



Rent Stabilization Board

RENT STABILIZATION BOARD

DATE: July 7, 2003

TO: Honorable Members of the Rent Stabilization Board

FROM: Jay Kelekian, Executive Director

SUBJECT: Study of Apartment Operating Costs for the 2004 Annual General Adjustment (AGA) Process

Recommendation:

That the Board authorize the Executive Director to execute a contract with Professor Kenneth Baar to prepare the yearly study of apartment operating costs for the 2004 Annual General Adjustment (AGA) process in an amount not to exceed \$10,000.

Background and Need For Rent Stabilization Board Action:

As presently written, the Rent Stabilization Ordinance (Berkeley Municipal Code Section 13.76.110.B) provides that the Board must annually obtain available data indicating increases and decreases in the expenses relating to the rental housing market in the City of Berkeley and, based on each year's data, adopt a formula for the adjustment of rent ceilings citywide.

Recently, in accordance with the settlement of the lawsuit between the Rent Board and the Berkeley Property Owners Association (BPOA), the City Council unanimously agreed to place a measure before the voters in November 2004, which would change the method for determining the AGA. If adopted, beginning with the 200s AGA, the Board will no longer be required to conduct the survey of operating expenses to guide them in determining what the AGA should be. Instead, the AGA will be a fixed percentage (65%) of the preceding years' Consumer Price Index (CPI).

Until the voters adopt changes to the Ordinance, the Board is required to conduct the AGA operating cost study. However, under the terms of the settlement in the BPOA case, the Board is committed to adjusting the rent ceilings by 65% of the CPI "unless to do so would constitute a clear abuse of discretion." According to Legal staff, the AGA study for the next two years, in addition to reporting and analyzing the changes in landlords operating and maintenance costs, should contain a specific legal determination as to whether adopting the 65% formula would constitute an abuse of the Board's discretion.

Since 1997, the Board has utilized the services of economic consultant Seifel Associates to conduct the AGA study. From everything I have heard, the Board has been pleased with Seifel's performance in conducting the AGA study. However, as Legal staff reported to the IRA/AGA Committee on June 26, 2003, the specific legal determination regarding abuse of discretion is best performed by an attorney.

Because of the newly added special requirements for the AGA study, the IRA/AGA Committee agreed that, if possible, someone qualified to do both the necessary economic and legal analysis should be retained to perform the study. It was recommended that staff check on the availability of Dr. Kenneth Baar to conduct the study for the 2004 AGA. Dr. Baar was recommended because; in addition to establishing the methodology utilized by the Board in conducting the operating cost analysis for over 20 years, Dr. Baar is an attorney and court recognized expert in rent control economics. Dr. Baar performed several AGA studies for the Board in the 1980's.

At the suggestion of the IRA/AGA Committee, I contacted Dr. Baar and inquired about his availability and interest in performing the upcoming AGA study. Once Dr. Baar indicated that he was both available and interested, I discussed the scope of service and projected costs.

For the past several years, the cost of performing the AGA study has ranged between \$12,000 - \$15,000. The FY 2004 budget has \$12,000 set aside for the study. Dr. Baar believes that with staff's assistance in gathering some of the background information, even with the additional legal analysis, the cost of the study should not exceed \$10,000. I would recommend that that the Board authorize me to execute a contract with Dr. Baar for an amount not to exceed \$10,000 so that he may begin performing the AGA study while the Board is on recess.

Financial Impact:

As indicated, the FY 2004 Adopted Budget has set aside \$12,000 for the AGA study. We will attempt to complete the entire study for \$10,000 and thereby realize a savings of \$2,000.

Name and Telephone Number of Contact Person:

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