

## **BERKELEY RENT STABILIZATION BOARD**

### **Introduction**

The 2011-12 Grand Jury investigated the operations of the Berkeley Rent Stabilization Board (BRSB). This was in response to a variety of complaints that BRSB is biased in favor of tenants, charges excessive registration fees to landlords, uses improper hiring procedures, and discourages open expression of concerns.

During this investigation the Grand Jury found that the BRSB is a self-sustaining bureaucracy that operates without effective oversight and accountability. The BRSB's independence from the city of Berkeley contributes to excesses in its registration fees, in compensation for the director and members of the board, and to perceptions of impropriety in personnel procedures.

### **Background**

In 1980 after Berkeley voters passed a rent stabilization law to regulate residential rent increases, the city initiated a rent stabilization program. The program was funded by annual registration fees paid by landlords of covered rental property. Non-payment of the registration fee by owners was a problem, so tenant organizations worked to get the voters to pass an ordinance creating an independent rent stabilization agency to provide stricter enforcement of the registration fee.

In 1982 the electorate voted to make the Berkeley Rent Stabilization Board (BRSB) an independent agency not responsible to the city council. The nine member rent stabilization board, elected by Berkeley voters for four year terms, regulates rents for most apartments built before 1980 (covered units) and strives to prevent unlawful evictions. While Berkeley's mayor, city council and city

manager have no direct power over the BRSB, the agency uses city departments for some functions: the city processes BRSB's employee payroll, the city conducts all hiring through the Human Resources department, and the city's finance department processes BRSB's bank deposits and provides purchasing support.

In 1995, the California legislature passed the Costa-Hawkins Rental Housing Act that instituted "vacancy decontrol" which allows landlords to set a new rent when a unit becomes vacant. The landlord has the power to determine the rent with no regulation by BRSB. This means that when a rental vacancy occurs, the landlord can rent the unit at the prevailing market rate. Thereafter the rental increases in covered units must comply with the Annual General Adjustment (AGA) set by the BRSB. This limit is set on future increases to provide rent stability for the new tenant.

After a three-year phase-in period, "vacancy decontrol" began in 1999. Approximately 80% of the covered rental units have tenancies that have turned over at least once since 1999. Berkeley has a high rate of turnover due to its large student population. The rest have "old rent control" tenancies that never have had vacancies so they never received a vacancy increase.

The rent stabilization provisions apply to approximately 19,000 rentals in multi-family units built before 1980. Owners of rental units covered by the law must register their units and pay an annual registration fee. In 1980-81 it was \$12 a unit; in 2011-2012 it is \$194 per unit with penalties for non-payment.

Every unit subject to rent control has a lawful rent increase ceiling. In recent years, the AGA in the rent ceiling has been set at 65% of the consumer price increase for the year, which means that for 2011- 2012 it is 1.6%. BRSB's web site has a full guide to rent control, specifying exemptions, appeals procedures for landlord-tenant disputes, and addressing frequently asked questions ([www.ci.berkeley.ca.us/rent](http://www.ci.berkeley.ca.us/rent)).

