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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Annual Report of the Rent Adjustment
Program for Fiscal Year 2011-2012

DATE: October 24, 2012

City Administrator
Approval

Date

11/24/12

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council accept this Annual Report of the Rent Adjustment Program for Fiscal Year 2011-2012.

EXECUTIVE 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.

BACKGROUND/LEGISLATIVE HISTORY

The Oakland City Council first adopted a Residential Rent Adjustment Program as an alternative to strict Rent Control in 1980 by Ordinance. The Ordinance has since been modified several times; the current version became effective in January, 2007, and is codified as OMC Chapter 8.22. The City Council and the Rent Board also adopt Regulations that govern the operation of the Residential Rent Adjustment Program. In addition, the Residential Rent Adjustment Program is responsible for adjudicating certain disputes that arise under the Just Cause for Eviction Ordinance (Measure EE).

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OUTCOME FOR FISCAL YEAR 2011-2012

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 11-12, staff met with an estimated 1,500 members of the public and provided information and referrals in person. This is a 4% increase from FY 10-11. Staff responded to an estimated 7,900 phone inquiries in FY 11-12, a slight decrease from FY 10-11. Staff also responded to about 160 email inquiries, about the same as the 162 such inquiries received in the previous fiscal year. Staff received and responded to four complaints from members of the public about the quality 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.

Petitions, Ellis Act and Citation Applications

The number of petitions and applications filed in FY 11-12 increased by 71% (from 228 to 389) when compared with FY 10-11. The RAP processed 382 Rent Adjustment Petitions, five Ellis applications to remove properties from the rental market, and two applications for administrative citation of a property owner. Staff believes that the large increase in the number of petitions filed may be attributed to a combination of aggressive outreach, improvement in economic conditions, and to former homeowners being driven into the rental market due foreclosures.

Table 1 shows a three year decline beginning in FY 08-09. Petitions and applications filed in FY 11-12 are on track to match the number of filings from FY 07-08.

Table I

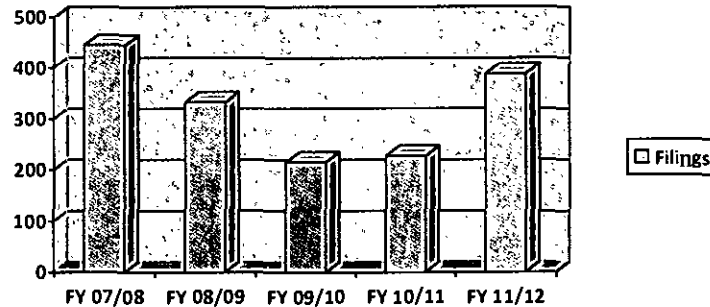


Table 2 shows the types of claims made by Rent Adjustment petitioners, both landlords and tenants, on the petitions filed during FY 11-12. Often, more than one claim is made on a single petition, so the total number of claims is greater than the number of petitions filed. The percentages shown indicate the proportion of all petitions filed that alleged each claim.

Table 2

CLAIM ALLEGED	% OF PETITIONS FILED	% OF PETITIONS FILED
	FY 10-11	FY 11-12
Unjustified increase	48.2%	64.3%
Decreased or inadequate housing services	52.7%	60.5%
No RAP notice with rent increase	20%	35.6%
No RAP notice at beginning of tenancy	17%	32.1%
No summary of justification for increase	6%	11.1%
Two increases within 12 months	3.1%	13%
Landlord request for certificate of exemption	8%	15.6%
Landlord request for pre-approval of increase	1%	1.3%
Improper increase under Civil Code §1954.50, et seq.	1%	2.5%
Landlord request for extension of time to complete repairs	.09%	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. There was an increase in petitions filed alleging an unjustified increase greater than the annual allowable CPI rate (64.3% of petitions). This result is slightly different from FY 10-11 when claims of decreased housing services outnumbered the claims for unjustified rent increases.

A claim for decreased or inadequate housing services was the second most common complaint (60.5% 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, increased dramatically (36% for beginning of tenancy and 32% with notice of rent increase) compared with FY 10-11 (18% for beginning of tenancy and 21% with notice of rent increase). This result will lead to a greater emphasis by Staff on notice requirements during landlord presentations during FY 12-13.

