



Rent Stabilization Board
Legal Department

MEMORANDUM

DATE: April 24, 2017

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the IRA/AGA/Habitability Committee

By: Matt Brown, Staff Attorney

SUBJECT: Proposed Regulations 520 [Exemption for Fraternities and Sororities] and 808 [Registration Fee for Authorized Seasonal Rentals in Fraternities and Sororities] – Second Reading

Recommendation:

That the Board adopt Rent Board Regulation 520 [Exemption for Fraternities and Sororities] and Rent Board Regulation 808 [Registration Fee for Authorized Seasonal Rentals in Fraternities and Sororities] as recommended by the IRA/AGA/Habitability Committee at its March 8, 2017 meeting. The full Board voted to adopt the proposed regulations at the first reading on March 20, 2017.

Background and Need for Rent Stabilization Board Action:

For decades, the Rent Board has allowed fraternities and sororities to claim exemption from the Ordinance, and beginning in 2012, the Board has set a pro-rated seasonal registration fee where rooms are rented to non-members on a seasonal basis. The passage of Measure AA on November 8, 2016 and its subsequent enactment on December 18, 2016 codified the Board's policies toward fraternities and sororities, and as such it is necessary to revise the applicable regulations.

A. History of Exemption of Fraternities and Sororities from the Ordinance

Section 13.76.050 of the Rent Stabilization and Eviction for Good Cause Ordinance specifically exempts, in full or in part, thirteen categories of properties. Prior to Measure AA, rental units or rooms occupied by members or non-members of fraternities were not expressly exempted under

the Ordinance. Dating back to as early as 1982, the Rent Board and City Council received legal opinions that applied the Ordinance to fraternities and sororities because they are a type of rooming house.

Due to the unique relationship of the members, the Board and City Council exercised discretion in charging fraternities and sororities a single registration fee when the house was occupied *solely by its own members* rather than charging a fee for each room rented, as would have been the case with a typical rooming house. Later, in 1985 the Board reached a settlement with sororities regarding their status under the Ordinance. Then in May 1989, after lengthy discussions with fraternity representatives, the Board notified Berkeley fraternities that the same criteria used to assess the status of sororities would also apply to fraternities.

The basic criteria to be met in order to obtain an exemption were as follows:

1. Occupancy of the house is restricted to active members of the fraternity;
2. Fees charged to the members are approved by vote of the members;
3. The house is owned by a fraternity or an affiliated nonprofit legal entity whose governing body includes at least one active member and whose sole purpose is the maintenance and operation of the house;
4. Money charged to the members for house use is restricted to the maintenance and operation of the house and no profit is made by providing housing; and
5. Active members are not subject to eviction provided they remain members in good standing of the fraternity.

These criteria reflect the understanding that although fraternities and sororities are rooming houses, the need for regulatory oversight by the Rent Board is minimal if they are occupied solely by their own members. However, where rooms are rented to non-members, whether on a seasonal basis or year-round, a more traditional landlord-tenant relationship arises which calls for the same regulation applied to a typical rooming house.

From 1989 on, fraternities and sororities were obligated to inform the Board whether their house met the criteria for exempt status. Those that did not meet the criteria registered their house as a single-family home and paid the agency a single registration fee. Over the years, several houses have made such payments while many other houses claimed the exemption and paid no fee. In rare cases, units were rented to non-members for longer than 14 days and thus were required to register on a per-unit basis.

B. Discovery of Seasonal Rentals

Section 13.76.050B exempts rental units rented primarily to transient guests for fourteen days or less. This provision is implemented by Regulation 504(B). Rental units rented for more than fourteen days must register and tenants in such units are afforded the full protections of the Ordinance. Such protections also apply to units rented on a seasonal basis.

When fraternities and sororities were granted their exemptions per the criteria discussed above,

the Rent Board was informed that the issue of seasonal rentals was irrelevant, because the sororities represented that they shut down their houses during the summer. Similar representations were made by fraternities. However, in late 2009 and early 2010, the Rent Board was made aware that many fraternities were renting out rooms during the summer as a source of revenue. An investigation revealed the practice to be widespread; fraternity houses were routinely renting to non-members, particularly during the summer months.

C. Amnesty Program and Seasonal Registration Fee

The Board concluded that most fraternities were unaware of their obligation to register these seasonal rentals, and therefore authorized an amnesty program in November 2010 for chapters that had been failing to register these seasonal rentals. However, fourteen lawsuits were filed in Superior Court against those houses that refused to participate in the amnesty program. Each of these lawsuits was ultimately settled.

In the course of administering the amnesty program, Rent Board staff had numerous discussions with various representatives of the fraternity and sorority community regarding the registration process.¹ These discussions clarified the unique needs and concerns of fraternities.

