

# SANTA MONICA RENT CONTROL BOARD-MEMO

To: Rent Board Commissioners

From: Legal Staff

Board Meeting of: February 5, 2004

Re: [Proposed Regulation 13008 regarding Registration of Bootlegged Rental Units](#)

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## Introduction

For many years, apparent conflict has existed between some of the City's zoning laws and the Rent Control Law's provisions defining controlled rental units as all residential rental units in the City. In order to address this problem, the City Council adopted an interim ordinance on December 16, 2003, waiving certain development standards for bootlegged units which were registered with the Rent Control Board by April 22, 2003.<sup>1</sup> In order to further harmonize the City's development standards with rent control regulations, this staff report proposes new regulation 13008, providing for a petition and hearing process to determine if units not registered as of April 22, 2003, should be permitted or required to register.

Rent Control Law section 1801(c) defines controlled rental units as all residential rental units in the city, with specified exceptions such as hotel units, units in extended medical care facilities, and new construction units, etc. However, under section 1801(c)(5), the exemption for newly constructed units does not apply to units created by conversion as opposed to new construction. Section 1803(q) of the law required landlords to register all controlled rental units within 60 days after the adoption of the law, by June 9, 1979.<sup>2</sup> Finally, section 1803(t) requires a landlord who wishes to remove a controlled rental unit from the rental housing market to obtain a removal permit from the Board by demonstrating that the unit is uninhabitable and cannot be made habitable in an economically feasible manner.<sup>3</sup>

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<sup>1</sup> An interim ordinance extending the initial interim ordinance was adopted January 27, 2004.

<sup>2</sup> The Rent Control Law was adopted on April 10, 1979.

<sup>3</sup> An owner may also obtain a removal permit to redevelop the property by agreeing that replacement units will be controlled and by agreeing that a percentage of the units will be affordable to low income households. This procedure is rarely used since the adoption of the Ellis Act and the Costa-Hawkins Act by the state legislature.

Some of the units registered with the Board were constructed or created without building permits or other required City approvals (bootlegged units). Many of the controlled bootlegged units are habitable or can be made habitable, but they may not meet the city's parking, density, or set-back requirements.

On December 16, 2003, the City Council adopted "An Interim Ordinance of the City Council of the City of Santa Monica Waiving Certain Development Standards for Rental Units which Were Built or Created Without Permits and Registered with the Rent Control Board Prior to April 22, 2003." This ordinance waives the City's Zoning Ordinance's set-back and density requirements for bootlegged units which were registered with the Board prior to April 22, 2003 and treats such units as legal, non-conforming units. See Staff Report for City Council Meeting 1-20-04 and ordinance, attached to this memo.

The City Council limited the waiver to units registered with the Board as of April 22, 2003, when the City Council gave the policy direction on the issue. It used this cut-off date to preclude owners from creating new illegal units to take advantage of the program waiving specified development standards. See Section 1(n) of the Ordinance.

The Board's focus is somewhat different from that of the City Council's in this matter. The Board has historically interpreted the Rent Control Law's protections to apply to bootlegged rental units in existence on April 10, 1979 and, additionally, to bootlegged dwelling units which were vacant on April 10, 1979, if their last previous use within the 12 months prior to April 10, 1979 was residential rental. See regulation 2002. As stated in the City staff's report to City Council, "The fact that these [bootlegged] units were constructed or created without permits does not affect their status as controlled units. A tenant's rights to protection against unlawful rents are the same whether or not the property owner complied with the law in building or creating the unit."

Thus, although the City Council has not waived requirements for units which were not registered prior to the April 22, 2003 cut-off date, proposed regulation 13008 allows or requires a landlord to register a bootlegged unit if it is shown by a preponderance of the evidence that the unit was rented as a residence between April 10, 1978 and April 10, 1979. In order to register a unit created after April 10, 1979 by conversion, the proposal requires the owner to show that the unit conforms to the City's zoning and development standards.

There may be a few units which will be eligible for registration under proposed regulation 13008 but not eligible for waiver of zoning requirements under the City's interim ordinance. However, staff does not believe there are many such units. The City's interim ordinance waiving set-back, density, and parking requirements for units registered before April 22, 2003, and attached

proposed regulation 13008 requiring a hearing before permitting registration of units thus harmonizes zoning law and the Rent Control Law to a significant extent.

### **Proposed Regulation 13008**

Paragraph (a) requires an owner who wishes to register a residential rental unit to file a petition and obtain a Board decision permitting registration and determining the correct Maximum Allowable Rent and base amenities for the unit. It also allows a tenant to file a petition for a determination of whether registration of an unregistered unit is required and for a determination of the correct Maximum Allowable Rent and base amenities of the unit.

Paragraph (b) sets forth the standards for determining whether an unregistered unit should be registered. The unit must be habitable or capable of being made habitable in an economically feasible manner. In addition, the petitioner must prove by a preponderance of the evidence one of the following factors: (1) the unit was a residential rental unit on April 10, 1979; (2) if the unit was vacant on April 10, 1979, its previous use during the year prior to that date was as a residential rental unit (regulation 2002); or (3) the unit conforms to the City's zoning and development standards. Under these standards, residential rental units rented on April 10, 1979 or the year prior to that date may be registered, in keeping with the Board's historical practice. In addition, residential rental units which are created by conversion after April 10, 1979, must comply with the City's zoning and development standards to be permitted to register, so that owners will not create new illegal units and attempt to use the Rent Control Board to avoid the City's development standards.

Paragraph (c) sets forth the information required in the petition, including the basis for the petition and reason the unit was not registered previously. Also required is information regarding current tenancies, rents, and amenities, and April 10, 1978 rents and amenities, if the current tenancy commenced before January 1, 1999. This information is necessary because maximum allowable rents for post-January 1, 1999 tenancies are, with certain exceptions, determined from the initial rent for the tenancy, while rents for tenancies commenced prior to January 1, 1999, are based on April 10, 1978 rents.

Paragraph (d) provides hearing procedures to be used in hearings under proposed regulation 13008 – those set forth in Chapter 4, which govern rent increase and decrease hearings. In addition, it requires the hearing examiner to seek and introduce into the record all available evidence regarding the issues in the case. This is proposed because the information needed for a determination in these cases may be very old and be difficult for parties to discover, especially those who did not live on the property or own the property in 1979. It is similar to

the duty imposed on the hearing examiner in base rent and base amenities cases in regulation 13004(d).

Finally, paragraph (e) requires registration within thirty days of a Board decision requiring registration under this regulation, along with payment of up to three years' past-due registration fees.

**Recommendation**

Staff recommends that the Board set the attached, proposed regulation 13008 for public hearing on March 11, 2004, and that it adopt the proposed regulation after hearing from the public.

Attachment: A. Proposed Regulation 13008

B. Staff Report for City Council Meeting of 1-20-04 regarding Interim Ordinance Waiving Certain Development Standards for Rental Units Built Without Permits