



DATE: April 21, 2022

TO: Honorable Members of the Rent Stabilization Board

FROM: DéSeana Williams, Executive Director
Lief Bursell, Senior Planner

SUBJECT: Recommendation to set the Fiscal Year 2022/23 Annual Registration Fees and to Authorize Pass-through of a Portion of the Registration Fee for Fully-controlled Units to Certain Tenants.

Recommendation

That the Board adopts the following four resolutions concerning the Fiscal Year (FY) 2022/23 annual registration fees:

Proposed Resolution 22-06 – adopting the annual registration fee, due July 1, 2022, at \$250 per unit for fully-covered units. This fee is calculated based on the revenue necessary to cover recurring operational and capital expenses for the services the program provides to fully controlled rental units.

Proposed Resolution 22-07 – adopting the annual registration fee, due July 1, 2022, at \$150 per unit for partially-covered Measure MM units. This fee is calculated based on the revenue necessary to cover the expenses associated with registering and providing additional services for Measure MM units.

Proposed Resolution 22-08 – adopting a lower \$37 per unit annual registration fee, due July 1, 2022, for Measure MM units in affordable housing projects. This fee is calculated based on the revenue necessary to cover the expenses to register and provide additional services for Measure MM units associated with affordable housing projects managed by a non-profit and have an operative regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

Proposed Resolution 22-10 –authorizes, with proper notice, the pass-through of up to \$10.00 per month to tenants where the tenancy began prior to January 1, 1999. The pass-through may be taken for 12 consecutive months. It cannot start prior to July 1, 2022, and must terminate no later than December 31, 2023, unless extended by future Board action. The increase shall not result in a pass-through of greater than \$10.00 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 50% or less of the Area Median Income (AMI) as calculated by HUD for the Oakland-Fremont, CA HUD FMR Area, or otherwise demonstrating proof of qualification as low-income, to be reimbursed for the pass-through.

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 2022/23. However, the Board traditionally sets the fee at a meeting sometime in April or May to provide enough time to allow staff to print and mail the annual bill before but no later than the last week of May. State law requires the Board to set a Public Hearing to get public input before it can increase the existing fee level.¹

The Budget & Personnel Committee has met four times thus far in calendar year 2022 to review various aspects of the agency's budget and staffing model and agree upon the appropriate recommendation for the FY 2022/23 registration fee levels. At their March 29, 2022 meeting, the Budget & Personnel Committee voted unanimously to recommend the Board maintain all registration fees at their current level, including the \$250 per unit for controlled rental units, \$150 per unit fee for Measure MM units, and \$37 per unit for specific affordable housing projects that are funded by the City of Berkeley Housing Trust Fund.

Board members and Committees are also encouraged to submit any requests or suggestions for next year's budget over the next month so that they may be reviewed by staff and the Budget and Personnel Committee in time for inclusion in the final FY 2022/23 budget recommendation.

Fiscal Year 2021/22 Budget Update

The Board's adopted budget anticipated collecting \$5,515,850 for the current fiscal year. As of April 5, 2022, the agency has collected \$5,567,168, and staff now project that annual revenue will come in closer to \$5,650,000. As was presented to the Board in the Mid-Fiscal Year Budget Report, actual mid-year expenditures were significantly lower than anticipated by the adopted budget.

Decreases in actual expenditure levels during the first part of FY 2021/22 were due to salary savings, the majority of capital expenditures, most notably for the 3Di system, and the upcoming tenant survey that will take place in the 2nd half of this fiscal year. Salary savings were due to turnover in five (5) positions and the vacant Deputy Director position. Staff anticipates all but the newly created Policy Director position will be filled shortly and that these savings will not be as significant during the second half of FY 2022. Staff now project that total expenditures will be around \$500,000 less than what the Board authorized in the adopted budget.

The attached March 17, 2022, Mid-Fiscal year 2021/22 Budget Report provides more detail on the status of the Board's budget. Staff will next prepare the 3rd quarter budget update for review by the Budget & Personnel Committee. The 3rd quarter budget update will be provided to the Board at its June 16, 2022, meeting as an attachment to the Budget & Personnel Committee's FY 2022/23 Budget Recommendation.

Considerations for Setting the FY 2021/22 Registration Fees

The Board will again have to balance the agency's need for revenue with the continued economic uncertainty faced by landlords and tenants who are still recovering from the COVID-

¹ See California Government Code Section 66016. Please note, however, that Staff does not recommend increasing the fee for this fiscal year.

19 pandemic. The Board should consider the following information when considering the Budget & Personnel Committee's recommendations to decide the appropriate levels for the FY 2022/23 registration fees.

Ongoing Eviction Moratoriums

On March 31, 2022, California's state-wide eviction moratorium (AB 2179) was extended through June 30, 2022. While the deadline to apply to the state for rental assistance expired for both landlords and tenants, Alameda County has received more requests than the available funds can cover. There is a backlog of requests that are slowing the processing of the applications. Berkeley's local eviction moratorium remains in place as long as the City Council declares the local state of emergency is in effect. Staff is still being contacted by tenants who are unable to pay part or all of their rent due to the economic impacts of the COVID-19, as well as landlords that are owed significant amounts of back rent and are still waiting for determinations regarding both their and their tenants' rent relief applications.

Status of the Board's Uncommitted Reserve

The Board has recently elected to adopt annual budgets that have authorized the spending down of the uncommitted reserve to avoid registration fee increases while the rental housing market is still recovering from the economic impacts of the COVID-19 pandemic. Spending down the uncommitted reserve has allowed the Board to spare landlords from fee increases while still allocating sufficient funding for important projects such as the Anti-Eviction Mapping Project upzoning analysis and the upcoming tenant survey. Staff and the Budget & Personnel Committee anticipate the Board will begin the FY 2022/23 fiscal year with around \$850,000 in uncommitted reserves. This represents a reserve of over 12%, and it is sufficient to cover two months of the program's recurring expenditures. This is adequate funding to allow the Board the flexibility to again spend down the uncommitted reserve to avoid increasing registration fees.

Measure MM Unit Registration

The agency has registered approximately 4,700 Measure MM units, including 600 Measure MM affordable housing units which pay the lower \$37 per unit fee. Thus far, the Board has received just over \$610,000 in revenue from Measure MM units. Given the success of the initial year of Measure MM registration, the Board will have more accurate projections for Measure MM revenue when adopting the FY 2022/23 budget.

Increasing Staff Capacity

The FY 2021/22 Mid-Fiscal Year Budget Report introduced several positions that the Executive Director intends to add to the staffing model. These include a Finance Manager, a Senior Housing Counselor, and a Digital Education & Social Media Coordinator. Since these are new positions that do not currently exist as City of Berkeley job classifications, they require approval by the City's Personnel Board. It will likely take some time to create and fill these new positions. This registration fee recommendation assumes that these new positions will be created and added during the FY 2022/23 fiscal year.

Personnel Costs in FY 2022/23 and Beyond

The City of Berkeley completed negotiations with several of its labor unions in the summer of 2021. As a result of these negotiations, all of the agency's employees received a 3-4% cost of living increase during the current fiscal year and are scheduled to receive an additional 3% cost of living increase at the beginning of FY 2022/23. Additionally, the City of Berkeley agreed to increase the amount it pays in retirement benefits for newer employees, which started in calendar year 2013 or after, by a total of 8% over a three to five-year period (the actual length of time

depends on the individual employee's bargaining unit). Personnel costs for salary and benefits are the agency's largest expenditure (estimated at around 72% of the budget for this fiscal year), and these increased costs, combined with the addition of the new staff positions discussed earlier, may require the Board to consider increasing registration fee levels for the FY 2023/24 registration year.

Measure MM Unit Fee Level

The Board established the initial Measure MM fee level at \$150 per unit, \$50 of which was to recover \$200,000 of implementation costs that fell within FY 2020/21. The Board also set a lower \$37 per unit fee level for affordable housing projects managed by a non-profit and within the regulatory period established by a regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

Staff and the Budget & Personnel Committee recommendation is that these fee levels be maintained at \$150 and \$37 per unit for FY 2022/23. Projected revenue generated at these existing fee levels is necessary to fund Measure MM registration services (including the additional temporary worker that was added to assist Measure MM registration), the additional housing counselor position created to add capacity to serve Measure MM units, mediation services for these units, non-personnel costs (e.g., contracts and building rent), and Measure MM unit-specific outreach and analysis.

The Budget & Personnel Committee has requested that staff provide a full analysis of Measure MM implementation, including the staff impacts of providing services to Measure MM units. Staff are still developing reports in the agency's new 3Di system, and report development will likely pause temporarily as staff shifts its time and focus to the FY 2022/23 registration effort. Staff will provide a full report on Measure MM implementation next fiscal year after the necessary reporting tools in the 3Di system are finalized.

