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# AGENDA REPORT

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Michele Byrd

SUBJECT: Annual Report of the Rent Adjustment  
Program for Fiscal Year 2012-2013

DATE: November 18, 2013

City Administrator  
Approval

Date

12/3/13

COUNCIL DISTRICT: City-Wide

## RECOMMENDATION

Staff recommends that the City Council accept this Annual Report of the Rent Adjustment Program for fiscal year 2012-2013.

## 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 in 1980 by Ordinance. The Ordinance has been modified several times since. The current version of the Ordinance became effective in January 2007. The Rent Adjustment Ordinance 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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## ANALYSIS

### PROGRAM OUTCOMES DURING FISCAL YEAR 2012-13

#### *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 12-13, staff met with 1,673 members of the public and provided information and referrals in person. This is a 12% increase from 1,500 in FY 11-12. Staff responded to an estimated 8,781 phone inquiries FY 12-13, an 11% increase from 7,900 in FY 11-12. Staff also responded to about 165 email inquiries, about the same as the 162 responded to last fiscal year. Staff received and responded to seven 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.

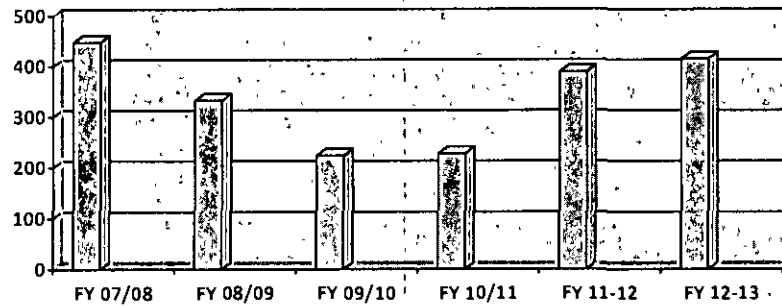
#### *Petitions, Ellis Act and Citation Applications*

The number of petitions and applications tiled in FY 12-13 increased by 5.7% (from 389 to 411) when compared with FY 11-12. The RAP processed 407 Rent Adjustment Petitions, and four applications for administrative citation. There were no Ellis applications to remove properties from the rental market. Staff believes that the number of petitions filed continues to be high due to the overall improvement in economic conditions, and to former homeowners being driven into the rental market due to foreclosures.

Table 1 shows a three year decline beginning in FY 08-09. Petitions and applications tiled in FY 12-13 nearly match the number of tilings from FY 07-08.

Table I

Trends in Petitions and Applications filed  
 July 2007 – June 2013



Shown on Table 2 are the types of claims made by Rent Adjustment petitioners, both landlords and tenants, on the petitions filed during FY 12-13. 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 chart indicates the number of claims alleged in petitions and 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	# OF CLAIMS FILED IN PETITIONS	% OF PETITIONS FILED
	FY 12-13	FY 12-13
Unjustified increase	219	53.2%
Decreased or inadequate housing services	204	49.6%
No RAP notice with rent increase	93	22.6%
No RAP notice at beginning of tenancy	117	28.5%
No summary of justification for increase	54	13.4%
Two increases within 12 months	37	9.0%
Landlord request for certificate of exemption	43	10.5%
Landlord request for pre-approval of increase	6	1.5%
Improper increase under Civil Code §1954. et seq.	16	3.9%
Landlord request for extension of time to complete repairs	2	.04%

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. 53.2% of petitions alleged an unjustified rent increase. This result is essentially unchanged from FY 11-12.

A claim for decreased or inadequate housing services was the second most common complaint (49.6% 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,<sup>1</sup> 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 (29% for beginning of tenancy and 23% with notice of rent increase) compared with FY 11-12 (18% for beginning of tenancy and 21% with notice of rent increase). This result will lead to continued emphasis by staff on notice requirements during landlord presentations.

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 11% to 13%.

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 (1.5% 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 11% of the petitions filed.

With the exception of no Ellis Act tilings, there were no significant changes in the relative frequency of the types of claims made from FY 11-12 to FY 12-13.

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<sup>1</sup> OMC §8.22.060.

***Petition Processing***

The average time from petition filing through staff decision for petitions filed in FY 12-13 was 100 days, compared with 80 days in FY 11-12. Staff believes that this increase is not a result of an increase in petitions, but from a few cases with multiple parties that required more than one hearing.

During FY 12-13 the Rent Adjustment Program, including the Board, resolved 355 cases. There are 54 cases (including 17 Appeal cases) that could not be resolved by June 30, 2013. Table 3 shows how the cases were resolved. Tenants (“T” on the chart) prevailed in 45.6% of the cases, landlords (“LL” on the chart) in 40.6% of the cases. There was no substantial difference in the proportion of cases resolved in favor of tenants from last fiscal year; however, the number of cases resolved in favor of landlords has increased from 32% to 41%.

Table 3

Final Decision	Number	% of Total	Pending	LL	T
None	54	13.1%	54		
Administrative Decision	34	8.3%		25	9
Appeal Decision	22	5.4%		11	11
Hearing Decision	173	42.1%		91	82
Involuntary Dismissal	37	9.0%		34	3
Remand Decision	2	0.5%		1	1
Settlement Agreement	26	6.3%		2	24
Voluntary Dismissal	63	15.3%		4	59
<b>TOTAL</b>	<b>411</b>	<b>100.0%</b>		<b>167</b>	<b>188</b>

13.1%    40.6%    45.7%

***Appeals to the Rent Board***

During FY 12-13, 39 appeals were filed. The Rent Board resolved 22 appeals from Staff Decisions during the fiscal year. This number includes appeals from some decisions issued in the prior fiscal year (not included on Table 3), but heard and decided by the Board after July 1, 2012. The appeals rate for staff decisions issued during FY 12-13 was 15.9%, which is at the historical average 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

approximately 13,394 eviction notices during FY 12-13, a 7.1% increase from FY 11-12's 12,500.

Adam Byer of the Alameda County Superior Court graciously prepared an estimate of Oakland evictions again this year. He reports that there were 3,222 limited jurisdiction unlawful detainer filings in fiscal year 2012/13 (July 1, 2012 through June 30, 2013) where the disputed property is in the City of Oakland. This represents a slight 1.9% decrease from the 3,284 eviction actions estimated for FY 11-12.

### *Applications Pursuant to the Ellis Act*

There were no Ellis Act filings to remove property from the rental market for FY 12-13.

### *Litigation in Court*

Although litigation is conducted by the City Attorney's Office, RAP staff also participates. Preparation of administrative records, answering correspondence and inquiries from the parties, receiving service of process, consultations with the attorney assigned to the case, and the occasional need to appear in Court all involve RAP staff. The City Attorney's Office handled a number of cases involving the Rent Program during the last fiscal year:

*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 Rent Board Regulation was affirmed in the Court of Appeals.

*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 Writ.* One writ in Superior Court was settled. One writ is pending in the Superior Court.

### *Rent Board:*

During FY 12-13, the Board voted to do:

- Adopt a Resolution to form a Standing Committee
- Send amendments to Debt Service and Capital Improvement to City Council for approval

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- Send amendments to Citation Regulations to City Council for approval

### ***Low Income Client Representation Program***

The low-income representation program resumed operations in July 2008 pursuant to Resolution No. 81218 C.M.S. approved by City Council April 15, 2008. The group of agencies providing the direct representation services includes Centro Legal de la Raza, the Alameda County Bar Association Volunteer Legal Services Corporation and Bay Area Legal Aid. Operations under the grant contract began in July 2008.

The purpose of the project is to provide services that would help resolve disputes between low-income tenants and landlords to secure their rights under Oakland's Ordinances that impact the landlord-tenant relationship. FY 08-09 was the first year of the contract.

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 12-13, contractors met 129% of the contract goal for limited scope services by providing services to 516 tenants. 60 tenants were provided extensive services for Rent Adjustment issues, meeting 100% of the contract goal. There were 44 appearances at Rent Adjustment Hearings, meeting 88% 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 12-13, 232 landlords were screened for eligibility, exceeding the contract goal by 154%. However, to date, no landlord has received extensive services or has been represented before Rent Adjustment Hearings. 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 outreach and screening landlords for eligibility. Further funds would be released when services are provided.

The term of the contract ended June 30, 2013. An RFP was issued in October 2012 and a proposal from Centro Legal de la Raza, the East Bay Community Law Center and the Alameda County Bar Association Volunteer Legal Services was accepted. However, the Bar Association and the East Bay Community Law Center withdrew their participation in August 2013. Centro Legal can provide all tenant services; however, a Request for Qualifications is being issued for an agency to provide services to low-income landlords.

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A full report on the performance outcomes under this contract was presented to the City Council in a separate report.

***Summary:***

Although the increase in petitions was not as dramatic as the 71% increase seen in FY 11-12, there was another 5.7% increase in petitions filed in FY 12-13. This may be attributed in part to an economy that continues to improve. The San Francisco Business Times noted that rents went up 11.2 percent in Oakland in FY 11-12.<sup>2</sup> In the second quarter of 2013, the Wall Street Journal reports that rents in Oakland spiked another 6.9%, making Oakland the second (behind San Francisco) highest in percentage increase for rents in the country.<sup>3</sup> Because of these trends, recruitments for two positions within the Department will be conducted. On-call personnel will continue to be utilized as needed for the Rent Adjustment Program to meet its responsibilities.

**PUBLIC OUTREACH/INTEREST**

In FY 12-13, Rent Adjustment Staff participated in the following outreach activities:

- July 18, 2012; Richard Illgen of the City Attorney's Office taught a Continuing Legal Course on Oakland's Rent Ordinance for the Alameda County Bar Association.
- July 20, 2012; Stephen Kasdin and Barbara Kong-Brown conducted training for tenant and landlord advocates from Centro Legal de la Raza and Bay Legal, and the Alameda County Bar Association.
- September 29, 2012; Connie Taylor and Barbara Kong-Brown conducted workshops on services for low-income landlords and Capital Improvements at the East Bay Rental Housing Annual Trade Expo.
- October 17, 2012; Richard Illgen attended the state-wide rent stabilization consortium meeting.
- November 11, 2012; Margaret Sullivan attended Housing and Foreclosure Prevention Clinic.
- January 9, 2013; Barbara Kong-Brown made presentation on Rent Adjustment mediation services to the Healthy Housing Pilot Program.

<sup>2</sup> San Francisco Business Times, July 3, 2012

<sup>3</sup> The Wall Street Journal, July 16, 2013



- February 15, 2013; an ad was placed in the landlord publication *Rental Housing* for six months.
- April 10, 2013; Connie Taylor made presentation on Rent Adjustment Program to Alliance of Californians for Community Empowerment and Urban Strategies Council to answer questions and provide brochures regarding the Rent Adjustment Program.
- April 20, 2013; Barbara Kong Brown attended Housing Resource Fair sponsored by the Oakland Housing Authority.

### 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 and with the newly formed Housing Assistance Center regarding the problems presented by the large number of foreclosures in Oakland.

This report has been reviewed by the Office of the City Attorney and by the Budget Office.

### 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 other income to the program is from Ellis application fees and copying charges<sup>4</sup> 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, which includes the transferred funds, shown in Oracle.

<sup>4</sup> These total less than \$2,500 for FY 12-13.

Table 4  
 Rent Program Revenue (Oracle)

Fiscal Year	Budgeted Revenue	Actual Revenue
FY03-04	1,400,000.00	1,194,469.09
FY04-05	1,300,000.00	1,884,900.25
FY05-06	1,542,529.00	1,744,214.54
FY06-07	1,839,221.00	1,595,438.90
FY07-08	1,957,000.00	2,175,237.99
FY08-09	1,957,000.00	1,725,342.32
FY09-10	1,890,990.00	2,079,992.00
FY10-11	1,890,990.00	1,925,731.00
FY11-12	1,800,000.00	1,973,823.00
FY12-13	1,800,000.00	2,043,340.24
Total	17,377,730.00	18,342,489.33

**Expenditures**

A complete list of the program expenditures for FY 12-13 is shown below. The largest expenditures are personnel costs. The budgeted expenditures include unspent but designated funds for hiring a Program Analyst II, and for the low-income representation grant.

Table 5

Department	Budget	Expenditures	Balance
City Administrator Salary and Benefits	176,852	173,109	3,743
City Attorney Salary and Benefits (attorney + support staff)	356,106	356,106	-
Finance & Management Salary and Benefits	299,636	272,709	26,926
Rent Adjustment Program DHDD Salary and Benefits			
Operations & Maintenance:			
Temporary Personnel	5,000	-	5,000
Low-Income Representation	100,000	98,160	1,832

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Minor Computer Software	10,081	2,396	7,685
Printing, Advertising & Promotion	20,000	9,557	10,443
Band and Credit Card Fees	4,200	4,200	160
Postage and Mailing	4,100	4,040	60
Miscellaneous Operating	24,781	18,781	6000
Subtotal O & M	168,162	136,974	31,188
DHCD Total	1,187,144	1,157,231	31,188
Program Total Budget & Expenditures	2,019,737	1,959,155	60,582
Program Reserve Funds	909,387		

**Program Budget**

Below is the Adopted Budget for FY 13-14:

Table 6

Rent Adjustment Program FY 13-14 Adopted Budget

<u>Department</u>	<u>Budget</u>
DHCD – Rent Adjustment Program:	
Salaries	504,571
Benefits	559,234
Low-Income Representation Grant	100,000
Operations & Maintenance (O & M)	197,844
Subtotal	1,361,649
City Administrator:	
Salary & Benefits	173,336
City Attorney:	
Salary & Benefits	348,415
Finance & Management Agency:	
Salaries & Benefits	266,922
Operations & Maintenance (O & M)	10,460
Subtotal	<u>277,382</u>
Grand Total	2,160,782

*Staff*

Below is a list of all the authorized staff charged to the Rent Adjustment Project (restricted revenue) on June 30, 2013:

Rent Adjustment Program:  
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)

City Administrator's Office:  
Assistant City Administrator (0.50)

Finance & Management Agency:  
Revenue Assistant (1)  
Tax Enforcement Officer II (1)  
Cashier (1)

City Attorney Office (2 FTE)  
Deputy City Attorney (0.90)  
Legal Admin. Asst. (1)

Total FTE 13.70

**FISCAL IMPACT**

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

**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:

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***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:***

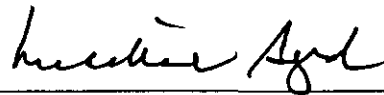
- Improving the landscape and climate of Oakland's neighborhoods by encouraging longer-term tenancies in rental housing.
- Aiding low-income families to save money to become homeowners.

**CEQA**

This report is not a project under CEQA.

For questions regarding this report, please contact Connie Taylor, Program Manager, 238-6246.

Respectfully submitted,



Michele Byrd, Director  
Housing and Community Development

Prepared by:  
Connie Taylor, Program Manager  
Rent Adjustment Program  
Housing and Community Development

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