


**Rent Stabilization Board**

**RENT STABILIZATION BOARD**

DATE: May 14, 2012  
TO: Honorable Members of the Rent Stabilization Board  
FROM:  Jay Kelekian, Executive Director and  
The Budget and Personnel Committee  
SUBJECT: Recommendation to set the FY 2013 annual registration fee (due July 2012), establish the maximum expenditure level for FY 2012/2013, and authorize the pass-through to certain tenants of a portion of the registration fee

**Recommendation**

That the Board adopt two resolutions concerning the annual registration fee and FY 2013 Budget:

**Proposed Resolution 12-5** – establishes a maximum recurring operational spending level of \$3,950,000 for Fiscal Year 2012/2013 and maintains the registration fee at the current level of \$194 per unit. The Resolution also directs that final budget documents detailing revenues, line-item expenditures and staffing model will be prepared for adoption by the Board in June.

**Proposed Resolution 12-6** – 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, 2012, and must terminate no later than December 31, 2013, 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 2012/2013. 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. When the Board adopted the FY 2011/2012 Budget last June, it was anticipated that there would be no need to raise the registration fee this year. This is primarily due to the salary savings we experienced in the previous two years leaving us with a secure reserve balance. I have been monitoring current year expenditures and revenues, as well as beginning the process of analyzing possible changes to next year's budget, and continue to believe that it should not be necessary to increase the registration fee. The Budget and Personnel Committee has reviewed my assumptions and has concurred that it is not necessary to raise fees for the upcoming year.

If the Board wishes to raise the current fee of \$194 per unit, a public hearing must be held upon ten days published notice as set forth in Government Code section 6062a. Therefore, in order to hold a public hearing to consider increasing the registration fee in May, notice of a potential fee increase must first be published. Newspapers require between 3-5 days' lead-time before publishing the public notice. The earliest possible date a notice could be published is May 19 but possibly as late as May 21st. While the Board may hold the public hearing the same evening that it makes a decision on the registration fee, the Board has traditionally held the initial public hearing in advance of the date the fee is adopted. If the Board is considering increasing the fee, I would suggest that we make a decision the same evening as the public hearing so that the mailing of bills is not delayed any further. Alternatively, we could schedule a special meeting for later in the month of May.

Based upon the most recent budget figures available (please see the information item in your agenda packet), I am projecting that the Rent Stabilization Fund will end this fiscal year with an unallocated balance of at least \$900,000. This is equivalent to roughly a three-month operational reserve. This amount is greater than the Board anticipated when it adopted the FY 2012 budget last June, primarily due to salary savings (for the third consecutive year) caused by several key positions left vacant for much of the year as well as some employees voluntarily foregoing COLAs or taking time off without pay. In addition, I anticipate that our revenue collections will exceed the amount budgeted by roughly \$30,000 this year.

The Budget and Personnel Committee has met several times to determine the best staffing model to get our priority projects completed and we will spend the next five weeks working out those details before presenting a proposal to the Board. The Budget and Personnel Committee and I feel confident that, we can commit to a total maximum recurring operational spending level of \$3,950,000 for FY 2013. This is the same amount as is contained in the adopted budget for the current year. There may be additional non-recurring/one-time items (such as the second phase of the RTS upgrade) included in the budget proposed for next year but these will only be proposed if we feel the solvency of the Rent Board Fund is not jeopardized. For several years, the Board's policy has been to continue meeting the increased demand for our services to the maximum extent that the Fund balance permits.

I will work with the Budget Committee to refine the proposed staffing model and return with a detailed line-item budget for FY 2012/2013. Based upon the projections discussed at the Budget and Personnel Committee, we anticipate that the Board will end next year (FY 2013) with an uncommitted reserve in excess of \$800,000. Based upon my year-end projections for the current fiscal year, as well as the commitment to keep next year's recurring operational expenditure level at or below \$3,950,000, I proposed that the Budget Personnel Committee recommend to the full Board that the registration fee not be increased for FY 2013; the Committee agreed by a vote of 2-0-1 (Yes -Tregub/Stephens, Absent - Drake).

#### **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 three 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, 2012, and must terminate no later than December 31, 2013, 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. The Committee and I are 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, approximately 260 low-income individuals have taken advantage of this program at an estimated cost to the AEPHI Fund balance of \$11,300. Approximately \$6,700 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 fourth 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 \$93,500.

Income Category	One Person	Two People	Three People	Four People	Five People	Six People	Seven People	Eight People
30% of AMI	\$19,650	\$22,450	\$25,250	\$28,050	\$30,300	\$32,550	\$34,800	\$37,050
40% of AMI	\$26,200	\$29,925	\$33,675	\$37,400	\$40,400	\$43,400	\$46,400	\$49,400
50% of AMI	\$32,750	\$37,400	\$42,100	\$46,750	\$50,500	\$54,250	\$58,000	\$61,750

The past two 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 12-05

### ADOPTING FISCAL YEAR 2013 BUDGET MAXIMUM EXPENDITURE LEVEL AND ESTABLISHING THE ANNUAL REGISTRATION FEE

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 Budget and Personnel Committee of the Rent Board has reviewed the overall budget priorities for next fiscal year and recommends an operational spending level for recurring costs not to exceed \$3,950,000 for Fiscal Year 2013; and,

WHEREAS, the Executive Director and Rent Stabilization Board believe that recurring annual revenues of \$3,825,000 in FY 2013 will be necessary to meet the Program's operating needs and it will require an annual registration fee of \$194 per unit; and,

NOW, THEREFORE, BE IT RESOLVED that in order to guide the Executive Director and the Budget and Personnel Committee in drafting a final line-item budget, a maximum recurring operational spending level totaling \$3,950,000 is hereby adopted for Fiscal Year 2013 with the establishment of a registration fee of \$194 per unit in order to meet the Board's projected budget.

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 2012.

**RESOLUTION NO. 12-05**

ADOPTING FISCAL YEAR 2012 MAXIMUM EXPENDITURE LEVELS AND  
ESTABLISHING THE ANNUAL REGISTRATION FEE **(Page 2)**

Dated: May 14, 2012

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

Yes:

No:

Abstain:

Absent:

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Lisa Stephens, Chairperson  
Rent Stabilization Board

Attest: 

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Jay Kelekian, Executive Director

## RESOLUTION 12-06

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF 2013'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 \$3,950,000 for Fiscal Year 2013; and,

WHEREAS, the Executive Director and Rent Stabilization Board believe that recurring annual revenues of \$3,825,000 in FY 2013 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,

**RESOLUTION 12-06**

**AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF 2013'S REGISTRATION FEE AS A TEMPORARY GENERAL ADJUSTMENT OF RENT CEILINGS.**  
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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 came completely into effect; and

WHEREAS, the Board has attempted to guarantee that owners of these units continue to receive compensation for actual increased costs, such as adjustments 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 2013 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 2013, 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 2013 Annual General Adjustment; and,

**RESOLUTION 12-06**

**AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF 2013'S REGISTRATION FEE AS A TEMPORARY GENERAL ADJUSTMENT OF RENT CEILINGS.**

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BE IT FURTHER RESOLVED that this twelve month temporary general adjustment of up to \$4.00 may not be imposed prior to July 1, 2012 and, regardless of when first collected, shall terminate no later than December 31, 2013, unless extended by further Board action; and,

BE IT FURTHER RESOLVED that the maximum increase shall not result in a pass-through greater than a \$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 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 allows low-income tenants with a household income at 40% or less of AMI to be reimbursed for any pass-through they incur from funds held by the Board that are committed under Regulation 1271 (B) to be for the benefit of low-income tenants.

Dated: May 14, 2012

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