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CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: October 12, 2010

RE: **Annual Report of the Rent Adjustment Program for Fiscal Year 2009-2010**

SUMMARY

A report on Rent Board expenditures is required each fiscal year by Oakland Municipal Code (OMC) Section 8.22.500.A. As mandated by the City Council, it provides information on the expenditures related to the Rent Adjustment Program and the utilization of the funds raised through collection of the Rent Program Service Fee.

FISCAL IMPACT

This report is informational only and proposes no changes to the Rent Adjustment Program or its fees. Therefore, it has no fiscal impact.

KEY ISSUES AND IMPACTS

Public Contact

The Rent Adjustment Program functions as a resource for Oakland landlords and tenants. Staff provides information about and referrals for many varied rental housing situations and problems. Public inquiries from Oakland residents include questions about Rent Adjustment, Just Cause for Eviction, security deposits, and other processes mandated by state and local law. During FY 09-10, staff met with an estimated 1,070 members of the public and provided information and referrals in person. This is a 31% decrease in direct public contact from FY 08-09. Staff responded to 8,305 phone inquiries in FY 09-10, a decrease of about 22% from FY 09-10. Staff also responded to about 150 email inquiries, an approximately 33% decrease from last fiscal year. There were two complaints from members of the public about the quality of public contact. Staff understands that the reduction in public inquiries and public contact directly reflects the changed circumstances in the rental housing market. For most of the fiscal year, landlords and tenants have been asking, primarily, about evictions, foreclosure, and decrease in services, rather than rent increases.

Item: _____
CED Committee
October 12, 2010

The Business License Tax Section addressed public inquiries about billing of the Rental Property Service Fee and continues to require temporary staffing in addition to all assigned program staff to answer the many calls received regarding the billing.

Petitions and Ellis Act Applications

The number of petitions and applications filed with the Rent Adjustment Program (RAP) gradually increased from June 2006 through October 2008. The number of petitions and applications filed in FY 09-10 decreased by 48.6% (from 333 to 224) when compared with FY 08-09. The RAP processed 216 Rent Adjustment Petitions, four Ellis applications to remove properties from the rental market, and four applications for administrative citation of a property owner. Staff believes that the decrease in petitions filed continues to be a consequence of the current economic conditions; however, aggressive outreach projects, coupled with a significant increase in the CPI allowable rent increase, have increased petitions filed in the last two months of FY 09-10.

Table1 shows the types of claims made by Rent Adjustment petitioners, both landlords and tenants, on the petitions filed during FY 09-10. Often, more than one claim is made on a single petition, so the total number of claims is greater than the number of petitions filed. The percentages shown indicate the proportion of all petitions filed that alleged each claim. Again, because more than one claim can be alleged on a single petition, the percentages total to more than 100%.

Table 1

CLAIM ALLEGED	% OF PETITIONS FILED	% OF PETITIONS FILED
	FY 08-09	FY 09-10
Unjustified increase	70%	46%
Decreased or inadequate housing services	45%	44%
No RAP notice with rent increase	30%	23%
No RAP notice at beginning of tenancy	30%	21%
No summary of justification for increase	15%	6%
Two increases within 12 months	9%	4%
Landlord request for certificate of exemption	3%	8%
Landlord request for pre-approval of increase	3%	1%
Improper increase under Civil Code§1954.5 et seq.	1%	1%
Landlord request for extension of time to complete repairs	0%	0%

Landlord justifications for increases greater than the annual CPI adjustment include capital improvements, increased operating and maintenance expenses (housing service costs), debt service, casualty losses (uninsured repairs), and recapture of deferred annual increases (banking). In most cases, these petitions require a hearing to determine the validity of the landlord's justification and to verify the amount of the increase. Petitions were filed almost equally between alleging an unjustified increase greater than the annual allowable CPI rate (46% of petitions) and decreased housing services (44% of petitions). This result is significantly different from FY 08-09 when 70% of petitions were filed when tenants perceived a rent increase was unfair.

A claim for decreased or inadequate housing services is the second most common complaint (44% of petitions). Tenants can allege a loss of any service the landlord is obligated to provide by law or by contract. Data on what services are allegedly "lost" is not collected by the program. However, in staff's experience, the lost services most commonly alleged have been: rodent and insect infestation; water leaking through roofs and windows; inoperative appliances, often furnaces or boilers and stoves; deteriorated carpet or flooring; unit in need of painting; and mold problems.