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 increased from 6% to 11.1%.

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 (1.3% 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 16% of the petitions filed.

There was an increase in claims made for unjustified rent increases (64%), compared to claims for decreased housing services (61%). There were also a larger number of landlord petitions for exemption from the Rent Ordinance. Otherwise, there were no significant changes in the relative frequency of the types of claims made from FY 10-11 to FY 11-12.

¹ OMC §8.22.060.

Petition Processing

Because of the large number of petitions filed during FY 11-12, scheduling hearing dates more than 60 days after a petition filing was often necessary. The average time from petition filing through staff decision for petitions filed in FY 11-12 was 80 days. This is only a slight increase from the processing time last fiscal year (75 days); however, there were more pending cases.

During FY 11-12 the Rent Adjustment Program, including the Board, resolved 296 cases. Two Board cases are still pending final resolution, and there are eighty-six cases with petitions filed in April, May, and June that could not be resolved by June 30, 2011. Table 3 shows how the cases were resolved. Tenants (“T” on the chart) prevailed in 46% of the cases, landlords (“LL” on the chart) in 32%. This is substantially the same proportion of cases resolved in favor of landlords and tenants as last fiscal year

Table 3

Final Decision	Number	% of Total	Pending	LL	T
None	86	22.4%	86		
Administrative Decision	47	12.2%		32	15
Appeal Decision	17	4.4%		10	7
Hearing Decision	108	28.1%		52	56
Involuntary Dismissal	26	6.8%		23	3
Remand Decision	4	1.0%		2	2
Settlement Agreement	28	7.3%		3	25
Voluntary Dismissal	68	17.7%		0	68
TOTAL	384	100.0%		122	176

22.4% 31.8% 45.8%

Appeals to the Rent Board

The Rent Board processed 18 appeals of 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 11-12 was about 4.4%, 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 12,897 eviction notices during FY 11-12, a slight increase from FY 10-11’s 12,394.

Adam Byer of the Alameda County Superior Court graciously prepared an estimate of Oakland evictions again this year. He reports that there were approximately 3,284 limited jurisdiction unlawful detainer filings in fiscal year 2011/12 (July 1, 2011 through June 30, 2012) where the disputed property is in the City of Oakland. The estimate is based on 3,982 limited jurisdiction unlawful detainer filings where the court location is the Rene C. Davidson Courthouse in Oakland. Mr. Byer examined a random sample of 251 of these cases. The disputed property was in Oakland for 207, or 82.5 percent, of these cases. The 3,284 estimate is 82.5 percent of the total of 3,982 such filings during the reporting period. This estimate represents a 6.3% decrease from the 3,490 eviction actions estimated for FY 10-11.

Applications Pursuant to the Ellis Act

During FY 11-12, five applications were filed to remove three single family residences and one duplex from the rental housing market. Four applications were filed in FY 10-11. Removal of rental units from the market using the Ellis Act did not have a significant effect in Oakland in FY 11-12.

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 the City Council on 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 these contracts.

After a review of all services provided by contractors, the Scope of Services was amended for FY 2011-2012 to capture all services provided that related to Rent Adjustment issues. The amended goals for the grant are to 1) provide limited scope services for at least 400 tenants and 10 landlords per year for Rent Adjustment issues; 2) provide extensive services for at least 60 tenants and 5 landlords per year for Rent Adjustment issues; and 3) provide legal representation for 50 tenants and 5 landlords at Rent Adjustment hearings per year.

During FY 11-12, contractors met 86% of the contract goal for limited scope services by providing services to 344 tenants. 48 tenants were provided extensive services for Rent Adjustment issues, meeting 80% of the contract goal. There were 26 appearances at Rent Adjustment Hearings, meeting 52% 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 contract goal is to screen 40 landlords for eligibility. For FY 2011-2012, 296 landlords were screened for eligibility, exceeding the contract goal by 74%. 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. For the past two years of the contract, funding to the Bar Association has been limited to screening landlords for eligibility. Further funds would be released when services are provided.

