oral testimony and written documentation from the Board Chair on the process used to determine the salary, all of which is ignored in the report.

The Board started with the City's salary range for directors of small departments (in the spring of 2008 the range was \$127,320 - \$175,032), and compared the salaries and experience of the other roughly equivalent department heads. In April 2008, this included the newly-hired City Clerk at \$169,776, the Director of Human Resources at \$161,136, and the Planning Director at \$179,039. We also looked at the previous Rent Board Director, who would have been making \$165,000-168,000 with only cost-of-living adjustments had she stayed. We conducted a salary study within the agency and found that, prior to renegotiating his contract in 2008, at least two other rent board staff were making more than the Executive Director. We also recognized that the Executive Director of the Rent Board is a unique position within the city, answerable and serving at the pleasure of the nine elected commissioners. The only other city jobs like this are the Superintendent of Schools and the City Manager. And while the Grand Jury does not believe that we should have looked at the salaries of directors of other rent control programs, we did. At the time, Santa Monica, which is most equivalent to Berkeley, was advertising for a new Administrator at a salary substantially higher than the \$148,500 our Executive Director was making.

With all of these considerations we set the Executive Director's salary at \$160,500, then the middle of the range for small department heads, plus any cost-of-living adjustments or other increases the City of Berkeley provided other department heads. We also provided annual step increases to allow the salary to approach the higher end of the salary range as the Director continued to gain experience in the position. The Executive Director's current salary reflects this. The \$183,000 the Grand Jury report cites is also within the current range for small department heads of \$137,772 - \$189,396. This range is set by the City of Berkeley, not the Rent Board. The current salary for the Administrator of the Santa Monica Rent Control Board is \$189,624.

Among the factual inaccuracies in this section of the Grand Jury's report, is a gross overstatement of the Library budget as being \$128,000,000 when it was actually roughly 1/10th that amount. The report also selectively provided salary comparisons for Berkeley Managers as a percentage of budget, ignoring positions like the City Attorney, City Clerk and other Division Managers whose salaries make up even larger portions of their operational budget. The report does not explain that it is not the practice of the City to consider only the size of the budget or number of people supervised in determining salary.

We regulate an industry with an annual income of over \$300,000,000 that wants to not only weaken but entirely eliminate rent regulation, with the result that the Director must be capable of managing and providing leadership in an environment that involves high controversy, high scrutiny, personal attack and frequent misrepresentation. During his tenure with the program, the current director has been personally threatened multiple times and found a bullet hole through his window. We have set his salary at a level that helps ensure that he stays in that position as long as possible, rather than finding it attractive to seek another position.

Rent stabilization is a specialized field that requires expert administration based on a combination of management skills and deep knowledge of the regulatory system and its history. The Board believes that Executive Director Jay Kelekian has demonstrated the highest level of competence and accomplishment during his tenure at the Berkeley Rent Board.

4. Board compensation was approved by the voters and has not increased since 1987.

The 1980 initiative measure provided that the Board would be a working Board and would receive appropriate compensation for their time and work up to a maximum of \$3,000 annually. Adjusted for inflation this is equivalent to about \$9,000 in 2012. The current stipend amount of \$500 monthly was set in 1985 and has not increased since. It has lost more than half its value due to inflation over the years. Health benefits were added in 1987 when other elected officials in Berkeley received them. In 1992 the Board majority, which had been elected with the support of the Berkeley Property Owners Association, reaffirmed this policy and allowed Board members to collect their full stipend as long as they attended at least two meetings every month. The current Board has established rules that tie the stipends to meetings attended and deducts additional amounts from a Rent Board members' stipend when they miss an excessive number of meetings.

The Rent Board is not like other City commissions, which are appointed by the City Council, are entirely advisory and are generally unpaid. Board decisions can only be appealed to the courts and not to the City Council as with other bodies such as the Planning Commission or Zoning Adjustments Board. In addition, the Board has an active committee structure, including Budget & Personnel; Eviction; Foreclosure & Section 8; IRA/AGA/Habitability; Outreach; Waivers; Safe & Sustainable Housing and an Ad Hoc Committee on Smoke-Free Housing. Rent Board members typically attend 25 - 40 meetings a year. We believe the Board's stipend level of \$500 monthly is appropriate when compared with other elected bodies like the School Board (\$1,500) and City Council (\$2,400).

Responses to Specific Grand Jury Recommendations

Recommendation 12-10: The Berkeley Rent Stabilization Board must reduce the high rental unit registration fees.

We disagree. The primary obligation of the Board is to effectively and efficiently implement the Rent Stabilization and Good Cause for Eviction Ordinance. The Board rejects the Grand Jury's view that lower fees take priority over more effective implementation of the ordinance. We have provided substantial evidence that the Board's approach to implementation is far superior to the approach taken by other cities that charge much lower fees and consequently are able to provide significantly less service.

Nonetheless, the Board is always exploring ways to increase the efficiency of our operations and we believe that the new software systems currently being installed at the Rent Board will make it possible to reduce staffing in certain areas. Given the increasing cost of salaries and benefits, much of it due to rapid increases in health insurance costs, it seems unlikely that such increased efficiency will allow reductions in fees, but it will likely help avoid the need for further increases for some period of time.

As follow-up to staff's discussions with the Berkeley Property Owners Association, the Board will develop and forward to the City Council options for expanding the number of units required to register and pay for services, which could lower the per-unit fee.

The Board further believes that if the State of California were to institute a statewide "single-payer" health insurance system, this would lead to significant reductions in health insurance costs and reduce the Board's cost of operations. The Board will so instruct its' legislative advocate.

Recommendation 12-11: The Berkeley Rent Stabilization Board must allow landlords to pass through a larger proportion of the registration fee to tenants.

We disagree. All registration fee increases from 1981 to 2005 were passed through to tenants through the Annual General Adjustment. This process passed 73% of the current fee through to tenants. In addition, owners are allowed to pass through all registration fee increases since 2005 to long-term tenants in units that have not received a vacancy increase to market rent, resulting in a total pass-through of 94% of the registration fee to these long-term tenants.

Apartments that have received a vacancy increase have had large rent increases that completely cover the increased registration fee, paying an average rent of \$1,400 monthly compared with an average of \$778 monthly for the units in which 94% of the registration fee has been carefully passed through year by year. An additional pass-through is neither required by nor supported by the language of the rent ordinance we are elected to implement.

