

**CITY OF OAKLAND
AGENDA REPORT**

OFFICE OF THE CITY CLERK
OAKLAND

2005 SEP 14 PM 1:03

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: September 27, 2005

RE: **ANNUAL REPORT REGARDING RENT ADJUSTMENT PROGRAM INCOME, COSTS AND OPERATIONS FOR FISCAL YEAR 2004-2005 AND ANTICIPATED COSTS FOR FISCAL YEAR 2005-2006 AND RECOMMENDATION TO EXTEND THE CURRENT FEE AT \$24 PER UNIT.**

SUMMARY

This report is required by the OMC Sections 8.22.500.A and 15.08.100.C.6 . As mandated by the City Council, it provides information on the operations of the Housing Residential Rent and Relocation Board and the utilization of the Rental Property Service Fee.

The most significant issues are: implementation of the low-income representation program; the program budget surplus; planned transfer of billing functions; maintenance of a near zero backlog in processing petitions; and, planned changes to the Rent Adjustment Ordinance and Regulations.

FISCAL IMPACT

Staff recommends that the fee be maintained at \$24 per unit per year. The \$24/unit per year was anticipated in the revenues estimates adopted by the City Council in the FY05-07 Policy Budget. This report has no fiscal impact.

BACKGROUND

When the Rent Adjustment Ordinance (hereinafter "Ordinance") was revised by the City Council in January 2002, with certain provisions effective July 1, 2002, the revisions included imposition of a \$24 per unit service fee to fund the operations of the Rent Adjustment Program. The City Council also mandated that staff provide a report each fiscal year on the cost and anticipated expense of operations of the Rent Adjustment Program to assess the effectiveness and amount of the user service fee.

In 2003, by the Rent Program Service Fee Ordinance, the Fee was continued by the Council for two more years through the end of the current budget cycle, June 30, 2005 and thereafter, the fee is considered by the Council as part of the Master Fee Schedule that is adopted as part of the City's budget process. The fee is paid by landlords of all units covered by either the Rent Adjustment Ordinance or the Just Cause for Eviction Ordinance.

Item: _____
CEDA Committee
September 27, 2005

KEY ISSUES AND IMPACTS

A discussion of the key issues follows. The primary concerns and accomplishments of the Rent Adjustment Program identified by staff are also discussed in this section.

I. FISCAL

FEE BILLING

INCREASED REVENUES

The steps taken by Rent Adjustment Program staff to improve the billing process have produced increased revenues. Entry of payment and exemption data is current through June 30, 2005.

UNITS BILLED

For FY 2004-2005, the Rent Program billed 19,733 properties with 70,235 units. The 2000 Census reported 88,305 rental units. The number of units billed is approximately 4,000 less than last fiscal year. Most of the reduction is due to permanently exempt properties that were removed from billing status. Most of these reflect corrections to existing data rather than new exemptions. Based on Staff's observations, many of these are single family homes or smaller rental properties that have been purchased for owner-occupancy and are no longer rental properties.

In conformity with the Fee Ordinance, beginning this fiscal year the due date for the Rental Property Service Fee was changed to January 1. The change created some confusion among landlords with the Business License Tax that is due on the same day. Owners of approximately 54,000 units have paid the current year's fee as of June 30, 2005. 1843 units were claimed exempt.

For increased accuracy and efficiency in billing and coordination and elimination of duplicate efforts by Business License Tax and Rent Adjustment, responsibility for the Rental Property Service Fee billing is being transferred to the Finance and Management Agency. It is expected that the change will be complete for the billing for FY05-06.

FY04-05

REVENUES

Revenues for FY 04-05 are \$1.89M as compared to \$1.22M for all of FY 03-04. Due to problems with the billing subcontractor, a substantial portion of the FY03-04 revenues were

received in FY04-05. The FY 04-05 number of \$1.89M includes about \$300,000 attributable to FY03-04. After adjusting for this posting problem, still the FY04-05 revenues increased about \$300,000 when compared to the prior fiscal year. Much of the increase came from owners who paid for the first time.

The budgeted revenues for FY 04-05 were \$1.4M. Actual revenues for FY 04-05 were about \$1.5M. It is anticipated that revenues will remain stable for FY 05-06 at about \$1.5M. The chart below shows Fee revenue collected by the Rent Adjustment Program since the fee was instituted through June 30, 2005. These figures represent the total bank deposits and are subject to small adjustments for returned checks and other miscellaneous credits.

01-02		02-03		03-04		04-05	Actual
Jul	#N/A	Jul	\$11,965.32	Jul	\$21,456.40	Jul	\$ 52,782.84
Aug	#N/A	Aug	\$ 3,816.00	Aug	\$5,548.36	Aug	\$ 396,698.67
Sep	#N/A	Sep	\$2,053.26	Sep	\$1,445.41	Sep	\$ 61,222.00
Oct	#N/A	Oct	\$13,269.48	Oct	\$32,269.00	Oct	\$ 19,968.43
Nov	#N/A	Nov	\$2,058.00	Nov	\$11,512.74	Nov	\$ 29,839.79
Dec	#N/A	Dec	\$27,900.00	Dec	\$45,945.82	Dec	\$ 27,693.86
Jan	#N/A	Jan	\$76,889.70	Jan	\$149,856.16	Jan	\$ 397,238.18
Feb	#N/A	Feb	\$39,882.40	Feb	\$51,872.00	Feb	\$ 593,865.47
Mar	\$433,528.66	Mar	\$361,669.20	Mar	\$320,831.75	Mar	\$ 243,084.50
Apr	\$477,651.00	Apr	\$438,912.38	Apr	\$308,105.70	Apr	\$ 48,139.89
May	\$157,516.94	May	\$104,189.80	May	\$238,482.68	May	\$ 12,405.46
Jun	\$9,648.52	Jun	\$21,699.24	Jun	\$33,136.80	Jun	\$ 6,529.54
	\$1,078,345.12		\$1,104,304.78		\$1,220,462.82		\$1,889,468.63

EXPENDITURES

A complete list of the program expenditures for FY04-05 is shown below. As expected, the largest expenditures are personnel costs and overhead, including charges by the City Attorney’s Office, that are more than 90% of the program costs in FY04-05. Other large charges either budgeted or actual, are the Low Income Representation program, outside vendor costs or billing and collecting the user fees (including bank charges for the lockbox and document scanning), and the costs of printing and mailing the annual bills. There are increases in costs for duplication, bank charges and departmental overhead due to increased vendor pricing. The amount for duplication in the FY04-05 budget includes the cost of printing the fee bills, as well as all in-house duplication.

PROGRAM EXPENDITURES FY 04-05						
			budgeted	encumbered	actual	available
	City Attorney	subtotal	\$275,226.00	\$0.00	\$275,226.00	\$0.00
	Rent Adjustment	subtotal	\$759,003.15	\$0.00	\$775,570.43	(\$16,567.28)
Salary and Benefits			\$1,034,229.15	\$0.00	\$1,050,796.43	(\$16,567.28)
Supplies and Materials			\$5,634.57	\$208.92	\$3,908.83	\$1,516.82
Postage & Equip. Repair			\$6,347.84	\$436.08	\$5,639.03	\$272.73
	Contract contingencies	subtotal	\$100,000.00	\$0.00	\$0.00	\$100,000.00
	Printing and mailing bills	subtotal	\$8,904.88	\$1,628.99	\$6,327.14	\$948.75
	Temporary personnel	subtotal	\$52,450.00	\$0.00	\$59,954.54	(\$7,504.54)
	Billing software	subtotal	\$45,000.00	\$0.00	\$0.00	\$45,000.00
	Low income rep program	subtotal	\$51,000.00	\$50,000.00	\$896.17	\$103.83
Contract Services			\$257,354.88	\$51,628.99	\$67,177.85	\$138,548.04
Education & Prof. Dues			\$4,500.00	\$0.00	\$2,263.34	\$2,236.66
Duplication & CI Assessment			\$12,602.16	\$0.00	\$13,925.20	(\$1,323.04)
Bank & Dept. Overhead			\$134,738.85	\$0.00	\$144,022.24	(\$9283.39)
		TOTAL	\$1,455,407.45	\$52,273.99	\$1,287,732.92	\$115,400.54

PROGRAM BUDGET

The adopted budget for FY05-06 is similar to the FY 04-05 budget. The major differences are a more than 23% increase in personnel costs to comply with union contract obligations. Staff was reduced by 2 FTE to balance the budget.

