

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: September 15, 2021

Final Decision Date Deadline: September 15, 2021

**STATEMENT OF THE ISSUE:** At the August 18, 2021 Regular Meeting of the Richmond Rent Board, Rent Program staff presented an overview of the existing internal late fee waiver policy, seeking feedback from the Board regarding the creation of a Board approved late fee waiver policy. Towards that end, Rent Program Staff have researched various late fee waiver policies from sister rent control agencies to provide Rent Board members with policy options for crafting a Rent Board approval late fee waiver policy to be codified via Rent Board regulation(s). Additionally, Rent Program staff received direction from the Board to examine a potential Regulation that would require Tenants pay a portion of the Rental Housing Fee to Tenants.

## INDICATE APPROPRIATE BODY

- |   |   |  |  |   |
|---|---|--|--|---|
| <input type="checkbox"/> City Council               | <input type="checkbox"/> Redevelopment Agency                             | <input type="checkbox"/> Housing Authority     | <input type="checkbox"/> Surplus Property Authority          | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> |   |

## ITEM

- |   |  |                                 |
|---|--|---------------------------------|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) |  |                                 |
| <input type="checkbox"/> Public Hearing   | <input type="checkbox"/> Regulation  | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement   | <input checked="" type="checkbox"/> Rent Board As Whole                          |                                 |
| <input type="checkbox"/> Grant Application/Acceptance                                 | <input type="checkbox"/> Claims Filed Against City of Richmond                   |                                 |
| <input type="checkbox"/> Resolution   | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) |                                 |

**RECOMMENDED ACTION:** (1) RECEIVE presentation on proposed Rent Board Late Fee Waiver Policy and (2) DIRECT staff to prepare proposed regulation(s) to clarify the policy for waiving late fees, including setting standards as to when late fees should be approval in whole or in part – Rent Program (Nicolas Traylor/510-620-6564).

AGENDA ITEM NO:

**G-4.**

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# AGENDA REPORT

**DATE:** September 15, 2021

**TO:** Chair Finlay and Members of the Rent Board

**FROM:** Nicolas Traylor, Executive Director

**SUBJECT:** PROPOSED RENT BOARD LATE FEE WAIVER POLICY AND CHARGING TENANTS A PORTION OF THE RESIDENTIAL RENTAL HOUSING FEE

## **STATEMENT OF THE ISSUE:**

At the August 18, 2021 Regular Meeting of the Richmond Rent Board, Rent Program staff presented an overview of the existing internal late fee waiver policy, seeking feedback from the Board regarding the creation of a Board approved late fee waiver policy. Towards that end, Rent Program Staff have researched various late fee waiver policies from sister rent control agencies to provide Rent Board members with policy options for crafting a Rent Board approval late fee waiver policy to be codified via Rent Board regulation(s). Additionally, Rent Program staff received direction from the Board to examine a potential Regulation that would require Tenants pay a portion of the Rental Housing Fee to Tenants.

## **RECOMMENDED ACTION:**

(1) RECEIVE presentation on proposed Rent Board Late Fee Waiver Policy and (2) DIRECT staff to prepare proposed regulation(s) to clarify the policy for waiving late fees, including setting standards as to when late fees should be approval in whole or in part – Rent Program (Nicolas Traylor/510-620-6564).

## **FISCAL IMPACT:**

There is no fiscal impact in terms of increased staff costs. Collection of the Rental Housing Fee would not be impacted, as Landlords would still be required to pay the Rental Housing Fee (minus the late fees) prior to the Rent Board approving a waiver.

## **DISCUSSION:**

Background

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Section 11.100.060(m) of the Rent Ordinance establishes both the integrity and autonomy of the Rent Board by mandating that the Rent Board “be an integral part of the government of the City [of Richmond],” and “exercise its powers and duties under [Chapter 11.100] independent from the City Council, City Manager, and City Attorney, except by request of the [Rent] Board.” The Rent Ordinance further vests the Rent Board with the sole power to oversee and adopt its own budget, while establishing that “the City Council and the City Manager shall have no authority to oversee, supervise, or approve this budget.” The Rent Program budget is comprised only of reasonable and necessary expenses to achieve the purpose of the Rent Ordinance and is currently funded in whole by the Rental Housing Fee charged to all Landlords in an amount deemed necessary and reasonable by the Rent Board and approved by the City Council.

