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CITY OF OAKLAND

AGENDA REPORT

2009 SEP -3 AM 9:12

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: September 15, 2009

RE: **Annual Report of the Rent Adjustment Program for Fiscal Year 2008-2009**

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. Program finances for Fiscal Year 2008-09 begin on page 9 of this report..

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 08-09, staff met with an estimated 1,402 members of the public and provided information and referrals in person. This is a 57% decrease in direct public contact from FY 07-08. Staff responded to 10,156 phone inquiries in FY 08-09, a decrease of about 22% from FY 07-08. Staff also responded to about 200 email inquiries, an approximately 50% decrease from last fiscal year.

There were four complaints from members of the public about the quality of public contact. The reduction in public inquiries and public contact is a direct reflection of the changed circumstances in the rental housing market. During the last few months, landlords and tenants have been asking, primarily, about 3-day notices and evictions, rather than rent increases. The focus of both landlord and tenant concerns for the last few months has been foreclosure and eviction, not rent increases.

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The process of billing and collection of the Rental Property Service Fee was transferred to the Business License Tax Section of the Finance and Management Agency in FY06-07. The Business License Tax Section provides service to customers related to the Fee. These contacts are not included in the data provided above. Temporary staff was required, 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. Petition filing declined precipitously during the first half of 2009, as shown on Table 1. The number of petitions and applications filed in FY 08-09 decreased by 26% (from 448 to 333) when compared with FY 07-08. The RAP processed 330 Rent Adjustment Petitions, two Ellis applications to remove properties from the rental housing market and one application for administrative citation of a property owner. Staff believes that the decrease in petitions filed is a consequence of the current economic conditions as rents are still declining.¹ Petitions are now at about 2005 levels.

The following chart shows the trend in petitions filed with the Oakland Rent Adjustment Program during FY 08-09

Table 1

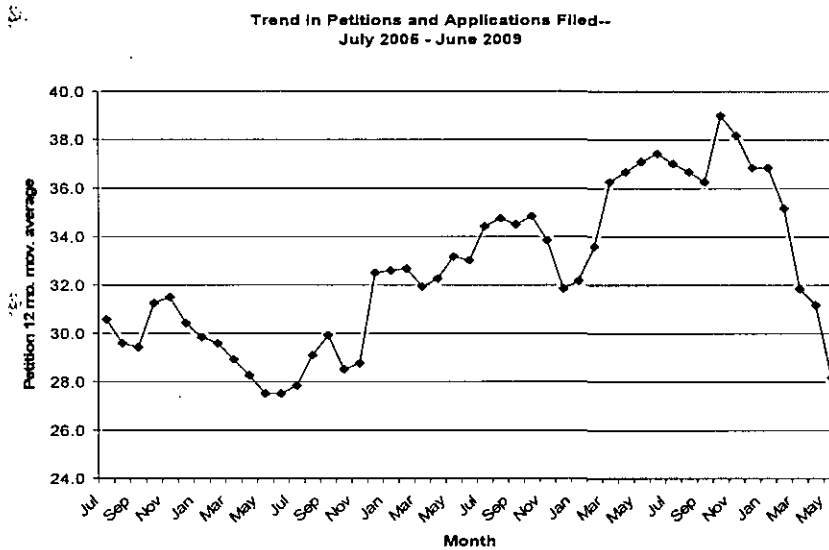


Table 2 shows the types of claims made by Rent Adjustment petitioners, both landlords and tenants, on the petitions filed during FY 08-09. Often, more than one claim is made on a single petition, so the total number of claims is greater than the number of petitions filed. The percentages shown indicate the proportion of all petitions filed that alleged each claim. Again,

¹ Marcus & Millichap, "Apartment Research Market Update, Second Quarter 2009"; San Francisco Business Times, "Report:Rents Falling, But San Francisco Still Expensive," April 15, 2009.

because more than one claim can be alleged on a single petition, the percentages total to more than 100%.

Table 2

CLAIM ALLEGED	% OF PETITIONS FILED	% OF PETITIONS FILED
	FY 07-08	FY 08-09
Unjustified increase	69%	70%
Decreased or inadequate housing services	48%	45%
No RAP notice with rent increase	31%	30%
No RAP notice at beginning of tenancy	30%	30%
No summary of justification for increase	9%	15%
Two increases within 12 months	9%	9%
Landlord request for certificate of exemption	3%	3%
Landlord request for pre-approval of increase	2%	3%
Improper increase under Civil Code §1954.50, et seq.	1%	1%
Landlord request for extension of time to complete repairs	1%	0%

Landlord justifications for increases greater than the annual CPI adjustment included 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 required a hearing to determine the validity of the landlord's justification and to verify the amount of the increase. By far, most petitions were filed alleging an unjustified increase greater than the annual allowable CPI rate (70% of petitions). This is consistent with staff's experience that most petitions are filed when a tenant perceives a rent increase to be unfair. Such petitions often include all of the perceived problems with the tenancy.

