



Rent Stabilization Board

ITEM NO. 5.a.(1)

MEMORANDUM

DATE: November 19, 2007

TO: Members of the Rent Stabilization Board

FROM: Jay Kelekian, Executive Director

SUBJECT: CLARIFICATION OF POLICY REGARDING CASH-IN-LIEU PAYMENTS

Recommendation:

That the Board adopt a resolution to clarify that elected Rent Board Commissioners continue to receive cash payments equivalent to the amount which the City pays its employees who elect to receive cash in lieu of receiving medical and/or dental benefits.

Background and Need for Rent Stabilization Board Action:

Berkeley Municipal Code Section 13.76.080(K) provides that the Rent Stabilization Board is a working board and its Commissioners are entitled to receive compensation for time and work performed at an amount set by the Board.

Since the early 1980's Board members have received a stipend in consideration for the hours they spend serving on the Board. In 1984, the first elected Board established the amount of \$500 per month as the appropriate amount of compensation. The Board also determined that \$50 should be deducted for each Regular Board meeting missed. This base amount has not been increased since 1984. In 1987, the Board adopted Resolutions 87-102 and 87-112 placing the Commissioners on the City's payroll and authorized the Commissioners to receive medical and dental payments. In 1989, the Board adopted Resolution 89-6 clarifying that the dental and medical payment premiums were to be paid from the Rent Stabilization Program budget. On January 13, 1997, the Rent Board's Chief Council issued an opinion concluding that the Rent Board Commissioners were authorized to receive cash-in-lieu payments in lieu of receiving medical and/or dental benefits. Various Rent Board Commissioners have been receiving cash-in-lieu payments since 1997 in reliance on the Chief Council's opinion.

On November 13, 2007, the City Attorney issued an opinion advising that the Auditor discontinue cash-in-lieu payments to elected Rent Board Commissioners until the Board's intent is made clear. The City Attorney opined that Rent Board Commissioners are not entitled to continue receiving cash-in-lieu payments unless the Board specifically clarifies its intent regarding the maximum level of compensation and benefits to which Commissioners are entitled. The City Attorney concluded that Rent Board Commissioners were not entitled to these cash-in-lieu payments because it did not appear that the Board had approved the payments. In 2000, the City Attorney had advised the Auditor to discontinue cash-in-lieu for City Council Members because cash-in-lieu is considered "additional compensation and not a health benefit" by the IRS and this additional compensation possibly conflicted with the Charter limitation on the amount of compensation Council may receive. Unlike the Council, whose compensation is set by the Charter, the Board determines the appropriate amount of compensation. At issue was if the Board had clearly articulated via formal action what compensation and benefits they have authorized. Staff and the City Attorney's office agree that the easiest way to resolve the situation is for the Board to pass a Resolution clarifying the Board's intent in this matter.

The Resolution will address once and for all the Board's intention with regard to its compensation and benefits package and confirm that it intends to provide qualifying Commissioners with the option of receiving cash-in-lieu payments.

Name and Telephone Number of Contract Person

Jay Kelekian, Executive Director
(510)644-6128

RESOLUTION 07-18

CLARIFYING THE RENT STABILIZATION BOARD POLICY ON CASH-IN-LIEU PAYMENTS

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

WHEREAS, the Rent Board is one of three elected bodies in the City of Berkeley; and

WHEREAS, the other elected officials sitting on governing bodies in the City of Berkeley are entitled to receive compensation ranging from \$1,500 to \$2,850 per month plus benefits; and

WHEREAS, pursuant to Berkeley Municipal Code Section 13.76.060(K) the Rent Stabilization Board is a working board and its Commissioners are entitled to receive compensation for time and work performed at an amount set by the Board; and

WHEREAS, since the early 1980's, Rent Board Commissioners have received stipends and compensation for service as a Commissioner on the Board;

WHEREAS, in 1984, the Board approved compensation for Commissioners of \$500.00 per month with \$50 deducted for each meeting missed;

WHEREAS, the Rent Board has not raised this base compensation amount since 1984;

WHEREAS, on April 20, 1987, the Rent Board Commissioners adopted Resolution No. 87-102, to place Commissioners on the City's payroll effective May 1, 1987;

WHEREAS, on July 20, 1987, the Rent Board adopted Resolution 87-112 authorizing Commissioners to join the City's medical and dental plans, at their own expense, but at the rates negotiated by the City;

WHEREAS, on June 5, 1989, the Rent Board adopted Resolution 89-6 which authorized the payment of medical and dental benefits for Commissioners from the Rent Stabilization Program budget;

WHEREAS, in November 1994, Council voted to authorize Council members to receive cash-in-lieu payments in lieu of receiving medical benefits;

WHEREAS, on January 13, 1997, the Rent Board's Chief Counsel issued an opinion concluding that the Rent Board authorized payments in lieu of receiving medical benefits for Commissioners in Resolution 89-6;

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WHEREAS, since the General Counsel's January 13, 1997 opinion, some Rent Board Commissioners have received cash-in-lieu payments without interruption in reliance on said opinion;

WHEREAS, the City Attorney recently issued an opinion concluding that the Rent Board had not authorized cash-in-lieu payments in Resolution 89-6 and Commissioners were therefore not entitled to continue receiving cash-in-lieu payments without first adopting a resolution explicitly authorizing such compensation;

WHEREAS, the City Auditor recently determined that, unless the Rent Board adopted a resolution specifically authorizing cash-in-lieu payments, the Auditor would stop issuing cash-in-lieu payments to Rent Board Commissioners;

WHEREAS, in addition to attending regularly scheduled Board meetings, Rent Board Commissioners are also expected to attend committee meetings, perform constituent work, and perform numerous other duties associated with holding a public office;

WHEREAS, it has always been the intent of the Board to provide equal compensation and benefits to all members of the Board;

WHEREAS, some Commissioners of the Board receive medical and/or dental insurance coverage under health insurance programs provided by a third party, independent of their position as Commissioners;

WHEREAS, the Rent Board currently provides Commissioners with monthly compensation and benefits in the amount of \$500.00 minus \$50.00 for each meeting missed and benefits in the form of payment of the monthly premium for medical and dental insurance at the rates set by the City;

WHEREAS, the Board desires to clarify its intent regarding the maximum level of compensation and benefits to which Board Commissioners are entitled;

NOW, THEREFORE BE IT RESOLVED, by the City of Berkeley Rent Stabilization Board that Rent Board Commissioners shall continue to receive the following compensation and benefits:

1. \$500.00 compensation per month minus \$50.00 for each regular Board meeting missed;
2. The payment of monthly premiums for medical and dental insurance programs offered to City of Berkeley employees;

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3. For those Commissioners who elect not to receive medical and dental insurance coverage under the City's plans and have coverage elsewhere, such Commissioners' compensation shall include a cash payment equivalent to the amount which the City pays its employees who elect to receive cash instead of City paid medical and/or dental insurance coverage;
4. Participation in YMCA benefits similar to those offered Council members and other City Employees; and

BE IT FURTHER RESOLVED that it is the intention of the Board that this Resolution takes effect immediately as compensation and benefits for Commissioners' service beginning in November of 2007.

Dated: November 19, 2007.

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

Yes:

No:

Abstain:

Absent:

Jesse Arreguin, Chair

Attest: _____
Jay Kelekian, Executive Director