



Rent Stabilization Board  
Office of the Executive Director

DATE: September 23, 2021

TO: Honorable Members of the Berkeley Rent Board

FROM: Honorable Members of the IRA/AGA/Registration Committee  
By: Matt Brown, Acting Executive Director *MB*

SUBJECT: Recommendation to adopt Resolution 21-23 allowing landlords to use Regulation 1017 to provide temporary, below-market rental housing in Berkeley to disaster victims displaced by the Northern California wildfires and to refugees fleeing the Afghanistan conflict

**Recommendation:**

That the Board adopt Resolution 21-23, which would activate Regulation 1017 allowing Berkeley landlords to provide housing to disaster victims displaced by the Northern California wildfires and refugees fleeing the Afghanistan conflict at below-market rents for a temporary (but fixed) period of time.<sup>1</sup> The IRA/AGA/Registration Committee reviewed this report at its meeting on September 8, 2021, and voted to recommend that the Board adopt this Resolution.

**Background and Need for Rent Stabilization Board Action:**

In the wake of Hurricane Katrina in 2005, the Board adopted Regulation 1017 which allowed landlords to offer below-market rate housing to victims displaced by national disasters<sup>2</sup> without risk of suffering long-term financial disadvantage. Landlords are permitted to rent to these disaster victims for a lower, temporary rent as long as the agreement is in writing. Regulation 1017(D) states:

Notwithstanding any other provisions of these regulations, when a displaced tenant as outlined in section (B) of this regulation, and the landlord of the replacement unit agree in writing for the tenant to rent the unit temporarily at a below-market rental rate, the landlord may increase the rent to market-level at the end of the temporary period

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<sup>1</sup> The Board has adopted similar Resolutions numerous times in the past to permit landlords to utilize the provisions set forth in Regulation 1017 which allow them to rent to disaster victims and refugees without risking financial disadvantage.

<sup>2</sup> The Regulation was amended on February 22, 2016, to allow landlords to assist victims displaced by state and local disasters (such as fires), as well, when authorized by the Board or executive director when the Board is not in session or otherwise unavailable. At that time the regulation was also amended to permit landlords to rent to refugees displaced by political unrest and be covered by the terms set forth therein.

provided that the agreement states the amount of rent that will be charged. The subsequent rent to be charged, as identified in the lease agreement, shall be treated as the initial rent for purposes of Regulation 1013. The temporary period of discounted rent may be extended by mutual agreement at any time. Any agreement entered into pursuant to this regulation must permit the disaster victim, refugee, or temporarily-displaced tenant, to terminate the agreement during the temporary period on notice of no less than 30 days.

A rental agreement between a landlord and a disaster victim, then, must clearly state the time period that the landlord is accepting below-market rent and must allow for the landlord to raise the rent (and identify the amount that the rent will be raised) after that fixed period as she would otherwise be able to on a vacant unit pursuant to Costa-Hawkins and Regulation 1013. The regulation allows for the landlord and tenant to extend the period of discounted rent by mutual agreement and further allows the disaster victim to terminate the agreement with 30 days' notice. Lastly, should the Board adopt Resolution 20-xx, the provisions of Regulation 1017 will remain in effect for six months.

Unlike other Board rules, Regulation 1017(B) requires that the Board invoke its provisions by Resolution. Regulation 1017 further provides that a federal, state or local disaster must be declared by the appropriate government agency. On Monday, August 30, 2021, Governor Newsom declared a State of Emergency in Alpine, Amador, and Placer Counties due to the Caldor Fire, and President Biden issued a Major Disaster Declaration related to the fires the week prior. Thousands of people in Northern California continue to be displaced from their homes and are still in need of temporary housing as neither the extent of the damage nor the duration of the recovery is known at this time. The need for temporary housing is exacerbated by the COVID-19 global pandemic, which renders evacuation centers a less than ideal option for high-risk individuals.

Moreover, the civil unrest in Afghanistan has displaced thousands from that region in recent weeks. Regulation 1017(B)(2) specifically allows refugees to qualify for coverage under the regulation. The regulation uses the definition set forth in the United Nations 1951 Refugee Convention: "a person with a 'well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.'"

