

Berkeley Tenants Convention Rent Board Questions 2016

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Question 1: Tell us something about yourself and why you have decided to consider running for Rent Stabilization Board Commissioner.

I am Tom Lord. Professionally, I am a computer programmer and software strategy consultant. In that capacity I have long been a part of the Free (Libre) Software Movement. In this movement we fight for the freedom of all people to copy, examine, run, modify, and share the programs we all have come to rely on. We fight against malicious industry practices such as software that spies on its users (whether for the government or for private industry). We fight against software licenses that forbid users from helping their neighbors by sharing. As a strategy consultant, I help people who invest commercially in libre software – software that respects the freedom of users. I help investors with both the technical aspects of software, and the political goals of the movement.

I live with my wife in an apartment in southwest Berkeley. We live on a short block between Russell and Ashby on a street with more than 30 apartments, probably something approaching 100 renters. We have, as well, three single family homes on this block, all owner occupied. The larger neighborhood is rich with renters and homeowners. On my block there are kids of all ages, often playing on the street, sidewalks, and driveways near their homes. There are student households, young professionals, large families, small families, and senior households. There are pets. There are trees. To describe this neighborhood as economically and ethnically diverse is an understatement.

I have read that our little part of Berkeley is one of the greenest in the city. It has some of the least crime in Berkeley. Our housing stock is not posh but it is not too bad, either. There is work to do but at least one building has benefited from the recent program of seismic upgrades. Every unit on my block is rent stabilized and some units turn over pretty frequently, while others have occupancies going back decades.

My little neighborhood, for the most part, is just a beautiful example of the success of Berkeley's efforts at rent stabilization and eviction protection. Humble and “low rent” though it may be, our patch of southwest Berkeley is a paradigm of public policy success.

Of course I will stand for Rent Stabilization Board Commissioner. I believe I can do a good job as commissioner and I am certain it is a job worth doing.

These days I am worried for renters in Berkeley. Our own neighborhood is a fine example: we are square in territory our Mayor now proposes to upzone.

I believe that the Rent Stabilization Board is at a cross-roads:

Probably we have all seen the video of the Berkeley Mayor advising a room full of landlords about how to politically attack the Rent Stabilization Board. There seems to be renewed energy, perhaps driven in part by the housing crisis, to weaken Berkeley's renter protections.

We all also know the disruptive history of jurisdictional overrides like Costa-Hawkins and the Ellis Act. The authority of the Rent Stabilization Board has already diminished over the past 35 years, mostly at the hands of the State of California.

The worst thing is that the RSB's very own statistics that show, year over year, that the system of rent stabilized units is losing below-market units through vacancy decontrol, demolition, conversion And at the same time, at present, *there is no efficient way to add new rent stabilized, below-market units!* We are steadily losing reasonable rents on the controlled pre-1980 units. There is no mechanism right now to replace those below-market units. This is a disaster.

Right now, relative to the regional median income, there are approximately *zero (0)* affordable units on the market in Berkeley. Every current tenant who is at or below household median rent is pinned down. The migration patterns are deeply segregationist. Displacement is running rampant.

The rent board is upholding its regulations but it is also losing the long term fight to advance its purposes.

The RSB risks being swept up in this tide and washed away to irrelevance or dissolution. What will be left to bother regulating, if this massive housing inflation keeps up much longer?

I am not running just to keep the RSB doing what it already does so well.

I am running to help the RSB survive, gain strength, and confront the housing crisis straight on with new policy leadership.

Question 2: How much time are you able to devote to the campaign? A contested campaign can consume 20 hours a week of your time until the election. As a Commissioner, you'll be attending one lengthy evening board meeting a month and a minimum of two daytime committee meetings (plus preparation time!) Are your hours flexible? Are late meetings a problem? Can you attend daytime meetings?

My schedule is flexible and the hours and times described are fine. My expectation if elected is that my work as commissioner will take significantly more time than just the actual meetings.

Question 3: What experience have you had with Berkeley's rent control ordinance, the Rent Board's staff, or the elected Board?

In the past, staff has helped me out of a bind. Years ago the RSB staff provided me with the information I needed to resist an unlawful demand for additional security deposit.

On another occasion, as a tenant in an uncontrolled unit, I was threatened with an owner move-in eviction or an eviction constructed through sharp rent increases. On the strength of Berkeley's eviction protections and with advice from the Eviction Defense Center my wife and I were able to negotiate an equitable relocation settlement after a tense dispute.

Question 4: Tell us about at least three issues that you consider important to tenants in Berkeley.

a) It is important to tenants that the Rent Stabilization Board and the staff continue to perform its established functions.

The RSB with its staff continues to be effective and important, even under the severe challenges of today's housing market. The board needs to continue to defend existing protections.

b) "The Bay Area Housing Crisis" – however you choose to define it precisely – is incredibly important to tenants.