Since its inception the Rent Program has waived \$142,644.40 in late fees through its administrative waiver process. \$25,682 in late fees were waived prior to the pandemic and \$116,962 in late fees were waived during the COVID-19 pandemic. In light of the fact that the Rent Board has full authority over the Rent Program budget/spending (fees collected and/or waived), and in the interest of public transparency, staff recommend that all late waive approvals and/or denials be subject to Rent Board approval.

Since 2017, the Rent Program has sent out Rental Housing Fee invoices to all Richmond Landlords on an annual basis. In its efforts to collect the fees, staff members have encountered various issues concerning Landlords’ nonpayment of the fees. For instance, while in the continuous process of refining Richmond’s rental housing database, the Rent Program regularly discovers Rental Units that have not been enrolled since the inception of the Program or that have changed status from non-rented to rented over the years, without informing the Rent Program. In other cases, some Landlords claim to not have received an invoice because of a billing, mailing or clerical error. In those cases, late fees were either waved in full or in part. Finally, some owners assert a financial hardship, health issues, or other reasonable basis for not paying the Rental Housing Fee on time. There have only been a few circumstances where Landlords were late for more than one fiscal year and requested a late fee waiver.

Given these various circumstances surrounding nonpayment of the fees, the Rent Program adopted an internal policy regarding assessing late fees. Under the current internal policy, the Executive Director or his/her designee may waive all or some of the late fees based on the criteria described above and listed in Request for Late Fee Waiver form (Attachment 1).

To be clear, every Landlord who has requested a late fee waiver has either received a partial or full granting of their request. However, the current Rent Program internal policy lacks a requirement of Rent Board approval, and/or Rent Board oversight. To ensure the appropriate level of Rent Board oversight and public accountability, staff members are seeking direction and feedback from the Rent Board with regard to drafting a proposed Rent Board late fee waiver regulation that would achieve the proper degree of oversight and accountability. Upon direction from the Rent Board, Rent Program staff would draft a

proposed regulation that not only sets forth the Rent Board approved criteria for granting a waiver, but also standards for when fees should be approved in full or in part.

### General Late Fee Waiver Policy Proposal

Pursuant to Richmond Municipal Code Chapter 11.100 (hereafter Rent Ordinance), Landlords are required to pay a Residential Rental Housing Fee (hereafter Rental Housing Fee) per Rental Unit. Landlords who fail to pay the Rental Housing Fee in a timely manner are assessed a late fee penalty. In 2018, after a fee study was completed, the Richmond City Council passed a late fee schedule that established the following assessments: a 10% late fee after being 30-days late, a 25% late fee after 60-days and a 50% late fee after 90-days from the date of the original invoice. Subsequent to the adoption of the late fee schedule, the Rent Program established an internal late fee waiver policy consistent to policies in similar rent control agencies. This policy has allowed the Executive Director their designee to administratively waive late fees under particular circumstances (see Attachment 1).

Rent Program staff understands the importance of establishing policies that are practical and administratively efficient and effective. Towards that end, Rent Program staff recommends the following overall process, which reflects the current internal late fee waiver policy as a starting point for receiving additional Rent Board input:

- 1) Rent Program staff receives a request for a late fee waiver from Landlord.
- 2) The Executive Director or his or her designee reviews the late fee waiver requests and issue a recommendation for Rent Board to approve the waiver, in full or in part, or deny the waiver, based on the Landlords reason for requesting the waiver and their payment history.
- 3) Rent Program staff compiles the late fee waiver requests for each month and places that list on the consent calendar for the following month's Rent Board meeting.
- 4) Rent Board members review a spreadsheet with details on each request (date of request, the reason(s) for request, a recommendation to the Board to approve or deny the request, and total amount waived). Each Late Fee Waiver Request form would be included as attachments for the Board's review.
- 5) Rent Board members vote to approve recommended waivers or may pull individual Request from the consent calendar for further discussion.