Board staff have received a call from a Berkeley landlord who has expressed interest in renting to Afghan refugees should any seek housing in the area. She is working with a local humanitarian organization that places refugees and has said she will utilize the arrangement set forth in Regulation 1017 should she be contacted by the organization and should the Board activate it.

**Conclusion:**

Regulation 1017 was adopted to allow landlords to provide housing to disaster victims and refugees fleeing conflict at a temporarily-reduced rental rate. Landlords have the choice as to whether they wish to provide below-market housing, but if they do, they will retain the right to

increase the rents to market if they indicate that they intend to do so in the lease agreement signed at the inception of the tenancy. Given the number of disaster victims displaced by the Northern California wildfires and the major civil unrest in Afghanistan, it would be helpful to give Berkeley landlords a viable option to provide temporary housing for them and still retain rights to market rate rents following the initial term. The IRA/AGA/Registration Committee reviewed this report at its meeting on September 8, 2021, and recommended the Board adopt this Resolution.

**Name and Telephone Number of Contact Person:**

Matt Brown, Acting Executive Director (510) 981-4905

**Attachments:**

1. Rent Board Regulation 1017
2. Proposed Resolution 21-23

1017. Temporary Housing for Disaster Victims

(A) This regulation is intended to enable landlords to provide emergency housing to disaster victims, refugees, and tenants displaced by local emergencies without risk of suffering long-term financial disadvantage and to assist such displaced persons in finding temporary housing while coping with the effects of the disaster, refugee crisis, or temporary displacement.

(B) Upon being informed of the following the Board may, by resolution, invoke the provisions of this regulation; said resolution will remain in effect for six months unless either rescinded earlier or extended by the Board:

1. A federal, state, or local disaster has been declared by the appropriate governmental authority and persons displaced by the disaster ("disaster victims") may be in need of temporary housing in Berkeley.
2. A refugee crisis has emerged and displaced refugees may be in need of temporary housing in Berkeley. A refugee, as defined by the United Nations 1951 Refugee Convention and subsequent Protocol, is a person with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it."
3. A tenant or group of tenants currently residing in Berkeley receives written certification by the Building Official, Fire Marshal, or their designee, that as a matter of public health and safety and/or as a matter of habitability, the tenant's rental unit is in such unsafe or unhealthy condition following a fire, earthquake, landslide, or similar local emergency that the tenant cannot or should not reside in the affected rental unit until it has been appropriately repaired.

(C) When the Board is not in session or is otherwise unavailable, the Executive Director, or his or her designee, may intervene on the Board's behalf without prior Board approval, to issue an order temporarily invoking the provisions of this regulation on a form provided by the Board. The order shall detail the nature of the disaster, refugee crisis, or local emergency, and the need for immediate action. The order shall have the same effect as the Board's invocation of the provisions of this regulation as outlined in Paragraph (B), and shall remain in effect until the Board next meets and is able to vote on the matter. The Executive Director or his or her designee shall notify the Board Chair and Vice Chair in writing that an Executive Order under this regulation was issued, and shall attach a copy to the communication.

(D) Notwithstanding any other provisions of these regulations, when a displaced tenant as outlined in section (B) of this regulation, and the landlord of the replacement unit agree in writing for the tenant to rent the unit temporarily at a below-market rental rate, the landlord

may increase the rent to market-level at the end of the temporary period provided that the agreement states the amount of rent that will be charged. The subsequent rent to be charged, as identified in the lease agreement, shall be treated as the initial rent for purposes of Regulation 1013. The temporary period of discounted rent may be extended by mutual agreement at any time. Any agreement entered into pursuant to this regulation must permit the disaster victim, refugee, or temporarily-displaced tenant, to terminate the agreement during the temporary period on notice of no less than 30 days.

[Effective: October 17, 2005; Amended February 22, 2016.]