If any owner has a legal rent ceiling that is lower than the amount necessary to pass through the registration fee along with all other operating costs and still receive a fair rate of return on their investment, they are entitled to petition the Rent Board for a rent increase and can even pass

through any reasonable costs for professional assistance in going through the individual rent adjustment process.

Recommendation 12-12:

The Berkeley Rent Stabilization Board must ask the city of Berkeley Human Resources Department for a thorough position-control audit to evaluate the number of staff, the classifications and workload.

While we disagree that the Human Resources Department is equipped to do the type of evaluation recommended, the Rent Board will consider contracting with an outside consultant with the necessary expertise or with another comparable rent stabilization program to do a peer review of our agency. This can be a valuable process. Berkeley Rent Board staff carried out a peer review and provided professional assistance to the City of East Palo Alto to help them rebuild their program several years ago, all of which was reimbursed on an hourly basis by that City.

The Human Resources Department regularly performs classification studies within the City of Berkeley, including for the Rent Board, but it does not evaluate the appropriate number of staff and their workload, which can only be done by people with expertise in the work of the agency studied and knowledge of what is required to carry out its mission. Determining the appropriate level of staffing to carry out the Rent Board's mission would require some expertise in what is needed to administer a rent stabilization program.

It is important to understand that the Human Resources Department already performs a review any time a department changes a classification to determine if it is justified by the work assigned. This is true if a staff-person is promoted or if the department wishes to upgrade a position, downgrade a position or create a new position. All desired changes in the Rent Board staffing model, under the current Executive Director, have been done only after the independent review of the Human Resources Department. Evaluation of the work and appropriate classification of a current staff member is normally done through a process called a "desk audit" which is very labor intensive, requiring the individual employee to write up a detailed description of everything they do, followed by verification and analysis by the Human Resources staff. It is doubtful that the Human Resources Department does more than half a dozen of these in a year, and it does not have the resources to conduct an analysis of all 21 positions at the Rent Board. Furthermore, a desk audit or other classification study only determines the appropriate classification to perform a set of assigned responsibilities and does not determine how many staff are needed to carry out the mission of the agency. The Rent Board Executive Director discussed this issue with the Director of Human Resources in July 2012 and he agreed that the Human Resources Department could not perform the type of study suggested by the Grand Jury and that the broader evaluation would be more appropriately conducted by an outside consultant or organization.

Recommendation 12-13:

The Berkeley Rent Stabilization Board must ask the city Human Resources Department to provide more comprehensive salary comparisons regularly and use them in setting salaries and benefits, including those of the executive director and the board members.

This recommendation has three components requiring separate responses:

1. We disagree that we need to ask the city Human Resources Department to provide more comprehensive salary comparisons regularly and use them in setting salaries and benefits, because this is already standard practice for all Rent Board staff positions except the Executive Director. They are already in civil service job classifications established by the City Council, with salary ranges established by the Council on the advice of the Human Resources Department, which regularly reviews salary data from other jurisdictions. In addition, when staff is hired their initial salaries are set by the Human Resources staff and annual increases are determined by the applicable union contract or the City of Berkeley personnel rules for exempt staff. This has been standard practice for all civil service staff since the inception of the agency.
2. We agree to work with the Human Resources Department to review City executive salary ranges and gather comparables of other similar rent control jurisdictions. We will review this data by the end of this fiscal year as part of the annual review of the Executive Director and use it when considering extending the contract of the current Director or hiring a new Director.
3. We disagree that the Human Resources Department has any role in setting Board compensation. As an elected body, under the City Charter the voters have determined that the Rent Board is charged with setting its own compensation. The amount of compensation has not been increased in over 25 years and is significantly less than other elected officials in Berkeley.

We will also ask that the City Council consider doing a review of all executive salaries in the City of Berkeley and further, that it reconsider the practice of giving executive staff the same salary increases that are given to unionized staff through contract negotiations.

Recommendation 12-14:

The Berkeley Rent Stabilization Board must conduct annual performance reviews of the executive director to provide more effective oversight.

We agree to conduct annual performance reviews of the Executive Director in addition to the major review that we do every three years. The Executive Director is an “At Will” employee serving at the pleasure of the Board, so in many regards his performance is being evaluated on an ongoing basis. The Director is in constant communication with Board members, receiving an average of two or three Board member communications daily. A thorough, formal performance review process takes several months, as it typically includes surveys of staff, stakeholder groups and the public. It is not realistic to expect such an extensive review to be conducted more often

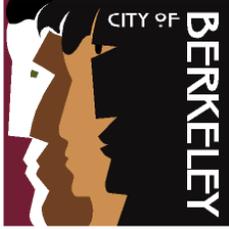
than every three years. The Board will conduct a more limited annual review of the Executive Director, with the first such review beginning no later than April 2013 and completed by June 2013 so that this review, along with the salary and benefit comparison described above, can be incorporated into the annual review of the Executive Director's salary.

Concluding Comment:

We encourage next year's 2012 – 2013 Civil Grand Jury to carefully review our response. We also encourage the 2012 – 2013 Civil Grand Jury to think more broadly about its charge. We ask that you look at the damage done to the residents of Alameda County by the inability of local governments to adequately fund even such basic services as public safety, education and the social welfare of the elderly, disabled and abused due to supermajority requirements for taxes and fees that have been placed in the California Constitution. There is an important role for Grand Jury oversight regarding the effective and efficient use of tax money and there is an equally important yet so far entirely neglected role for review of the damage done when local government lacks the resources necessary to carry out the mission entrusted to it by its citizens.

We suggest that much of the "inefficiency" found by Civil Grand Juries as they review other local government agencies in the current era reflects the disorganization that results when government has inadequate resources to carry out its mission. The Berkeley Rent Board is fortunate that it is not subjected to these severe funding limitations. It is clear, however, that the continuing failure to adequately fund many essential government services has extraordinary costs that will be felt by our communities for many years to come. We look forward to seeing this analysis in a future report by the Alameda County Civil Grand Jury.

Attachment: Rent Stabilization and Eviction for Good Cause in the 21st Century



Rent Stabilization Board

RENT STABILIZATION AND EVICTION FOR GOOD CAUSE IN THE 21ST CENTURY

August 20, 2012

Introduction

This report explains how the Berkeley Rent Stabilization Board has adapted to the passage of vacancy decontrol and is working to ensure continued and effective enforcement of rent regulations and good cause for eviction in the 21st Century.

