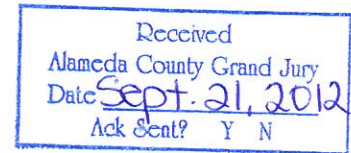


Rent Stabilization Board



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:

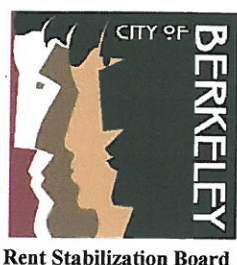
Enclosed is a copy of the official response of the Berkeley Rent Stabilization Board to the report and recommendations of the 2011-2012 Alameda County Civil Grand Jury Final Report. This response was approved by the Board at its meeting of August 20, 2012 and includes our response to Recommendations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

Sincerely,

A handwritten signature in blue ink, reading "Lisa Stephens".

Lisa Stephens  
Chair, Berkeley Rent Board

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



**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 21<sup>st</sup> 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 1<sup>st</sup> 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**

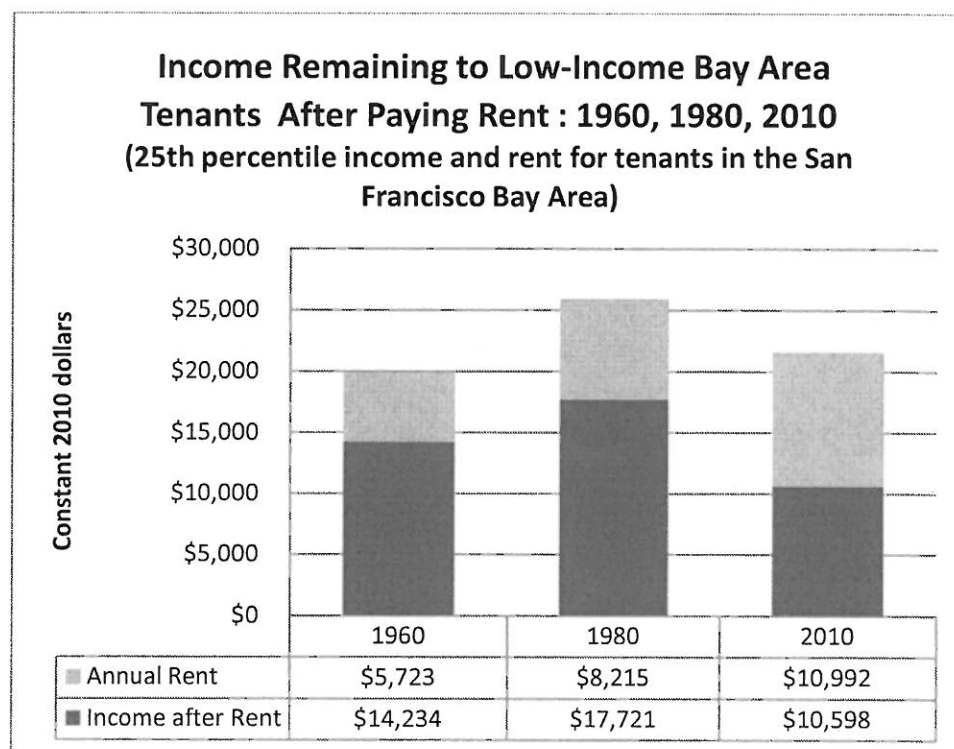
A discussion of the purpose of the ordinance and the circumstances under which the ordinance was passed and continues to operate is essential when evaluating the work of the Berkeley Rent Stabilization Board.

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 – recontrol” 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.<sup>1</sup> In contrast, Berkeley's recent study found that at most five percent of all tenants were paying an amount over the registered rent ceiling.<sup>2</sup> 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. |

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

<sup>2</sup> 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 1<sup>st</sup>. 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."<sup>3</sup>

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.

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<sup>3</sup> 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 <sup>4</sup> |                 |                            |
|--------------------------------------------------------------------|-----------------|----------------------------|
|                                                                    | 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.<sup>5</sup> 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”.

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

<sup>5</sup> 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 1/10<sup>th</sup> 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

*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 21<sup>st</sup> Century