

CITY OF OAKLAND

AGENDA REPORT

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OFFICE OF THE CITY CLERK
OAKLAND
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TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: September 23, 2008

RE: **Annual Report of the Rent Adjustment Program for Fiscal Year 2007-2008**

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. Although the City Council eliminated the requirement of an annual report on the operations of the Housing Residential Rent and Relocation Board and the Rent adjustment Program in November 2007 as part of the amendments to Chapter 15.08 of the Municipal Code, the information is again being provided for FY 2007-2008 to provide detailed information on use of the fee revenue.

In November, 2007, the City Council increased the annual Rent Program Service Fee by \$6 to \$30 per unit per year with one-half of the fee passed on to tenants. There was a corresponding increase in revenues resulting from the increase in the annual Rent Program Service Fee. The number of petitions and public contact increased significantly.

FISCAL IMPACT

This report makes no recommendations for changes and 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 07-08, staff met with 3,201 members of the public and provided information and referrals in person. This is a 60% increase in direct public contact from FY 06-07. Staff responded to about 13,000 phone inquiries, an increase of approximately 20% over last fiscal year, with only one complaint. Staff also responded to about 400 email inquiries. There was a substantial increase in public

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contact with Rent Adjustment Staff members during the last fiscal year, in part due to an increased number of inquiries regarding foreclosure, Just Cause and evictions.

Fee bill inquiries for FY07-08 were handled separately by the Business License Tax Section and again required temporary staffing in addition to all program staff to field the many calls received during the billing cycle.

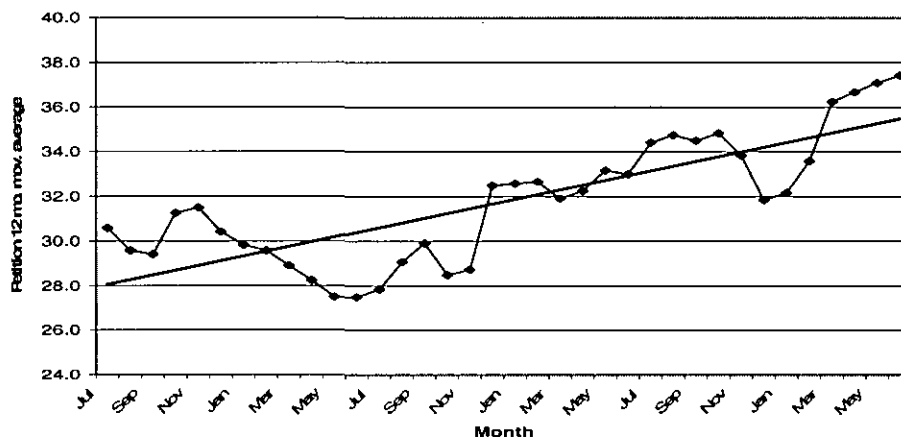
Petitions and Ellis Act Applications

The number of petitions and applications filed with the Rent Adjustment Program (RAP) has gradually increased since June 2006 after a decrease from FY 00-01 through most of FY 05-06. The upward trend began during late FY 05-06 and has continued through FY 07-08. The number of petitions and applications filed in FY 07-08 increased by 13% (from 396 to 448) when compared with FY 06-07. The RAP received 445 Rent Adjustment Petitions and three applications to remove properties from the rental market (Ellis Act), a marked decrease in Ellis filings from eight applications the year before. Ellis filings have not yet had a significant impact on the rental housing market in Oakland. For comparison, San Francisco, with only twice Oakland’s population had 330 Ellis Act filings during FY 06-07.¹

The following chart shows the upward trend in petitions filed. This trend of increasing petitions has continued into the new fiscal year with a 50% increase (from 33 to 47) in July 2007 as compared to July 2006. The number of petitions being filed is larger than at any time since the end of the “dot-com” boom in FY 02-03. It is anticipated that petition filings will continue to increase slowly through the first half of FY 08-09.

Table 1

Trend in Petitions and Applications Filed—
 July 2005 - June 2008



¹ http://www.sfgov.org/site/uploadedfiles/rentboard/Annual_Report/RB%20Statistical%20Report%202006-2007.pdf, p.1.

Table 2 shows the types of claims made by Rent Adjustment petitioners, both landlords and tenants, on the petitions filed during FY 07-08. 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 2

CLAIM ALLEGED	NUMBER	% OF PETITIONS FILED
Unjustified increase	311	69.4%
Decreased or inadequate housing services	213	47.5%
No RAP notice with rent increase	139	31.0%
No RAP notice at beginning of tenancy	134	29.9%
No summary of justification	38	8.5%
Two increases within 12 months	38	8.5%
Landlord request for certificate of exemption	15	3.3%
Landlord request for pre-approval of increase	8	1.8%
Improper increase under Civil Code §1954.50, et seq.	6	1.3%
Landlord request for extension of time to complete repairs	5	1.1%

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. By far, most petitions are filed alleging an unjustified increase greater than the annual allowable CPI rate (69.4% of petitions). This is consistent with staff's experience that most petitions are filed when a tenant perceives a rent increase is unfair.

A claim for decreased or inadequate housing services is the second most common complaint (47.5% 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 services most commonly alleged as "lost" relate to ineffective weatherproofing (leaking roofs and windows), structural damage to the property, non-

functioning appliances (including heating equipment), loss of parking, transfer of utilities costs from landlord to tenant, loss of use of yard space and loss of storage.

Landlords who increase rents in violation of the Rent Adjustment Ordinance often do not comply with the requirement to provide the tenant with a form notice of their rights under Rent Adjustment. Proper notice to tenants by landlords of tenants' rights as required by Ordinance, at both the beginning of the tenancy and, together with a notice of rent increase, remains a significant issue (29.9% and 31.0 % of petitions, respectively).

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 (1.8% of petitions) sought pre-approval due to their particular circumstances. The Rent Adjustment amendments passed by the City Council in 2007 allows landlords to petition for a certificate of exemption for the first time. This resulted in 15 such petitions (3.3% of petitions).

The relative frequency of the types of claims made during FY 07-08 is basically unchanged from FY 06-07.

Petition Processing

Staff maintained a petition backlog of near zero during most of FY 07-08. The average time from petition filing through staff decision for petitions filed in FY 07-08 was 71 days. This is an increase in processing time for the second consecutive fiscal year. As the number and complexity of petitions filed increases, processing times will increase until newly authorized staff are hired and trained.

During FY 07-08 the Rent Adjustment Program, including the Board, resolved 445 cases. Table 3 shows how the cases were resolved. Tenants ("T" on the chart) prevailed in 61% of the cases, landlords ("LL" on the chart) in 39%. This is a significant increase in the proportion of cases resolved in favor of landlords compared to last fiscal year (25%).

Table 3

Final Decision	Total	Favor LL	Favor T
Pending	124	--	--
Administrative Decision	41	9	32
Appeal Decision	21	10	11
Hearing Decision	109	41	68
Involuntary Dismissal	65	58	7

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Mediation Agreement	23		23
Voluntary Dismissal	62	6	56
	445	124	197

In addition to the increase in the number of petitions filed, the cases filed with the Rent Adjustment Program are increasingly litigious over the last fiscal year, with extensively litigated debt service cases in the forefront. Parties requested mediation in fewer cases. The proportion of cases that reach hearing has increased, and the success rate for mediations has declined. Many cases were brought over relatively small rent increases. These changes have increased staff workload.

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 8,848 eviction notices during FY 07-08, a decrease of about 16% from the 10,590 notices received last year (FY 06-07), and roughly 5% fewer than the number of eviction notices received two years ago (9,417 in FY 05-06).

The Alameda County Superior Court estimates that 3,566 eviction actions were filed alleging limited jurisdiction² for rental properties located in Oakland during FY 07-08. This is a 30% increase from the 2,755 filed in FY 06-07. Much of this increase may be due to foreclosure-related activity.

Applications Pursuant to the Ellis Act

The City Council passed protections for tenants in buildings removed from the rental housing market pursuant to the state Ellis Act³ during FY 03-04 and charged the Rent Adjustment Program with its implementation. During FY 07-08, three applications were filed to remove 11 total units from the rental housing market. This is a very low number and a substantial decrease from last year. The properties "Ellised" during FY 07-08 were one single family house, and two, 4-unit rental properties. There is no indication of a rush to remove units from the rental housing market or to attempt to bypass rent or eviction controls by removing units from the market. The most common use of the Ellis Act in Oakland is to empty units for owner occupancy, including purchase of small residential buildings for occupancy by multiple owners as tenants-in-common. Removal of rental units from the market using the Ellis Act does not pose a significant reduction in affordable rental housing in Oakland, as it does in San Francisco and some other jurisdictions.

² Limited jurisdiction includes cases in which the amount in controversy does not exceed \$25,000. It is a fair inference that most of the limited jurisdiction cases were residential, rather than commercial, evictions.

³ Government Code §7060, et seq.

Outreach Activities

In FY 07-08, Rent Adjustment Staff participated in the following outreach activities:

Public Presentations:

July 2007	Shared table at Black Expo with other Housing divisions
October 17, 2007	Presentation to a luncheon meeting of the Oakland Lions Club
November 2007 – January 2008	Participation in producing and distributing public service announcement and print campaign to inform tenants of rights in foreclosure situation
December 13, 2007	Interview for Comcast “Newsmakers” re: foreclosures and tenants
December 18, 2007	Appearance on the KPFA morning show re: foreclosures and tenants
January 2008	Coordination of an appearance by Rent Board member at Rental Housing Association Auxiliary luncheon.
March 15, 2008	Participation on panel at Rental Housing Association trade fair
April 1, 2008	Presentation at California Prudential Realty, Grand Avenue office.
April 4, 2008	Presentation to meeting of the Hispanic Realtors of Alameda County.
April 30, 2008	Staff presentation at Oakland Housing Authority
May 2, 2008	Staff presentation to a luncheon meeting of Hispanic Realtors of Alameda County
June 14, 2008	Staff participation in the Citywide Housing Fair: <ul style="list-style-type: none">• Staffed a public information booth• Coordinated and presented two rent adjustment workshops and one eviction workshop to the public

Direct Mail and Informational Handouts:

In July 2007, the Rent Adjustment Program arranged for the design and printing of colorful, large-format information postcards. The wording on one side of the postcard is in English, with the reverse side in Spanish. These postcards were distributed to non-profit community organizations for distribution to the public.

The Rent Adjustment Program arranged for the production and mailing of a glossy, fold-over informational brochure – in English, Spanish, Cantonese and Vietnamese – to every multi-unit address in the City (about 90,000). The brochure was mailed in September 2007.

PROGRAM DESCRIPTION

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

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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.

The Business License Tax Section of the Revenue Division of the Finance and Management Agency does the billing for the RAP. For FY 2007-2008, Business License Tax billed for 21,100 properties, a small reduction from last fiscal year; for which 14,608 responses were received, including claims of exemption. The revenue estimate for FY 07-08 was \$2 million. Actual revenue collected during FY 07-08 was \$1.82 million, about \$180,000 less than projected. The difference is attributed to increased non-compliance when compared to last year. Table 4 shows fee revenue collected during the last four fiscal years, through June 30, 2008. These figures represent the total received, subject to minor adjustments for miscellaneous debits and credits, principally dishonored checks.

Table 4

Rent Program Revenue by Fiscal Years 04-05 through 07-08

	04-05	05-06	06-07	07-08
Revenue	\$1,589,468.63	\$1,757,286.92	\$ 1,580,125.68	\$ 1,826,694.67

Compliance and Collections

There are no statistics on the precise number of rented housing units in Oakland at any given time. The 2000 Census reported a total of 88,000 rental units in Oakland. After subtracting those units that are exempt from the Fee (e.g., units built after 1982 and Housing Authority units), the Business License Tax Section billed 76,946 units identified as having been rented the year before or reported as rented by the owner during the year. Fees were paid for 52,483 units. Delinquent invoices for 1,050 properties were mailed to the owners of record in July with an aggregate billing of \$1,149,060.43. Past experience indicates that a substantial number of “delinquent” accounts are for units exempt from paying the user fee in which the owner did not respond to the billing.

The Business License Tax Section concentrates on collecting larger accounts. The cost of collecting a small debt exceeds the potential recovery and is not cost-effective. The Revenue Division only sends to Collections amounts of \$150 or more. Delinquent accounts under \$150 continue to accumulate penalties and interest and receive yearly invoices until resolved or the amount owed exceeds \$150. In July 2008, Business License Tax collected about \$120,000 in delinquent fees, accounted as income in FY 08-09.

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

Expenditures

A complete list of the program expenditures for FY 07-08 is shown below. The largest expenditures are personnel costs. Other major expenditures include the low income representation contract, updated software costs, and bank charges. The budgeted expenditures include unspent but designated funds for hiring two additional staff, the low-income representation grant, billing software and docket management software. At the end of FY 07-08, Rent Adjustment had a carry forward of approximately \$567,000. The unexpended funds resulted from delays in filling the Program Analyst III position (\$120,000), an unfilled Office Assistant I position (\$42,000) and operation of the low-income representation program for only two months due to delays in renewing the contract (\$100,000). Remaining unspent funds are being carried forward to pay future anticipated increases in personnel costs.

Rent Adjustment Program Expenditures Report
 Fiscal Year 2007-08

	<u>Budget</u>	<u>Expenditures</u>	<u>Balance</u>
City Attorney	\$ 335,952	\$ 335,952	\$ -
FMA -Rent Adjustment	\$ 418,183	\$ 288,520	\$ 129,663 ⁵
CEDA - Rent Adjustment Program			
Salary & Benefits	\$ 1,013,142	\$ 962,180	\$ 50,962
Overhead	\$ 134,981	\$ 131,041	\$ 3,939
Total Salary & Overhead	\$ 1,148,123	\$ 1,093,221	\$ 54,902
Operations & Maintenance			
Temporary Personnel Services	\$ 16,802		\$ 16,802
Postage & Mailing	\$ 49,506	\$ 26,461	\$ 23,045
Printing and Duplicating	\$ 45,024	\$ -	\$ 45,024
Professional Services Contract	\$ 31,843	\$ 31,843	\$ -
Minor Computer Hardware & Software	\$ 11,090	\$ 5,210	\$ 5,880
Computer Software – case management	\$ 50,000		\$ 50,000
Misc. Operating	\$ 448,018	\$ 21,173	\$ 426,845
Total Operations & Maintenance	\$ 652,283	\$ 84,687	\$ 567,596 ⁶
Total Rent Adjustment Program (CEDA)	\$ 1,800,406	\$ 1,177,908	\$ 622,498
Total Program Expenditures	\$ 2,554,541	\$ 1,802,380	\$ 752,161

⁵ This amount includes funds committed, but unexpended, for new billing software and personnel costs associated with the change to the new system.

⁶ This amount includes unspent funds for two positions authorized by the City Council, which are in the process of being filled, and the Low Income Representation Program, that renewed operations in July 2008.

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Program Budget

The adopted budget for FY 08-09 is generally similar to the FY 07-08 budget.

Table 5

Rent Adjustment Program Budget
 Fiscal Year 2008-09

	<u>Current Year</u> <u>Appropriation</u>	<u>Carry Forward</u>	<u>Total Budget</u>
City Attorney	\$ 346,663		\$ 346,663
FMA -Rent Adjustment			
Salary & Benefits	\$ 163,601		
Temporary Personnel			
O&M Services		\$ 43,760	
Other		\$ 85,908	
Total FMA Budget	\$ 163,601	\$ 129,668	\$ 293,269
CEDA - Rent Adjustment Program			
Salary & Benefits	\$ 1,007,097	\$ 46,516	
Overhead	\$ 136,387	\$ 3,334	
Total Salary & Overhead	\$ 1,143,484	\$ 49,851	
Operations & Maintenance			
Temporary Personnel			
Services		\$ 16,802	
Postage & Mailing		\$ 23,045	
Printing and Duplicating		\$ 27,000	
		\$ 100,000	
Data Processing Services		\$ 17,300	
Computer Software for			
Revenue		\$ 50,000	
Misc. Operating	\$ 246,590	\$ 328,828	
Total CEDA Budget	\$ 1,390,074	\$ 612,826	\$ 2,002,900
Total RAP Budget	\$ 1,900,338	\$ 742,494	\$ 2,642,832

Low Income Representation Program

The low-income representation program began 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. The grant contract approval process has been concluded, the contract signed and operations began in July 2008. A training session for staff members of the non-profit service providers was conducted by the RAP

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staff. In the past, the representation provided to Oakland landlords and tenants has been effective. Staff looks forward to another successful year of operation of this program.

Litigation in Court

Although litigation is conducted by the City Attorney's Office, RAP staff also participate. 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.

Four new Petitions for Writ of Administrative Review of Rent Board decisions were filed during FY 07-08. This is a decrease from the seven new cases filed in FY 06-07 and similar to the five cases filed in FY 05-06. There are seven cases pending in court at present. Four are in the Superior Court. One is in the Appellate Division of the Superior Court. Two are in the Court of Appeal. Two of the cases involve challenges to the Just Cause for Eviction Ordinance.

Staffing

Below is a list of all the authorized staff charged to Rent Adjustment restricted revenue as of June 30, 2008:

Rent Adjustment (9 FTE)	
Program Manager	(1)
Hearing Officer	(2)
Program Analyst III	(1)(vacant)
Program Analyst II	(2)
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>(1)</u>
Total FTE	13.0

Hiring Process

The vacant Program Analyst III position is in the process of being filled. The Office Assistant I position is vacant at the present time. It is anticipated that the position will be filled in the near future.

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 in order 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.

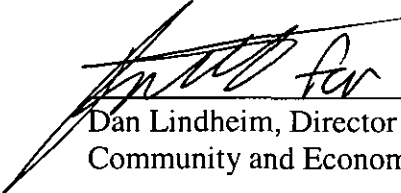
RECOMMENDATION(S) AND RATIONALE

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

No action is requested of the City Council at this time.

Respectfully submitted,

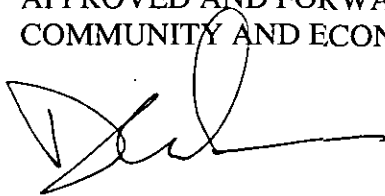


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APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator

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