Balancing Available Reserve Against Economic Uncertainty

In prior years, the Board had committed to a strategy of increasing the registration fee in a "pay as you go" manner, raising it enough to meet budget commitments outlined for the upcoming fiscal year while at the same time endeavoring to maintain a reserve of approximately 5%-8% of the operating budget. This strategy was adopted mainly in response to property owners' stated desire to accommodate operational inflation in smaller, real-time adjustments and avoid substantial registration fee increases in any given year.

However, in the previous two years, the Board deviated from this plan in response to the COVID-19 pandemic. Two years ago, the Board elected to utilize a portion of the uncommitted reserve to cover anticipated expenses that would not be covered by revenue generated by the \$250 annual registration fee. Last year, the Board again elected to utilize a portion of the uncommitted reserve to avoid raising the registration fee and avoid overly relying on Measure MM registration revenue when the registration compliance rate and the overall number of qualifying units were unknown. Since the uncommitted reserve is again projected to be well above the historic 5%-8% level at the end of FY 2021/22, the Board again has the ability to use its existing reserve to avoid raising the annual registration fee at a time when tenants and landlords in Berkeley are still struggling due to the impacts of the COVID-19 pandemic.

The following table shows the registration fee as a percentage of the rent, which is probably the most relevant measure of the impact of any fee. The shaded area reflects a pre-vacancy decontrol program, while 1998 was a transition year from full rent control to decontrol. If the Board maintains the fee at \$250, it will be the lowest percentage of the average (mean) annual rent since the voters began electing Board members in 1984 and the second consecutive time the fee has ever been less than 1% of the average yearly rent for controlled rental units.

Fees as a percentage of rent			
Year	Fee	Mean Monthly Rent	% Annual Rent
1984	\$60	\$267	1.87%
1987	\$80	\$293	2.28%
1989	\$100	\$328	2.54%
1991	\$136	\$361	3.14%
1998	\$112	\$720	1.30%
2000	\$124	\$865	1.19%
2005	\$154	\$1,062	1.21%
2010	\$194	\$1,274	1.27%
2014	\$194	\$1,498	1.08%
2015	\$213	\$1,606	1.11%
2016	\$234	\$1,637	1.12%
2017	\$270	\$1,710	1.32%
2018	\$250	\$1,816	1.15%
2019	\$250	\$1,956	1.07%
2020	\$250	\$2,039	1.02%
2021	\$250	\$2,110	0.99%
2022	\$250	\$2,177	0.96%

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 approved this formula, and in 2004, the voters approved this change in how the AGA was calculated. Prior to the change in the AGA methodology, all increases in the registration fee between 1980 and 2005 were taken into consideration and incorporated in the Annual General Adjustment of rents.

Since the adoption of statewide vacancy decontrol in the late 1990s, rent levels have been set using two different standards. Under vacancy decontrol, owners are expected to consider 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 to a new tenant. Approximately 90% of the units have experienced at least one decontrol event since 1999. The Board has been extremely careful to guarantee that owners of the 10% 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, given the purposes of the Ordinance, to pass along to tenants a part or all of the increase in fees as a temporary adjustment of rent ceilings.

For 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. In 2015, 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. In 2016, when the fee was raised by \$18, an additional \$2.00 per month was added, raising the monthly pass-through to \$8.00 per unit. In 2017, when the fee was increased by \$36, the pass-through was increased by an additional \$3.00 per unit, bringing the total monthly pass-through to \$11 per unit. Three years ago, the fee was lowered to \$10 per month to reflect the \$20-per-year decrease in the registration fee, and it has remained at that level since then. This year, if the fee is maintained at the proposed \$250 per unit, the Budget & Personnel Committee believes it is appropriate to maintain the pass-through at \$10 a month. The proposed pass-through may be taken for 12 consecutive months and cannot begin prior to July 1, 2022, and must terminate no later than December 31, 2023, unless extended by future Board action. The change shall not result in a pass-through of greater than \$10.00 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 must be 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 the 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 to 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, around 700 low-income individuals have taken advantage of this program and utilized around \$130,000 of the AEPHI Fund balance.

If the Board wishes to continue this mitigation, it will need to authorize an additional allocation from the AEPHI settlement account, containing approximately \$61,000. The original \$18,000 allocation for the pass-through reimbursement program lasted over six years. As the registration fees have increased over the years, we have noticed two trends: More owners take the pass-through, and more low-income tenants request reimbursement. This trend continued unchanged until last year, when there was a reduction in the number of pass-throughs and reimbursement requests. The COVID-19 pandemic likely contributed to the reduced number of pass-throughs and reimbursement requests received this fiscal year. The following table lists the totals from each of the past several years:

FY 2022/23 Registration Fee Report

April 21, 2022

Page 7

Year	2016/2017	2017/2018	2018/2019	2019/2020	2020/21	2021/22
Registration Fee Charged (amount of pass-through)	\$234 (\$8 per month)	\$270 (\$11 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)
Number of Notices Property Owners Sent to Tenants	486	595	601	680	565	537 (YTD)
Number of Qualified Tenants Requesting Reimbursement	75	101	110	126	104	83 (YTD)

The Program spent just over \$10,000 on reimbursements in FY 2020/21, and staff anticipates spending around the same amount this year. The Board authorized an additional \$13,000 allocation for the passthrough program last year. There is more than sufficient funding for these reimbursements to continue in FY 2022/23, even if requests increase to pre-pandemic levels.

In 2010, the Board also discussed the appropriate income level to qualify for the reimbursement program. Under federal guidelines, 50% of area median income (AMI) is considered “Very Low Income.” Previously, 30% of AMI was considered “Extremely Low Income,” but that definition has since been changed to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit. There is no unique designation for 40% of the AMI that staff is aware of. The household income by household size for 30%, 40%, and 50% of the AMI for Alameda County is listed below. According to HUD guidelines, the 2021 area median income for a household in Alameda County is \$125,600. The HUD guidelines were published on April 1st of, 2021. The table below lists income standards for 1-8 person households calculated at 30%, 40%, and 50% of the AMI, rounded to the nearest \$50 per HUD’s practice. HUD income limits have not yet been updated for 2022.

Income Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% AMI	\$26,400	\$30,150	\$33,950	\$37,700	\$40,700	\$43,750	\$46,750	\$49,750
40% AMI	\$35,150	\$40,200	\$45,200	\$50,240	\$54,250	\$58,300	\$62,300	\$66,300
50% AMI	\$43,950	\$50,250	\$56,500	\$62,800	\$74,000	\$79,500	\$84,950	\$90,450

In calculating the 50% AMI “Very Low Income” limit, HUD also includes “High Housing Cost Adjustment” for the Oakland-Fremont CA HUD Metro FMR Area. This increases the base 50% AMI income limit category for a family of four by \$5,700 or 9.1%.

HUD Income Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
50% AMI	\$47,900	\$54,800	\$61,650	\$68,500	\$74,000	\$79,500	\$84,950	\$90,450

In previous years, the Board established a standard that allows low-income tenants with a household income of 40% or less of the AMI to be reimbursed for the pass-through, and it was not until FY 2018/19 that the Board set the qualifying income at the higher 50% AMI level. In FY 2019/20, Staff and the Budget and Personnel Committee recommended that the mitigation pass-through for low-income tenants be adopted to match the HUD's higher 50% AMI or "Very Low Income" limit, including the "High Housing Cost Adjustment" and to continue 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. Staff and the Budget & Personnel Committee recommend the mitigation pass-through for low-income tenants be adopted with this standard again for FY 2022/23. Staff will update income limits for 2022 as soon as HUD publishes them.

Staff and the Budget and Personnel Committee also recommend that reimbursement for the pass-through continue to be limited to the current registration year, which is consistent with the Board's practice for the past three years.

Please note that the registration fee pass-through and low-income tenant reimbursement programs are only applicable to controlled rental units and will not apply to Measure MM units.

Conclusion

The Budget & Personnel Committee recommends that the Board adopt resolutions to set the fee for fully covered units at \$250² and the fee for partially covered units subject to Measure MM at \$150 per unit. The committee also recommends that the Board consider setting a lower \$37 fee for partially covered units subject to Measure MM that are in affordable housing projects that are managed by a non-profit and are within the regulatory period established in a regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

Finally, the Budget & Personnel Committee recommends that the Board adopt a resolution to authorize the registration passthrough and low-income tenant reimbursement program to continue in FY 2022/23.