### Late Fee Waiver Policy Research and Options

Rent Program Staff researched the late fee waiver policy of 8 rent control agencies: Santa Monica, San Jose, Berkeley, West Hollywood, San Francisco, East Palo Alto, Mountain View and Oakland. It is important to note that San Francisco, Oakland, East Palo Alto and Mountain View did not provide late fee waivers via particular policy. Instead in these jurisdictions, payment dates were not postponed or revised and late fee penalties continued to be assessed if payments were not received by the due dates. The following cities had their corresponding late fee policies:

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Santa Monica	<p><b>Defer registration fee payments for units occupied by tenants who were unable to pay rent due to Covid-19</b></p> <ul style="list-style-type: none"><li>• Typically due August 1, if paid in full by December 1 no late fees or penalties will accrue.</li><li>• If not paid by December 1, late fees and penalties will accrue retroactively.</li><li>• Proof of nonpayment is required and approval by Administrator.</li></ul>
San Jose	<p><b>Suspension of Late Fees to align with the Rent Increase Moratorium</b></p> <ul style="list-style-type: none"><li>• Any outstanding late fees were suspended from May 2020 through June 30, 2021, late fees will not accrue during the term.</li><li>• Landlords remain financially responsible for any late fees accruing prior to adoption of the Rent Increases Moratorium and upon its expiration.</li></ul>
West Hollywood	<p><b>Due date of payment extended from July 15 to August 15, 2021.</b></p> <ul style="list-style-type: none"><li>• Due to the Covid-19 Pandemic, a penalty will be assessed on payments received after August 15, 2021.</li></ul>
Berkeley	<p><b>Late Fee/Penalties Are Waived Pursuant Rent Board Regulations</b></p> <ul style="list-style-type: none"><li>• Late Fees are waived either ministerially by staff or discretionally by the Rent Board. Berkeley was the only jurisdiction studied that provided for standards regarding when to waive fees in full or in part.</li></ul>

### Late Fee Waiver Standards

Per direction provided by the Rent Board, Rent Program Staff has researched late fee waiver policies from similar rent control agencies. As mentioned above, the Berkeley Rent Stabilization Program was the only agency that had established standards for waiving fees in part or in full. This standard was based on two factors: the number of units on the rental property and the number of times a Landlord had been late in the past. Berkeley's policy is codified in Berkeley Rent Board Regulation 883, 884 and 885 (Attachment 2). Because Berkeley's late fee schedule is vastly different than Richmond's, any standard utilized by the Richmond Rent Program would need to reflect the late fee schedule utilized by Richmond. For example, in Berkeley, Landlords who are late one day receive a 100%

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penalty. The 100% penalty was put in place by Berkeley voters, who amended the Berkeley Rent Ordinance in 1982 (Tenant's Rights Amendments Act of 1982) as a means to compel compliance, since during the first 6 years as an agency, only about 60% compliance was achieved in large part due to a significant number of Landlord's who protested having rent control in Berkeley by not funding the agency. The year following the passage of the Tenant's Rights Amendment Act of 1982, the Berkeley Rent Stabilization Program doubled its registration of rental properties.

### Berkeley's Late Fee Waiver Standards

The Berkeley Rent Stabilization Program utilizes the following late fee waiver standard for Landlords who are not new owners:

For the first late payment within the prior six years – 100% of late fees waived  
For the second late payment within the prior six years – 90% of penalties waived  
For the third late payment within the prior six years – 75% of penalties waived  
For the fourth late payment within the prior six years – 55% of penalties waived  
For the fifth late payment with the prior six years – 30% of penalties waived  
For the sixth late payment with the prior six years – waiver is denied

New owners with no other residential rental property in Berkeley, who were unaware of the property registration requirements of the Berkeley Rent Ordinance and who registered the property within 12 months of acquiring title to the property may receive a waiver of late fees in accordance with the following schedule:

The property contains 1 to 2 rental units – 100% of penalties waived  
The property contains 3 to 5 rental units – 90% of the penalties waived  
The property contains 6 to 10 rental units – 75% of the penalties waived  
The property contains 11 to 20 rental units – 50% of penalties waived