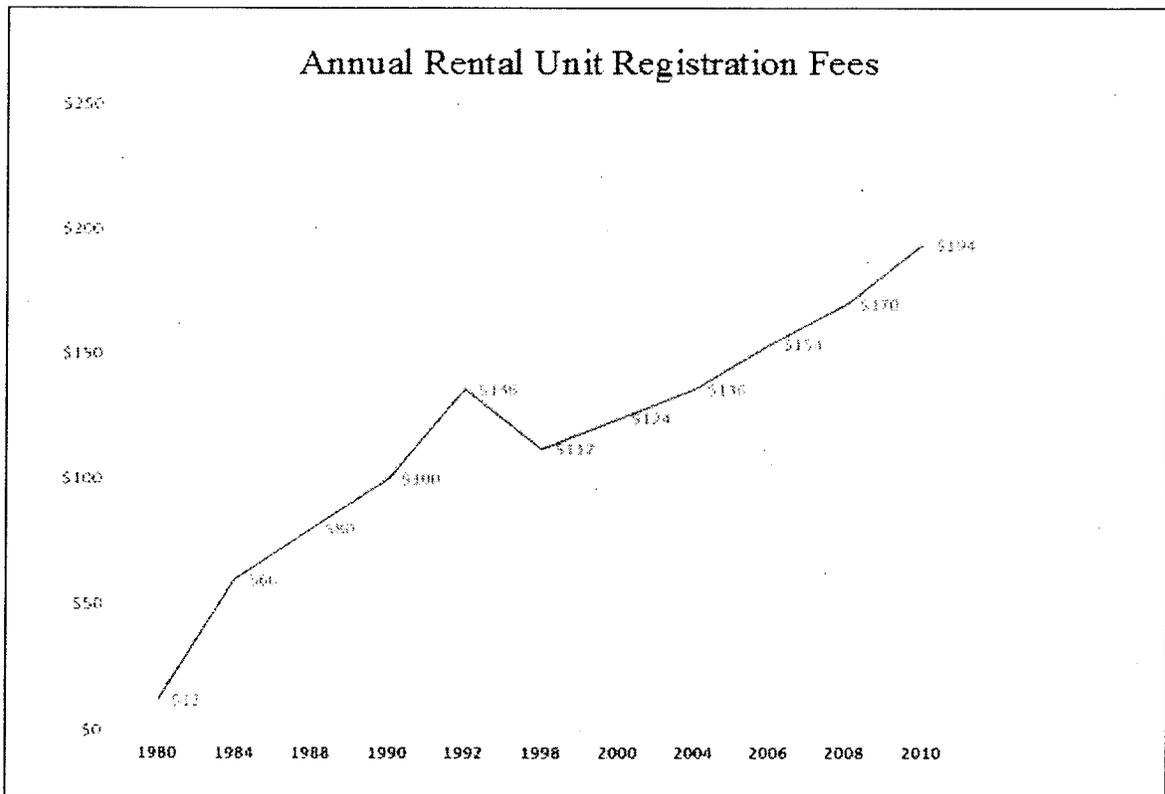
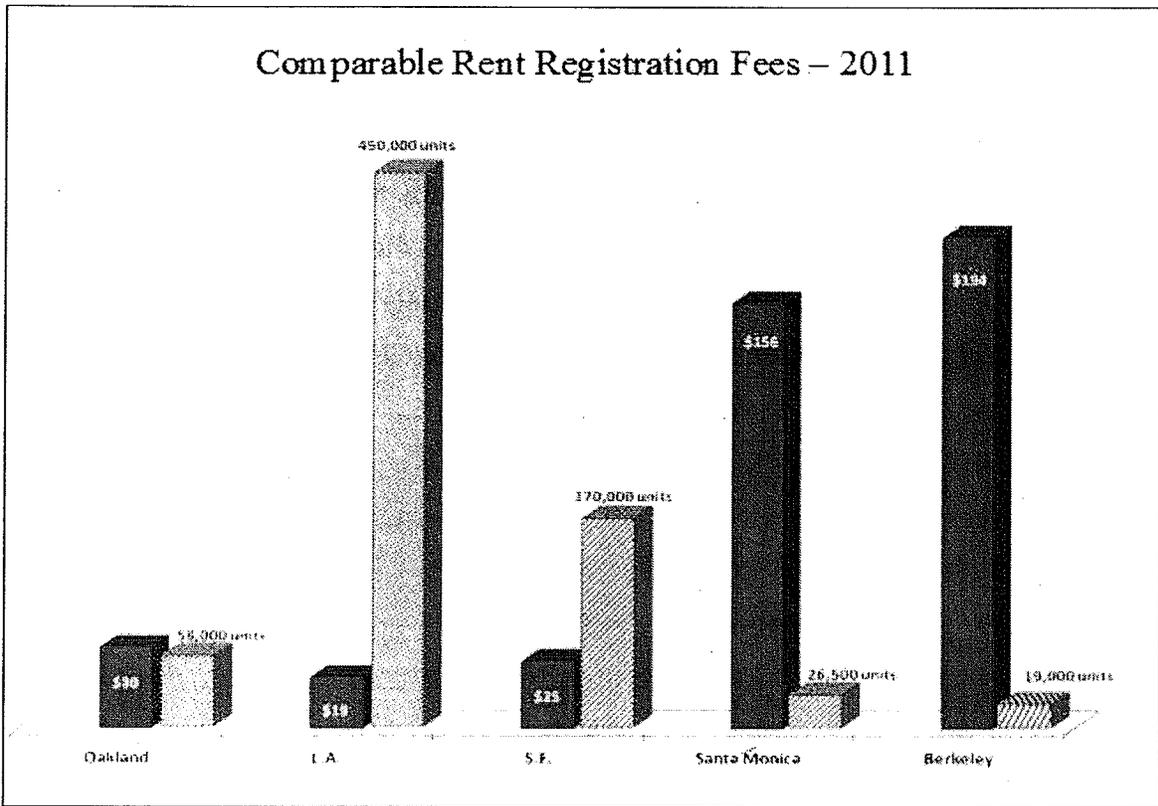
## **Investigation**

During this investigation the Grand Jury interviewed many witnesses including representatives from the board, management, staff, and citizens familiar with BRSB. Grand Jury members attended a board meeting, viewed videos of meetings on the web page, and reviewed materials provided by the city of Berkeley and BRSB. The Grand Jury considered two aspects of BRSB: 1) budget and fees; and 2) personnel procedures.