Name and Telephone Number of Contact Person

DéSeana Williams, Executive Director (510) 981-6903

Attachment – FY 2021/22 Mid-Fiscal Year Budget Report

² This would be the fifth year in a row that the fee for fully covered units would be set at \$250.

RESOLUTION 22-06

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR FULLY COVERED UNITS; DUE JULY 1, 2022

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 an amount deemed reasonable by the Board; and

WHEREAS, the Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$5,700,000 in FY 2023 will be necessary to meet the Program's operating needs; and

WHEREAS, because of the ongoing housing crisis, demand for Rent Stabilization Program services has increased dramatically in recent years, including an estimated 40% to 60% increase over the past 8 years; and

WHEREAS, the Rent Stabilization Program has provided important services to tenants and landlords during the current COVID-19 pandemic and relief effort; and

WHEREAS, the Board believes that, to the extent possible, the Program should continue to meet the needs of owners and tenants requesting our services and maintain a staffing level to allow that to happen; and

WHEREAS, inflation has increased approximately 40% and average rents of controlled units have increased by approximately 73% since 2009; and

WHEREAS, since 2009, the base annual registration fee has only been increased three times by a total of \$56; and

WHEREAS, the current fee of \$250 represents 0.96% of the average (mean) monthly rent for rental units regulated by the Berkeley Rent Stabilization Program; and

WHEREAS, in FY 2018 the Board adopted a total fee of \$270, \$250 to cover necessary operational costs and an additional fee of \$20 to cover costs of anticipated capital improvements and to establish a capital reserve; and

RESOLUTION 22-06

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR FULLY-COVERED UNITS; DUE JULY 1, 2022 (Page 2)

WHEREAS, in FY 2019 the Board adopted a fee of \$250, \$245 to cover necessary operational costs and \$5 dedicated to capital needs; and

WHEREAS, in FY 2020 the Board again adopted a fee of \$250, \$245 to cover necessary operational costs and \$5 dedicated to capital needs; and

WHEREAS, in both FY 2021 and FY 2022 the Board adopted a fee of \$250 to cover only necessary operational costs; and

WHEREAS, because of salary related savings in FY 2022, the Board has an operational reserve balance of over 8%; and

WHEREAS, to reach the revenue targets referenced above, an annual registration fee of \$250 per unit fee for fully covered units is required; and

WHEREAS, the Board will meet to consider and adopt a final budget document detailing the revenues, line-item expenditures and staffing model in June 2022.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2023 registration fee for fully covered rental units, due July 1, 2022, is hereby set at \$250 per unit; and,

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 the Board's consideration and adoption at a scheduled meeting in June 2022.

Dated: April 21, 2022

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

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 22-07

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2022

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 an amount deemed reasonable by the Board; and

WHEREAS, the Acting Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$5,700,000 in FY 2023 will be necessary to meet the Program's operating needs; and

WHEREAS, Measure MM, which was placed on the general election ballot by the Berkeley City Council on July 30, 2020, and subsequently passed by the voters on November 3, 2020, now requires the Board to register certain partially covered rental units, including: rented single-family homes, condominiums, and newly-constructed units; and

WHEREAS, on December 17, 2020, by Resolution 20-17, the Rent Stabilization Board, approved the implementation of registration for partially exempt units due to the amendments to the Rent Stabilization Ordinance mandated by Measure MM; and

WHEREAS, Resolution 20-17 established that the Rent Stabilization Board will not charge a Registration Fee for partially exempt Measure MM units for the remainder of the FY 2021; and

WHEREAS, Resolution 20-17 further resolved that any additional expenses associated with registering or providing services for partially exempt units during the remainder of the current fiscal year shall be considered and potentially increase the Registration Fee for partially exempt units for the 2021/2022 Fiscal Year; and

WHEREAS, Resolution 20-17 authorized Rent Stabilization Program staff to offer a number of services previously unavailable to tenants and landlords of partially exempt units including, but not limited to mediation regarding a variety of different rental housing concerns and counseling regarding: evictions and security deposits, the Berkeley Emergency Response Ordinance, the local eviction moratorium (BMC Section 13.110), the state eviction moratorium (AB 3088), the statewide anti-rent-gouging law (AB 1482), the Tenant Buyout Ordinance, the Rental Housing Safety Program, and the Short-Term Rental Ordinance; and

RESOLUTION 22-07

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2022 (Page 2)

WHEREAS, in FY 2022 the Board adopted a total fee of \$150, \$100 to cover the additional expenses associated with registering and providing services for partially exempt Measure MM units during FY 2022, and \$50 to cover expenses associated with registering and providing services in FY 2021; and

WHEREAS, a little over 4,000 units have registered under Measure MM thus far FY 2022; and

WHEREAS, the Executive Director and Rent Stabilization Board believe that \$650,000 in annual revenue will be necessary to register and provide services to Measure MM units in FY 2023; and

WHEREAS, the Rent Stabilization Program has provided important services to tenants and landlords of partially exempt Measure MM units during the current COVID-19 pandemic and relief effort; and

WHEREAS, the Board believes that, to the extent possible, the Program should continue to meet the needs of owners and tenants of Measure MM units that request our services and maintain a staffing level to allow that to happen; and

WHEREAS, to reach the revenue target referenced above, a \$150 per unit fee for partially exempt Measure MM units is required; and

WHEREAS, the Board will meet to consider and adopt a final budget document detailing the revenues, line-item expenditures and staffing model in June 2022.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2023 registration fee for partially exempt Measure MM units, due July 1, 2022, is hereby set at \$150 per unit; and,

BE IT FURTHER RESOLVED that Rent Stabilization Program staff will continue to collect as much information as possible on the impacts and expenses associated with registering and providing services for partially exempt Measure MM units in FY 2023; and,

BE IT FURTHER RESOLVED that the Rent Stabilization Board will consider all data and information gathered on the impacts and expenses associated with providing services to partially exempt Measure MM units in FY 2023 when setting the registration fee levels for FY 2024.

RESOLUTION 22-07

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2022 (Page 3)

Dated: April 21, 2022

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

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 22-08

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2022

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 an amount deemed reasonable by the Board; and

WHEREAS, the Executive Director and Rent Stabilization Board believe that new recurring annual revenues of at least \$5,700,000 in FY 2022 will be necessary to meet the Program's operating needs; and

WHEREAS, Measure MM, which was placed on the general election ballot by the Berkeley City Council on July 30, 2020, and subsequently passed by the voters on November 3, 2020, now requires the Board to register certain partially covered rental units, including: rented single-family homes, condominiums, and newly-constructed units; and

WHEREAS, on December 17, 2020, by Resolution 20-17, the Rent Stabilization Board, approved the implementation of registration for partially exempt units due to the amendments to the Rent Stabilization Ordinance mandated by Measure MM; and

WHEREAS, Resolution 20-17 established that the Rent Stabilization Board will not charge a Registration Fee for partially exempt Measure MM units for the remainder of the FY 2021; and

WHEREAS, Resolution 20-17 further resolved that any additional expenses associated with registering or providing services for partially exempt units during the remainder of the current fiscal year shall be considered and potentially increase the Registration Fee for partially exempt units for the 2021/2022 Fiscal Year; and

WHEREAS, Resolution 20-17 authorized Rent Stabilization Program staff to offer a number of services previously unavailable to tenants and landlords of partially exempt units including, but not limited to mediation regarding a variety of different rental housing concerns and counseling regarding: evictions and security deposits, the Berkeley Emergency Response Ordinance, the local eviction moratorium (BMC Section 13.110), the state eviction moratorium (AB 3088), the statewide

RESOLUTION 22-08

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2022 (Page 2)

anti-rent-gouging law (AB 1482), the Tenant Buyout Ordinance, the Rental Housing Safety Program, and the Short-Term Rental Ordinance; and

WHEREAS, Board staff will be able to provide tenants in these affordable housing units some, but not all, services it provides to other Measure MM tenants; and

WHEREAS, rental units in certain affordable housing project projects that are managed by a non-profit do not qualify for an exemption from registration under MM per Rent Stabilization Ordinance section 19.76.050.K; and

WHEREAS, the Rent Stabilization Program provides important services to these tenants, including counseling of low-income tenants in these units; and

WHEREAS, the Rent Stabilization Board's mediation program is available to tenants, property owners, and the non-profit managers with these units; and

WHEREAS, there are costs associated with providing the above referenced services to these units; and

WHEREAS, in FY 2022 the Board adopted a total fee of \$37, \$25 to cover the additional expenses associated with registering and providing services for these partially exempt Measure MM units during FY 2022, and \$12 to cover expenses associated with registering and providing services in FY 2021; and