Many newer tenants are paying record-high premiums compared to the landlord's cost of supplying the unit they live in. Conversely, many incumbent tenants are paying rents well below the likely market price of their unit at auction, in today's markets. Therefore many (most?) tenants are "pinned down", not likely to be able to move within the city if they lose their current unit. Many tenants experience pressure to vacate their unit. For new renters in all but the top range of incomes, prices are out of reach.

This is the situation the Rent Stabilization Board was created to combat but, today, the existing regulations amount to fighting a "rear guard" action. The system is falling apart.

c) It is important to tenants that the Rent Stabilization Board promote fairness to landlords, and cooperative relations among landlords, tenants, and the Board.

The Board is not there to *divide* the diverse community, but to *strengthen* it. It is a fact of life that landlords and tenants sometimes wind up in legally adversarial positions. The Rent Stabilization Board's ability to help with such disputes rests on its ability to be fair and credible to both parties.

d) Finally, it is important for tenants to actually know the Rent Stabilization Board exists.

Tenants benefit if they know the Board exists and have some sense of what the Board and staff do. Best of all is if tenants recognize the Rent Stabilization Board as part of local, *participatory* democracy. Ideally, tenants would not only know about the Rent Stabilization Board, but additionally they would think of the Board as a civic process in which they can directly participate.

Question 5: “What is the role of the Rent Board Commissioners? What powers do they have? What changes do you think should be made in how the Rent Board operates?”

Every Commissioner serves as a member of the board and collaborates with other Commissioners and with staff to perform the functions of the Board.

The Board routinely:

- supervises the Executive Director and oversees the budget and staff operations
- executes the procedures of determining the AGA
- communicates with the public, other City Commissions, City Council, and other persons and entities
- directs studies of the conditions of housing units, tenants, and landlords
- contemplates and proposes new legislation or other actions to Council
- maintains and oversees administration of the Board's regulations
- assists with dispute mediation
- adjudicates certain disputes

Some of this work takes place in committees that report to the Board as a whole. Each Commissioner is expected to participate in at least two committees. One committee, the 4x4 Joint Task Force on Housing, is an important nexus of communication and collaboration with City Council.

As a new member of the Board I would not seek to change how the Board operates.

If elected, I *will* however ask fellow Commissioners to consider forming a new Committee on Housing Affordability. As a sort of straw-man proposition, the purpose of the Committee on Housing Affordability would be to:

- Define housing affordability goals appropriate to prevailing conditions, Berkeley's policies, and the Board's purposes.
- Establish the parameters (quantitative and qualitative) of the present affordability crisis relative to those goals.
- Bring forward potential new actions to address the crisis, paying particular attention to the broader aspects of the Board's purposes, powers, and duties.
- Create an analytic framework for evaluating alternative courses of action and characterizing the trade-offs among them.
- Report, in an ongoing and iterative way, the Committee's progress.

I believe that such a Committee on Housing Affordability could serve to concentrate and intensify the demonstrated interest of Commissioners in the general housing crisis that today afflicts the entire Bay Area and the greater region around it. The Board, with its staff, its collection of experience and expertise, and its legal powers, is in a *unique position* to assume a greater leadership role in establishing Berkeley's housing-related policies.

The preceding is my answer to question 5, though below I have appended some technical observations about the legal basis for the Board's purposes, powers, and duties:

The Rent Stabilization Board is brought to into being by Article XVII of the City's Charter. There it is given a broad purpose which it is worth quoting directly:

- to provide for proper administration of programs to regulate residential rents
- to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions
- to help maintain the diversity of the Berkeley community
- to ensure compliance with legal obligations relating to the rental of housing

The powers of the Board are partially specified by the Charter and can be summarized:

- to determine and arbitrate the rent levels of regulated units
- “to administer any Berkeley program which regulates rents and evictions”
- to employ staff to carry out the Board's functions
- to finance reasonable and necessary expenses through the registration fee
- to request and receive additional revenue “from the City of Berkeley and/or *any other available source* for its reasonable and necessary expenses.” (emph. added)
- and, critically: *additional powers* assigned to it by Council or through initiative

Berkeley's “programs which regulate residential rents and evictions”, and some enumerated “legal obligations relating to the rental of housing”, are established by ordinance in division IX of Title 13 of the municipal code (“Public Peace, Welfare, and Morals”), particularly chapters 13.76, 13.77, 13.78, 13.79, and 13.84.

Chapter 13.76 is central in assigning the Board specific powers and functions. It enumerates and elaborates 18 powers and duties pertaining to setting rent levels, adjudicating certain disputes, intervening in certain matters that may come before a court, enforcing regulation including by seeking injunctive relief, reporting annually to Council, administering oaths and issuing subpoenas, and so forth.

