Rent Stabilization Board

RENT STABILIZATION BOARD

DATE: May 11, 2016

TO: Honorable Members of the Rent Stabilization Board

FROM: Budget and Personnel Committee, and
Jay Kelekian, Executive Director

SUBJECT: Recommendation to set the FY 2017 annual registration fee (due July 2016), and authorize the pass-through to certain tenants of a portion of the registration fee

Recommendation

That the Board adopt two resolutions concerning the Fiscal Year (FY) 2017 annual registration fee:

Proposed Resolution 16-01– increasing the FY 2017 annual registration fee, due July 1, 2016 to $234 per unit.

Proposed Resolution 16-02 – authorizes, with proper notice, the pass-through of up to $8.00 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, 2016, and must terminate no later than December 31, 2017, unless extended by future Board action. The increase shall not result in a pass-through of greater than $8.00 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), or otherwise demonstrating proof of qualification as low-income, 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 2016/2017. 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 to mid-May. The Budget and Personnel Committee has been meeting regularly over the past several months monitoring the current year's budget as well as analyzing the required level of service and funding options for FY 2016/17 and into the future. Most recently, the Budget and Personnel Committee met on May 2nd, and adopted the recommendations described above.

The attached report (Attachment A), prepared for the May 2nd Budget Workshop and Public Hearing on the FY 2016/17 Budget and Registration Fee, details the process followed and the nine primary options considered prior to the Committee ultimately recommending that per-unit registration fees due

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July 1st increase by $21 per year. The primary issue explored and analyzed in the May 2, 2016 report and by the Budget and Personnel Committee was "What action or combination of actions would best allow the Board to close/bridge the structural deficit existing in the FY 2016 budget?" While overall, the Fund maintained a healthy total balance the past several years, the annual deficit was created because, for several years the Board decided to limit increases in registration fees to only when it was absolutely required to prevent the fund balance from going below 8% (one month) reserve. This approach was successful in keeping fees lower than had they been raised commensurate to the amount costs increased annually. However, this approach also resulted in a structural revenue/expenditure gap of $575,000 heading into FY 2015/2016. The Board, last year, agreed that the reserve was sufficient so that it did not require the elimination of the full $575,000 gap in one year. The Board raised the fee $18 and reduced the annual gap by $325,000. It was assumed that the fees would need to be adjusted again in FY 2016/2017 but the question was really how much or little would be sufficient to maintain a Fund reserve in the vicinity of 8%.

The attached May 2nd report also provides background on how much CPI and rent have increased since 2009, as well as a table reflecting, over time, registration fees as a percentage of rent. A $21 increase in the fee would equal in a 20.61% increase in fees since May 2009, which is a slightly greater than the roughly 18% increase in CPI since May 2009. During that same period, the average rent for all rent controlled units has increase 27.46%, which, on average, equals $346 in additional monthly ($4,152 annually) income per unit for owners. The May 2nd report also included five attachments to guide the Board in its deliberations:

Attachment 1 – Rent Stabilization and Good Cause for Eviction in the 21st Century
Attachment 2 – Updated PowerPoint slides describing the ongoing work of the operational units at the Rent Stabilization Program (based on the 2015 presentation to the Board)
Attachment 3 – Rent Stabilization Program FY 2015/16 "line item" 2/3-year update and FY 2016/17 "Status Quo" budget
Attachment 4 - Table showing Fund balances if the Board continues to adopt "Status Quo" budgets and does not adjust the fees.
Attachment 5 – Rent Board Fund balance projections through FY 2018 based upon the annual fee level being set either at $225, $231, $234 or $237.

Four individuals addressed the Board at the May 2nd Budget Workshop and Public Hearing. The attached resolution (16-01) reflects the Committee's belief that it was essential to try to maintain something approaching an 8% Fund reserve balance over the next two years, even if staffing levels are raised. With modest savings in one or both of the budgets adopted prior to June 2018, a fee of $234 does not guarantee hitting the 8% target but certainly makes the goal attainable. The resolution also directs that the formal line-item budget and staffing model will be presented and discussed in June and must be adopted prior to June 30th. Over the next six weeks, staff and the Budget and Personnel Committee will craft a comprehensive expenditure proposal based on assumed revenues of approximately $4,730,000 being raised in FY 2017 and a target of maintaining at least an 8% reserve. Board members and Committees are encouraged to submit any requests or suggestions for next years' budget over the next two weeks so that they may be reviewed by staff and the Budget and Personnel Committee.

<u>Pass-through of Increase in Registration Fee to Tenants</u>
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

between 1980 – 2005 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, under the stated logic of vacancy decontrol, increases to the registration fee presumably have been factored into the rent charged a new tenant. Approximately 87% of the units have experienced at least one decontrol event since 1999. The Board has been extremely careful to guarantee that owners of the 13% 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 or all of the increase in fees as a temporary adjustment of rent ceilings.

Over 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. Last year, with the $19 per year increase in the registration fee, the amount of the pass-through was increased by $2.00 per month for a new total pass-through of $6.00 per month. Staff and the Budget and Personnel Committee believe it is appropriate to increase the pass-through by two additional dollars for a new monthly total of $8.00. The proposed pass-through may be taken for 12 consecutive months and cannot begin prior to July 1, 2016, and must terminate no later than December 31, 2016, unless extended by future Board action. The increase shall not result in a pass-through of greater than $8.00 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.

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

The last time the fee was increased, the Board discussed the impact that the pass-through of the fee 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, approximately 350 low-income individuals have taken advantage of this program at an estimated cost to the AEPHI Fund balance of just under $18,000. Less than $1,000 remains in the $18,000 initially earmarked for this program. Therefore, if the Board wishes to continue this mitigation, you would need to authorize an additional allocation from the AEPHI settlement account. The original $18,000 allocation for the pass-through reimbursement program lasted over six years without needing to increase the original allocation. Because the Board reviews the continuation of the reimbursement program each year, a new allocation of $6,000 should suffice in FY 2016/2017.

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. According to HUD guidelines, the 2016 area median income for a household of four persons in Alameda County is $93,600.

Income Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% AMI	$20,500	$24,400	$26,350	$29,250	$31,600	$33,950	$36,730	$40,890
40% AMI	$27,320	$31,200	$35,120	$39,000	$42,120	$45,240	$48,360	$51,480
50% AMI	$34,150	$39,000	$43,900	$48,750	$52,650	$56,550	$60,450	$64,350

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. Staff and the Budget and Personnel Committee recommend that the mitigation pass-through for low-income tenants be continued at the same 40% of AMI standard but amended to allow individuals to demonstrate proof of qualification for reimbursement if they already have been determined eligible for another similar state or federal program, including but not limited to CalWorks, CalFresh, Medi-Cal, WIC or another program approved by the Executive Director.

Name and Telephone Number of Contact Person:

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Attachment A – May 2, 2016 Background Material for Budget Workshop and Public Hearing on the FY 2017 Budget & Possible Increase in the Annual Registration Fee (online only).