WHEREAS, the Rent Stabilization Board does not want to overburden affordable housing service providers with fees given that they do not operate for a profit; and

WHEREAS, the approximately 500 units in affordable housing projects have registered under Measure MM thus far in FY 2022; and

WHEREAS, the Rent Stabilization Program has provided important services to tenants and landlords of partially exempt Measure MM units during the current COVID-19 pandemic and relief effort; and

RESOLUTION 22-08

SETTING THE FISCAL YEAR 2022/2023 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS IN AFFORDABLE HOUSING PROJECTS THAT ARE MANAGED BY A NON-PROFIT AND HAVE AN OPERATIVE REGULATORY AGREEMENT WITH THE CITY OF BERKELEY THROUGH ITS HOUSING TRUST FUND PROGRAM; DUE JULY 1, 2022 (Page 3)

WHEREAS, the Board believes that, to the extent possible, the Program should continue to meet the needs of owners and tenants of Measure MM units, including units in affordable housing projects, that request our services and maintain a staffing level to allow that to happen; and

WHEREAS, to reach the revenue target referenced above, a \$37 per unit fee for partially exempt Measure MM units is required; and

WHEREAS, the Board will meet to consider and adopt a final budget document detailing the revenues, line-item expenditures and staffing model in June of 2022.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2023 registration fee, due July 1, 2022, for partially-exempt Measure MM units owned by a limited partnership and having a managing general partner that qualifies as a 501(c)(3) non-profit organization that are in a housing project within the regulatory period established by a regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

BE IT FURTHER RESOLVED that Rent Stabilization Program staff collect as much information as possible on the impacts and expenses associated with registering and providing services for partially exempt Measure MM units in affordable housing projects in FY 2023; and,

BE IT FURTHER RESOLVED that the Rent Stabilization Board will consider all data and information gathered on the impacts and expenses associated with providing services to partially exempt Measure MM units in affordable housing projects in FY 2023 when setting the registration fee levels for these units in FY 2024.

Dated: April 21, 2022

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

YES:

NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

RESOLUTION 22-10

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2022/2023 REGISTRATION FEE AS A TEMPORARY GENERAL ADJUSTMENT OF RENT CEILINGS AND HAVE STAFF IMPLEMENT A MECHANISM THAT ALLOWS QUALIFYING LOW-INCOME TENANTS 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 Executive Director and Rent Stabilization Board believe that recurring annual revenue of \$5,700,000 in FY 2023 will be necessary to meet the Program's operating and capital needs and it will require an annual registration fee of \$250 per unit for fully covered units \$150 for partially covered Measure MM units; 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, prior to the voters changing the way in which the Annual General Adjustment (AGA) was calculated effective in 2005, the Board passed along to tenants all increases in the registration fees as one of the components of the AGA; and

WHEREAS, with the voter-approved change in how the AGA is calculated, the Board is no longer allowed to include new increases to the registration fee as part of the AGA, but only as a pass-through adopted and extended each year; and

WHEREAS, the Rent Stabilization Board consistently found that it would be fair and equitable in view of the purposes of the Rent Ordinance to pass along to tenants' part or all of the increase in the registration fee as a temporary adjustment of rent ceilings; and

WHEREAS, under vacancy decontrol, owners are expected to consider 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 9.3% of the rental units in the City have a tenancy that began prior to January 1, 1999, when vacancy decontrol was fully implemented; and

RESOLUTION 22-10

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2022/2023 REGISTRATION FEE AS A TEMPORARY GENERAL ADJUSTMENT OF RENT CEILINGS AND HAVE STAFF IMPLEMENT A MECHANISM THAT ALLOWS QUALIFYING LOW-INCOME TENANTS TO BE REIMBURSED FOR ANY PASS-THROUGH (Page 2)

WHEREAS, the Board has attempted to guarantee that owners of these non-decontrolled rental units continue to receive a pass-through for increased costs 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 2023 registration fee as a temporary adjustment of rent ceilings; and

WHEREAS, the Board also understands and wishes to mitigate the financial hardships experienced by tenants at 50% or less of Area Median Income (AMI) as calculated by the Department of Housing and Urban Development (HUD) for the Oakland-Fremont, CA HUD FMR Area, or otherwise receiving certain forms of income-qualifying assistance, who have to pay the pass-through; 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 2023, the landlord may, by serving legal notice pursuant to California Civil Code section 827, increase the rent by up to \$10.00 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 2023 Annual General Adjustment; and

BE IT FURTHER RESOLVED that this twelve-month temporary general adjustment of up to \$10.00 may not be imposed prior to July 1, 2022, and, regardless of when first collected, shall terminate no later than December 31, 2023, unless extended by further Board action; and

BE IT FURTHER RESOLVED that the maximum increase shall not result in a pass-through greater than \$10.00 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 the above-referenced form to the Rent Board before collecting the pass-through; and

RESOLUTION 22-10

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2022/2023 REGISTRATION FEE AS A TEMPORARY GENERAL ADJUSTMENT OF RENT CEILINGS AND HAVE STAFF IMPLEMENT A MECHANISM THAT ALLOWS QUALIFYING LOW-INCOME TENANTS TO BE REIMBURSED FOR ANY PASS-THROUGH (Page 3)

BE IT FURTHER RESOLVED that the Board instructs the Director to implement a program that reimburses low-income tenants with a household income at 50% or less of the AMI as calculated by HUD for the Oakland-Fremont, CA HUD FMR Area, or otherwise demonstrating proof of qualification in another state or federal program (including, but not limited to, CalWORKS, CalFresh, Medi-Cal, WIC) approved by the Director, for any pass-through of registration fees they incur as provided by Regulation 1271(B), which allows for distribution of unclaimed funds to benefit low-income tenants.

Dated: April 21, 2022

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

YES:

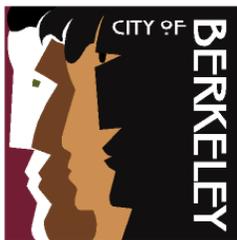
NO:

ABSTAIN:

ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director



Rent Stabilization Board
Office of the Executive Director

DATE: March 17, 2022

TO: Honorable Members of the Berkeley Rent Stabilization Board

FROM: Honorable Members of the Budget & Personnel Committee
By: DéSeana Williams, Executive Director
Lief Bursell, Senior Planner

SUBJECT: Mid-Fiscal Year 2021-2022 Budget Report

Recommendation

That the Board review the mid-fiscal year budget report and adopt Resolution 22-03 to adjust the agency's staffing model by converting the vacant Deputy Director position to a new Policy Director position, which will serve as the lead staff person for the Board's policy projects and initiatives.

Background

On June 17, 2021, the Board adopted a staffing model and budget with a maximum expenditure authorization for Fiscal Year (FY) 2021/22. Prior to adopting the budget, the Board voted to keep the annual registration fee for fully-covered units at \$250 per unit and to set the Measure MM unit fee at \$150 per unit¹. Due to the ongoing impacts of the COVID-19 pandemic on the rental market, the Board chose to maintain the fully-covered unit fee at \$250 per unit, which has remained at that level since FY 2018/19 and to utilize its uncommitted reserve to pay for any expenses that were not covered by FY 2021/22 revenue. The Board also set a lower Measure MM registration fee of \$37 per unit for 100% affordable housing projects that are managed by a non-profit and are within the regulatory period established by a regulatory agreement with the City of Berkeley through its Housing Trust Fund program.

The Board's adopted budget anticipated spending down the uncommitted reserve by around \$550,000 this fiscal year. The Board has maintained a larger than expected uncommitted reserve balance over the past several fiscal years primarily due to staff turnover and unexpected vacancies in several previously-budgeted positions. This reserve has given the Board the

¹ The Measure MM fee included a base fee of \$100 per unit to cover the FY 2021/22 costs, and an additional \$50 fee to recover FY 2020/21 implementation costs. Similarly, the \$37 per unit affordable housing project fee includes a \$25 base fee and an additional \$12 to recover FY 2020/21 costs.

flexibility to avoid fee increases while still funding important projects such as the upcoming tenant survey and the Anti-Eviction Mapping Project's (AEMP) upzoning impact analysis. The Board's established reserve policy is to maintain an uncommitted reserve that covers all expenditures for between one and two months or 8%-16% of recurring expenditures. Although the Board has previously chosen to go below this 8% reserve level to limit the extent of fee increases, it has maintained a two-month or 16% reserve in recent years. The year's adopted budget anticipated ending this fiscal year with approximately \$332,000 in its uncommitted reserve, which is approximately 6% of recurring expenditures. The Board determined that decreasing the reserve below its minimum 8% level was an acceptable trade-off to avoid increasing the fully-covered fee that applies to between 19,000 and 20,000 units at a time when the economy and rental housing market are still impacted by the COVID-19 pandemic and both local and statewide eviction moratoriums.