It is helpful, here, to highlight a few specific powers given to the Board by 13.76:

- “7. Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.”
- “15. Hold public hearings.”
- “17. Other powers necessary to carry out the purposes of this chapter which are not inconsistent with the terms of this chapter.”

The limitation of power 17 to “the purposes of this chapter [13.76]” refer to section 13.76.030. The purposes are very broadly stated:

The purposes of this chapter are to regulate residential rent increases in the City of Berkeley *and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing.* This legislation is designed to *address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged.* **[emph. added]**

I believe the powers and purposes I have highlighted above make the Rent Stabilization Board an ideal forum within which to establish a Committee on Housing Affordability.

(The other) Question 5: (a) How do you feel about affordable housing? (b) What do you think about low-income housing?

Taking these out of order:

(b) In today's conditions it is imperative to fight hard to protect, preserve, and add to the stock of units designated for low-income tenants. It is imperative to convince more landlords to accept tenants with Section 8 assistance. This is vital for keeping vulnerable tenants housed and for helping homeless people find homes.

This is not to say that existing programs for providing housing to low-income persons and households are ideal but they are what we have. The Rent Stabilization Board and staff have a role helping to expand the stock of such units and helping to devise and create alternatives.

It must not pass without mention that apart from low-income units, and apart from landlords that accept Section 8 vouchers, a critically important source of low-income housing in Berkeley *is the long-standing tenancies of low-income households in rent stabilized units*. Staff's and the Board's dedication to preserving these tenancies has been and will continue to be profoundly important and beneficial.

(a) The phrase “affordable housing” is tricky these days, because its precise meaning varies so widely with context and even within a single conversation.

Taking a broad usage: “affordable housing” means simply that, in general, people are able to find good quality housing, appropriate to their needs, at prices that are reasonable relative to their household incomes. In this sense of the phrase, the Bay Area is in the throes of a deep crisis, as we all know. One of my aspirations is to help find novel ways the Board can confront this crisis.

There is a narrow technical usage of “affordable housing” that deserves mention: the designation of in-situ “affordable” units as a condition of approval for new developments. Affordable units of this sort are problematic because in the regulation and negotiation for them, true and lasting housing affordability solutions can fall by the wayside. As an example, a developer might be able to get affordable housing credit for reserving some units for tenants at *120% of the Area Median Income* even though, by definition, more than half of the need is below that level of income.

Question 6: The Berkeley Housing element says, "Ensure that below-market-rate housing is distributed as evenly as possible throughout the community." What are the pros and cons of distributing low-income units as parts of new projects, and what are the pros and cons of using set-aside fees from those projects to build mixed low- and medium-income buildings around the city? We want to emphasize that this question is unsettled area and there are no right or wrong answers.

Including low-income units as parts of new projects has the advantage of (likely) making the units available more quickly and cost-effectively. The new units will be available as quickly as the project itself. Construction of the units will benefit from the economies of scale of the project.

Furthermore, in a most literal and direct way, inclusionary units help to at least slightly offset a market tendency towards economic-based segregation. It is a chartered purpose of the Rent Stabilization Board to "help maintain the diversity of the Berkeley community" (Article XVII Section 120). Economically integrated buildings, as opposed to buildings that are economically segregated, are consistent with that purpose.

On the other hand, contributions to the Housing Trust Fund in-lieu of inclusionary units affords the City some theoretical flexibility to locate the potentially developed low-income units wherever they "make the most sense" given a balance of complex considerations and opportunities.

Both in-lieu fees and inclusionary units, as currently constituted in Berkeley, share some common defects. Developers can and do designate inferior units as in-situ low-income units, resulting in a kind of in-building segregation and a less than desirable housing stock for low-income tenants. Similarly, projects using the Housing Trust Fund money are apt to create segregated buildings in less than ideal locations. Both approaches, meanwhile, produce far less affordable housing than is needed by any reasonable measure, while at the same time helping to worsen the balance of market-rate and affordable units.

I believe the Rent Stabilization Board should form a *Committee on Housing Affordability* (see question 5) that can help to devise "third way" alternatives to both in lieu fees and in-situ units (as presently constituted).

Question 7: Is a pro-tenant Rent Board capable of treating both large and small landlords fairly? Explain.

A pro-tenant Rent Board *had better* be capable of treating both large and small landlords fairly *because such fairness is an absolute requirement of pro-tenant advocacy.*

On the one hand, were the Board to be *unfair* to landlords it would be a disaster. Landlords would be handed a strong incentive and fair cause to combat the legitimacy of the Board and its powers. Far from helping tenants, the Board would be putting at risk those legal and regulatory protections that tenants need.