Section One reviews the purposes of the Rent Board and the scope of the Board's mandate, which is to implement an ordinance designed to help level the playing field and ensure fair treatment for both landlords and tenants in a region where tenants, who are mostly low-income, have little market power.

Section Two compares the strong, active enforcement approach utilized by Berkeley, West Hollywood and Santa Monica with the more passive, complaint-driven enforcement approach utilized by Los Angeles, Oakland and San Francisco and shows that Berkeley's active enforcement is both more effective and more costly than complaint-driven programs.

Section Three describes the administrative structure of the Rent Stabilization Program and its relationship with other City departments.

Section Four gives an historical overview of changes in the Program's budget, fees and staffing from its inception to the present day, showing how staffing gradually declined as a result of vacancy decontrol and then stabilized in response to increased demands resulting from changes in the program environment, most notably the current recession.

Section Five describes the effort underway for the past several years to reorient Program activities to better meet the evolving needs of tenants and property owners under current conditions. These include a stronger emphasis on educating property owners and tenants about good cause for eviction, a greater emphasis on dispute resolution, strengthened interdepartmental coordination and improved administrative capacity and use of modern information technology. All of these efforts have received broad public support.

I. Purposes and Scope of the Berkeley Rent Stabilization Program

The Berkeley Rent Stabilization Program implements the Rent Stabilization and Eviction for Good Cause Ordinance passed by the voters in June 1980 and is governed under Article 17 of the Berkeley City Charter, “Elected Rent Stabilization Board”, passed by voter initiative in November 1982. The Ordinance (Berkeley Municipal Code Section 13.76) states:

“The purposes of this chapter are to regulate residential rent increases in the city of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, 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.”

The Rent Stabilization and Eviction for Good Cause Ordinance responds to a severe and longstanding housing market failure in Berkeley and in the surrounding Bay Area. In a genuinely competitive market with adequate supply that increases as demand increases, competition would hold rents down to the minimum necessary to cover the costs of operating and maintaining housing and providing a modest profit. Instead, for the past thirty years Bay Area rents have been based on scarcity in a market where supply has failed to increase with demand, making them among the highest rents in the United States. Under such circumstances, tenants are easily taken advantage of unless protected by strong and effective regulation.

The Ordinance also falls within Berkeley’s tradition of demanding equal rights for all, providing tenants in good standing with a level of security in their homes that is nearly equivalent to that available to homeowners with fixed-rate mortgages. Berkeley’s voters have affirmed their continuing support for rent stabilization and eviction for good cause many times over the years, for example by strengthening the limits on owner move-in evictions in 2000 and adopting additional amendments proposed by the elected Rent Board in 2004.

Berkeley’s current system of rent regulation can best be described as “vacancy decontrol – recontrol”. In 1980 the voters established a strong form of rent regulation called “vacancy control”, which set base rents and allowed increases without regard for changes in tenancy. In 1995 the state legislature overrode the will of the voters of Berkeley and passed the Costa Hawkins Act, which allows the landlord to set the initial rent of a new tenancy, a system called “vacancy decontrol”. Once the unit is re-rented it is again controlled for the duration of the tenancy, with limits set on future increases in order to provide stability and security to the new tenant. Vacancy decontrol began on January 1, 1999 after a three-year phase-in period.

The good cause for eviction provisions of the ordinance govern nearly the entirety of the approximately 27,000 rental units in Berkeley, while the rent stabilization provisions apply to

approximately 21,000 units in multi-family properties built before 1980. About 19,000 of these units are required to register at any given time and the other 2,000 units are temporarily exempt. The most common reason for temporary exemption is that the unit is rented to a tenant who participates in either the Section 8 Portable Voucher or Shelter Plus Care programs. Permanently exempt units include those built after 1980 and most single-family and condominium units.

The Berkeley Rent Board is now responsible for administering rent regulations for two parallel sets of tenancies: “old rent control” tenancies in units that have never received a vacancy increase and newer tenancies in units that have had a vacancy increase bringing the unit to market rent. At this point slightly more than 80% of stabilized units have turned over at least once since January 1, 1999 and have tenancies that began at market rent under the vacancy decontrol – recontrol rules.

Approximately 3,500 households have tenancies that began prior to January 1, 1999 and most of these have rents that are based on the original (usually 1980) base rent plus allowable annual and individual rent adjustments. There are also a small number of units within this group that received additional increases during the 1996 – 98 phase-in period. The rent ceilings for these long-term rent-controlled tenants are usually from 30% - 40% below the current market rent. According to the Rent Board’s 2009 tenant survey, the great majority of the tenants who fall under “old rent control” are low-income and 37% of these households include a resident who is disabled, elderly or both. Even with rents substantially below the current market rate, 42% are paying over 30% of their income for rent and the majority would be hard put to afford other housing in Berkeley. (For more details, see Berkeley Rent Stabilization Board, *Report on the April – May 2009 Survey of Tenants of Registered Rental Units*, March 15, 2010, available on the Rent Board web site under Research Reports.)

By way of comparison with other housing programs, the Berkeley Housing Authority assists approximately 1,900 tenants with Section 8 vouchers or certificates and the City’s non-profit housing organizations have, over the past forty years, developed an inventory of about the same number of units of subsidized housing (with about 300 units that fall in both groups) for a total of about 3,500 assisted households. Meanwhile, taking both old and new tenancies, Berkeley has more than 8,000 low-income **non-student** tenants living in the private rental housing market who are provided with protection and stability by the Rent Stabilization and Eviction for Good Cause Ordinance. In addition, thousands of students and middle-income tenants also benefit from clear rules and a more level playing field between landlords and tenants.

The Rent Board has an important role in monitoring evictions as well as rents. Although evictions are carried out through the courts, the Rent Board is notified of all eviction actions and monitors them to ensure that they involve valid causes for eviction and to ensure that vacancy increases are not granted in cases that fall under the exceptions in the Costa Hawkins Act. The Board also administers the requirements of both the state Ellis Act, for owners evicting their

tenants to go out of the rental business, and the corresponding local Ellis Ordinance, which provides a timeline and relocation payments to any tenants.