### Standards for Richmond

Since the Richmond Rent Program utilizes the City of Richmond's late fee schedule, where late fees are applied at a rate of 10% after 30 days late, 25% after 60 days late and 50% after 90 days late, any standards for partial late fee waivers that are adopted should reflect this schedule. As a result, the Board would be restricted to waiving late fees using four levels: waiving no late fees (0%), or just waiving a tier or tiers of penalties (10%, 25% or 50%). Rent Program staff recommends factoring in both the number of times late over a period of time, and consideration for how long a property owner has operated their rental property in Richmond. However, since Richmond does not have an automatic 100% penalty for being a day late, it does not seem appropriate or necessary to establish a complicated waiver schedule similar to Berkeley's. Additionally, since the Richmond Rent Program has only been in existence for the last 4 years and because rental properties in Richmond change hands frequently (in part due to the high number of single family homes and condos rented), particular emphasis should be given to providing

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relief for those Landlords who are new to operating a rental property in a rent controlled jurisdiction.

One option contemplated by staff is as follows:

### Payment History Standard

**First late payment within the last 5 years** – all or any late fees accrued waived

**Second or third late payment within the last 5 years** – if at the 10% penalty level when requesting a waiver, then the 10% penalty waived. If at the 25% penalty level, then late fees drop to the 10% level. If at the 50% level, then late fees drop to the 25% level.

**Fourth late payment within the last 5 years** – no waiver (unless the late fees accrued were the result of staff error or mailing issue or per the discretion of the Board).

### Ownership History Standard

For new rental property owners, who enrolled their rental property with the Rent Program within 12 months, the following schedule or something similar could be employed:

**The property contains 1 to 2 units** – all late fees waived

**The property contains 3-20 units-** – if at the 10% penalty level when requesting a waiver, then the 10% penalty waived. If at the 25% penalty level, then late fees drop to the 10% level. If at the 50% level, then late fees drop to the 25% level.

**The property contains more than 20 units** – no waiver (unless the late fees accrued were the result of staff error or mailing issue or per the discretion of the Board).

### Board Discretion

Under this proposed option, the Rent Board may consider the grounds listed in the Late Fee Waiver form (Attachment 1) in all waiver circumstances including those where no waiver is recommended by staff and those that are ministerial waivers performed by Rent Program staff.

### Ministerial Waivers

In some circumstances, Landlords receive late fees as the result of staff, mailing or billing errors. In those circumstances, where the Landlord were unable to pay the fee because of no fault of their own, Staff recommends that such waivers be decided ministerial or administratively. Since many of the late fee situations result from billing, clerical or mailing issues, such waivers would not be adjudicated by Rent Board members, but would be listed as ministerial waivers for the Board's review as part of the Rent Board agenda's consent calendar. The Board would be empowered to pull any ministerial waiver for

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further review during a Board meeting. This would allow the Board to differentiate between those waivers request that resulted from billing, mailing or clerical errors by staff and those in which were not and provide transparency regarding internal billing issues that may need improvement or resolution.

### **Charging Tenants a Portion of the Rental Housing Fee**

Because the Rent Ordinance does not require Tenants to pay a portion of the Rental Housing Fee, nor does it authorize the Rent Board to charge Tenants a portion of the Rental Housing Fee, the only way to require Tenants pay a portion of the fee is to present the issue as a ballot measure and have the voters amend the Rent Ordinance to include the requirement. Otherwise, Landlords may utilize the Maintenance of Net Operating Income process to pass-through the Rental Housing Fee and other expenses in the form of a Rent increase, if they can establish that the payment of the Rental Housing Fee and other expenses has resulted in a deprivation of a fair return

### **Next Steps**

Upon direction provided by the Rent Board, Rent Program staff will draft proposed regulation(s) that clarify the policy for waiving late fees and provide standards to when late fee waivers should be approved in whole or in part.

### **ATTACHMENT(S):**

Attachment 1 - Late Fee Waiver form

Attachment 2 - Berkeley Rent Board Regulations 883, 884 and 885

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**ITEM G-4**

**September 15, 2021  
RENT BOARD MEETING**

**ATTACHMENT 1**

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### Request to Remove Late Fees

Property Owner Name: \_\_\_\_\_

FRJC #: \_\_\_\_\_

Property Owner Phone Number or Email: \_\_\_\_\_

The Property Owner has requested the removal of late fees on their account totaling \$ \_\_\_\_\_ for the following reason:

- New Owner, did not receive invoice
- Wrong Mailing Address
- Owner believed property was exempt from the Rent Ordinance
- Financial hardship, caused by circumstances beyond the Landlord’s control, such as natural disaster, destruction or major damage to the Rental Property not due to the Landlords actions, bankruptcies and disputes over ownership of the property.
- Hospitalizations or medical treatments of the Landlord or Landlord’s family during the fee billing period, or a death in the family within the fee billing period
- The landlord was billed for a fewer number of units because of errors in property records maintained by the Rent Program where the error was not attributable to information supplied by the Landlord. The penalties are waived only for unbilled units; the billed units should be paid on time.
- A previously enrolled property was not billed as a result of staff error.
- An invalid or erroneous account number was assigned, which resulted in billing errors or improper crediting of payments by the landlord.
- The determination of whether or not the property was subject to the Ordinance required an analysis through the existing Administrative Determination of Exempt Status process. Penalties will be waived only while the determinations pending. If the Landlord raised the issue requiring administrative determination, penalties will be waived only from the date of the first written contact with the Board in which the issue was raised. Waiver of penalties will not be granted if the staff determines that the issue raised is already settled and/or has no substantial merit. If the issue was raised by Rent Board staff, the waiver period commences on the date on which the administrative determination was requested by the staff. In all situations in which a determination was requested, the waiver period terminates when the Landlord is notified of the determination regarding the status of his/her property.
- The property owner was unable to collect some or all of the rent due to the COVID-19 pandemic and the resulting hardship led to non-payment of the Rental Housing Fee. In this case, the property owner must declare under penalty of perjury, in detail, how COVID-19 has impacted their business (i.e. how many month’s tenants didn’t pay rent, illness in the family or self, etc.)
- Other: \_\_\_\_\_

This request has been conditionally granted by the Rent Program, provided the owner pays the Rental Housing Fee before \_\_\_\_\_.  
*(10 business days unless new owner or incorrect mailing address - then 30 days)*

\_\_\_\_\_  
Executive/Deputy Director Signature / Staff Initials

\_\_\_\_\_  
Date

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

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### **881. Delinquent Registration Fees and Penalties**

(A) If the full fee is not paid by July 1, of any year after 1991, it is delinquent, and a penalty equal to one hundred percent of the fee so delinquent shall become due in addition to the fee. Every six months that the fee remains delinquent, the penalty shall be increased by one hundred percent of the original fee. Landlords whose fee payments are delinquent will be notified by Board staff as soon as possible of this fact and the amount, including the penalty, which they owe. Although partial payments will be accepted, rental units will not be considered to be properly registered until the full fee, including any penalty, has been paid for them.

(B) The fee is not delinquent if the required amount has been paid on or before September 2, 1980, even if the registration statement is not properly completed until after that date, as long as the unit for which the fee was paid is identified as the property address at the time of payment, or staff determines there is good cause for lack of that information.

[Regulation 881 effective October 2, 1980; amended June 6, 1997]

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### **882. (RESERVED)**

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

A landlord who is assessed a penalty pursuant to Regulation 881 may request the Board to waive all or part of the penalty by showing good cause for the delinquent payment. In order to implement the provisions of Section 8(f) of the Rent Stabilization Ordinance, the Board has determined that the following circumstances constitute good cause for waiver of penalties. When substantial delays in billing or delays in reconciling accounts are attributable to City staff, the penalties otherwise due will be waived. The Rent Board Executive Director, or his or her designee, is empowered to waive late payment penalties under the following circumstances:

(A) An invalid or erroneous account number was assigned, which resulted in billing errors or improper crediting of payments by the landlord.

(B) The landlord was billed for a fewer number of units because of errors in property records maintained by the City where the error was not attributable to information supplied by the landlord. The penalties are waived only for unbilled units; the billed units should be paid on time.

(C) The billing address of the landlord has not been corrected after the owner had notified the Board in writing of a change of address.

**(D)** A previously registered property was not billed as a result of staff error.

**(E)** A property account was erroneously closed for reasons not attributable to the landlord, and the account is subsequently reopened and billed.

**(F)** The determination of whether or not the property was subject to the Ordinance required an analysis by Rent Board legal staff. Penalties will be waived only while the legal opinion is pending. If the landlord raised the issue requiring legal determination, penalties will be waived only from the date of the first written contact with the Board in which the issue was raised.

Waiver of penalties will not be granted if the legal staff determines that the issue raised is already settled and/or has no substantial merit. If the legal issue was raised by Rent Board staff, the waiver period commences on the date on which the legal opinion was requested by the staff. In all situations in which a legal opinion was requested, the waiver period terminates when the landlord is notified of the legal determination regarding the status of his/her property.

In all cases in which a waiver is granted pursuant to the provisions of this subsection, penalties will again accrue if the bill is not paid within 30 days after the error has been corrected and the landlord has been notified of the determination of the status of his/her property under the Ordinance.

**(G)** Other errors in billing or reconciling accounts are directly attributable to Rent Board or City staff.

**(H)** The late payment of a fee due on July 1st is made, without deliberate delay, by August 30th of the same year (within 60 days of the July 1st due date), and all other balances due are paid within that time. In such case, the Executive Director will, except as provided in subsection (J) below, waive the penalties based on the landlord's payment history for the property in accordance with the following schedule:

For the first late payment within the prior six years, - 100% of penalties waived;  
 For the second late payment within the prior six years, - 90% of penalties waived;  
 For the third late payment within the prior six years - 75% of penalties waived;  
 For the fourth late payment within the prior six years - 55% of penalties waived;  
 For the fifth late payment within the prior six years - 30% of penalties waived;  
 For the sixth late payment within the prior six years - waiver denied.

For the purposes of this subsection (H), "landlord" means the current property owner . However, if the landlord was not a bona fide purchaser for value, this definition includes the immediate predecessor owner.

**(I)** A new owner with no other residential rental property in Berkeley was unaware of the property registration requirements of the Rent Ordinance and registered the property within 12 months of acquiring title to the property. In such case, the Executive Director will, except as provided in subsection (J) below, waive the penalties in accordance with the following schedule:

The property contains 1 or 2 rental units - 100% of penalties waived;  
 The property contains 3 to 5 rental units - 90% of penalties waived;

The property contains 6 to 10 rental units - 75% of penalties waived;

The property contains 11 to 20 rental units - 50% of penalties waived;

If a property covered by the above schedule is registered between 12 and 24 months after the new owner acquired title, the percentage of penalties waived will decrease by 10%. Waiver requests for new owners of property containing more than 20 units or of properties that were not registered within 24 months of acquiring title will be evaluated pursuant to Regulation 884(B).

This subsection (I) does not apply if a prior owner incurred penalties that are outstanding and subject to review under any circumstance listed in Regulation 884(B), except subsections 884(B)(5) and (B)(6).

**(J)** The payment schedules in subsections (H) and (I) above will not apply if the Executive Director, or his or her designee, recommends that the Board review the request under Regulation 884(B) because the interests of justice require that a greater or lesser amount be waived.

[Regulation 883 amended by the addition of (G) effective 1/12/83; amended by deleting "and interest" and by the addition of (H), effective 6/6/97 and as amended 3/20/98; amended August 21, 2000 by adding the last sentence to H; amended 6/24/03 with addition of (I) and other various changes; amended July 20, 2009 change in (H) first sentence added without deliberate delay, by August 30 instead of September 30 and fee is due within 60 days instead of 90; amended December 13, 2010, by revising (H) to add and all other balances due are paid within the 60 days and define landlord for the purposes of this regulation, adding (J) and references to it in (H) and (I), and making various other changes; amended November 21, 2011 by deleting reference to automatic waivers for late payment of fees for a previously non-exempt unit.]

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## **884 . Other Waiver Requests**

**(A)** Waiver requests for good cause that do not meet the criteria enumerated in Regulation 883 will be referred to the Executive Director for review. The Executive Director, or his or her designee, will evaluate the request and determine if it should be reviewed ministerially by staff, or on a discretionary basis by the full Board. The Board will examine whether there is good cause to waive some or all of the penalties.