A claim for decreased or inadequate housing services is the second most common complaint (45% 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 copy of the City's printed form notice of tenant's rights under Rent Adjustment,² 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 (30% of petitions for each lack of notice claim).

Landlords are also required by the Rent Adjustment Ordinance³ 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 substantially from last fiscal year and is now claimed on 15% of the total petitions.

Landlords are allowed to increase 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, (s)he can raise it a greater amount without pre-approval by the RAP. However, a small number of landlords (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 3% of the petitions filed.

Other than the increase in claims of landlord failure to provide a summary of justifications for an increase upon request, there are no significant changes in the relative frequency of the types of claims made from FY 07-08 to FY 08-09.

Petition Processing

Staff maintained a petition backlog of near zero during most of FY 08-09. The average time from petition filing through staff decision for petitions filed in FY 08-09 was 71 days. This is statistically the same processing time for a petition as last fiscal year.

During FY 08-09 the Rent Adjustment Program, including the Board, resolved 359 cases. Three cases are still pending final resolution. Table 3 shows how the cases were resolved. Tenants ("T" on the chart) prevailed in 63% of the cases, landlords ("LL" on the chart) in 36%. This is substantially the same proportion of cases resolved in favor of landlords and tenants as last fiscal year.

² OMC §8.22.060.

³ OMC §8.22.070.C.4.

Table 3

Final Decision	Number	% of Total	Pending	LL	T
None	3	0.8%	3		
Administrative Decision	38	10.5%		9	29
Appeal Decision	18	5.0%		12	8
Hearing Decision	124	34.3%		58	66
Involuntary Dismissal	55	15.2%		46	9
Remand Decision	20	5.5%		3	17
Settlement Agreement	49	13.5%		0	49
Voluntary Dismissal	55	15.2%		4	51
	362	100.0%	3	132	229
			1%	36%	63%

Apparently due to changes in the real estate loan market, there have been no new debt service cases since late 2008.

Landlords and tenants agreed to mediation almost three times as often in FY 08-09 as the year before, although the total number of mediation sessions conducted remains small when compared to earlier years. For every three tenants who request mediation of a rent dispute, only one landlord agrees to mediate.

Appeals to the Rent Board

The Rent Board processed 72 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, 2008. The appeals rate for staff decisions issued during FY 08-09 was about 14%, slightly below the historical average appeals rate of 16%.

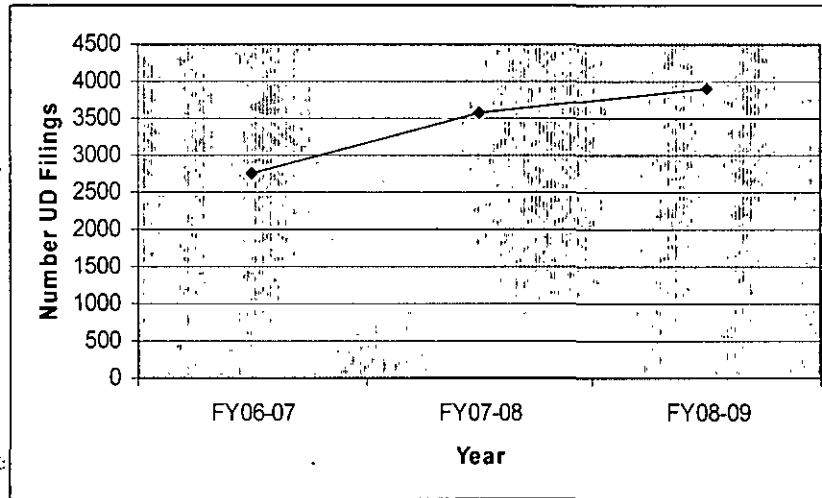
Eviction Notices and Evictions

The Just Cause for Eviction Ordinance (No. 12537CMS) 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 9,320 eviction notices during FY 08-09, a 5% increase from FY 07-08's 8,848. For comparison, the average number of eviction notices received for the prior three years was 9,618.

Adam Byer of the Alameda County Superior Court graciously prepared an estimate of Oakland evictions again this year. He reports that there were approximately 3,912 limited jurisdiction unlawful detainer filings in fiscal year 2008/09 (July 1, 2008 through June 30, 2009) where the disputed property is in the City of Oakland. The estimate is based on 4,033 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 194, or 97 percent, of these cases. The 3,912 estimate is 97 percent of 4,033. This estimate represents a 10% increase over the 3,566 eviction actions estimated for FY 07-08, and a 42% increase from FY 06-07. The increase in eviction cases actually filed is shown graphically on Table 4

Table 4



Applications Pursuant to the Ellis Act

During FY 08-09, only one application was filed to remove one single family residence from the rental housing market. This is the lowest number ever processed by the RAP, and a substantial decrease in Ellis applications for the second consecutive year. Removal of rental units from the market using the Ellis Act did not have a significant effect in Oakland in FY 08-09.

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 (VLSC) and Bay Area Legal Aid. Operations under the grant contract began in July 2008. A training session 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 help resolve disputes between low-income tenants and landlords and to secure their rights under Oakland Ordinances that impact the landlord-tenant relationship.

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 115 tenants and up to 5 landlords per year.

During FY 08-09, advice and counsel was provided to 435 tenants and one (1) landlord. *Pro per* filing assistance was provided for 66 tenants, meeting 74.2% of the contract goal. No landlords qualified for representation under the program.

Based on observations by Rent Adjustment Staff during the hearings they conduct, and in appeal hearings before the Rent Board, Centro Legal is providing effective representation to low income tenants. Overall, management of the program and representation is satisfactory, with room for improvement. When low-income landlords sought assistance from VLSC; they were not seeking help for Rent Adjustment problems; rather they were requesting assistance with leases, eviction, or other problems. In staff's opinion, based on a program audit, Bay Area Legal Aid runs a very professional operation and provided top quality legal services.

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.

No new Petitions for Writ of Administrative Review of Rent Board decisions or other litigation were filed during FY 08-09. Although one Petition process was begun and papers were served on the RAP, no petition has been filed in Court. There is only one Rent Adjustment related case pending in Court at present.

Three major cases ended with decisions favorable to the City during the fiscal year. *Knight v. City of Oakland*, the last of the older cases from 1200 Lakeshore was dismissed, in effect affirming the Rent Board's decision. In *Old Mother's Cookies v. City of Oakland*, a live work property claimed exempt as new construction, the California Court of Appeal affirmed the Rent Board's decision. *Kim, et al. v. City of Oakland* was a challenge to the validity of the Just Cause for Eviction Ordinance based on preemption by California statutes. Most relief requested was denied by the Alameda County Superior Court, although some isolated provisions of the Ordinance were stricken. The trial court decision was upheld by the California Court of Appeal. Mr. Kim requested the California Supreme Court review the Court for Appeals decision, but the Supreme Court denied the request.

Vidor v. City of Oakland (Vulcan Properties) is a case in which tenants challenged a live-work conversion exempted as new construction. The case is pending in the California First District Court of Appeal. It has been fully briefed. The date for oral argument has not been set.

Brown v. City of Oakland (Hinh). In April 2009, Petitioner (tenant) served a writ petition challenging Rent Board decision on the City, but never filed the writ petition with the Superior Court. However, the petitioner filed a request for the Administrative Record in Court. The City Attorney's office understands that the case is not pending.

Outreach Activities

In FY 08-09, Rent Adjustment Staff participated in the following outreach activities:

Public Presentations

- September 17, 2008--Rick Nemcik Cruz spoke at a Section 8 workshop sponsored by the Oakland Housing Authority.
- October 8, 2008--Rick Nemcik Cruz and Connie Taylor trained advocates from Centro Legal de la Raza and Bay Area Legal Aid.
- January 24, 2009--Rick Nemcik Cruz and Stephen Kasdin spoke at the First AME Church Community Social Outreach Day
- April 18, 2009--Rick Nemcik-Cruz attended the Rental Housing Association of Northern Alameda County Trade Show and answered exhibitor and attendee questions.
- April 21, 2009--Connie Taylor spoke to the Rental Housing Association Lady's Auxiliary at Scott's restaurant in Jack London Square.
- May 16, 2009--Richard Illgen conducted a public workshop for landlords with the Oakland Housing Authority.
- On May 27, 2009 Rick Nemcik Cruz spoke at a conference for landlord attorneys at the Alameda County Bar Association.

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 Community Development Block Grant (CDBG) funds that offer services related to housing. These CDBG recipients have publicized the Rent Adjustment Program, through both mailings and community programs.