On the other hand, when the Board is *determinedly fair to all parties* it not only protects its own legitimacy and legal basis, it can help adversarial parties to find mutually acceptable compromises, and to respect and honor the reasonable perspectives of all sides.

Of course the Board cannot always make everyone happy, whether landlords or tenants or anyone else. Rental regulations and real life events can create necessary but “fault free” difficulties for landlords and tenants alike. Although happiness can not be guaranteed, a commitment to fairness must be central to the Board's attitudes and actions.

Question 8: How do you think that rent and eviction controls are related to homelessness? Can the Rent Board have any effect on the homeless situation?

The absence or ineffectiveness of rent and eviction controls leads to abrupt losses of housing in conditions where replacement housing is difficult or impossible to obtain. It is a significant cause of people becoming homeless.

Precise statistics are impossible to come by but it is universally recognized that eviction (literal or constructed) is the event that drives a majority of homeless people into homelessness.

Chapter 13.76 of the Berkeley Municipal Code not only enables the Rent Board to have a positive effect combating this source of homelessness, it mandates that the board work to that end:

This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged. (13.76.030)

The Board's existing enforcement of regulations, its staff assistance to tenants in need, its work with the Eviction Defense Center, and its capacity to help mediate landlord-tenant disputes are all key tools to help combat homelessness.

I do not know whether the Rent Board currently coordinates with social service agencies to assist tenants whose eviction can not be prevented, but certainly the Board can and perhaps ought to do so.

Question 9: What do you consider to be your constituency or base of support? What organizations are you affiliated with? What qualities would you bring to the slate?

I have no established electoral base. I am not a member of any of Berkeley's political organizations. If elected I would consider myself to be a representative of all residents of Berkeley. I am not interested in joining any political party, per se.

I am affiliated (as a volunteer) with the Writer Coach Connection organization. I coach students at Longfellow Middle School. I am affiliated as a volunteer and sometimes contributor to the Berkeley Daily Planet.

I would bring to the slate a sharp analytic mind, an easygoing manner in collaboration, a seriousness of purpose, an open mind, and lots of relevant background knowledge.

Question 10: Please check links on our website (berkeleytenantconvention.net) to two potential ballot measures affecting tenants that will be on the ballot in November: (a) Safe and Affordable Homes tax, and (b) Amending Measure Y to increase relocation payments and prevent family evictions during the school year. Explain your position on both.

(a) Safe and Affordable Homes Tax

While I am generally in favor of the progressive taxation of net profit from rental housing, regrettably, I cannot support the Safe and Affordable Home tax as it is formulated.

Three show-stoppers for me:

1. The proposed tax as described is not progressively indexed to net profits, it taxes all units whose owner owns more than a few units.
2. Even supposing, implausibly, that the tax will not be “passed through” as rent increases to tenants of uncontrolled (or controlled but vacated) units, landlords will presumably pass through the tax in the form of lower employee wages and/or reduced service to tenants. In this way, the tax promises to improve housing affordability by regressively taxing renters and low wage workers.
3. A “Citizen Oversight Panel” to advise council on spending the money is a too-easily corruptible, aimless approach to administering the funds.

I have already written publicly against this measure:

<http://www.berkeleydailyplanet.com/issue/2015-08-07/article/43577?headline=BTU-Should-not-Endorse-Capitelli-and-Arreguin-s-Tax-on-Renters-Public-Comment---Thomas-Lord>

I do believe that, given the opportunity to work with the proposal initiators, I might have been able to suggest alterations that would have allowed me to endorse the revised proposal.

(b) Amending Measure Y to increase relocation payments and prevent family evictions during the school year

I support this recommendation. It is well conceived, well researched, well argued, and advances the purposes of Berkeley's housing policies. There are details I might have sought to change but they are of no immediate consequence.

I watched video of the Rent Stabilization Board discussion of this issue and was especially impressed at the Chair's skill at advancing the discussion. One good and very experienced landlord I know has long ago told me his rule of thumb for the price to him of any form of legal eviction. By his account, the proposed relocation assistance is entirely within bounds and would likely help both parties in a no-fault eviction.

Question 11: The Convention asks all candidates to sign a pledge to not run against or endorse against the slate the Convention selects. Will you sign it? Do you think that the pledge is important? Do you think it's fair?

Yes, I can sign such a pledge.

I trust that the convention would not ask unless it were viewed as important. I think such a pledge would be more fair and realistic if it included an escape clause on the basis of conscience. As a practical matter, I do not think my concern about such an escape clause is important to me in this election cycle.

Question 12: If you are nominated by the convention, will you agree, in concert with other slate members, to hire a coordinator with full authority to make campaign decisions in consultation with the slate? The slate will retain the power to determine an overall budget and replace the coordinator.

Yes.