**(B)** Discretionary Waivers. The determination of good cause for a waiver of penalties depends on the totality of the circumstances in the following categories:

**(1)** The good cause asserted in the waiver request is a death or illness in the landlord's family;

**(2)** The waiver request was filed following the initiation of legal action by the Rent Board to recover unpaid registration fees;

**(3)** Rent Board records indicate that, on or after January 1, 1999, the landlord requesting the waiver had served a notice of termination of tenancy pursuant to Civil Code section 1946, 1946.1, or 1954.535, or a notice of intent to withdraw accommodations pursuant to Berkeley Municipal Code section 13.77.050 (Ellis Act);

**(4)** Two or more rental units at the property for which the waiver is requested are not available for rent;

**(5)** A tenant at the property for which the waiver is requested filed an Individual Rent Adjustment or Rent Withholding petition during the prior five years;

**(6)** The landlord requesting the waiver owns or manages 11 or more rental units;

**(7)** The landlord requesting the waiver was not the owner of the property when the penalty first accrued;

**(8)** The penalty has accrued because registration fees have not been paid for three or more fiscal years;

**(9)** A notice of default or notice of sale for the property has been recorded with the county recorder's office pursuant to Civil Code section 2924, within the past five years;

**(10)** The landlord has paid late each year for the prior five years;

**(11)** The Executive Director, or his or her designee, recommends that the interests of justice require that a greater or lesser amount be waived.

**(12)** The property is on the inventory of potentially hazardous soft story buildings, as defined in the Soft Story Ordinance (Berkeley Municipal Code Chapter 19.39), but the landlord is not in compliance with that ordinance. For the purposes of this Regulation, compliance with the Soft Story Ordinance means that the landlord has notified tenants and posted a notice as required by B.M.C. section 19.39.060, and submitted an Initial Screening and seismic engineering evaluation report as required by B.M.C. section 19.39.070, by the applicable deadline under B.M.C. section 19.39.090.

**(C) Ministerial Waivers.** For all other waiver requests, the landlord's recent payment history will determine penalties using the following schedule:

First late payment within the prior five years - 100% of penalties waived;

Second late payment within the prior five years - 80% of penalties waived;

Third late payment within the prior five years - 60% of penalties waived;

Fourth late payment within the prior five years - 40% of penalties waived.

Fifth late payment within the prior five years - the waiver request will be decided by the full Board in accordance with Regulation 884(B)(10).

**(D)** For the purposes of this Regulation 884, “landlord” means the current property owner. However, if the landlord was not a bona fide purchaser for value, this definition includes the immediate predecessor owner.

**(E)** Where a waiver of penalties paid to the Board is granted in whole or in part, the amount of the waiver will be credited to the landlord’s account to offset future registration fees unless the Executive Director, upon written request of the landlord, determines that there is good cause to issue a refund.

**(F)** A waiver of penalties granted under this regulation is conditional upon payment of the balance due within the time period designated by the Executive Director or the full Board.

[Amended February 5, 1999; amended August 21, 2000 by changing the initial review of requests for waiver of late registration penalties from a Board Commissioner to a Hearing Examiner and setting forth grounds for waiver of late registration penalties as listed in A through F; amended June 24, 2003, eliminating former A – F and adding (B) 1 - 8 and various other changes; amended December 13, 2010, by clarifying the Executive Director’s role in (A), eliminating service of a 3-day notice as triggering a discretionary waiver in (B) 3, adding (B) 9 – 11, establishing a new schedule in (C), defining landlord for this regulation in (D), and making various other changes. Amended July 30, 2012 by adding subsection (12), which adds compliance with Soft Story Ordinance as criterion for discretionary waiver requests.

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### **885. Responses to Wavier Recommendations**

The Executive Director will send his or her recommendation on a waiver reviewed under Regulation 884 subsections (A) and (B) to the landlord at least seven days before the Board meeting at which the waiver is to be considered. Any landlord who disagrees with the Executive Director’s recommendation may file a written response to be forwarded to the Board and/or address the Board at the meeting where the waiver is considered.

[Amended August 21, 2000, as reworded; amended June 24, 2003 changing Hearing Examiner’s recommendation to Executive Director’s recommendation on a waiver pursuant to Regulation 884 and eliminating the last sentence; amended December 2010]

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### **886 - 899 (RESERVED)**

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[Rent Stabilization Board](#), 2125 Milvia Street, Berkeley, CA 94704

Questions or comments? Email: [rent@cityofberkeley.info](mailto:rent@cityofberkeley.info) Phone: (510) 981-7368

(510) 981-CITY/2489 or 311 from any landline in Berkeley

TTY: (510) 981-6903

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