The Board also voted to incorporate a formal mid-fiscal year budget review as a permanent part of the Board's annual budget process. The Board utilized a mid-fiscal year budget review process for the first time last fiscal year and it successfully allowed the Board to pivot to respond to the passage of Measure MM and hire an additional Housing Counselor position. This additional counseling position has helped to respond to inquiries related to the Measure MM implementation, as well as the increased services the agency is providing to Measure MM units.

FY 2020/21 Year-End Fund Balance

The staff has reviewed the final reports from the Finance Department on the Board's FY 2020/21 revenues and expenditures. The Board's year-end FY 2020/21 revenue was \$4,998,516 and total expenditures were \$5,059,050. \$52,083 in expenditures owed for services provided in FY 2020/21 was carried over to FY 2021/22 – this is not surprising as the last invoices of the year for work completed in June are often not submitted in time to process payment until July or August and, therefore, these expenditures must be accounted for in the following fiscal year. For this reason, the Board's year-end fund balance is higher on a cash basis than an accrual basis, which accounts for expenses that were incurred even if they are yet paid for.

The Board's total FY 2020/21 year-end fund balance was \$1,435,979 (on an accrual basis). The Board's capital reserve ended the year at \$495,500, which left its uncommitted reserve at \$940,479. This is 16.7% of projected recurring expenditures. Please note that these numbers are still preliminary because they have not yet been audited. The City of Berkeley contracts with an outside auditor to review its financial statements, and an audit of the Board's FY 2020/21 financial statements should be ready to review sometime in March or April of 2022.

As discussed in the FY 2021/22 budget recommendation, the outside auditor's report will show that the Rent Board's FY 2020/21 revenue is \$328,327 lower than the numbers that were provided to the Board and are being discussed here. This is due to a malfunction in the agency's online payment system that resulted in \$328,327 in FY 2020/21 revenue being deposited as FY 2019/20 revenue. For budgetary purposes, it is more accurate to count this revenue in FY 2020/21, even though it is accounted for elsewhere in the Board's audited financial statements.

Fiscal Year 2021-2022 Revenue Collection

The Board's adopted budget anticipated the agency collecting \$5,515,850 in revenue for the current fiscal year. As of December 31, 2021, the agency has collected \$5,434,941, well on pace to reach or exceed the amount. At the mid-fiscal year point, 298 delinquent fully-covered unit accounts owed a total of \$176,000 in current year fees. Overall, collection for fully-covered units is slightly lower than last year as the number of delinquent accounts is higher and owes about \$75,000 more than at the midpoint of last year.

When the Board adopted its FY 2021/22 budget, the main area of uncertainty was the rate of compliance and the overall total number of Measure MM units that would register during the initial registration year for Measure MM units. The Board chose a conservative estimate of 50% compliance rate for the initial year and the adopted budget only anticipated \$300,000 (\$350,000 including late registration penalties) in revenue. Actual Measure MM revenue at mid-year is \$616,724, with a total of 4,570 units registering, including 598 units paying the lower \$37 per unit, affordable housing fee. As of the mid-year, 270 outstanding Measure MM accounts owe just over \$125,000 in current year registration fees. Recently, staff sent out a second round of penalty bills to both Measure MM and fully-covered properties.² Overall there are approximately \$300,000 in unpaid registration fees³ and the number of delinquent accounts is higher than normal, which is not unexpected given the COVID-19 impacts and the addition of the new Measure MM registration requirements.

At the request of the Budget & Personnel Committee, the attached mid-fiscal year budget update spreadsheet identifies in separate rows what revenue comes from Measure MM registration fees and what revenue comes from fully-covered unit registration fees.

Administration of the Fair Chance Ordinance

On December 14, 2020, the Board agreed in principle to administer the recently-passed Ronald V. Dellums Fair Chance Access to Housing Ordinance (B.M.C. Chapter 13.106) on behalf of the City after receiving a letter from Mayor Arreguín requesting that the agency do so "subject to the negotiation of an agreement between the City administration and the Board regarding the specific roles and responsibilities in ordinance implementation".

Staff submitted a proposed budget that estimated \$10,350 in startup costs and \$105,500 in ongoing personal costs to administer the Ordinance. As part of their FY 2021/22 adopted budget, the City Council agreed to transfer \$115,850 in funds from the City of Berkeley general fund and that the Board staff would bill them only the actual costs to run the program.

² The Board adopted Resolution 21-19 on July 15, 2022, which created an amnesty period to allow property owners the opportunity to pay the Board's Registration Fee for FY 2020/2021 without penalty. Resolution 21-19 gives a 90-day amnesty to owners of fully-covered units if they were financially impacted by COVID-19; and a 120-day amnesty for Measure MM units without consideration of COVID-19 financial hardship.

³ There are also nearly one million dollars in penalty fees still outstanding between fully-covered and partially covered units.

The agency has set up Fair Chance Ordinance and is now actively administering it, but other than some limited counseling on the Ordinance, the administration has taken far fewer resources than initially anticipated. As of December 31, 2021, the agency has not yet billed the City's general fund related to the Fair Chance Ordinance and does not anticipate billing for a significant amount unless there are active cases that arise and require full evidentiary hearings. Year-end 2021/22 revenue projections have been reduced by \$100,000 to reflect the anticipated reduction in compensation for administering the Fair Chance Ordinance.

Fiscal Year 2021-2022 Mid-Year Expenditures & Updated Projections

As of December 31, 2021, the Board has expended a total of \$2,312,414. Actual mid-year expenditures are significantly less than what was anticipated in the Board's adopted budget due to salary savings and because the bulk of capital expenditures, mostly for the 3Di Rent Tracking System (RTS) replacement, will take place in the 3rd and 4th quarter. Salary expenditures were down in the 1st half of the year due to the turnover of five positions and the vacant Deputy Director position. Staff now project that total FY 2021/22 expenditures will be around \$550,000 less than what the Board authorized in the adopted budget.

A preliminary mid-year budget update is attached to this report and provides details on actual expenditures by budget line-item. The staff has also updated the projected year-end projections with updated projections on personnel expenditures, accounted for any changes or additions to the Board's contracts with outside vendors, and reduced spending from the Board's capital reserve.

As discussed earlier in this report, the actual year-end numbers for FY 2020/21 are not yet final and are pending final review by the City of Berkeley's contracted outside auditor.

Current Agency Priorities

The Rent Board's adopted FY 2022 Budget continues to prioritize the Rent Board's five core services⁴ or areas of work, which are:

- Outreach
- Counseling
- Petitions & Mediations
- Registration of controlled rental units
- Policy, administrative, and legal support

In addition to the agency's ongoing "core" work, the Board's adopted budget included the following priority projects and initiatives (current status in parenthesis):

⁴ More detail on the Board's core services can be found in the June 18, 2020 report recommending adoption of the FY 2020/21 Line-Item Budget and June 20, 2019 report on Rent Stabilization and Good Cause for Eviction in the 21st Century.

- Complete the initial registration of Measure MM units. (Mostly complete)
- Provide increased service to Measure MM units. (Ongoing – there have been 9 mediation requests and just under 200 counseling cases involving Measure MM units)
- Prepare and execute a phased office reopening and begin to provide more in-person services to clients. (In progress)
- Provide outreach and assistance to tenants and landlords on laws and requirements for evictions as state and local eviction moratoriums come to an end. (*In progress*)
- Fully transition from the agency’s existing RTS Database to the agency’s new integrated software platform being developed by 3Di. (*In progress*)
- Recruit, select, hire and train a new permanent Executive Director. (**Complete**)
- Create and hire a new General Counsel position that reports directly to the Board. (**Complete**)
- Implement and administrate the City’s Fair Chance Housing Ordinance. (**Complete**)
- Complete a survey of tenants and begin scoping a study/survey of property owners. (*In progress*)
- Use the 2nd and 4th Wednesdays to work on agency-wide improvement areas identified in the executive transition survey. (Ongoing)
- Continue work to improve the Demolition Ordinance to reach the appropriate balance of allowing new construction, while protecting sitting tenants and mitigating the overall loss of housing affordability. (*In progress*)
- Work with the City of Berkeley to revamp and improve the Relocation Ordinance. (In progress)
- Monitor development projects including the creation of new ADUs that impact the tenancies or services to existing tenants. (Ongoing)
- Continue to monitor Short-Term Rental Ordinance compliance to prevent the loss of long-term rentals. (Ongoing)
- Continue studying and memorializing the impacts of Costa-Hawkins on Berkeley and other cities in the state. (Ongoing)
- Implement a two-phase project to recreate all Rent Board web content (including PDFs) and transfer to the new website CMS, and expand integration with the City’s public records portal. Implementing and administratively improving the launch of the 3Di platform to effectively capture and report Measure MM unit registration. (*In progress*)
- Developing the 3Di platform to replace the existing Rent Tracking System (RTS) and case management system. (*In progress*)
- Implement redesign of a new agency website. (**Nearly complete**, new website scheduled to launch in March of 2022)
- Providing input to the Planning Department and HHCS Department on planned revisions to Berkeley’s Demolition Ordinance and Relocation Ordinance. (*In progress*)
- Continue working with local and regional groups to develop a coordinated and effective response to the housing crisis. (Ongoing)

