

CITY OF OAKLAND

AGENDA REPORT

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OFFICE OF THE CITY CLERK
OAKLAND

2011 OCT 27 PM 1:05

TO: Office of the City Administrator
ATTN: Deanna J. Santana
FROM: Community and Economic Development Agency
DATE: November 8, 2011

RE: Annual Report of the Rent Adjustment Program for Fiscal Year 2010-2011

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, this report 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 (RAP) 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 10-11, staff met with an estimated 1,073 members of the public and provided information and referrals in person. This is nearly the same as 1,070 in FY 09-10. Staff responded to 7,935 phone inquiries in FY 10-11, a slight decrease of about 4.6% from FY 09-10. Staff also responded to about 162 email inquiries, a slight increase from 150 last fiscal year. Staff received and responded to two complaints from members of the public about the quality of public contact. Many landlords and tenants continue to ask about evictions, foreclosure, and decrease in services, rather than rent increases. However, contrary to the trend seen in the past three fiscal years, there was a slight increase in most areas of public contact.

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.

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Petitions and Ellis Act Applications

The number of petitions and applications filed in FY 10-11 was nearly the same (from 224 to 228) when compared with FY 09-10. The RAP processed 219 Rent Adjustment Petitions, four Ellis applications to remove properties from the rental market, and five applications for administrative citation of a property owner. Staff believes that the relatively low number of 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, appears to have ended the three year decline in applications filed with RAP.

Table 1 shows the types of claims made by Rent Adjustment petitioners, both landlords and tenants, on the petitions filed during FY 10-11. 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	
	FY 09-10	FY 10-11
Unjustified increase	46%	48.2%
Decreased or inadequate housing services	44%	52.7%
No RAP notice with rent increase	23%	20.5%
No RAP notice at beginning of tenancy	21%	17.9
No summary of justification for increase	6%	6%
Two increases within 12 months	4%	3.1%
Landlord request for certificate of exemption	8%	8%
Landlord request for pre-approval of increase	1%	1%
Improper increase under Civil Code § 1954.1 et seq.	1%	1%
Landlord request for extension of time to complete repairs	0%	.09%

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. There was a decrease in petitions filed alleging an unjustified increase greater than the annual allowable CPI rate (48.6% of petitions).

This result is significantly different from FY 08-09 and FY 09-10 when the majority of petitions were filed when tenants perceived a rent increase was not justified under the regulations.

A claim for decreased or inadequate housing services was the most common complaint (52.7% 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 is showing slight improvement compared with FY 09-10 (18% for beginning of tenancy and 21% 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 remained the same as claimed in FY 09-10.

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 to 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.

There is a decrease in claims made for unjustified rent increases (48.2%), compared to claims for decreased housing services (52.7%). Otherwise, there were no significant changes in the relative frequency of the types of claims made from FY 09-10 to FY 10-11.

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 10-11 was 75 days. This is practically the same processing time for a petition as last fiscal year (74 days).

During FY 10-11 the Rent Adjustment Program, including the Board, resolved 257 cases. Three cases are still pending final resolution, and there are nine cases with petitions filed in May and

¹ OMC §8.22.060.

June that could not be resolved by June 30, 2011. Table 2 shows how the cases were resolved. Tenants ("T" on the chart) prevailed in 59% of the cases, landlords ("LL" on the chart) in 37%. 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	12	4.5%	12		
Administrative Decision	24	8.9%		8	16
Appeal Decision	35	13%		20	15
Hearing Decision	109	40.5%		46	51
Involuntary Dismissal	19	7.1%		15	4
Remand Decision	2	0.7%		2	0
Settlement Agreement	26	9.7%		0	26
Voluntary Dismissal	42	15.6%		3	39
TOTAL	269	100.0%	12	94	151
			4.7%	36.6%	58.8%

During FY 10-11, there were two debt service cases. There were also two debt service cases during FY 09-10. 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 10-11 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 18 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, 2011. The appeals rate for staff decisions issued during FY 10-11 was about 9%, well below the historical average appeals rate of 16%.