Eviction monitoring is particularly important for units occupied by long-term tenants, since vacancy decontrol can create a major economic incentive to vacate such units and restart the rent at current market levels. The Rent Board's 2010 economic study demonstrated that, as a result of vacancy decontrol and the continued high demand for rental units in Berkeley, most landlords have received major increases in rents. On an annual basis rents in Berkeley are more than \$100 million higher than they would have been if vacancy control had remained in place or if rents at the beginning of rent control had simply increased at no more than the rate of inflation, as they would have in a more competitive housing market. This additional \$100 million in annual rental income, virtually all of which goes into net operating income, has increased the value of Berkeley's rental properties by over one billion dollars. It has not, however, increased Berkeley's tax revenues by very much, since most rental properties have not turned over since vacancy decontrol and they retain the much lower property tax rates mandated by Proposition 13. (For more details, see Berkeley Rent Stabilization Board, *The Effects of Rent Stabilization and Vacancy Decontrol on Rents, Rental Property Values and Rent Burdens in Berkeley, California*, April 19, 2010, available on the Rent Board web site under Research Reports.)

II. The Value of a Strong Regulatory System

Broadly speaking, there are two models of how to approach regulation of the landlord-tenant relationship; passive enforcement and active enforcement. The passive enforcement approach makes information available but does not collect systematic information regarding current rents and enforces regulations only in response to complaints, which usually find their way to the regulatory agency only in egregious cases or where tenants have contact with an advocacy organization. The active enforcement approach uses extensive outreach to inform tenants and owners about their rights and obligations under the law and regulations, maintains full and accurate records through reporting requirements for initial rents and eviction proceedings, ensures information provided by owners is also sent to current tenants for review, provides mediation and dispute resolution services and actively enforces the law and program regulations when it finds violations.

Berkeley is a city whose voters demand active enforcement. The Berkeley Rent Stabilization Program has 21 employees and an adopted budget for the 2011/2012 fiscal year of \$3,950,000, mostly from annual registration fees of \$194 per unit. Santa Monica, another high enforcement city, has an adopted 2011/2012 revenue budget of \$4,716,000, mostly from registration fees of \$156 per unit. Its 27 employees oversee 26,500 rent stabilized units.

By way of contrast, the City of Los Angeles runs a rent stabilization program with lower-level enforcement. Its ordinance applies to approximately 450,000 units, which are overseen by a staff

of 77 employees. An annual registration fee of \$18.71 per unit generates most of the program's revenue of \$8,772,000. Similarly, the Oakland Residential Rent Adjustment Program, which also takes a lower-level enforcement approach, has responsibility for regulating approximately 58,000 units with a staff of eight and budgeted revenue of \$1,891,000 from a per unit fee of \$30.

The differences in information outreach, rent registration and enforcement generate measurable differences in results. The City of Los Angeles' survey of tenants in 2007-2008 and found that 27% of tenants reported current rents that were more than 105% of what they should have been based on the tenants' initial rent and the increases allowed under the L.A. rent stabilization ordinance. (Economic Roundtable, *Economic Study of the Rent Stabilization Ordinance (RSO) and the Los Angeles Housing Market*, 2009, available at the L.A. Housing Department web site). By contrast, a 2009 survey of tenants in Berkeley found that 7% of pre-1999 tenants and 5% of tenants who moved in after 1998 reported a rent that was over 105% of the legal rent ceiling. (Berkeley Rent Stabilization Board, *Report on the April – May 2009 Survey of Tenants of Registered Rental Units*, March 15, 2010, available on the Berkeley Rent Stabilization Program web site). The Berkeley survey overstates the overpayment rate because it did not try to take into account legal "separate agreement" payments, such as for parking or storage space, which tenants may have considered part of the rent. Even so, it is clear that rent violations are quite rare in Berkeley and fairly common in Los Angeles. This is certainly related to the fact that Berkeley requires landlords to report the initial rent for all new tenancies and mails out an annual statement to all tenants with their legal rent ceiling. In contrast, Los Angeles does not require rent reporting and their consultants recommended that they consider doing so.

The Los Angeles study also found that 37% of tenants in stabilized units did not know that their rents were regulated. The Berkeley study found that 27% of tenants in stabilized units did not know, although only 3% of long-term Berkeley tenants did not report knowing that their rent was controlled. This reflects the particular challenge that Berkeley has in reaching the high-turnover student sector within its tenant population. After receiving the results of the survey, Berkeley has taken several measures to improve its outreach to college students.

The Los Angeles ordinance is currently the subject of major ongoing controversy and protests from tenants because its provisions allow landlords a minimum annual increase of 3% on sitting tenants, while over the past several years the rate of inflation has been much less than that. In contrast, Berkeley's ordinance does not allow a minimum annual increase if there is no inflation.

It is not a coincidence that the high-enforcement cities in California were originally cities with strong vacancy-control rent regulations, while the low-enforcement cities always allowed decontrol on vacancy. Vacancy control systems had to track the legal rent for each unit, and could easily continue the practice after the state mandated vacancy decontrol. In addition, since Berkeley has a database with the addresses of all rent stabilized units, it is able to send regular mailings to all landlords and tenants informing them of their rights and obligations under the law.

III. Structure of the Rent Stabilization Program

The elected Rent Stabilization Board hires the Executive Director, who hires all other staff and manages the Program. The Rent Stabilization Program budget for the 2011/2012 fiscal year, adopted last June, budgeted for 21.15 full-time equivalent staff (FTE) divided into four units: Registration and Public Information (9.35 FTE), Hearings (2.35 FTE), Legal (3.50 FTE) and Administration/Policy (4.25 FTE). The Board also funds 1.1 FTE in the City's Information Technology Department and allows for some temporary assistance up to 0.6 FTE. (Minor changes are made throughout the year. The numbers used in this report always refer to the initial adopted budget unless otherwise specified.)

The **Registration unit** handles the annual payment of registration fees for approximately 19,000 units, as well as requests for waiver of penalties for late payments, registration of approximately 4,500 new rents established after a change in tenancy each year, annual verification of approximately 2,000 units with temporary exemptions and verification of changes in exemption status. The unit staff calls landlords with past histories of late payment in advance of each year's due date to help them avoid penalties. We are not aware of any other agency (public or private) that goes to these lengths to avoid assessing a penalty. If a penalty is assessed, the Board processes several hundred requests a year to have the penalty reduced or forgiven entirely based upon good cause, with some relief being granted in over 90% of the cases.