Tenants continue to receive good representation under the program. The program has also been instrumental in assisting tenants with Rent Adjustment issues who also had problems related to eviction and foreclosure.

The contract mandates periodic audits of the program. An audit was conducted in 2009, and a subsequent audit was conducted in 2011. In the 2009 audit, there were 4 findings regarding 1) Intake and Appointment process; 2) Staff assigned to Rent Board cases; 3) Training; and 4) Low-income landlords. All findings were resolved satisfactorily. In 2011, there was one finding regarding the documentation of income for Rent Adjustment cases. The finding was resolved satisfactorily.

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 can involve RAP staff. The City Attorney's Office handled a number of cases involving the Rent Program during the last fiscal year:

Apartment Owner's Association v. Rent Board. The Apartment Owner's Association challenged a Rent Board regulation regarding the eviction of tenants from illegal units. The regulation required landlords to use a 30/60 day notice to evict tenants; AOA wants landlords to be able to use 3-day notices, even though the landlord created the illegality. The matter is in the Court of Appeal; it has been fully briefed and is awaiting scheduling of oral argument.

Amicus in Foreclosure Eviction. The City Attorney's Office filed an amicus in a case involving an eviction following a foreclosure. The matter was orally argued, including argument by the City Attorney's Office.

Administrative Writs. The City Attorney's Office successfully defended one administrative writ; another is pending in the Superior Court.

Evictions: In addition, the City Attorney's Office has been able to get some banks to back down from some improper evictions of tenants following foreclosures through negotiation and threatening to intercede on tenant's behalf

Rent Board

During FY 11-12, the Board voted to:

- Adopt Capital Improvement Committee's recommendation to amend Capital Improvement Regulations.
- To have a Standing Committee to review possible changes to the Rent Ordinance and Regulations.
- To amend Debt Service Regulations.

A report to amend Capital Improvement and Debt Service Regulations will be presented to the City Council in 2013. The request for a Standing Committee will be presented to the CED Committee on December 11, 2012.

ANALYSIS

The Rent Adjustment Program has seen a 71% increase in petitions filed during FY 2011-2012. This may be attributed in part to an improving economy and in part to homes lost to foreclosure, thus there are more tenants looking for rental housing. The San Francisco Business Times noted that rents went up 11.2 percent in Oakland over the last year.² Because of these trends, it will be necessary to fill the vacancies within the Department and determine what additional support is needed for the Rent Program to meet its responsibilities.

PUBLIC OUTREACH/INTEREST

In FY 11-12, Rent Adjustment Staff participated in the following outreach activities:

- **July 19, 2011:** Presentation by Barbara Kong-Brown and Brenda Burrell at workshop sponsored by Lao Family Community Development, Inc. from 9:00 a.m. to 12 noon.
- **August 31, 2011:** Connie Taylor interviewed by Rental Housing Magazine (East Bay Rental Housing Association).

² San Francisco Business Times, July 3, 2012

- **October 20, 2011:** Presentation by Connie Taylor to Grand Jury Social Service Committee.
- **November 9, 2011:** Barbara Kong-Brown discussed Capital Improvement regulations at the Energy Savings for Multifamily Property Owners Workshop
- **February 2, 2012:** Barbara Kong-Brown and Stephen Kasdin facilitated workshop for Oakland Building Inspectors from 9 a.m. to 10 a.m.
- **February 9, 2012:** Barbara Kong-Brown and Stephen Kasdin answered questions about the Rent Adjustment Program at Alameda County Law Library.
- **May 2, 2012:** Connie Taylor attended and discussed Capital Improvement rent increases at Workshop on Energy Savings on Multifamily and Rental Housing.
- **May 16, 2012:** Roberto Costa attended Older Americans Month Celebration and provided information about the Rent Adjustment Program.
- **June 7, 2012:** Barbara Kong-Brown and Stephen Kasdin made presentation to Bay Property Group on how to raise rents in Oakland.
- **August 2012:** Richard Illgen conducted a continuing legal education seminar on Oakland Rent Adjustment for the Alameda County Bar Association.

COORDINATION

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.

The Rent Adjustment Program continues to coordinate with the City Attorney's office regarding the problems presented by the large number of foreclosures in Oakland.