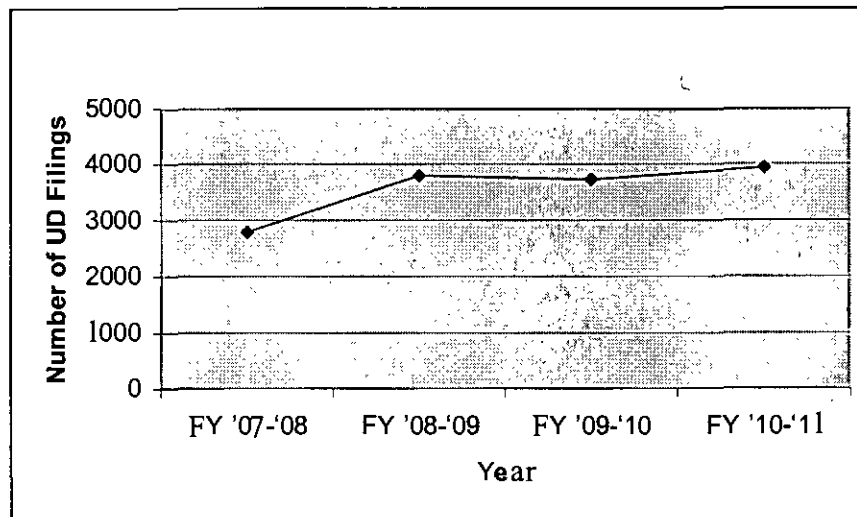
Eviction Notices and Evictions

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 12,394 eviction notices during FY 10-11, an 8.5% increase from FY 09-10's 10,478.

Adam Byer of the Alameda County Superior Court graciously prepared an estimate of Oakland evictions again this year. He reports that there were approximately 3,490 limited jurisdiction

unlawful detainer filings in fiscal year 2010/11 (July 1, 2010 through June 30, 2011) where the disputed property is in the City of Oakland. The estimate is based on 3,750 limited jurisdiction unlawful detainer filings where the court location is the Rene C. Davidson Courthouse in Oakland. Mr. Byer examined a random sample of 216 of these cases. The disputed property was in Oakland for 201, or 93.1 percent, of these cases. The 3,490 estimate is 93.1 percent of 3750. This estimate represents a 6.1% increase over the 3,702 eviction actions estimated for FY 09-10. The increase in eviction cases actually filed is shown graphically on Table 3

Table 3



Applications Pursuant to the Ellis Act

During FY 10-11, four applications were filed to remove three single family residences and one duplex from the rental housing market. Four applications were also filed in FY 09-10. Removal of rental units from the market using the Ellis Act did not have a significant effect in Oakland in FY 10-11.

Low Income Client 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 were 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 to 15 tenants and up to 5 landlords per year. For income eligibility, the goal is to screen 960 tenants and 40 landlords.

During FY 10-11, 743 tenants were screened for eligibility, meeting 77.4% of contract goal. Advice and counsel was provided to 256 tenants, exceeding the contract goal by 11.3%. *Pro per* filing assistance was provided for 49 tenants, meeting 42.7% of the contract goal.

Since the inception of the contract, subcontractor the Alameda County Bar Association has far exceeded the contract goal for screening landlords. The outreach to landlords has been exceptional. However, to date, no landlord has met the income limits required for assistance. Despite being unable to reach low-income landlords, Staff believes that landlords with Rent Adjustment issues should continue to be screened for eligibility. Staff is exploring other ways to reach landlords, for example, advertising in a landlord publication. However, for FY 10-11, the budget for landlord services had to be adjusted. The adjusted budget specified the cost for screening landlords, and the amount that would be paid if a landlord received assistance.

Tenants continue to receive good representation under the program. The program has also been instrumental in assisting tenants with legal problems related to foreclosure. However, for the first time since the inception of the contract, primary contractor, Centro Legal and subcontractor Bay Legal, failed to meet at least 50 percent of the contract goal for *Pro per* filing assistance. After a review of all services provided to tenants during FY 10-11, a determination will be made about further adjustments to the budget and scope of services before payment of the contract resumes effective July 1, 2011.