- Work with the City of Berkeley IT Department to enhance agency cyber security.
(Ongoing)

The following projects have been identified by Staff, with the Board and its other committees as priorities, but implementation work has not yet begun:

- Select a vendor to complete the scanning of all property files and other agency files.
- Provide enhanced training for staff and Board members
- Recruit, select, hire and train a new permanent Executive Director.
- Providing input to the 4x4 Committee and City Council on implementation of the Fair Chance and “TOPA” Ordinance.
- Working with City Council to assist with the adoption of the Tenant Opportunity to Purchase Act (TOPA).

As the agency continues with the launch and implementation of its two priority projects, the Measure MM implementation and the RTS and case management replacement project, these are large, time-intensive projects that impact staff in all the work units. Additionally, the administratively heavy involvement of staff in the City of Berkeley’s website overhaul has further stretched staff resources. These larger, agency-wide projects are particularly administratively intense and often take up all extra staff capacity for any other initiatives or projects beyond the provision of the agency’s five core services. This is particularly true at this moment when staff is continuing to work on the data migration and transition of RTS and case management, as well as the launch of the registration for fully-covered units in 3Di.

The launch and data migration phase of the 3Di system transition is ongoing and should extend well into the next fiscal year, particularly for the non-registration-related features such as Case Management, and the modules used for the processing of both evictions and petitions. Staff should have increased capacity to take on an additional project, such as the scanning of property files after the full data migration and complete module launch have been completed.

It is important to note that the initiatives/projects listed above do not impact all work units equally. For example, the increased volume of client contacts directly related to Measure MM and the data migration with 3Di has impacted mainly the Registration Unit and the Public Information Unit. The city of Berkeley’s website overhaul project has deeply impacted the Administrative and Planning Unit. The resources a proposed initiative requires, and the agency’s current workload and capacity to respond, are important factors when considering any changes to the existing staffing model.

Current Staffing Model

The agency’s current staffing model has 25.0 Full-time Equivalent (FTE) career positions. Thus far in FY 2022, the agency has successfully recruited and hired a permanent Executive Director,

as well as added and hired for the new General Counsel position. Additionally, the former temporary position of Associate Planner has been made permanent and the staff person who filled the temporary position has been appointed to the permanent position.

After the recent hiring of a new PIU Manager, there are currently three (3) vacant positions within the agency. All vacancies are indicated in the adopted organizational chart attached to this report. Two of our permanent staff members are also on temporary leave but are expected to return sometime within the next six months.

Filling Vacancies

The three current vacancies are the Deputy Director position, a Senior Management Analyst that serves as the Registration Unit manager, and a Staff Attorney II position. Staff estimate that a new Registration Unit manager will be hired as soon as April, and the Staff Attorney II position will be filled sometime within the 2nd Quarter of 2022.

The FY 2021 mid-fiscal year report stated that the agency has adapted to operating without a Deputy Director has not had an active staff person in that role for several years. After reviewing the agency's needs and the Board's desire for a senior staff person to work on housing policy issues, staff recommends the Board remove the Deputy Director position from the staffing model and create and hire a new Policy Director position.

Part of the justification for creating the Deputy Director position was to hire and train a successor to the agency's previous Executive Director. Now that a new Executive Director is in place, succession planning is no longer a priority. The only benefit to having a Deputy Director is that this position serves as the backup to the Executive Director in case of emergency, vacation, or extended absence. Now that the agency's new General Counsel position has been filled by its former Acting Executive Director, there is an experienced senior staff person that reports directly to the Board and can back up the Executive Director when necessary.

The Board's adopted budget states that the Board is interested in pursuing a candidate to increase capacity to provide direction regarding several policy initiatives the Board is interested in adopting. Most of the policy issues the Board has raised recently are in the areas of housing and land use planning. A Deputy Director is an operations-focused position, and these policy areas require a staff person with a background and education in those areas. The proposed Policy Director would be created with the specific policy areas the Board is focusing on in mind.

The conversion of the vacant Deputy Director position is the only change staff is proposing to the staffing model at present, but there are several additional changes that staff recommends the Board consider implementing in FY 2022/23.

Future Staffing Model Changes

Given the imperative to increase capacity to further broaden how we provide service both internally and externally, there is a need to separate internal functions within certain units and introduce more focused functions in others. To achieve this, the staff is recommending the Board consider the creation of a total of three new positions in the next fiscal year. These positions are a Finance Manager, Senior Housing Counselor, and a Digital Education and Social Media Coordinator.

Finance Manager

Currently, payroll, finance, and budgetary functions are splintered between several work units. The Finance Manager would take over supervision of these tasks. In addition, the Finance Manager will be the first step to creating a finance unit that will also be responsible for contracting and purchasing activities. The Rent Board's current staffing model and organizational structure have limited capacity to handle these functions efficiently. An independent and financially-focused unit will allow for increased resources in other units that are currently handling these functions, offer more streamlined processes, and provide a centralized unit to be accountable for these functions which will further stabilize the organization and benefit overall productivity.

Senior Housing Counselor

There is a need to create a higher-level counselor position in the Public Information Unit (PIU). PIU staff are essential for the provision of core Rent Board services including education, counseling, and conducting community outreach. The PIU housing counselors must possess a niche, in-depth knowledge, and understanding of the Ordinance, state and local laws, and the intersections of multiple community agencies and resources related to rental housing. A Senior Housing Counselor would provide an additional and necessary layer to the unit where responsibility will be dedicated to highly specialized cases, research, and special projects. Moreover, adding this layer will allow the current housing counselors to continue to improve response times and increase regular counseling availability to consistently provide nuanced and detailed assistance with our clients' unique housing situations.

Digital Education and Social Media Coordinator

For years, the Board has expressed an interest in increasing the agency's social media presence and adapting our outreach program to include popular applications such as Twitter and LinkedIn. Additionally, as the Rent Board aligns with the City of Berkeley's new website platform, there will be an increased need to centralize the management of our print, web, and digital outreach to ensure clear, consistent, and accurate messaging. The Digital Education and Social Media Coordinator will also take on the responsibility to increase our digital education presence that

will update the community more broadly on important affordable housing matters, legislation, and resources that not only inform but benefit those we serve.

Budget & Personnel Committee Recommendation

Having reviewed a similar report and hearing staff's presentation, on March 8, 2022, the Budget & Personnel Committee unanimously recommended that the full Board authorize a staffing model adjustment to convert the vacant Deputy Director position to a new Policy Director position. If the Board adopts this change, staff will take the appropriate steps to work with the Human Resource Department to create and then advertise for the position.

The Budget & Personnel Committee will continue to discuss the other positions mentioned in this report at future meetings before bringing any additional recommendations to the Board.

Next Steps

After reviewing the mid-fiscal year budget report and making changes to the current staffing model, the Board also needs to provide input on additional programs or initiatives they would like considered for inclusion in the FY 2022/23 budget. Starting at their March 29, 2022 meeting, the Budget & Personnel Committee will review the initial budget projections for the next fiscal year and then begin working on a recommendation for the setting of the FY 2022/23 registration fee. The Board should anticipate considering the registration fee recommendation at either its regular meeting on April 21, 2022 or at a special meeting during the first week of May. If there are no new major increases proposed to the agency's expenditures, the Board may be able to again avoid any significant increase to next year's registration fees.

Conclusion

Staff has prepared Resolution 22-03, which the Board must adopt to convert the vacant Deputy Director Position to a new Policy Manager position. Staff awaits the Board's direction on the Budget & Personnel Committee's recommendation, as well as its feedback on the other potential future changes to the staffing model that are identified in this report.

Attachments:

1. Mid-Fiscal Year Budget Update Spreadsheet
2. Adopted Fiscal Year 2021/2022 Staffing Model & Organization Chart
3. Proposed Resolution 22-03 Adjusting Staffing Model to Convert the Vacant Deputy Director Position to a New Policy Director Position.