Property owners are required to provide their tenants with a form notice of tenant's rights under *Rent Adjustment,*[1] *together with information about application of the Smoking Ordinance to the* particular property ("RAP Notice"). The failure of property owners to provide a RAP notice to tenants, at the beginning of the tenancy and with a notice of rent increase remains a significant problem (21% for beginning of tenancy and 23% with notice of rent increase).

Landlords are also required by Ordinance to provide a summary of the justifications for a rent increase upon a written request from their tenant. Failure to provide a summary is a basis to invalidate the increase. The number of petitions alleging failure to provide a summary has decreased from last fiscal year and is now claimed on 6% of the total petitions.

Landlords are allowed to increase the rent by an annual amount calculated from the CPI statistics issued by the US Department of Labor. If a landlord has a justification for a greater increase allowed by the Ordinance, she/he can raise it a greater amount without pre-approval by the RAP. However, a small number of landlords (1% of petitions) sought pre-approval due to their particular circumstances. Petitions for a certificate that a particular unit or property is exempt from Rent Adjustment comprised 8% of the petitions filed.

Other than the decrease in claims made for unjustified rent increase, there was no significant changes in the relative frequency of the types of claims made from FY 08-09 to FY 90-10.

[1] OMC §8.22.060.

Petition Processing

Staff maintained a petition backlog of near zero during most of FY 09-10. The average time from petition filing through staff decision for petitions filed in FY 09-10 was 74 days. This is practically the same processing time for a petition as last fiscal year (71 days).

During FY 09-10 the Rent Adjustment Program, including the Board, resolved 220 cases. Three cases are still pending final resolution, and there are twenty cases with petitions filed in May and June that could not be resolved by June 30, 2010. Table 2 shows how the cases were resolved. Tenants ("T" on the chart) prevailed in 57% of the cases, landlords ("LL" on the chart) in 34%. This is substantially the same proportion of cases resolved in favor of landlords and tenants as last fiscal year.

Table 2

Final Decision	Number	% of Total	Pending	LL	T
None	23	9.5%	23		
Administrative Decision	27	11.1%		12	15
Appeal Decision	25	10.3%		13	12
Hearing Decision	96	39.5%		43	53
Involuntary Dismissal	15	6.2%		11	4
Remand Decision	2	0.8%		2	0
Settlement Agreement	17	7.0%		0	17
Voluntary Dismissal	38	15.6%		1	37
TOTAL	**243**	**100.0%**	**23**	**82**	**138**
			9.5%	33.7%	56.8%

During FY 09-10, there were two debt service cases. Apparently, due to changes in the real estate loan market, these have been the only new debt service cases since late 2008.

Landlords and tenants agreed to mediation in FY 09-10 about the same as the year before, although the total number of mediation sessions conducted remains small when compared to earlier years. For every three tenants that request mediation of a rent dispute, only one landlord agrees to mediate.

Appeals to the Rent Board

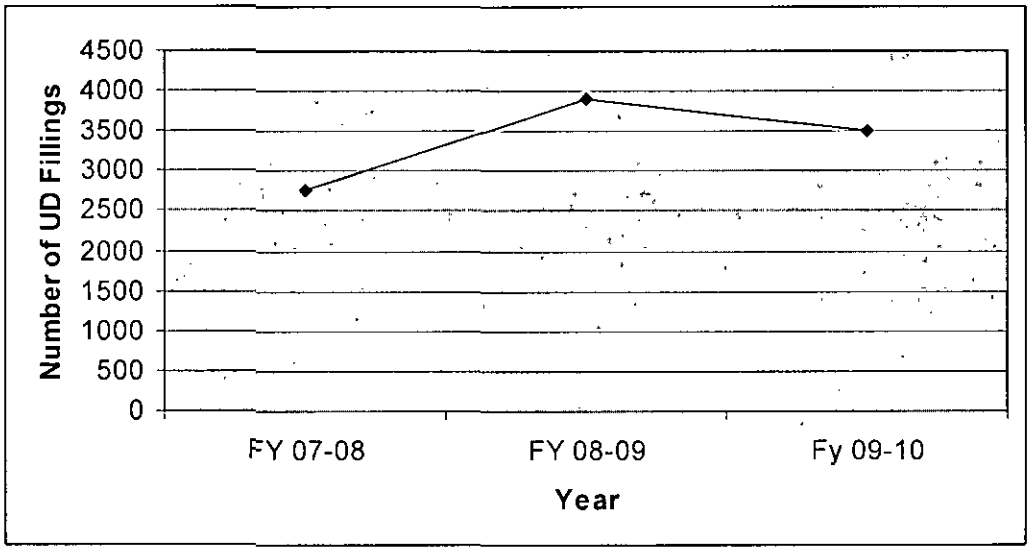
The Rent Board processed 38 appeals from Staff Decisions during the last fiscal year. This number includes appeals from some decisions issued in prior fiscal years (not included on Table 3), but heard and decided by the Board after July 1, 2010. The appeals rate for staff decisions issued during FY 09-10 was about 12%, below the historical average appeals rate of 16%.

Eviction Notices and Evictions

The Just Cause for Eviction Ordinance requires that a copy of every eviction notice served to residents of a covered unit be filed with the RAP within 10 days of service. The RAP received 10,478 eviction notices during FY 09-10, an 8.9% increase from FY 08-09's 9,320.

Adam Byer of the Alameda County Superior Court graciously prepared an estimate of Oakland evictions again this year. He reports that there were approximately 3,535 limited jurisdiction unlawful detainer filings in fiscal year 2009/10 (July 1, 2009 through June 30, 2010) where the disputed property is in the City of Oakland. The estimate is based on 3,702 limited jurisdiction unlawful detainer filings where the court location is the Rene C. Davidson Courthouse in Oakland. Mr. Byer examined a random sample of 200 of these cases. The disputed property was in Oakland for 191, or 95.5 percent, of these cases. The 3,535 estimate is 95.5 percent of 3702. This estimate represents a 10.6% decrease over the 3,912 eviction actions estimated for FY 08-09. The increase in eviction cases actually filed is shown graphically on Table 3

Table 3



Applications Pursuant to the Ellis Act

During FY 09-10, four applications were filed to remove three single family residences and one duplex from the rental housing market. This is as slight increase from FY 08-09 when only one Ellis application was filed; however, removal of rental units from the market using the Ellis Act did not have a significant effect in Oakland in FY 09-10.

Low Income Representation Program

The low-income representation program resumed operations in July 2008 pursuant to Resolution No. 81218 C.M.S. approved by City Council April 15, 2008. The group of agencies providing the direct representation services includes Centro Legal de la Raza, the Alameda County Bar Association Volunteer Legal Services Corporation and Bay Area Legal Aid. Operations under the grant contract began in July 2008. Training sessions for staff members of the non-profit service providers was conducted by the RAP staff.

The purpose of the project is to provide services that would help resolve disputes between low-income tenants and landlords to secure their rights under Oakland's Ordinances that impact the landlord-tenant relationship. FY 08-09 was the first year of the contract.

The contract goals for the grant were to 1) advise and counsel up to 230 tenants and up to 10 landlords per year; 2) provide pro per petition-filing assistance for up to115 tenants and up to 5 landlords per year.

During FY 09-10, advice and counsel was provided to 430 tenants, exceeding the contract goal by 53.5%. *Pro per* filing assistance was provided for 67 tenants, meeting 58.3% of the contract goal.

While 35 landlords were screened for rent board issues (87.5% of contract goal), no landlord qualified for representation under the program. This is unchanged from FY 08-09. Most landlords, who sought assistance from VLSC, were not seeking help for Rent Adjustment problems. Rather, they requested assistance with leases, eviction, or other problems.

Based on observations by Rent Adjustment Staff during hearings they conduct and in appeal hearings before the Rent Board, Centro Legal is providing good representation to low income tenants. Overall, management of the program and representation has improved during FY 09-10.

Litigation in Court

Although litigation is conducted by the City Attorney's Office, RAP staff also participates. Preparation of administrative records, answering correspondence and inquiries from the parties, receiving service of process, consultations with the attorney assigned to the case, and the occasional need to appear in Court all involve RAP staff. The following Rent Board cases were addressed in court in the last fiscal year:

Brown v. D&C Lee Management LLC. In April, 2010, Petitioner (tenant) filed a writ petition challenging the Rent Board decision, claiming that the Rent Board decision was inconsistent with prior decisions. The matter is being heard in Alameda Superior Court. The matter is still in the preliminary stages.

The Apartment Owners Association v. Rent Board. The Apartment Owners Association is challenging recent changes made to the Just Cause Ordinance, which prevents landlords from evicting tenants from illegal units that the landlord created and rented. The case is pending in Alameda County Superior Court.

Brown v. City of Oakland. Petitioner (tenant) filed a writ petition challenging a Rent Board decision. The matter is pending.

Rental Housing Association v. City (aka Kim v. City) This was the omnibus challenge to Oakland's Just Cause for Eviction Ordinance. Prior to the last fiscal year, the City prevailed at the trial court and on appeal; the California Supreme Court denied review. Nonetheless, the attorney for the Kim parties' (the Rental Housing Association have settled with the City) filed a motion for attorney's fees based on the loss of some minor provisions in the RHA settlement and one minor provision on appeal. The attorney claimed more than $900,000 in attorney's fees. The City defeated the motion in its entirety. The court awarded zero attorney's fees based on the Kim parties' failure to achieve any significant results.

Outreach Activities

In FY 09-10, Rent Adjustment Staff participated in the following outreach activities:

Public Presentations

- Presentation by Rick Nemick-Cruz at Rental Housing Association July 11, 2009.
- Stephen Kasdin and Connie Taylor conducted training for advocates from Centro Legal de la Raza, Bay Legal, and Alameda County Bar Association on December 4, 2009.
- Alix Rosenthal conducted a public workshop for landlords with the Oakland Housing Authority.

Advertising

- Poster Ads inside of A.C. Transit buses from March 3, 2010 thru June 27, 2010.
- Letter, along with brochures, were sent on April 8, 2010 to 20 Oakland Organizations for tenants and landlords, offering staff presentations.
- Completed creation of poster to be placed in ten A.C. Transit bus shelters.

Collaboration with Other Organizations

All of the agencies that provide services to the public under the Low-Income Representation Program Grant are providing public outreach for the Rent Adjustment program by referring potential users of Rent Adjustment services. Informational flyers have been distributed to recipients of CDBG funds. CDBG recipients publicize the Rent Adjustment Program, by both mailings and community programs.

Planned Outreach Activities

- Preparation of a quick start guide for new Oakland residential landlords (in process);
- Placing posters inside of AC Transit buses;
- Placing posters on park benches
- Training nonprofit groups that work with tenants, such as Echo Housing, Eden I & R, and Travelers' Aid, on the essential elements of the Rent Adjustment Ordinance;
- Speaking to neighborhood groups that have been established by other housing and redevelopment agencies;

FINANCES

Revenue

The Rental Property Service Fee was established on February 5, 2002 by Ordinance No. 12399 C.M.S. to fund the Rent Adjustment Program. The Fee funds the operation of the Rent Adjustment and Just Cause for Eviction programs almost exclusively. The fee amount was increased by $6 to $30 per unit per year by the City Council beginning in FY 07-08. The only other income to the program is from Ellis application fees and copying charges[2] that have a minimal impact on the Rent Adjustment budget. Table 4 shows budgeted and actual fee revenue from FY 003-04 to the present shown in Oracle.

Table 4
Rent Program Revenue (Oracle)

Fiscal Year	Budgeted Revenue	Actual Revenue
FY03-04	1,400,000.00	1,194,469.09
FY04-05	1,300,000.00	1,884,900.25
FY05-06	1,542,529.00	1,744,214.54
FY06-07	1,839,221.00	1,595,438.90
FY07-08	1,957,000.00	2,175,237.99
FY08-09	1,957,000.00	1,725,342.32
FY09-10	1,890,990.00	2,079,992.00
	11,886,740.00	12,399,595.00

[2] These total less than $2,500 for FY 09-10.

Expenditures

A complete list of the program expenditures for FY 09-10 is shown below. The largest expenditures are personnel costs. The budgeted expenditures include unspent but designated funds for hiring a Program Manager and two additional staff, and for the low-income representation grant.

Table 5
Rent Adjustment Program Expenditures Report
Fiscal Year 2009-10

	Budget	*Expenditures*	*Balance*
City Attorney			
Salary & Benefits	$336,510	341,627	(5,117)
Business License Tax			
Salary & Benefits	$179,980	205,025	(25,045)
O & M:	634	2,330	(1,696)
Other			
Total: Business License Tax	$180,614	207355	(26,740)
Rent Adjustment Program – CEDA			
Salary & Benefits	$973,360	792,078	181,282
Overhead	$132,600	107,712	24,888
Subtotal - Salary & OH	$1,105,960	899,790	206,170
O & M			
Printing, Duplicating & Outreach	$38,000	16,030	21,970
Low Income Representation Program	$107,157	101,377	5,780
Temporary Personnel	$5,000	-	5,000
Minor Computer Hardware & Software	$55,000	-	55,000
Misc. Operating	$217.070	132.608	289,619
Subtotal O&M	$247,202	$124,911	$122,291
CEDA - Total	$1,528,187	1,032,398	495,789
Program Total Expenditures	$1,813,681	1,581,380	232,301

The only encumbrance (not noted on Table 5) is $5,780 for the June 2010 periodic payment for the Low Income Representation Program. The invoice has been submitted, but was not paid during FY09-10.

Program Budget

In FY 09-10, there was an error in the City Attorney's budget that only included funding for a Legal Assistant ($104,880). Funding for an Attorney ($231, 630) was inadvertently excluded;

however, a subsequent adjustment in the budget restored the funds for the Attorney. The adopted budget for FY 10-11 designates funding for these two full-time positions. The operating and Maintenance expenses for FY 10-11 are nearly the same from the FY 09-10 budget.

Table 6
Rent Adjustment Program FY 10-11 Adopted Budget

	Amount
Salaries	486,940
Benefits	485,510
Dept. Overhead	132,600
Low Income Rep	100,000
Operating Expenses	100,620
Excess of PSB over Oracle	71,030
Subtotal	1,376,700
City Attorney (total)	334,530
Business License Tax (personnel)	179,760
Total Budget	1,890,990

Staff

Below is a list of all the authorized staff charged to the Rent Adjustment Project (restricted revenue) on June 30, 2010.

Rent Adjustment (9 FTE)	
Program Manager	(1) (vacant)
Hearing Officer	(2)
Program Analyst III	(1)
Program Analyst II	(2) (1 vacant)
Administrative Assistant I	(2)
Office Assistant I	(1) (vacant)
Business License Tax (2 FTE)	
Revenue Assistant	(1)
Tax Enforcement Officer II	(1)
City Attorney Office (2 FTE)	
Deputy City Attorney	(1)
Legal Admin. Asst.	(1)
Total FTE	13.0

Vacant Positions

Recruitment for a Program Manager has been completed and the position will be filled as soon as possible. The vacant Program Analyst II position will be filled as soon as practicable. Staff anticipates that the Office Assistant I position will remain vacant for the present.

SUSTAINABLE OPPORTUNITIES

Pursuant to City Council Resolution No. 74678 C.M.S., adopted December 1, 1998, staff encourages property owners to operate sustainable projects. Stabilizing Oakland's existing residential tenancies will continue to stabilize neighborhoods. The rental regulation programs address the "3 E's" of sustainability by:

Economic:

- Preserving the affordable housing inventory for families, seniors, and disabled people in Oakland.
- Mitigating the adverse economic pressure on surrounding neighborhoods caused by new housing development.

Environmental:

- Preventing social disruption of established neighborhoods with rental housing.
- Mitigating any adverse environmental impacts resulting from development of new and existing rental housing.

Social Equity:

- Improving the landscape and climate of Oakland's neighborhoods by encouraging longer-term tenancies in rental housing.
- Aiding low-income families to save money to become homeowners.

DISABILITY AND SENIOR CITIZEN ACCESS

The City's Rent Adjustment staff complies with legal requirements to provide access to all Rent Adjustment Program services for people with disabilities and to ensure that the units rented to people with disabilities comply with applicable codes. The Just Cause for Eviction Ordinance and the Ellis Act Ordinance provide special protections against evictions and relocation benefits for seniors and people with disabilities.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the Rental Property Service Fee be maintained at the present level of $30 per unit per year.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council accept this informational report.

Respectfully submitted,

Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Michele Byrd, Deputy Director
Housing and Community Development

Prepared by:
Connie Taylor, Acting Manager
Rent Adjustment Program
Housing and Community Development

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:

Office of the City Administrator

Item: _____
CED Committee
October 12, 2010