The contract mandates periodic audits of the program. An audit was conducted in 2009, and a subsequent audit will be conducted in the fall of 2011. A full report on the performance of the program will be presented to Council before the end of FY 11-12.

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 City Attorney's Office handled a number of cases involving the Rent Program during the last fiscal year:

The Apartment Owners Association v. Rent Board. The Apartment Owners Association challenged the validity of an amendment to the Just Cause Regulations. The amendment set out

the requirements for evicting tenants from illegal units that the landlord created and rented. Landlords had been using a 3-day notice claiming the tenant was using the premises illegally, even though it was the landlord who created the illegality. The Regulation required the landlord to use a 30 or 60 day eviction notice, or the Ellis Act that requires 120 days notice or one year for elderly or disabled tenants. The City prevailed in Alameda County Superior Court.

Amicus in Foreclosure Eviction. The City Attorney's Office filed an amicus in an eviction matter that was appealed by a major bank seeking to evict a tenant in violation of the Just Cause Ordinance. The bank foreclosed and claims it should have inherited the owner-occupancy exemption the former owner of the three unit property had.

Writs Challenging Rent Board Decisions. The City Attorney's Office handled several writs during FY 10-11. In two of the writs, landlords challenged Rent Board decisions; in the third, a tenant filed the writ.

Rent Board

During FY 10-11, the Rent Board formed a committee to consider changes to Capital Improvement Regulations. The Board elicited written comments from landlord and tenant organizations to assist them in making recommendations.

The Board also reviewed the recommendations in the draft Debt Service report. The report is a result of a vote taken by the Board on July 30, 2009 regarding Debt Service as a justification for raising rents. Because the majority of current Board members are recently appointed, they may vote to add their recommendation to the report that will then be presented to Council.

OUTREACH ACTIVITIES

In FY 10-11, Rent Adjustment Staff participated in the following outreach activities:

Public Presentations

- Presentation by Connie Taylor at First Congregational Church of Oakland on Saturday, September 11, 2010 8:30 to 10:30 a.m.
- Stephen Kasdin, Connie Taylor, and Barbara Kong-Brown conducted training for advocates from Centro Legal de la Raza, Bay Legal, and Bay Area Legal Aid on October 8, 2010 from 2:30 to 4:30 p.m.
- Presentation by Connie Taylor at West Oakland Senior Center on November 16, 2010 from 2:30 to 4:30 p.m.
- Connie Taylor attended Mayor's event at City Hall, had table with Rent Adjustment information from 4:30 to 8:30 p.m.
- Presentation by Connie Taylor at North Oakland Senior Center on January 13, 2011 from 9:30 to 10:30 a.m.

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- Connie Taylor attended Allen Temple Baptist Church, had table with Rent Adjustment information from 8:30 a.m. to 12 noon.
- Presentation by Connie Taylor at Income Property Investment Seminar for Agents and Investors, Tuesday, February 8, 2011 12:00 noon to 4 p.m.
- Christian Lagasca attended District 5 Town Hall Meeting, April 9, 2011 from 10:30 a.m. to 1:30 p.m. providing informational material.
- Christian Lagasca attended District 2 Town Hall Meeting, April 30, 2011 from 10:30 a.m. to 1:30 p.m. providing informational material.
- Barbara Kong-Brown attended District 4 Town Hall Meeting May 14, 2011 10:00 a.m. to 2:00 p.m. providing informational material.
- Barbara Kong-Brown attended District 7 Town Hall Meeting, May 21, 2011, 10: a.m. to 2:00 p.m. providing informational material.
- Presentation by Barbara Kong-Brown and Brenda Burrell at Lao Family Community Development, Inc. on June 16, 2011 from 2:00 p.m. to 3:30 p.m.

Foreclosure

At all of the above outreach activities, informational material was provided for tenants seeking legal advice about foreclosure. Staff attended a foreclosure workshop on September 11, 2010 to discuss tenant rights under the Just Cause for Eviction Ordinance. Staff also discussed foreclosure at a presentation before landlords at the Income Property Investment Seminar on February 8, 2011.