**Rent Stabilization Program
FUND 440
Preliminary FY 2021 Year-End & FY 2022 Mid-Year Budget Update**

Code	Description	Adopted FY 2021	Actual Year-End FY 2021	Adopted FY 2022	Mid-Year FY 2022	Projected FY 2022
11-01	Monthly Employees	2,482,000	2,325,298	2,850,000	1,108,336	2,500,000
11-03	Hourly Employees	0	0	0	0	0
13-01	Overtime	5,000	477	2,000	177	1,000
27-20	Benefits	1,620,000	1,550,686	1,800,000	672,318	1,600,000
30-12	Stipends	53,500	51,800	53,500	26,900	53,500
30-23	Misc. Legal Expenses	360,000	225,683	20,000	8,485	65,000
30-36	Temp. Agency Employees	0	801	5,000	11,013	25,000
30-38	Misc. Professional Services	410,000	336,739	410,000	192,636	586,241
30-42	Office Equip. Mtc. Svcs. / Furniture	13,000	6,796	13,000	5,044	13,000
30-43	Bldg. & Structures Mtc. Svc.	400	392	500	202	500
30-51	Bank Credit Card Charges	25,000	7,615	25,000	10,020	25,000
40-10	Professional Dues & Intern Fees	3,000	2,060	3,000	139	3,000
40-31	Telephones	5,000	7,292	5,000	3,696	5,000
40-50	Printing and Binding	25,000	24,798	35,000	12,180	35,000
40-62	Meals & Lodging	1,000	0	1,000	0	1,000
40-63	Registration Fees/Training	12,000	0	12,000	1,393	12,000
40-61/64	Transportation & Commercial Travel	5,000	12	3,000	51	3,000
40-70	Advertising/public access	30,000	33,720	45,000	23,016	45,000
40-80	Books & Publications	13,000	13,207	13,000	6,571	13,000
50-10	Rental of Land / Buildings	355,000	336,232	375,000	171,468	375,000
51-10	Postage	25,000	26,798	40,000	3,703	30,000
51-20	Messenger / Delivery	500	0	500	0	500
55-11	Office Supplies	15,000	12,346	13,500	5,689	13,500
55-50	Food and Water	2,000	704	1,000	459	1,000
70-43	Office Equipment and Furniture	5,000	0	5,000	0	5,000
70-44	Computers, Printers, Software	10,000	2,767	12,000	606	12,000
75-25	PC Replacement/City Software Licences	50,709	50,709	74,305	37,152	74,305
75-35	Mail Services	3,600	3,600	3,600	1,800	3,600
75-50	City Vehicle / Fuel & Maint.	1,500	1,500	1,500	0	1,500
	Expenditure Subtotal**	5,531,209	5,022,031	5,822,405	2,303,054	5,502,646
	Special Projects (RTS Upgrade, online registration, training)	565,000	37,019	453,130	9,360	290,900
	Annual Capital Reserve	0	0	0	0	0
	Total Authorized Fund Expenditures*	6,096,209	5,059,050	6,275,535	2,312,414	5,793,546
	Fully-covered Unit Revenue			5,000,000	4,816,700	4,920,000
	Measure MM Revenue			350,000	616,724	650,000
	Fair Chance Ord. Administration			115,850	0	0
	Misc. (Project review, Settlements, Admin. Fees)			50,000	1,517	3,000
	Total Authorized Fund Revenue*	4,850,000	4,998,516	5,515,850	5,434,941	5,573,000
	Annual Surplus/Shortfall	(1,246,209)	(60,534)	(759,685)	3,122,527	(220,546)
	<i>Previous FY Carryover Expenditures</i>				52,083	52,083
	FUND BALANCE (cash basis)	289,938	1,488,035	728,350	3,850,877	1,267,489
	FUND BALANCE (accrual basis)	289,938	1,435,979	676,294	3,798,821	1,267,516
	TOTAL UNCOMMITTED OPERATIONAL FUND BALANCE	254,938	940,479	399,294	3,763,821	907,316

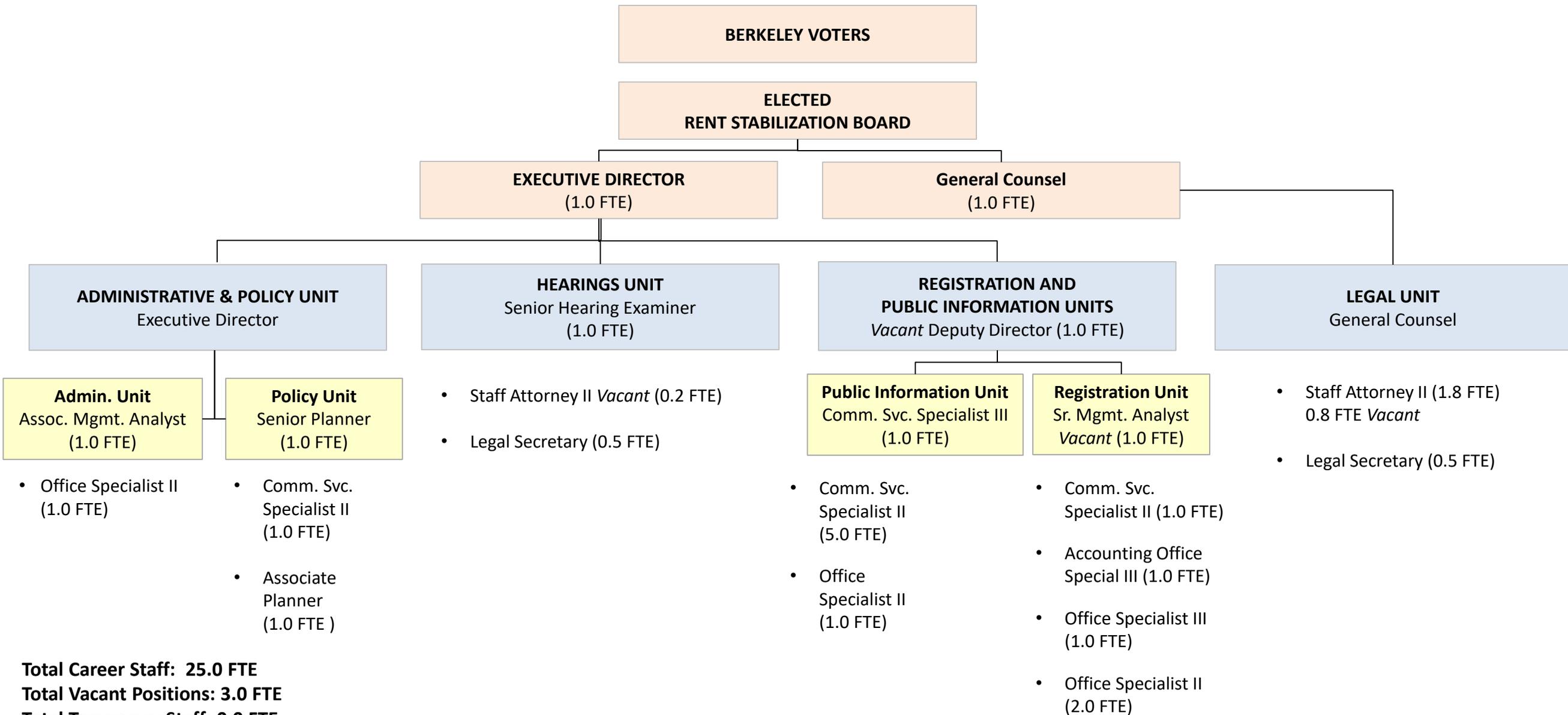
* Note: this report only reflects charges & revenues against the Rent Board Fund (Fund 440) and does not include services charged to or received from other funds

** Note: variance in actual expenditures and total fund balance reflects remaining balance in reimbursement offset escrow

Adopted Berkeley Rent Stabilization Program 2021/22 Organization Chart

Career and Temporary Positions FY 2021/22

Sorted by Division Supervision



RESOLUTION 22-03

ADJUSTING THE FISCAL YEAR 2021-2022 STAFFING MODEL POSITION DETAIL TO CONVERT THE VACANT DEPUTY DIRECTOR POSITION TO A NEW POLICY DIRECTOR POSITION

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

WHEREAS, the Rent Stabilization Board operates based on 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 met twelve times in the fiscal year 2020-21 to monitor the budget and the Program's progress meeting the goals established by the Board; and

WHEREAS, the Board completed a formal, mid-fiscal year budget review for the first time on February 18, 2021, and added a new Housing Counselor position to respond to the increased demand for services resulting from the passage of Measure MM; and