The **Public Information unit** (PIU) conducts extensive outreach to inform landlords and tenants of their rights and obligations through regular mailings, newsletters and other media. It holds monthly informational meetings at libraries and senior centers and does workshops for landlords and tenants. For example, in each of the past two years it held a workshop on eviction procedures for landlords to ensure that owners who needed to engage in this process knew how to do it correctly. PIU staff recently held another workshop specifically for small property owners. Each workshop was attended by more than 50 owners, who expressed appreciation for the comprehensive presentations. PIU contacts new owners of Berkeley rental property and sends information packets to new tenants. It sends information on the eviction for good cause requirements to tenants who have received a three-day eviction notice. PIU responds to over 10,000 inquiries/client contacts from the public annually, and when landlords or tenants bring in specific situations the staff follows through advising one or both parties until the situation is resolved. Although the Rent Program's current software does not provide detailed statistics, we know that volume of inquiries and counseling has increased substantially over the past three years as the economic situation has worsened.

Staff is allocated as needed between the Registration and Public Information units, with a total of 9.35 FTE budgeted.

The **Hearings unit**, with 2.35 FTE (including 1.85 Hearing Examiners), deals with situations in which conflict has arisen between a landlord and a tenant. In 2010 its staff held hearings on 104 petitions for rent reductions or rent increases. In addition, the Hearings and Public Information units jointly conduct a mediation program and held 134 mediations in 2010. Hearings staff also carry out occasional special projects.

The **Legal unit**, with 3.5 FTE, is responsible for advising the Board and Executive Director on all legal matters, similar to how the City Attorney advises the City Council and City Manager. The Legal Unit also handles collection of unpaid registration and penalty fees, reviews hearings unit decisions that are appealed to the Board and responds to writs and lawsuits filed against the Board. In 2010 the unit filed in small claims court against 140 properties and subsequently had to file liens with the County on 40 of these properties. When banks foreclose on a property and fail to pay fees, leaving them to an often unknowing new owner, the Legal unit will join with the new owner in pursuing payment from the bank.

The **Administrative/Policy unit**, with 4.25 FTE, includes the Executive Director and Deputy Director, who are responsible for providing leadership and managing the agency under the general direction of the elected Board, drafting and maintaining the annual budget, hiring and promotions, grievances and disciplinary actions and maintaining effective relations with other elected officials, heads of other City departments and the public. The unit is also responsible for office administration, staffing meetings of the Board and its eight committees, and conducting research and analysis and producing reports.

Other City departments carry out several administrative support functions, although the City Charter does not require the Rent Board to use them. They include the City Auditor, Finance/Treasury, City Clerk, Human Resources, and an outside auditor selected by City. With the exception of the Executive Director, who is hired directly by the elected board with the assistance of an executive search firm, all personnel matters are conducted in consultation with the Human Resources Department in strict conformance with their procedures. The Executive Director hires and promotes staff through the City of Berkeley's civil service process. The City's Human Resources Department handles the outreach, determines eligibility for the list and ranks the candidates. All top candidates and others from within the City system are interviewed by a panel that provides recommendations to the Executive Director. Over the past five years all permanent staff hired by the Rent Board were ranked in the "most highly qualified" group by the HR Department and received the highest ranking by the professional review panel conducting the job interviews. The educational qualifications of the last nine people hired or promoted over the past several years are as follows: one person with a Ph.D. and one with a master's degree in city planning, two people with master's degrees in public administration, four people with law degrees and one with community college coursework.

All Rent Program positions except that of the Executive Director are defined within the City's job classification system. When the new position of Deputy Director was created, for example, it

was reviewed not only by the Rent Board but also by the City's Personnel Commission and then approved by the City Council. The Rent Program Executive Director is co-signatory with the City Manager on all relevant union contracts and normally participates in contract negotiations as part of the management team. Employees at the Rent Program have seniority rights within the City system as a whole. The grievance and disciplinary procedures are defined by the union contracts and the Rent Program does what all other City departments do and follows the advice of the Human Resources Department and the Labor Relations Coordinating Committee.

Rent Program staff, like all City staff, is paid through the City Auditor's payroll unit. The Finance Department handles the Rent Program's banking functions. Purchasing is conducted under the advice of the Finance Department, following standard City bidding and RFP procedures, with the exception that the Rent Program staff may, with approval of the Executive Director, take advantage of cost savings from, for example, obtaining more bids than the City normally requires or by using an immediate credit card payment to obtain a lower cost.

The Rent Program originally hired its own Information Technology staff, but now contracts with the Information Technology Department for IT services. This arrangement both provides more comprehensive service and greater flexibility as needs change. Replacement of the Rent Program's obsolete software is being conducted under the advice of the IT Department to maximize compatibility between software used by the Rent Program and other City departments. This contract is budgeted at 1.1 FTE for the current fiscal year. It is anticipated that once the new system is fully in place the allocation for these services will be reduced.

IV. Berkeley Rent Program Annual Budgets, An Overview of Changes from 1980 - 2012

Table 1 below shows changes in the Rent Stabilization Program finances and staffing over time. After each several years of data there is an explanation of major issues and changes. Some of the information is not readily available for the years before 1988-89, but later reports provided historical data on annual registration fees going back to the beginning of the agency in 1980 and on staffing FTEs (full-time equivalents) going back to 1985. The adopted budget is given starting in 1988-89 and actual expenditures since 1980-81, rounded to the nearest \$1,000. Data for the years before 1988-89 has not been verified using the original budget reports.

When the agency began in 1980/81 the initial budget and staffing was completely unrealistic. The agency needed to determine which units were covered and which were exempt and register initial base rents for covered units while dealing with a deluge of lawsuits and concerted refusal to comply with the law. The owners of thousands of units tried to prevent the agency from carrying out its mission by refusing to pay fees or register base rents, forcing the City Council to lend money to support the program. In 1982 a voter initiative increased penalties for late payment and empowered the Board to place liens on properties whose owners failed to pay. Compliance increased substantially the following year.

Santa Monica passed its ordinance in 1979 and began rent registration with an annual fee of \$12.50 per unit, which may have provided the model for Berkeley's starting point of \$12. Two years later, in 1981, the Santa Monica fee was set at a more realistic \$72 per unit. Berkeley was several years slower in coming to this realization, with the fee reaching \$60 in 1985 under the first elected Rent Board.

Table 1: Rent Board Budget History (see Appendix for full table without breaks for commentary)

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
1980 – 1981		\$12		\$322,000
1981 – 1982		\$12		\$354,000
1982 – 1983		\$30		\$553,000
1983 – 1984		\$30		\$647,000
1984 – 1985	NA	\$30		NA
1985 – 1986	31.5	\$60		\$1,043,000

In 1986 the legislature passed the Petris Act, requiring rent control agencies to certify rent ceilings by the end of the following year. Staffing reached its peak in FY 1986-87 as the Agency hired more staff in a final effort to clarify the base rents for as many units as possible before the deadline.

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
1986 – 1987	36.0	\$60		\$1,404,000
1987 – 1988	31.5	\$80	NA	\$1,311,000
1988 – 1989	31.5	\$80	\$1,861,000	\$1,642,000
1989 – 1990	32.93	\$100	\$2,220,000	\$1,873,000
1990 – 1991	33.63	\$100	\$2,180,000	\$2,676,000
1991 – 1992	28.35	\$136	\$2,385,000	\$2,147,000
1992 – 1993	29.65	\$125	\$2,510,000	\$2,400,000
1993 – 1994	26.2	\$125	\$2,400,000	\$2,410,000
1994 – 1995	26.9	\$115	\$2,345,000	\$2,290,000

In the November 1990 elections a new majority gained control of the Rent Board. They cut programs and staff and approved major rent increases in response to *Searle v. City of Berkeley Rent Stabilization Board*. The City Council filed suit against the elected Board arguing that the increases were larger than legally necessary. At that point the Rent Board attorneys and a legal secretary (3.5 FTE) were moved from the City Attorney's Office to the Rent Board to eliminate

the resulting conflict of interest. The Rent Board majority changed again in the November 1994 elections, but in 1995 the state legislature passed legislation mandating vacancy decontrol. The Costa Hawkins Act created a three-year phase-in period from 1996 to 1998 in which landlords could receive a 15% vacancy increase and full vacancy decontrol began on January 1, 1999.

As vacancy decontrol went into effect the number of rent increase petitions filed by landlords declined, as did the level of litigation. In FY 1996/97 Rent Program staff included a Chief Legal Counsel, two Staff Attorney positions and 4.6 Hearing Examiners. By FY 2002/03 the Chief Legal Counsel was eliminated and there were 2.3 Hearing Examiners. (See Table 3 for detailed information on changes in the hearings unit.)

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
1995 – 1996	26.6	\$125	\$2,410,000	\$2,266,000
1996 – 1997	26.6	\$112	\$2,308,000	\$2,278,000
1997 – 1998	24.6	\$112	\$2,387,000	\$2,405,000
1998 – 1999	24.6	\$112	\$2,417,000	\$2,234,000
1999 – 2000	23.7	\$124	\$2,412,000	\$2,299,000
2000 – 2001	22.2	\$124	\$2,457,000	\$2,286,000
2001 – 2002	22.3	\$124	\$2,602,000	\$2,464,000
2002 – 2003	22.3	\$124	\$2,769,000	\$2,676,000
2003 – 2004	21.3	\$136	\$2,992,000	\$2,751,000

In November 2004 voters passed Measure O which was jointly sponsored by the Rent Board and the Berkeley Property Owners Association. It set the Annual General Adjustment in rent at 65% of the increase in the Consumer Price Index rather than according to an annual cost study conducted by an outside consultant. With the onset of the financial crisis and recession in 2008 there was an upsurge in demand for counseling that has continued for the past 3+ years.

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
2004 – 2005	20.3	\$136	\$3,155,000	\$2,857,000
2005 – 2006	19.3	\$154	\$3,236,000	\$2,967,000
2006 – 2007	19.3	\$154	\$3,290,000	\$3,107,000
2007 – 2008	19.3	\$170	\$3,525,000	\$3,313,000
2008 – 2009	19.3	\$170	\$3,517,000	\$3,546,000
2009 – 2010	20.4	\$194	\$3,995,000	\$3,496,000
2010 – 2011	20.95	\$194	\$3,950,000	\$3,648,000
2011 – 2012	20.55	\$194	\$3,950,000	

Fully 79% of the Rent Program budget is for staff salaries and benefits. Over the past ten years staffing has remained largely level (or decreased slightly) but expenditures have increased substantially. This reflects the contracts negotiated by the City of Berkeley with its employee unions, especially the rapid increases in benefit costs resulting from the increased cost of health insurance and increased contributions to pension plans. For example, in FY 2002/2003 with a stock market boom under way and CalPERS reporting the pension plan fully funded as a result, employee benefits were budgeted at 25% of employee salaries. Today, with increased pension and health insurance costs, employee benefits are 55% of salary. In other words, \$600,000 of the FY 2011/12 budget is the result of the increased benefits ratio. Without that change, the increase in the budget since 2002/2003 matches the rate of inflation in the Bay Area.

It should be noted that the problem of increasing pension costs is the result of the investment strategy chosen by the California Public Employees Retirement System, not the pensions themselves. CalPERS did not set aside adequate reserves for an eventual market downturn, and undercharged the State and local governments during a decade of high stock-market returns. It is as if local governments had borrowed against their pension obligations during the stock-market boom of the 2000s and now have to repay the money. If pension costs had been correctly estimated, then personnel costs would have been higher during that period and the Rent Board would have charged higher fees. In effect, landlords are now paying higher fees to make up for the unrealistically low fees charged in earlier years.

V. Meeting the Challenges of the 21st Century

Our agency changes to meet the evolving needs of the community we serve. What is often not understood is that, while Costa-Hawkins largely eliminated the need for hundreds of administrative hearings to determine building-by-building fair return requirements, the Rent Board's other responsibilities have remained intact and in some cases have increased in scope and importance.

Eviction for Good Cause

With the passage of Costa-Hawkins the number of hearings has decreased but the financial incentive for an owner to evict a long-term tenant in good standing has increased dramatically. In the first few years of vacancy decontrol we witnessed hundreds of cases of owners attempting to evict tenants without "good cause", so that they could increase the rent paid by a new tenant. This undermines the stated intent as well as the integrity of the Ordinance. The Board responded by increasing outreach and information and ensuring that low-income households had access to eviction defense services from local legal assistance organizations. All new owners and new tenants receive a package of information from the Program concerning our services and the

protections offered under the law. Over the past eight years, all owners and tenants received an informative and easy to read newsletter several times a year. The format has recently changed to a more attention-getting large size postcard focused on one or two topics.

In response to the foreclosure crisis we created a new outreach program to ensure that tenants in foreclosed buildings are aware of their rights. Representatives of lenders routinely demand that tenants in foreclosed buildings leave their homes and threaten them with eviction despite the fact that foreclosure is not a “good cause” for eviction under Berkeley’s Rent Stabilization and Eviction for Good Cause Ordinance. The Rent Program staff obtains information monthly on properties that are declared to be in default or foreclosure and then mails information to all units on these properties informing occupants that if they are a tenant they have a right to remain in their unit. The mailing also provides the tenant with contact information for the Rent Board and legal assistance organizations. Staff at the East Bay Community Law Center and the Eviction Defense Center have informed us that Berkeley tenants are better informed of their rights than tenants in neighboring cities and more likely to contact them if their tenancy is threatened.

Reallocation of staff to dispute resolution

While the Berkeley Property Owners Association threatens litigation against the Rent Board on a regular basis, the overall level of litigation in Superior Court involving the Rent Board is down and one of the two previous Staff Attorney III positions has been replaced by a Staff Attorney I. Current legal staffing is now one Staff Attorney III and two Staff Attorney I positions. One FTE of the Staff Attorney I position is assigned to the Public Information Unit as “attorney of the day” to provide quality control and assist in responding to particularly difficult questions.

Table 2: Cases filed in Small Claims Court and Liens filed with Alameda County

Year	Small Claims Cases	Liens Filed
2007	53	17
2008	84	33
2009	91	29
2010	140	40
2011	133	33

The amount of litigation by the Rent Board for collection of unpaid registration fees has increased over the past several years, with more cases filed in small claims court and somewhat more unpaid judgments that result in the Rent Board filing liens against the property (See Table 2). On average no more than one small claims case a year is denied by the commissioner hearing the case although a few are remanded to the Rent Board for review of newly made claims that the unit is exempt.

The number of Hearing Examiners went from 6.85 in 1991/92 to 4.6 in 1996/97 to 2.3 in 2000/01 was further reduced to 1.85 in the 2011/12 fiscal year (See Table 3). The Rent Program is now placing greater emphasis on providing mediation services to try to resolve landlord-tenant disputes. This reduces landlord-tenant litigation and formal complaints that require hearings and improves landlord-tenant relations generally. Mediation has been particularly effective in assisting owners who are locked into disputes with long-term tenants that might otherwise result in repeated hearings or eviction notices and going to court.

Table 3: Rent Hearings and Mediations by Calendar Year

	<u>Hearing</u> <u>Petitions</u>	<u>Landlord</u> <u>Petitions</u>	<u>Tenant</u> <u>Petitions</u>	<u>Appeals</u> <u>to Board</u>	<u>Mediations</u>	Examiner <u>FTE</u>
1992	NA					6.85
1993	NA					5.35
1994	NA	NA	NA			4.6
1995	485	345	128	NA	NA	4.6
1996	381	190	184			4.6
1997	425	192	222	NA	NA	4.6
1998	362	167	191			2.6
1999	364	88	235	NA	NA	3.2
2000	325	75	250			3.2
2001	312	66	245	20	NA	3.3
2002	262	54	204	29		2.3
2003	161	42	111	22	NA	2.3
2004	122	30	78	19		2.3
2005	117	21	89	7	NA	2.3
2006	142	23	103	12	5	2.3
2007	118	29	82	9	16	2.3
2008	152	36	100	9	13	2.3
2009	134	26	98	15	70	2.3
2010	104	22	75	13	135	1.95*
2011	128	25	74	8	83	1.85

Notes: Petition data from 2006 /2010 are based on December 1st of the previous year through November 30th. Hearings for “Certification”, “Occupancy” and “Exempt Status” are not categorized as landlord or tenant petitions. * The FY 2009/10 FTE of 2.45 was changed to 1.95 with the loan of 0.5 FTE to the City as a cost saving measure. No statistics on mediations were kept prior to 2006, although a few were done on an informal basis. FTE is for the fiscal year including January-June of the calendar year for which hearing data is given.

One way the Rent Program has reduced costs while helping to maintain staffing in its Hearings Unit is by making Hearing Examiners available to the Berkeley Housing Authority, with their hourly costs reimbursed by the BHA. Over the past five years they have generally done 10 - 20 hearings a year for the BHA. Rent Program Hearing Examiners can also serve as back-up for the City Hearing Examiner when she is away or backlogged, with the hourly costs paid by the City Manager's Office. It is essential for the program to maintain its own staff of experienced Hearing Examiners. The issues are too specialized and specific to the Berkeley ordinance and its implementing regulations for contracting with outside hearing examiners to be successful. Berkeley and several other rent control jurisdictions that have experience with hiring outside hearing examiners have ultimately decided to hire in-house examiners given the complexity of the governing laws and regulations.

The Rent Board has gradually decreased the number of staff and the proportion of higher salaried staff. Its goal has been to prevent or avert conflict through information and counseling rather than adjudication. When there is a dispute staff tries to resolve it with the least conflict possible (voluntary mediation rather than a formal hearing) in order to preserve the relationship between the parties and contain costs.

Interdepartmental Coordination

The Rent Stabilization Program routinely provides assistance to other departments. Tenant petitions for rent reductions are one of the City's tools for ensuring that landlords correct housing code violations. The Planning Department review of applications for condominium conversion includes a Rent Program staff review of whether there have been evictions on the property of a nature that would disqualify it from conversion under the City's condominium conversion ordinance. The Rent Board is reimbursed for assisting the City with the condominium conversion ordinance. The Auditor's Office uses data on rent ceilings to help track down owners who fail to pay the required percentage of gross rent as business license tax.

The Rent Board is working to improve cooperation with the Planning and Development Department, the Health, Housing and Community Services Department, the Auditor and the IT and Finance Departments. Important issues that involve both the Rent Stabilization Program and the Departments under the City Council include:

- increasing seismic safety in "soft story" buildings, where the ground floor may collapse in a major earthquake;
- improving energy efficiency in rental properties;
- setting conditions for demolition of existing rental housing to allow redevelopment of the site at higher densities, which could displace long-term tenants;

- developing appropriate procedures for dealing with owners of unpermitted units while minimizing harm to their tenants;
- housing code enforcement;
- assisting in developing a smoking ordinance for multifamily properties to ensure that health and safety goals are met without causing improper evictions;
- assisting in extending recycling to multifamily rental buildings;
- assisting in extending disaster preparedness organizing to multifamily buildings;
- improving tax revenue collection through pooling information on rents.
- serving, at the request of the City Manager, as the initial point of contact and counseling for tenants displaced in two major fires concerning their rights as well as possible resources to assist them in their relocation;

In addition, since protection of tenants from improper evictions is an essential part of the mission of the Rent Program, it is important to have procedures that provide an appropriate balance between enforcement of City zoning, housing and other code requirements and protection of tenants so that they can either return to their homes once violations are cleared or have a transition that prevents unnecessary disruption or even homelessness. Over the past decade a series of court decisions have changed the legal landscape in significant ways, with the result that some existing City procedures no longer provide the balance that was originally intended.

Accomplishments so far include passage on November 8, 2011 by the City Council of an updated Relocation Ordinance that was jointly produced by staff from the Rent Program and the Housing Department. Other issues continue to be discussed in the “4 by 4 Committee”, composed of four City Council members and four elected Rent Board commissioners. A proposal to instruct staff to draft revisions to the City’s ordinances governing demolition and removal of existing rental units was discussed in the 4 by 4 Committee and passed unanimously by the City Council on December 6, 2011.

Strengthening Internal Capacity

The Administrative Unit has added a Deputy Director because after the elimination of the Chief Counsel position the agency no longer had a person who could easily step into the shoes of the Executive Director during periods of absence. Ironically, creation of the Deputy Director position was delayed because the Executive Director was unable to attend a City Council meeting due to a family emergency. The Deputy Director is currently overseeing the Rent Program’s policy research and analysis and working with other departments to improve the coordination process on the issues listed above. In another few years, the position will be important in creating a smooth succession when the current Executive Director decides to retire.

The Administration Unit has also revamped the Administrative Staff Assistant position and recruited and hired a replacement and added an Assistant Planner to carry out analytical tasks and assist in working with other Departments.

The Rent Stabilization Program is most of the way through a several years long and much delayed process of improving internal procedures and upgrading Rent Program software for greater efficiency. The Rent Board's Rent Tracking System software, which is 19 years old and now obsolete, is scheduled to be replaced by the end of this year. A substantial amount of funding was added to the FY 2009 – 2010 budget for this project. Delays in carrying it out have resulted in carrying forward much of the money budgeted for the project, so actual expenditures have been substantially lower than budgeted expenditures for the past several years. The new software is expected to make it possible to reduce ongoing staffing in the registration unit, make Rent Board information more accessible and easier to analyze and increase our ability to assist other City departments.

With the new software in place, the Rent Board will be able to dramatically update its use of the web for business and communications. The Rent Board is a high-volume agency, with annual registration of 19,000 units as well as annual notifications of legal rent ceilings, new rent registration of several thousand units every year, and around 10,000 additional client contacts every year with questions and concerns that often required detailed knowledge of the rent ordinance and related City and State laws to resolve. With the new software the Board will be able to construct a web portal that will allow property owners to pay annual registration fees on line, register the initial rents for new tenancies on line and verify that information regarding their units is up to date. In addition, the Board will be able to use social media, such as Facebook, in order to provide information and updates. This will continue and extend the Board's tradition of openness and transparency, currently best exemplified by having its meetings carried by cable TV, radio, and webcast with closed captioning and making agendas and accompanying staff reports available on the web.

Table 1. Berkeley Rent Program Annual Budgets

<u>Fiscal Year</u>	<u>FTE</u>	<u>Fee</u>	<u>Adopted Budget</u>	<u>Actual Expenditures</u>
1980 – 1981		\$12		\$322,000
1981 – 1982		\$12		\$354,000
1982 – 1983		\$30		\$553,000
1983 – 1984		\$30		\$647,000
1984 – 1985	NA	\$60		NA
1985 – 1986	31.5	\$60		\$1,043,000
1986 – 1987	36.0	\$60		\$1,404,000
1987 – 1988	31.5	\$80	NA	\$1,311,000
1988 – 1989	31.5	\$80	\$1,861,000	\$1,642,000
1989 – 1990	32.93	\$100	\$2,220,000	\$1,873,000
1990 – 1991	33.63	\$100	\$2,180,000	\$2,676,000
1991 – 1992	28.35	\$136	\$2,385,000	\$2,147,000
1992 – 1993	29.65	\$125	\$2,510,000	NA
1993 – 1994	26.2	\$125	\$2,400,000	\$2,410,000
1994 – 1995	26.9	\$115	\$2,345,000	\$2,290,000
1995 – 1996	26.6	\$125	\$2,410,000	\$2,266,000
1996 – 1997	26.6	\$112	\$2,308,000	\$2,278,000
1997 – 1998	24.6	\$112	\$2,387,000	\$2,405,000
1998 – 1999	24.6	\$112	\$2,417,000	\$2,234,000
1999 – 2000	23.7	\$124	\$2,412,000	\$2,299,000
2000 – 2001	22.2	\$124	\$2,457,000	\$2,286,000
2001 – 2002	22.3	\$124	\$2,602,000	\$2,464,000
2002 – 2003	22.3	\$124	\$2,769,000	\$2,676,000
2003 – 2004	21.3	\$136	\$2,992,000	\$2,751,000
2004 – 2005	20.3	\$136	\$3,155,000	\$2,857,000
2005 – 2006	19.3	\$154	\$3,236,000	\$2,967,000
2006 – 2007	19.3	\$154	\$3,290,000	\$3,107,000
2007 – 2008	19.3	\$170	\$3,525,000	\$3,313,000
2008 – 2009	19.3	\$170	\$3,517,000	\$3,546,000
2009 – 2010	20.4	\$194	\$3,995,000	\$3,496,000
2010 – 2011	20.95	\$194	\$3,950,000	\$3,648,000
2011 – 2012	20.55	\$194	\$3,950,000	NA

Detailed information on Berkeley Rent Program annual budgets from the early years is not readily available, but later reports provided historical data on annual registration fees going back to the beginning of the agency in 1980 and on staffing FTEs (full-time equivalents) going back to 1985. The contract with the IT Department is counted as an FTE. Temporary staffing prior to 2009 is not readily available and is excluded to maintain comparability. The adopted budget is given starting in 1989 and actual expenditures since 1991.