		PROGRAM BUDGET FY 05-06	
	City Attorney	subtotal	\$281,604
	Rent Adjustment	subtotal	\$974,668
Salary and Benefits			\$1,259,272.00
Supplies and Materials			\$13,208.92
Postage & Equip. Repair			\$3,436.08
Contract Services			\$60,000.00
Education & Prof. Dues			\$4,500.00
Duplication & Printing			\$9,629.99
Dept. Overhead			\$132,818.00
Misc. & Reserve			\$17,062.00
Prior year carry forward			(\$115,400.54)
		TOTALS	\$1,384,526.45

The reduction in contract services for FY05-06 is due to the elimination of temporary personnel costs and a one-time charge for billing software budgeted in FY04-05, but not yet spent, that is included in the carry forward. The rest of the prior year surplus will be used to defray FY06-07 program cost increases.

STAFFING

Rent Adjustment Program staff is:

Program Manager	1
Hearing Officer	3 ¹
Urban Economic Analyst	1 ²
Program Analyst	2
Administrative Assistant I	2
Accountant III	1 ³
Account Clerk II	1 ⁴
FTE in City Attorney's	1.5

The Rent Adjustment staffing will be reduced by two FTE as the positions of Administrative Assistant II and Urban Economic Analyst II are eliminated as they become vacant in order to balance the Program budget until additional revenues are generated. The two billing positions, Accountant III and Account Clerk II, will be transferred to the Fiscal and Management Agency to do the billing, effective September 15, 2005.

II. PROGRAM OPERATIONS

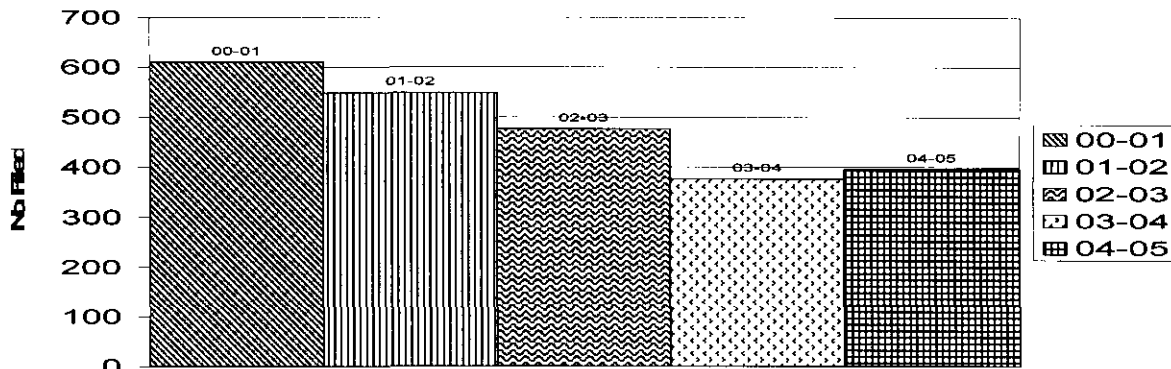
RENT ADJUSTMENT

PETITIONS

Because large portions of the Program's workload are determined by the petitions received, the number of petition filed is closely tracked by Staff. The petitions filed in FY04-05 increased slightly from the prior fiscal year.

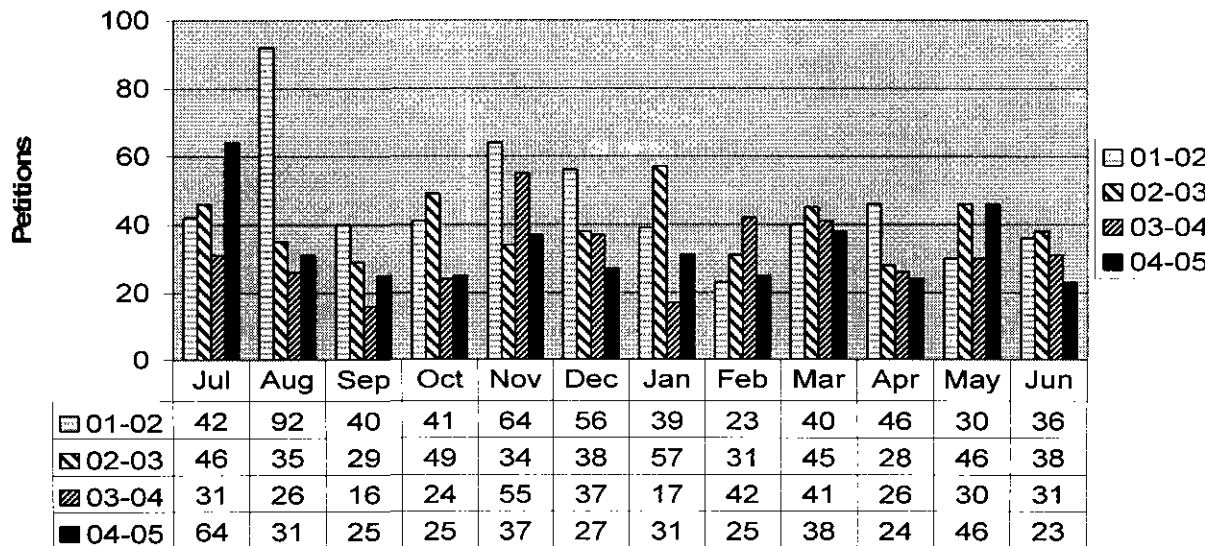
¹ One Hearing Officer is full-time, two are on call contract employees.
² This position ends in October 2005.
³ This position is vacant pending transfer of the billing to FMA.
⁴ This position is vacant pending transfer of the billing to FMA.

Petitions by Fiscal Year



The rate of decrease in petitions filed slowed during the last 6 months of 2004 and now seems to have stabilized at about 400 petitions per year. Extending the present rate of petitions filed through the end of the year, about 380 petitions will be filed in calendar year 2005. 187 petitions were filed during the first 6 months of calendar year 2005. That is identical to the number filed during the first 6 months of 2004. See the following chart for the totals by month.

Petitions filed by Month



The number of petitions filed with the Rent Adjustment Program approximately doubled each year from 1998 to 2001 during the run-up in Oakland rental housing prices. The number of petitions must be some function of the number of rent increases given. Any substantial increase in market rents in Oakland seems likely to be followed by a substantial increase in the number of petitions. The converse is also appears to be true. The number of petitions filed from July-December 2003 fell significantly as residential rents fell. However, the

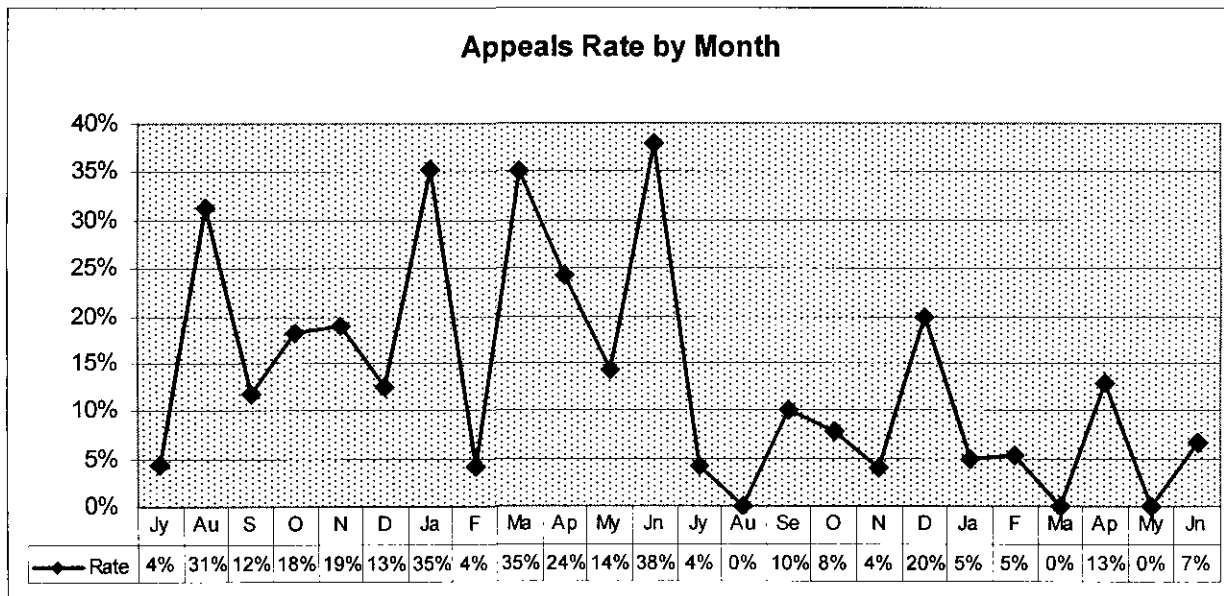
number of petitions filed during FY04-05 (396) increased slightly from FY03-04 (376), as petitions filed from July-December 2004 increased.

NO HEARINGS BACKLOG

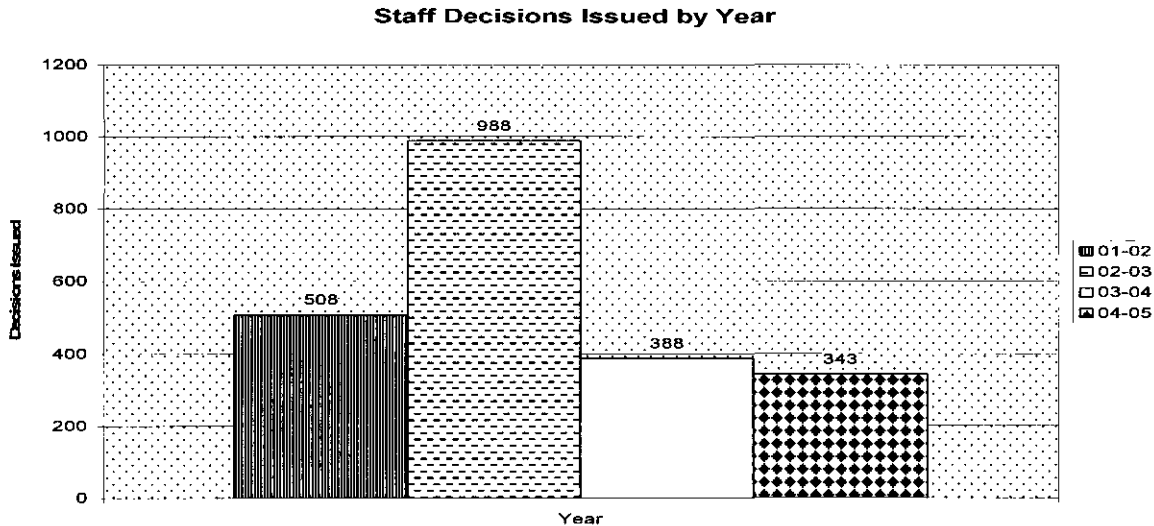
Staff has maintained the backlog to near zero during FY 04-05. The most important factors in the lack of a backlog are improved petition processing times, closing older cases, a reduced appeals rate, and a substantial rate of settlements.

The average time from petition filing through Staff Decision for FY 04-05 was 67 days, a 40% improvement from 111 days during FY03-04. Both the number of decisions and the time from petition filing to decision have decreased as the last of the older cases have been finished.

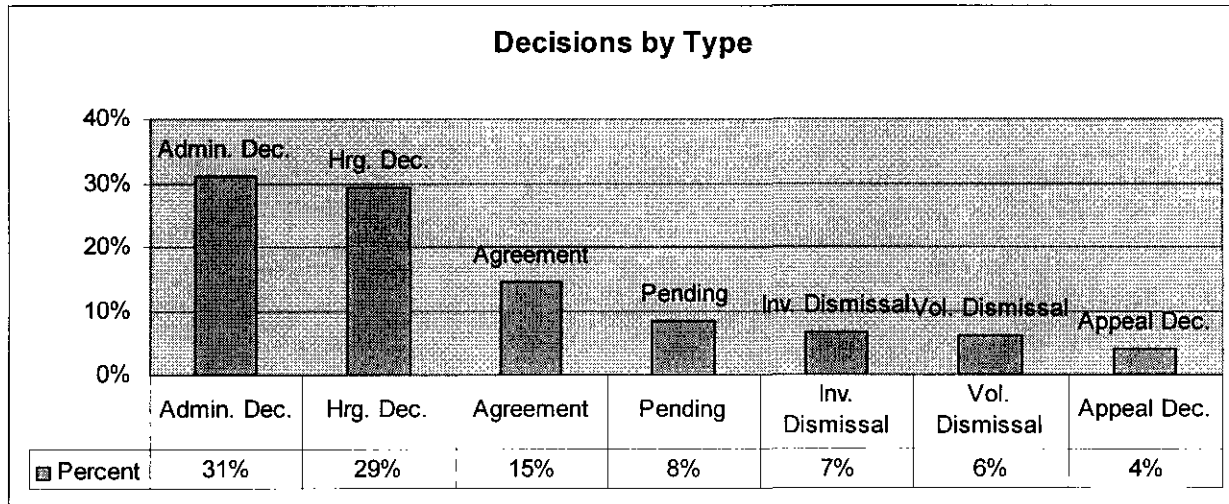
The rate of Staff decisions appealed to the Rent Board declined during FY 04-05, from 24% to 9%. During three months out of the year, there were no appeals filed at all. In addition, the two properties that generated almost 2/3 of the appeals in FY03-04 (74 of the 118 appeals filed) generated only 6 appeals in FY 04-05. The number of disputes settled between landlords and tenants has also been a significant factor in the reduction of the appeals backlog as settled cases are not appealed.



A comparison of the number of decisions issued by staff over the last four years follows. The reduction in the number of decisions issued reflects the reduced backlog of cases to be decided.



The percentage of cases resolved through each type of decision is shown on the next chart.



APPEALS BACKLOG REDUCED AGAIN

During FY04-05, Staff Decisions in 64 cases were appealed to the Rent Board, compared with 118 cases appealed the year before. During FY04-05 the Board issued 73 appeal decisions. For comparison, during FY 03-04, the Board issued 143 appeal decisions. Despite the decrease in decisions, the number of cases awaiting an appeal decision has been reduced substantially—from about 30 at the beginning of FY04-05 to about 18 pending appeals on June 30, 2005, an improvement of 40%. The improvement is due to the 46% decrease in the number of appeals filed.

The improvement notwithstanding, the continuing appeals backlog is disappointing. Almost half of the Rent Board meetings were canceled during the year for lack of a quorum, either general or special. The lack of Rent Board meetings made elimination of the appeals backlog impossible. The average time from filing of a petition to mailing of the appeal decision was 356 days, an unacceptably long time.

Assuming the rate of appeals filed stays constant, and that alternates are added to the Rent Board, the appeals backlog could be completely eliminated by the end of November 2005. With the enlarged Rent Board, if the present trends continue, by the end of FY04-05, the Rent Adjustment Program will meet the goal stated in the Ordinance of processing cases through appeal within 120 days of filing, excluding cases that require special processing, e.g. when the petition is lacking essential information or when postponements are granted.

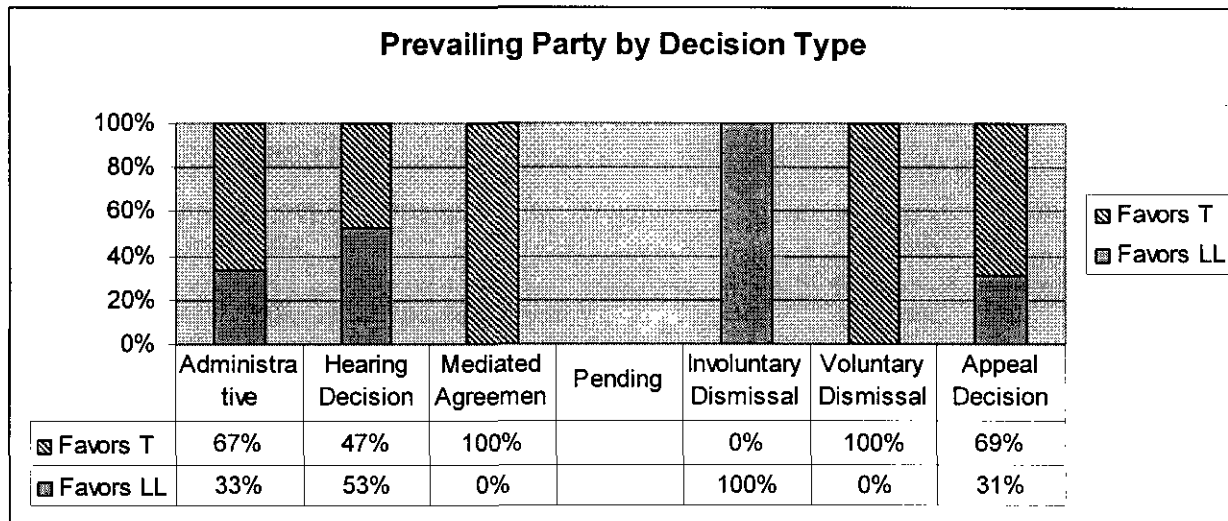
Of the 64 cases appealed to the Rent Board during FY04-05, tenants filed 53 appeals and the landlords filed 15. Both parties filed appeals in four cases.

MERIT OF PETITIONS DECIDED

During FY04-05, Staff began tracking the prevailing party in each case. Because definitive information is not available in all situations, assumptions are made as to the prevailing party in certain situations. The assumptions will not be correct in all cases. Only three landlord petitions were filed and decided during FY04-05. All three were decided in favor of the tenants.

395 tenant petitions were filed during the same period. In Staff's experience, in almost all of the tenant petitions settled, the tenant has obtained some relief, albeit not all of the relief requested in the petition. So, settlements are tallied with the tenant as the prevailing party. Voluntary dismissals are also tallied with the tenant prevailing because, from experience, almost all voluntary dismissals result from settlements. Similarly, landlords are tallied as the prevailing party when a petition is dismissed involuntarily. The numbers for Administrative Decisions, Hearing Decisions and Appeal Decisions reflect the outcome of the cases input by staff for each case at the time the decision was mailed. Applying these assumptions, tenants prevailed on 58% of the tenant petitions and landlords prevailed in 34%. 8% of the tenant petitions filed are still pending a final decision.

Despite the uncertainties, the information is the most accurate tally of the prevailing party that Staff has assembled to date. It provides a good indication of the merit of the petitions filed. The following chart shows the percentages of prevailing party for each type of decision.