### Budget & Fees

BRSB operates with 20.95 full time employees and an annual budget of nearly \$4 million in 2010-2011. The Grand Jury found that, even after Costa Hawkins reduced the amount of work for rent boards by allowing rents to rise uncontrolled when vacancies occur, the BRSB did not decrease its total activities or budget, but instead “re-invented itself,” adjusting to the changes to sustain its operations. It appears to be a self-sustaining bureaucracy that operates without effective oversight and only minimal accountability.

BRSB’s budget and staff are large given the number of rental units in Berkeley when compared with the rent stabilization programs in other cities such as Oakland and San Francisco. *(See Chart, Comparable Rent Registration Fees - 2011)* BRSB explains this difference by stressing its active approach to rent control which provides multiple services to tenants. It uses extensive outreach, including publications and seminars, to inform tenants and owners about their rights and obligations. It maintains full and accurate records through reporting requirements for initial rents and eviction proceedings, and provides mediation and dispute resolution sessions. Not all of these services are provided in other cities that have a more passive approach to enforcing rent control.



This relatively large budget and staff are funded by the extraordinary increase in the annual registration fee from \$12 per unit to \$194 per unit between 1980 and 2012. (See *Chart, Annual Rental Unit Registration Fees*). The Grand Jury was struck by the lack of controls over the increase in the registration fee. The landlords pay the fee for services primarily benefiting tenants. This allows the BRSB to maintain its operations with minimal external controls.

The Grand Jury recognizes Berkeley voters have supported active rent control along with their commitment to neighborhood preservation and limited growth. The Grand Jury heard conflicting testimony about whether BRSB represents the interest of landlords as well as the tenants. The Grand Jury finds that the current board is primarily composed of representatives from a pro-tenant slate. One manifestation of this is that the board hires a lobbyist who is paid \$50,000 a year to advocate for state legislation that is pro-tenant. In addition, the BRSB contracts with local non-profits to provide legal advice and representation to tenants fighting evictions. Another manifestation is that landlords are only allowed to pass \$4.00 a month of the registration fee to tenants for a total of \$48 a year. In contrast, Santa Monica, like Berkeley, takes an active approach to rent control, yet it lets landlords pass \$13.00 a month to the tenants for a total of \$156 a year thus covering Santa Monica's entire registration fee. The Grand Jury concludes that a larger pass-through of the registration fee to tenants in Berkeley would be a fairer way to finance rent control and one which creates a potential check on excessive increases in the registration fee because the tenants would share more of the burden.

The Grand Jury also finds that the penalties for non-payment of registration fees in Berkeley are extremely high and substantial staff and board time is devoted to pursuing payment and handling waiver requests. The penalty is 100% of the registration amount, imposed one day after the fee is delinquent. This is much higher than other city-imposed penalties. For example, the transient occupancy tax (hotel tax) penalty is 10% of the amount due, and the parking space rental tax is also 10%. The BRSB reported that several hundred requests are processed

each year to have the penalty reduced or waived entirely and that some relief is granted in over 90% of the cases. The Grand Jury learned that these waivers are discretionary and most often reviewed by staff, leading the Grand Jury to question the potential for misuse and arbitrary application. In 2010 the BRSB legal unit filed in small claims court against 140 properties and subsequently filed liens on 40 of those properties.

The Grand Jury found that the size of the staff has not decreased commensurate with the decrease in the workload after vacancy decontrol. Furthermore, the number of hearings has gone down from 364 in 1999 to 128 in 2011. The emphasis now is on mediation because it is more cost effective. The number of hearing examiners has also gone down, yet enough remain that they are used for other jobs and “rented out to the city” which reimburses BRSB.

Berkeley voters support the mission of the BRSB when they elect members to the board. However, even given that approach there are excesses that make the Grand Jury question whether the BRSB is managing its resources appropriately. Increases in fees without justification raise questions for the Berkeley electorate to consider. Other cities with significantly more units manage rent control with lower fees.

### Personnel Procedures

The Grand Jury heard allegations about improper personnel procedures: hiring does not follow standard procedures, no appeals process exists, positions are created and hires made based on friendships rather than qualifications, and commitments are made to new hires before the proper procedures are followed. The Grand Jury also heard contradictory testimony that all hiring and disciplinary procedures follow standard procedures, are approved by the BRSB, and the most qualified person is hired.

We heard that only people "on the list" developed by the city of Berkeley's Human Resources (HR) department's screening panel are hired. However, the Grand Jury heard testimony that being on the list is not a guarantee of quality. Names on the list are not ranked and their presence on the list may just indicate that they have met the minimum qualifications. Then, according to "the rule of the list," anyone who makes the list can be hired. There are rules limiting hiring relatives but no rules limiting hiring friends. So it is possible that proper formal procedures can be followed while there are also perceptions of impropriety.

The Grand Jury concludes that perceptions of impropriety must be addressed by the board and the director. We also conclude that the BRSB and director should heed the advice from the city departments handling personnel, payroll, and finances. In addition, Berkeley staff appears to be too deferential to the BRSB when problems are identified.

Another complaint about personnel procedures concerned the inappropriate creation of new positions and hiring of friends. For example, Berkeley HR and the city council had to review BRSB's plan to create a new position of deputy director because it involved a change in the charter. HR supported the new position, which had been justified on the grounds that it would provide for an orderly succession. The city council questioned why the position was needed in a relatively small unit. In the end it was approved. The problematic nature of the appointment was underscored when the deputy director, hired ostensibly for succession planning, retired after a year. The deputy director was then rehired as a part time senior planner for the BRSB as an annuitant, a part-time position where a retired employee is paid while receiving retirement benefits. The Grand Jury questions whether there was a need to add a deputy director position in an agency this size. And again we think the board and the city need to be more diligent in questioning the director's recommendations to increase staff size.

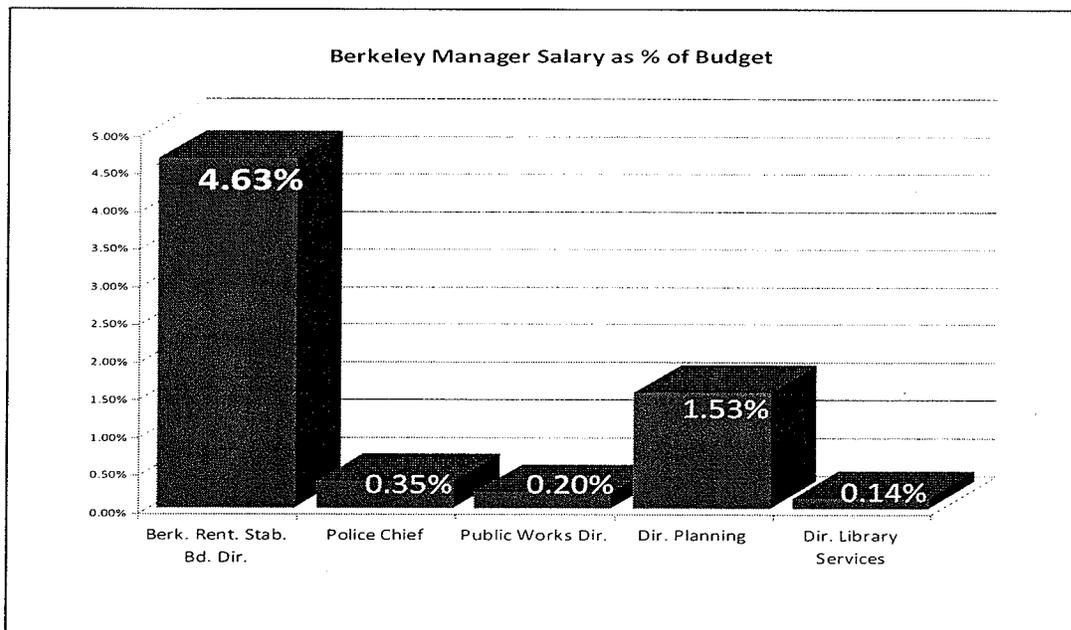
In investigating the salary of the BRSB's executive director, the Grand Jury found that it is well above the salaries of department directors in much larger

departments in Berkeley and other cities. The director is one of the most highly compensated staff members in the city. The director makes a salary of \$183,000 (excluding benefits) in an organization with 20.95 full time equivalents (FTE) and a budget of \$3.95 million. In comparison, Berkeley’s director of Public Works makes \$181,000 (excluding benefits) in an organization with 326 FTEs and a budget of \$90 million.

**BERKELEY MANAGERS’ SALARIES**

Agency	BRSB Director	Police Chief	Public Works Director	Director of Planning	Director Library Services
Salary	\$183,000	\$203,680	\$181,000	\$183,440	\$175,475
Annual Budget	\$4 million	\$58 million	\$90 million	\$12 million	\$128 million
# of Employees	21	296	326	65	117

As shown in the chart below, the salary of the BRSB director is an inordinately high percent of the agency’s budget.



The Grand Jury heard testimony that the BRSB asked the city HR to conduct a comparative compensation study for the director's position. Such studies should not simply compare directors' salaries at a handful of other active rent control agencies, but must also compare the salaries of other Berkeley city directors.

Similarly we question the compensation and benefits for board members. They are paid \$500 a month plus benefits including health benefits, which is excessive compared with other rent boards and local government commissions and committees. We find that the Berkeley HR department does not provide enough oversight of the BRSB personnel procedures.

Another complaint was that the proportion of attorneys on staff was too large in relation to the total staff size thus keeping BRSB expenditures higher than appropriate. While most city of Berkeley departments utilize the city attorney's office for their legal needs, the BRSB has several attorneys on staff. Now that the legal workload has decreased as a result of Costa Hawkins, the proportion of attorneys should be reduced. We found that some attorneys were being used to do jobs not requiring legal training. In addition to having a staff supervisor, there is an "attorney of the day" assigned to the BRSB. The Grand Jury learned the current workload does not justify the number of lawyers, exacerbated by the BRSB's justification that the attorney of the day's job is to advise other staff to not give legal advice. Additionally, the number of hearings has declined over the years, causing the Grand Jury to question if there is a better use of public funds in this staffing situation. The Grand Jury reviewed documents provided by the BRSB and heard testimony that several of the positions in the BRSB spend time doing work for other city departments rather than doing work for the BRSB.

BRSB has not asked the city of Berkeley's HR department to perform an audit to determine appropriate staffing levels. Without a formal position control audit, there is no effective oversight of the relationship between the work required and the raising of fees. It appears to the Grand Jury that the BRSB 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.

The Grand Jury also heard that there was not an appeals process for personnel matters. We found that there is an appeals process. The executive director hears appeals and then if it is denied, the appeal goes to the city's grievance board and then to the city manager who delegates the job to the HR director. Unionized employees' procedures vary by union and contract.

Another complaint is that BRSB's board is not exercising sufficient oversight of the executive director. The Grand Jury did not assess complaints regarding the executive director's management style or whether he has created an atmosphere that discourages questioning. The board evaluates the executive director every three years including doing a 360-degree evaluation asking many of the stakeholders to assess his work. The responses showed substantial support for the executive director but also some concerns that he discourages open expression of views. Providing effective oversight of an executive is the responsibility of a board particularly when the agency operates independently from traditional administrative control. The Grand Jury determines that the board is too deferential to the executive director and urges the board to improve its oversight. Evaluations should be done annually and the board should give more feedback to the director, urging him to more appropriately address personnel issues.

## **Conclusion**

BRSB is a governmental entity with its own source of revenue – registration fees. The board is elected by Berkeley residents and is generally pro tenant with little accountability to the landlords who fund the operations of the board. Thus, the board has little to no incentive to control costs. In an era where most governmental entities must control costs, BRSB has been exempt from these pressures because it has a dedicated source of funds and is a self-sustaining

bureaucracy. Berkeley voters are the only ones who can change the direction of the BRSB and so far they have not shown any inclination to do that.

While the BRSB does provide rent control that voters appear to want, the board is not providing strong enough oversight, not holding the agency accountable – not scrutinizing personnel hiring, not questioning compensation, not balancing both landlord and tenant interests, not trying to constrain increases in registration fees. For example, the executive director makes an exorbitant salary that comprises nearly 5% of the entire budget of the agency. The Grand Jury finds this unacceptable and concludes the board needs to reprioritize services and to reduce costs not only in its administration but in services to the citizens of Berkeley.

The Berkeley Rent Stabilization Board's independence from the city of Berkeley contributes to its excesses. Too often, it operates without traditional administrative controls that could be provided by the city of Berkeley.

## **RECOMMENDATIONS**

### *Recommendation 12-10:*

The Berkeley Rent Stabilization Board must reduce the high rental unit registration fees.

### *Recommendation 12-11:*

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

### *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.

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.

Recommendation 12-14:

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

**RESPONSES REQUIRED**

Berkeley Rent Stabilization Board

*Recommendations 12-10 through 12-14*