In addition to public outreach and providing brochures on foreclosure, specific information is given by Staff to tenants who call or come into the office when their landlord's property has been foreclosed upon. Tenants are advised that under the Just Cause Ordinance foreclosure is not grounds for eviction. Tenants are further advised that if they receive any eviction notice, even if their name does not appear on the notice, to seek legal advice.

Rent Adjustment staff is currently working with the Neighborhood Law Corp. to coordinate a meeting with legal agencies to ensure that tenants are receiving the best legal advice possible regarding problems faced by foreclosure.

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 recipient of CDBG funds. CDBG recipients publicize the Rent Adjustment Program, by both mailings and community programs.

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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 charges² 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
FY10-11	1,890,990.00	1,925,731.00
Total	13,777,730.00	14,325,326.09

Expenditures

A complete list of the program expenditures for FY 10-11 is shown below. The largest expenditures are personnel costs. The budgeted expenditures include unspent but designated funds for hiring a Program Manager (the Program Manager was hired in June 2011) and one additional staff (Program Analyst II was hired in March 2011), and for the low-income representation grant.

² These total less than \$2,500 for FY 10-11.

Table 5
Rent Adjustment Program Expenditures Report
Fiscal Year 2010-11

	Budget	Expenditures	Balance
City Attorney			
Salary & Benefits	\$334,530	569,464	(234,934)
Business License Tax			
Salary & Benefits	\$179,760	207,127	(27,367)
O & M:			
Other	0	0	0
Total: Business License Tax	\$179,760	207,127	(27,367)
Rent Adjustment Program – CEDA			
Salary & Benefits	\$972,410	782,673	189,737
Overhead	\$132,600	90,911	41,690
Subtotal - Salary & OH	\$1,105,010	873,583	231,427
O & M			
Printing, Duplicating & Outreach	\$30,000	11,441	18,559
Low Income Representation Program	\$100,000	93,088.11	2,069.53
Temporary Personnel	\$5,000	-	5,000
Minor Computer Hardware & Software	\$15,000	646	14354
Misc. Operating	49,075	11,365	37,711
Subtotal O&M	\$213,805	122,293	91,512
CEDA - Total	\$1,304,086	987,035	317,051
Program Total Expenditures	\$1,818,376	\$1,757,738	60,638

The only encumbrance (not noted on Table 5) is \$3,597.58 for the June 2011 periodic payment for the Low Income Representation Program. The invoice has been submitted, but was not paid during FY10-11.

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Program Budget

The operating and Maintenance expenses for FY 11-12 are slightly lower than expenses from the FY 10-11 budget.

Table 6
Rent Adjustment Program FY 11-12 Adopted
Budget

	<u>Amount</u>
Salaries	523,254
Benefits	300,540
Dept. Overhead	112,866
Low Income Rep	100,000
Operating Expenses	60,833
Subtotal	1,097,493
City Attorney (total)	322,864
Business License Tax (personnel)	256,960
Total Budget	1,677,317

Staff

Below is a list of all the authorized staff charged to the Rent Adjustment Project (restricted revenue) on June 30, 2011.

Rent Adjustment (9 FTE)	
Program Manager	(1)
Program Analyst II	(2)
Hearing Officer	(2)
Administrative Assistant I	(2)
Business License Tax (2 FTE)	
Revenue Assistant	(1)
Tax Enforcement Officer II	(1)
City Attorney Office (2 FTE)	
Deputy City Attorney	(1)
<u>Legal Admin. Asst.</u>	(1)
Total FTE	11.0

Positions taken out of the Budget

The Program Analyst III and the Office Assistant 1 positions were taken out of the budget for FY 11-12. However, staff anticipates that the Program Analyst III position will be placed back into the budget during FY 11-12.

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.

Environmentat:

- 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.

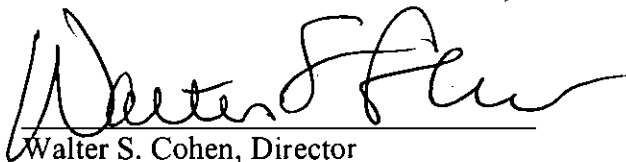
RECOMMENDATION(S) AND RATIONALE

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, Program Manager
Rent Adjustment Program
Housing and Community Development

**APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:**


Office of the City Administrator

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