The Rent Board Commissioners considered the matter at various committee meetings and at the May 14, 2012 Board meeting. As a result of careful deliberation and community input, a pilot process for registration of seasonal rentals by fraternities and sororities was proposed and adopted. The original seasonal registration process was as follows:

1. Pay a reduced, pro-rated fee of \$50.00 per unit for summer rentals;
2. Fill out Registration Forms specifically tailored to summer rentals; and
3. Provide the Board with a permanent contact person/liaison

In the first year of the pilot seasonal registration program, FY 12-13, the Rent Board collected \$9,520 in registration fees from the various fraternities who registered a total of 176 units. Staff conducted unannounced inspections of four fraternity houses to ensure that the Fraternity Summer Registration Forms were placed in the rooms as mandated by the Board, and found that forms were in place in all the inspected units.

In the second year of the seasonal registration program, FY 13-14, the Rent Board collected \$8,144 in registration fees from the various fraternities who registered a total of 160 units. Again, the program was an overwhelming success, with only two chapters paying late, and only one case of non-payment, for a single unit.

Throughout the course of this process, Rent Board staff was in regular communication with sorority houses, but no houses registered. Staff identified thirteen sorority chapters that owned

¹ These representatives included chapter presidents, students, property managers, members of the Fraternity Alumni Council (FAC), the FAC itself, alumni representatives, and attorneys representing a consortium of chapters.

and operated houses in Berkeley. The subsequent investigation confirmed the sororities' original representations that they do not rent rooms to non-members. Staff obtained declarations from chapter representatives attesting to this fact. Nevertheless, the Rent Board has kept the option for sororities to register seasonal rentals in the interest of applying the law and regulations to fraternities and sororities equally.

The Board has continued to administer the seasonal rental program on an annual basis. Now that the program has been codified by Measure AA, it is necessary to revise the regulations.

D. Regulation 520 defines the circumstances in which a fraternity or sorority is exempt

Regulation 520 articulates the criteria from the seasonal rental registration program described in the history above. Specifically, Regulation 520 makes it clear that fraternity and sorority houses will generally be exempt, except when they are used for "authorized seasonal rentals" as defined in Regulation 808. By articulating these criteria in Regulation 520, the Board avoids any conflict with existing regulations 403 and 403.5, which were drafted prior to the enactment of Measure AA. Furthermore, the regulation uses plain language to state that "Tenants who live in these units that are not active members of fraternities and sororities, however, are not exempt from any section of the Rent Ordinance." See Regulation 510, subsection A. This clarification will help to avoid repeating the confusion that precipitated the original seasonal rental registration program.

E. Regulation 808 defines Authorized Seasonal Rental

In order to ensure that there is no confusion regarding what types of rentals will qualify for the seasonal rental registration program, Regulation 808 explicitly defines an "authorized seasonal rental"² as a rental unit occupied by a tenant who is not an active member of a fraternity or sorority in a property owned and operated by the fraternity or sorority... for only part of the year." See Regulation 808, subsection A.

Regulation 808 also clarifies that fraternities and sororities pay a reduced registration fee for seasonal rentals. The Board will set the registration fee for seasonal rentals at the same time it sets the annual registration fee, as it has since the Board began charging a seasonal rental fee in 2012. The regulation provides that the "Board shall publicize the fee and identify all properties

² After the IRA/AGA/Registration Committee unanimously voted to recommend adoption of proposed Regulations 520 and 808, legal staff became aware of a relatively obscure regulation that uses similar terminology. Regulation 1014 was adopted in March of 1998 to allow landlords to set a rent during the summer months of 1998 for less than they would otherwise charge during the school year. The regulation defined these tenancies as "short-term seasonal rentals." This regulation had an extremely limited scope (as adopted *it was only operative during the summer months of 1998*) and has no applicability moving forward.

While the Board could repeal Regulation 1014, legal staff recommends that it remain, so that any discrepancies in our records from long-term rents may be explained moving forward and to account for the unlikely scenario in which a petition is filed where a tenant is still living in a unit affected by the provisions of the regulation. Legal staff added a sentence to paragraph A of Regulation 808 clarifying that an "authorized seasonal rental" defined herein is completely unrelated to a "short-term seasonal rental" as defined in Regulation 1014.

subject to the reduced fee for authorized seasonal rentals. The fee shall be paid no later than July 1 of each year and be subject to all penalties (proportionally reduced based on the total amount of the fee)” available under the Ordinance. See Regulation 808, subsection B.

Conclusion

The IRA/AGA/Registration Committee recommended that Regulations 520 and 808 be adopted to clarify the requirements for registration of authorized seasonal rentals by fraternities and sororites.

Proposed Regulations 520 and 808 are attached hereto.

Name and Telephone Number of Contact Person:

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Rent Stabilization Board

520. Exemption for Fraternities and Sororities

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

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

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

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

[Effective Date: _____, 2017]

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

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

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

[Effective Date: _____, 2017]