COST SUMMARY/IMPLICATIONS

Source of Funding

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

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other income to the program is from Ellis application fees and copying charges³ that have a minimal impact on the Rent Adjustment budget.

Program Reserves

In 2012, Rent Adjustment was assigned a separate funding account. During the transfer of funds, auditors determined that \$988,369 should have been allocated to Rent Adjustment from the general fund. These funds represent the following:

- Savings from salaries due to furlough days
- Vacancy for the Project Manager II that took nearly two years to fill
- Two vacancies for Program Analyst II that took several months to fill

Program reserves will allow for the hiring of a Program Analyst II, the only vacant position, and another Hearing Officer due to the increase in petitions. It will also act as a cushion so that the Program Service fee remains flat for the foreseeable future

Table 3 shows budgeted and actual fee revenue from FY 003-04 to the present, which includes the transferred funds, shown in Oracle.

Table 3
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
FY11-12	1,800,000.00	1,973,823.00
Total	15,577,730.00	17,287,518.09

³ These total less than \$2,500 for FY 11-12.

Expenditures

A complete list of the program expenditures for FY 11-12 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), for one other staff person (Program Analyst II was hired in March 2011), and for the low-income representation grant.

Table 4
 Rent Adjustment Program Expenditures Report
 Fiscal Year 2011-12

	Budget	Expenditures	Balance
City Attorney			
Salary & Benefits	\$322,9640	348,376	(25,512)
Finance & Management Agency:			
Salary & Benefits	\$256,960	221,039	(35,921)
Rent Adjustment Program – CEDA			
Salary & Benefits	\$865,702	860,402	5,300
Overhead	\$73,797	69,142	4,465
Subtotal - Salary & OH	\$939,499	929,544	9,955
O & M			
Printing, Duplicating & Outreach	\$39,279	39,279	-
Low Income Representation Program	\$101,386	96,857	4,528
Temporary Personnel	\$20,000	8,173	11,827
Minor Computer Hardware & Software	\$17,000	17,000	-
Misc. Operating	67,860	69,784	(1,924)
Subtotal O&M	\$245,525	231,093	14,431
CEDA - Total	\$1,185,024	1,160,637	24,386
Program Total Expenditures	\$1,764,848	\$1,730,052	34,795

The only encumbrance not noted on Table 4 is \$8,257.11 for the June 2012 periodic payment for the Low Income Representation Program. The invoice has been submitted, but was not paid during FY11-12.

Program Budget

Below is the Adopted Budget for FY 12-13:

Table 5
Rent Adjustment Program FY12-13 Adopted Budget

	<u>Amount</u>
Salaries	487,604
Benefits	512,616
Low Income Rep	100,000
Operating Expenses	60,000
Subtotal	1,160,220
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City Attorney (total)	322,864
Business License Tax (personnel)	476,487
Total Budget	1,959,571

Staff

Below is a list of all the authorized staff charged to the Rent Adjustment Project (restricted revenue) on June 30, 2012.

Rent Adjustment (9 FTE)	
Program Manager	(1)
Program Analyst II	(2)
Program Analyst III	(1)
Hearing Officer	(2)
Administrative Assistant I	(2)
ASM I	(0.15)
Account Clerk III	(0.15)
Finance & Management Agency	
Revenue Assistant	(1)
Tax Enforcement Officer II	(1)
Cashier	(1)
City Attorney Office (2 FTE)	
Deputy City Attorney	(1)
<u>Legal Admin. Asst.</u>	(1)
 Total FTE	 13.30

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FISCAL IMPACT

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

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:

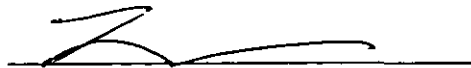
- Improving the landscape and climate of Oakland's neighborhoods by encouraging longer-term tenancies in rental housing.
- Aiding low-income families to save money to become homeowners.

CEQA

This report is not a project under CEQA.

For questions regarding this report, please contact Connie Taylor, Rent Adjustment Program Manager, at (510) 238-6246.

Respectfully submitted,



Fred Blackwell
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Rent Adjustment Program