WHEREAS, on May 6, 2021, after reviewing the available reserves and considering the economic stress caused by the global COVID-19 pandemic, the Board voted to maintain the annual registration fee for full-covered units at \$250 per unit and to set the Measure MM fee at \$150 per unit; and,

WHEREAS, on June 1, 2021, the Budget and Personnel Committee and the Acting Executive Director met and discussed a line-item operating budget and staffing model for FY 2022 for the Board's review and consideration; and,

WHEREAS, on June 17, 2021, the Board adopted Resolution 21-13, authorizing the Fiscal Year 2021-2022 staffing model and maximum expenditure level; and the proposed operating budget (including contracts) for FY 2021-2022 authorizes new expenditures totaling \$6,275,535, which includes both recurring operational and capital needs; and

RESOLUTION 22-03

ADJUSTING THE FISCAL YEAR 2021-2022 STAFFING MODEL POSITION DETAIL TO CONVERT THE VACANT DEPUTY DIRECTOR POSITION TO A NEW POLICY DIRECTOR POSITION (Page 2)

WHEREAS, with the adoption of Resolution 21-13, the Board also added a formal, mid-fiscal year review as a permanent part of its budget process going forward, to assess revenues, reserves, and the need for staffing model and/or programmatic changes; and

WHEREAS, after performing the mid-fiscal year budget review in February and March of 2022 and examining the current workload and filled positions along with the goals and objectives for FY 2021-2022 articulated by the Board, the Executive Director, and the Budget & Personnel Committee, the Board believes that it is necessary to convert the vacant Deputy Director Position to a new Policy Director Position; and

WHEREAS, the Deputy Director Position was initially created in 2010 to backup and assist the Executive Director with day to day operations; work on special projects, and as a succession planning tool to help identify and train a potential successor to the Board's previous Executive Director; and

WHEREAS, Board has recently hired a new Executive Director and created a new General Counsel position that reports directly to the Board and can back up the Executive Director when the need arises, and

WHEREAS, the Board has identified several policy initiatives, such as the need to study the continued impacts of Costa Hawkins, improving Berkeley's tenant Relocation Ordinance, and working with local and regional groups to develop a coordinated and effective response to the housing crisis; and

WHEREAS, the Deputy Director position is more operationally focused and the majority of the Board's identified policy initiatives require policy expertise, particularly in the areas of housing and land use planning; and

WHEREAS, the creation of a new Policy Director position that can lead the Board's policy initiatives will improve the agency's ability to accomplish the goals outlined in the Board's adopted budget.

RESOLUTION 22-03

ADJUSTING THE FISCAL YEAR 2021-2022 STAFFING MODEL POSITION DETAIL TO CONVERT THE VACANT DEPUTY DIRECTOR POSITION TO A NEW POLICY DIRECTOR POSITION (Page 3)

NOW, THEREFORE, BE IT RESOLVED that the Board directs staff to eliminate the vacant Deputy Director position and create a new permanent Policy Director position; and

BE IT FURTHER RESOLVED THAT this change to the staffing model will not cause the Board to exceed the overall spending level totaling \$6,275,535 it previously authorized for the Fiscal Year 2021-2022.

Dated: March 17, 2022

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

YES:
NO:
ABSTAIN:
ABSENT:

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
DéSeana Williams, Executive Director

Distributed at the Meeting



FY 2022 Mid-Fiscal Year Budget Review

Budget & Personnel Committee
and Executive Director

FY 2022 Adopted Budget



Maintaining \$250 Per Unit Fee



Implementing Measure MM



Utilizing Uncommitted Reserve

Measure MM
Mid-Year
Registration
Update

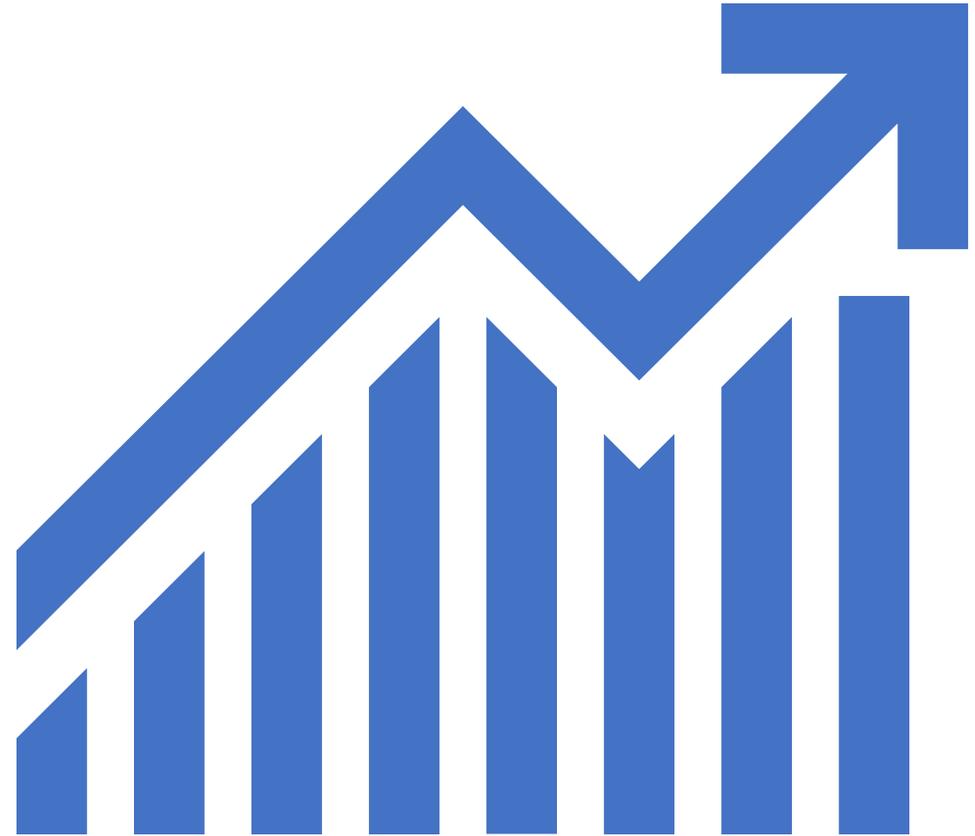
4,570 registered Measure MM
units, 892 claimed exempt

598 units from 100%
affordable housing projects

\$616,724 total revenue

FY 2021-22 Revenue Collection

- Adopted FY 2022 Revenue = \$5,515,850
- Actual Mid-Fiscal Year Revenue = \$5,434,941
- Updated Projected Revenue = \$5,573,000





FY 2021-22 Expenditures

- Authorized Expenditures = \$6,275,535
- Actual Expenditures = \$2,312,414 (Mid-Fiscal Year)
- Updated Projected Expenditures = \$5,793,546

Impact to Uncommitted Reserve

	Start of Fiscal Year	End of Fiscal Year	Change
Adopted	\$940,479	\$399,924	-540,555
Updated Projection	\$940,479	\$907,316	-33,163

+\$507,000 increase above adopted budget

Five Core Rent Board Services



OUTREACH



COUNSELING



HEARINGS &
MEDIATIONS



REGISTRATION &
RENT CEILING
RECORDS



POLICY,
ADMINISTRATIVE,
AND LEGAL
SUPPORT

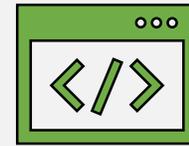
Large Agency Wide Projects



MEASURE MM
IMPLEMENTATION



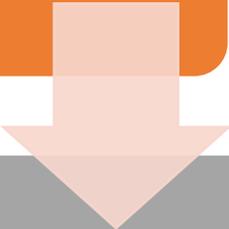
RTS TO 3DI
DATABASE TRANSITION



WEBSITE REDESIGN
& CONTENT MIGRATION

Current Staffing Model

25.0 Full time equivalent (FTE)
Career Positions



3.0 FTE Vacant

VACANT POSITIONS

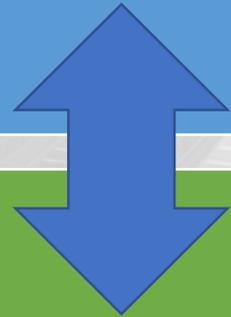
Deputy
Director

Staff Attorney
II

Registration
Unit Manager

Budget & Personnel Committee Staffing Model Recommendation

Convert Vacant
Deputy Director



To New Policy
Director Position

Potential New Positions Under Consideration for FY 2023



Finance Manager



Senior Housing Counselor



Digital Education & Social
Media Coordinator



Next Steps

- Collect Input
- Prepare Recommendation for FY 23 Registration Fee
- Set Fee no later than 1st week of May

Questions