## RESOLUTION 21-23

**ALLOWING LANDLORDS TO INVOKE THE PROVISIONS OF REGULATION 1017 TO OFFER BELOW-MARKET RATE RENTAL HOUSING TO DISASTER VICTIMS DISPLACED BY THE FIRES IN NORTHERN CALIFORNIA AND AFGHAN REFUGEES FLEEING POLITICAL UNREST WITHOUT RISK OF SUFFERING LONG-TERM FINANCIAL DISADVANTAGE**

WHEREAS, On Monday, August 30, 2021, Governor Newsom declared a State of Emergency in Alpine, Amador, and Placer Counties due to the Caldor Fire, and President Biden issued a Major Disaster Declaration related to the fires the week prior; and

WHEREAS, many Northern California residents continue to be displaced from their homes and are still in need of temporary housing as neither the extent of the damage nor the duration of the recovery is known at this time; and

WHEREAS, the need for temporary housing is exacerbated by the COVID-19 global pandemic, which renders evacuation centers a less than ideal option for high-risk individuals; and

WHEREAS, the civil unrest in Afghanistan has displaced thousands from that region in recent weeks; and

WHEREAS, thousands of homeowners and tenants (“disaster victims”) were displaced by these natural disasters and political unrest; and

WHEREAS, many of the disaster victims and refugees are still homeless or marginally housed and in need of temporary housing while their communities are being rebuilt; and

WHEREAS, the Board adopted Regulation 1017 in the wake of Hurricane Katrina in 2005 to allow landlords to rent to displaced national disaster victims at below-market rents without risk of suffering long-term financial disadvantage; and

WHEREAS, the Board amended Regulation 1017 on February 22, 2016, to permit landlords to rent to refugees displaced by political unrest and be covered by the terms set forth therein; and

WHEREAS, Regulation 1017 permits landlords to craft written rental agreements for disaster victims that provide a period of reduced rent and then raise the rent to market; and

WHEREAS, Regulation 1017 provides that landlords must identify the temporary period of reduced rent and the amount of rent to which it will be increased should the tenants remain in the unit; and

WHEREAS, Regulation 1017 allows the tenants to terminate the rental agreement with at least 30 days’ notice; and

WHEREAS, the Board must invoke the provisions of Regulation 1017; and

WHEREAS, there is currently an identifiable need for short-term, below-market housing to assist disaster victims and refugees; and

**RESOLUTION 21-23**

**ALLOWING LANDLORDS TO INVOKE THE PROVISIONS OF REGULATION 1017 TO OFFER BELOW-MARKET RATE RENTAL HOUSING TO DISASTER VICTIMS DISPLACED BY THE FIRES IN NORTHERN CALIFORNIA AND AFGHAN REFUGEES FLEEING POLITICAL UNREST WITHOUT RISK OF SUFFERING LONG-TERM FINANCIAL DISADVANTAGE (Page 2)**

WHEREAS, the Board has invoked the provisions of Regulation 1017 a number of times over the past several years under similar circumstances; and

WHEREAS, the IRA/AGA/Registration Committee voted to recommend that the full Board adopt this Resolution at its September 8, 2021 meeting; and

WHEREAS, Regulation 1017 is entirely voluntary, and landlords may choose to offer temporary, below-market rental housing if they wish;

NOW, THEREFORE BE IT RESOLVED that the City of Berkeley Rent Stabilization Board hereby invokes the provisions of Regulation 1017 to allow landlords to rent to disaster victims displaced by the fires in Northern California and to Afghan refugees fleeing political unrest at below-market rents without risk of suffering long-term financial disadvantage; and

BE IT FURTHER RESOLVED that the provisions of Regulation 1017 shall remain in effect for six months; and

BE IT FURTHER RESOLVED that the City of Berkeley Rent Stabilization Board may extend the invocation of Regulation 1017 at the end of this six-month period; and

BE IT FURTHER RESOLVED that the City of Berkeley Rent Stabilization encourages landlords to rent to displaced disaster victims and refugees at temporarily reduced rates as they have suffered greatly by the effects of these tragedies, and many are still in search of homes.

Dated: September 23, 2021

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

YES:

NO:

ABSTAIN:

ABSENT:

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Leah Simon-Weisberg, Chair  
Rent Stabilization Board

Attest: \_\_\_\_\_  
Matt Brown, Acting Executive Director