Planned Outreach Activities

- Creating Rent Adjustment Facebook, YouTube, and Twitter pages;
- An email to real estate brokers and agents explaining their duty to ascertain/disclose the rent adjustment status of residential rental housing properties (in process);
- Preparation of a quick start guide for new Oakland residential landlords (in process);
- Placing posters advertising the availability of Rent Adjustment in AC Transit buses;

- Purchasing an advertisement for the Rent Adjustment Program on Google offering access to Rent Adjustment when hits on relevant word combinations are received;
- 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;

All of the planned outreach activities are being done in cooperation with the Marketing Department.

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 charges⁴ that have a minimal impact on the Rent Adjustment budget. Table 4 shows budgeted and actual fee revenue from FY 03-04 to the present, as 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
YF06-07	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
	9,995,750.00	10,319,603.09

The Rent Adjustment Program has covered its costs since implementation of the Rental Property Service Fee.

⁴ These totaled less that \$2,500 for FY 07-08.

Expenditures

A complete list of the program expenditures for FY 08-09 is shown in Table 5. The largest expenditures are personnel costs. The budgeted expenditures include unspent but designated funds for hiring two additional staff, the low-income representation grant, billing software and docket management software.

Table 5
Rent Adjustment Program Expenditures Report
Fiscal Year 2008-09

	Budget	Expenditures	Balance
City Attorney			
Salary & Benefits	\$330,124	\$330,124	\$0
Business License Tax			
Salary & Benefits	\$157,359	\$168,415	(\$11,056)
O & M:			
Temp Personnel	\$885	\$10,982	(\$10,097)
Postage & Mailing	\$10,000	\$10,000	\$0
Minor Computer Hardware	\$73,236	\$73,236	\$0
Data Processing Services	\$13,205	\$13,486	(\$281)
Printing & Duplicating	\$24,795	\$9,813	\$14,982
Other	\$6,310	\$1,554	\$4,756
Total: Business License Tax	\$285,790	\$287,486	(\$1,696)
Rent Adjustment Program – CEDA			
Salary & Benefits	\$1,026,228	\$957,968	\$68,261
Overhead	\$131,673	\$128,108	\$3,565
Subtotal - Salary & Overhead	\$1,157,901	\$1,086,076	\$71,826
O & M			
Printing and Duplicating	\$10,000	\$9,847	\$153
Low Income Representation Program	\$100,000	\$92,843	\$7,157
Temporary Personnel	\$17,000	\$0	\$17,000
Minor Computer Hardware & Software	\$10,004	\$9,496	\$509
Postage & Mailing	\$24,000		\$24,000
Professional Services	\$27,000		\$27,000
Misc. Operating	\$59,198	\$12,725	\$46,473
Subtotal O&M	\$247,202	\$124,911	\$122,291
CEDA - Total	\$1,405,104	\$1,210,987	\$194,117
Program Total Expenditures	\$2,021,018	\$1,828,596	\$192,422

The only encumbrance (not noted on Table 5) is \$7,157 for the June 2009 periodic payment for the Low Income Representation Program. The invoice has been submitted, but was not paid during FY08-09.

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Program Budget

The adopted budget for FY 09-10 reduces expenditures, principally for the City Attorney and in Operating and Maintenance expenses from the FY 08-09 budget as required by the reduced revenue.

Table 6

Rent Adjustment Program FY 09-10 Budget

	<u>Amount</u>
Salaries	486,940
Benefits	486,420
Dept. Overhead	132,600
Low Income Rep	100,000
Operating Expenses	318,110
Subtotal	1,524,070
City Attorney (total)	104,880
Business License Tax (personnel)	179,980
Total Budget	<u>1,808,930</u>

Staff

The list below shows of all authorized staff being charged to the Rent Adjustment Project (restricted revenue) on June 30, 2009.

Rent Adjustment (9 FTE)	
Program Manager	1
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
<u>Legal Admin. Asst.</u>	<u>.5</u>
Total FTE	12.5

Vacant Positions

Recruitment for the vacant Program Analyst II position is underway and the 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,

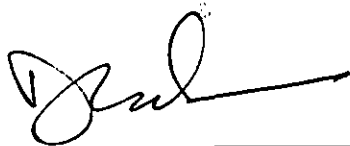


Walter S. Cohen, Director
Community and Economic Development Agency

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

Prepared by:
Rick Nemcik-Cruz, Manager
Connie Taylor, Program Analyst III
Stephen Kasdin, Hearing Officer
Rent Adjustment Program
Housing and Community Development

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator