Rent Stabilization Board

RENT STABILIZATION BOARD

DATE: May 13, 2013

TO: Honorable Members of the Rent Stabilization Board

FROM: Jay Kelekian, Executive Director

SUBJECT: Recommendation to set the FY 2014 annual registration fee (due July 2013), and authorize the pass-through to certain tenants of a portion of the registration fee

Recommendation

That the Board adopt two resolutions concerning the FY 2014 annual registration fee:

Proposed Resolution 13- 2– setting the FY 2014 registration fee, due July 1, 2013 at the current level of $194 per unit. This Resolution is consistent with the action taken at your last Board meeting.

Proposed Resolution 13-3 – authorizes the continuation of Resolutions 09-04 and 10-05 that allows, with proper notice, the pass-through of up to $4.00 per month to tenants where the tenancy began prior to January 1, 1999. The pass-through may be taken for 12 consecutive months and cannot begin prior to July 1, 2013, and must terminate no later than December 31, 2014, unless extended by future Board action. The increase shall not result in a pass-through of greater than $4.00 per month to any tenant. The Resolution also directs staff to continue a program/mechanism that allows low-income tenants with a household income of 40% or less of Annual Median Income (AMI) to be reimbursed for the pass-through. Funds for the reimbursement would come from the AEPHI tenant overcharge settlement which, pursuant to Board Regulation 1271(B), must be used for the benefit of low-income tenants.

Background and Need for Rent Stabilization Board Action

Legally, the Board has through the end of June to adopt a line-item budget and expenditure authorization level for FY 2013/2014. However, in order to provide sufficient time to allow staff to print and mail the annual bill prior to the last week of May, the Board traditionally sets the fee no later than a meeting in early-mid May. Last month, the Board agreed that it would not be necessary to increase the fee above the current level of $194 per unit to raise the revenue necessary in FY 2013/14. The attached resolution is prepared based upon that Board direction. As also determined by the Board last month, the formal line-item budget and staffing model will be presented and discussed in June and must be adopted prior to June 30th. Board members and Committees are encouraged to submit any requests or suggestions for next years' budget in the next week or two so that they may be reviewed by staff and the Budget and Personnel Committee.

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Pass-through of Increase in Registration Fee to Tenants

In 2003, the BPOA proposed changing the way the Annual General Adjustment (AGA) was calculated, shifting from a pass-through of actual cost increases to a flat formula based on a percentage of the CPI. The Board agreed with this formula and, in 2004, the voters approved of this change in how the AGA was calculated. Prior to the change in the AGA methodology, all increases in the registration fee were taken into consideration and incorporated in the Annual General Adjustment of rents.

Since the adoption of statewide vacancy decontrol in the late 1990's, rent levels have been set using two different standards. Under vacancy decontrol, owners are expected to take into account past and anticipated future operating cost increases when setting the initial rent for a new tenancy. Therefore, increases to the registration fee presumably have been factored into the rent charged. Roughly 80% of the units have experienced at least one decontrol since 1999. The Board has been extremely careful to guarantee that owners of the 20% of units never decontrolled continue to receive compensation for actual increased costs, such as adjustments to the registration fee. Since 2004, the Board has found that it would be fair and equitable, in view of the purposes of the Ordinance, to pass along to tenants part of the increase in fees as a temporary adjustment of rent ceilings. In each of the past several years, the Board approved a pass-through of up to $4.00 per month to tenants where the tenancy began prior to January 1, 1999. The proposed pass-through may be taken for 12 consecutive months and cannot begin prior to July 1, 2013, and must terminate no later than December 31, 2014, unless extended by future Board action. The increase shall not result in a pass-through of greater than $4.00 per month to any tenant. The pass-through must be on a form provided by the Board or use language provided by the Director and a copy filed with the Program. I am recommending that this pass-through be extended for an additional year.

Mitigation of Impact of Pass-through for Low-Income Tenants

In 2010, the Board discussed the impact that the pass-through of $4.00 could have on tenants on a fixed income, especially following the ongoing cuts in several state and federal programs assisting those most vulnerable in our society. Consequently, the Board adopted a resolution directing staff to develop a mechanism that allows low-income tenants with a household income of 40% or less of Area Median Income (AMI) to be reimbursed for the pass-through. Funds for the reimbursement came from the AEPHI settlement. Pursuant to Board Regulation 1271(B), in the event of overcharges from a case in which a tenant has not claimed reimbursement within a year, the Board may designate a program of the City of Berkeley that benefits low- and/or moderate-income tenants. Because the AEPHI settlement was entirely from overcharges to tenants and did not include any registration fee, the Board elected to use this as a source to fund the mitigation of the pass-through. Since 2010, over 300 low-income individuals have taken advantage of this program at an estimated cost to the AEPHI Fund balance of $13,000. Approximately $5,000 remains in the $18,000 initially earmarked for this program. It is worth noting that the original amount allocated was for 1-2 years. If the Board continues the pass-through reimbursement we will have completed our fifth year without needing to increase the original allocation.

In 2010, the Board also discussed the appropriate income level to qualify for the reimbursement program. Under Federal guidelines, 30% of AMI is considered "Extremely Low Income" and 50% is considered "Very Low Income". To my knowledge, there is no unique designation for 40% of AMI. The household income by size of household for 30%, 40% and 50% of AMI for Alameda County is listed below. The area median income for a household of four persons in Alameda County is $89,200.

Income Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% AMI	$18,750	$21,400	$24,100	$26,750	$28,900	$31,050	$33,200	$35,350
40% AMI	$25,000	$28,550	$32,100	$35,700	$38,550	$41,400	$44,300	$47,100
50% AMI	$31,250	$35,700	$40,150	$44,600	$48,200	$51,750	$55,350	$58,900

The past several years, the Board established a standard that allows low-income tenants with a household income of 40% or less of AMI to be reimbursed for the pass-through. We recommend that the mitigation pass-through for low-income tenants be continued at the same 40% of AMI standard.

Name and Telephone Number of Contact Person:

Jay Kelekian, Executive Director (510) 981-4949

RESOLUTION 13-02

ESTABLISHING THE FY 2014 ANNUAL REGISTRATION FEE, DUE JULY 1, 2013

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, the Rent Stabilization Board operates on the basis of a fiscal year and each year adopts an operational budget after public review and input; and

WHEREAS, Section 123 of Article XVII of the Charter of the City of Berkeley provides that the Rent Stabilization Board shall finance its reasonable expenses by charging landlords annual registration fees in amounts deemed reasonable by the Board; and,

WHEREAS, the Rent Board has reviewed the overall budget priorities for next fiscal year and recommended an operational spending level for recurring costs not to exceed $4,020,000 for Fiscal Year 2014; and,

WHEREAS, the Executive Director and Rent Stabilization Board believe that recurring annual revenues of $3,850,000 in FY 2014 will be necessary to meet the Program's operating needs and it will require an annual registration fee of $194 per unit; and,

WHEREAS, by Resolution 13-01 (incorporated herein by reference), the Board resolved to consider and adopt a final budget document detailing the revenues, line-item expenditures and staffing model in June 2013;

NOW, THEREFORE, BE IT RESOLVED that the annual FY 2014 registration fee, due July 1st, 2013, is hereby set at $194 per unit;

BE IT FURTHER RESOLVED that the Executive Director shall produce a final budget document detailing the revenues, total expenditure level (recurring and one-time costs) broken down in line-item detail, and staffing model for Rent Board consideration and adoption at a scheduled meeting in June 2013.

Dated: May 13, 2013

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

Yes:
No:
Abstain:
Absent:

_____
Lisa Stephens, Chairperson
Rent Stabilization Board

Attest: _____
Jay Kelekian, Executive Director

RESOLUTION 13-03

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF 2014's REGISTRATION FEE AS A TEMPORARY GENERAL ADJUSTMENT OF RENT CEILINGS AND HAVE STAFF IMPLEMENT A MECHANISM THAT ALLOWS LOW-INCOME TENANTS (AT 40% OF AMI) TO BE REIMBURSED FOR ANY PASS-THROUGH

BE IT RESOLVED by the Rent Stabilization Board of the City of Berkeley as follows:

WHEREAS, the Rent Stabilization Board operates on the basis of a fiscal year and each year adopts an operational budget after public review and input; and

WHEREAS, Section 123 of Article XVII of the Charter of the City of Berkeley provides that the Rent Stabilization Board shall finance its reasonable expenses by charging landlords annual registration fees in amounts deemed reasonable by the Board; and,

WHEREAS, the Rent Board has reviewed the overall budget priorities for next fiscal year and recommends an overall recurring operational spending level not to exceed $4,020,000 for Fiscal Year 2014; and,

WHEREAS, the Executive Director and Rent Stabilization Board believe that recurring annual revenues of $3,850,000 in FY 2014 will be necessary to meet the Program's operating needs and it will require an annual registration fee of $194 per unit; and,

WHEREAS, Sections 6.N and 8.K of the Rent Stabilization Ordinance authorize the Rent Board to approve passing a portion of annual registration fees along to tenants as a rent adjustment; and

WHEREAS, since the adoption of statewide vacancy decontrol, rent levels have been set using two different standards; and

WHEREAS, since 2004, the Rent Stabilization Board found that it would be fair and equitable in view of the purposes of the Rent Ordinance to pass along to tenants part of the increase in fees as a temporary adjustment of rent ceilings; and,

WHEREAS, under vacancy decontrol, owners are expected to take into account past and anticipated future operating cost increases when setting the initial rent for a new tenancy and therefore, increases to the registration fee presumably have been factored into the rent charged; and

WHEREAS, approximately 20% of the rental units in the City have a tenancy that began prior to January 1, 1999, when vacancy decontrol was fully implemented; and

WHEREAS, the Board has attempted to guarantee that owners of these units continue to receive compensation for actual increased costs, such as increases to the registration fee; and

WHEREAS, the Rent Stabilization Board finds that it would be fair and equitable in view of the purposes of the Rent Stabilization Ordinance to continue to pass along to certain tenants a portion of the 2014 registration fee as temporary adjustments of rent ceilings; and

WHEREAS, the Board also understands the financial hardships experienced by tenants living at 40% or less of Area Median Income (AMI), who have to pay the pass-through and wishes to mitigate these hardships; and

WHEREAS, the Board has unclaimed overcharge money available in the AEPHI Lawsuit Settlement Fund designated under Regulation 1271 (B) for programs that benefit low- and/or moderate-income tenants.

NOW, THEREFORE BE IT RESOLVED that for each rental unit in which the tenancy began prior to January 1, 1999, for which a full registration fee is paid for Fiscal Year 2014, the landlord may, by serving legal notice pursuant Civil Code section 827, increase the rent by up to $4.00 a month for twelve consecutive months, provided, however, that this partial registration fee pass-through shall not be considered part of the permanent rent ceiling for purposes of calculating the 2014 Annual General Adjustment; and,

BE IT FURTHER RESOLVED that this twelve month temporary general adjustment of up to $4.00 may not be imposed prior to July 1, 2013 and, regardless of when first collected, shall terminate no later than December 31, 2014, unless extended by further Board action; and,

BE IT FURTHER RESOLVED that the maximum increase shall not result in a pass-through greater than $4.00 per month, and notice to tenants of any pass-through shall be on a form provided by the Board or use language approved by the Executive Director; and

BE IT FURTHER RESOLVED that the landlord shall be required to submit a copy of this form to the Rent Board before collecting the pass-through; and

BE IT FURTHER RESOLVED that the Board instructs the Director to implement a program that reimburses low-income tenants with a household income at 40% or less of AMI for any pass-through they incur provided by Regulation 1271 (B) which allows for distribution of unclaimed funds to benefit low-income tenants.

Dated: May 13, 2013

Adopted by the Rent Stabilization Board of the City of Berkeley by the following vote:

Yes:
No:
Abstain:
Absent:

_____
Lisa Stephens, Chairperson
Rent Stabilization Board

Attest: _____
Jay Kelekian, Executive Director