JUST CAUSE FOR EVICTION

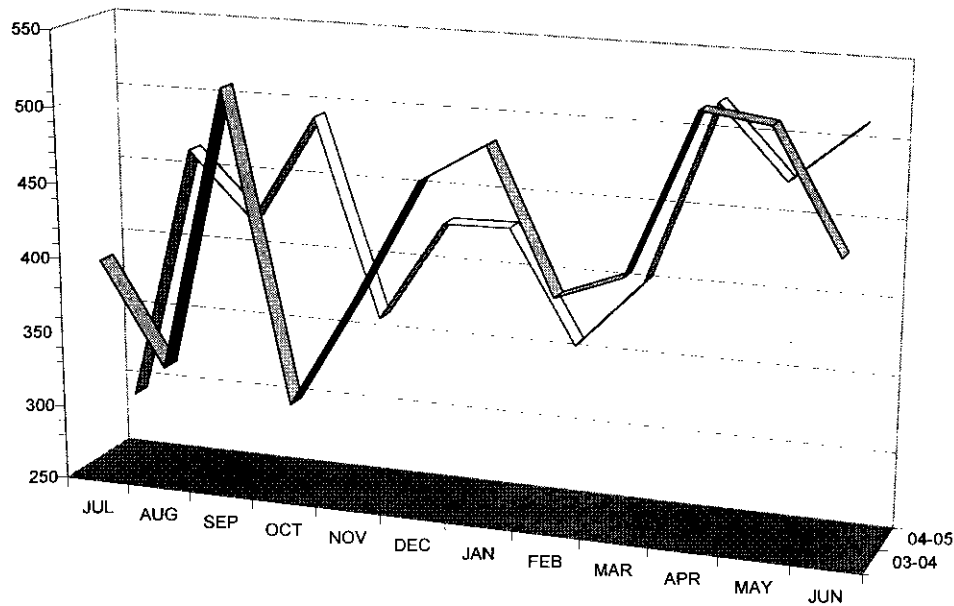
ADOPTION OF REGULATIONS TO IMPLEMENT ORDINANCE

Regulations to implement the Just Cause for Eviction Ordinance were adopted by the Board during FY04-05 and are presently in effect. Implementation of the Just Cause Ordinance and its Regulations have been relatively trouble free. Most problems have arisen in the context of owners of rented single family dwellings who want to sell the property. Under the circumstances, the Ordinance prohibits eviction absent good cause. The sale is not considered good cause under the Ordinance.

EVICTION NOTICES

The Just Cause for Eviction Ordinance requires that a copy of every eviction notice served on tenants in units covered by the Ordinance be filed with the Rent Adjustment Program. The number of eviction notices received by the Rent Adjustment Program during FY 04-05 was 5167, a decrease of about 8% from the 5629 received during the last fiscal year. However, the number of eviction notices in July 2005 increased substantially from July 2004. There is insufficient data to determine a meaningful trend.

Eviction Notices by Month



	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
03-04	397	329	517	313	386	467	493	400	417	524	518	441
04-05	294	465	422	493	363	430	431	358	403	521	475	512

LITIGATION OF JUST CAUSE ORDINANCE

As the City Council is aware, a broad challenge to the legality of the Just Cause for Eviction ordinance is still pending in the Alameda County Superior Court. The matter is being handled by the City Attorney’s Office.

ELLIS ACT ORDINANCE

After passage of Ellis Act Protections by the City Council during FY03-04, staff developed and implemented a set of procedures and a series of forms to implement those protections. During FY04-05, five Ellis applications were filed. This is the same number as the previous year. The number of applications does not present a threat to rental housing in the City of Oakland. For the two years that the Ellis Act protections have been in effect, only one building larger than 4 units was removed from the rental housing market, a 31 unit building at 3549 Piedmont Avenue, to be used for the expansion of Kaiser HMO operations. There is no indication of a rush to remove units from the rental housing market.

SUSTAINABLE OPPORTUNITIES

Pursuant to City Council Resolution No. 74678, C.M.S. adopted on December 1, 1998, staff encourage property owners to operate sustainable projects. Stabilizing Oakland's existing rent tenancies will continue to stabilize existing neighborhoods and rental communities. 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

Fees to fund the Rent Adjustment Program have been maintained at the present level, \$24 per unit, for the next fiscal year. The amount is sufficient to cover Rent Program operations, and compares reasonably with the fees charged in San Francisco (currently \$22 per apartment and \$11 per residential hotel room/unit/ year) and Berkeley (currently \$136/unit/year).

ALTERNATIVE RECOMMENDATION(S)

Staff proposes no alternative to continuing the source and amount of the funding for the Rent Adjustment Program.

ACTION REQUESTED OF THE CITY COUNCIL

This report recommends no action to the City Council.

Respectfully submitted,



DAN VANDERPRIEM
Director of Redevelopment, Economic
Development and Housing

Reviewed by:
Sean Rogan *SR14*
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Housing and Community Development

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Rent Adjustment Program Manager

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR