



Rent Stabilization Board

DATE: April 18, 2024

TO: Honorable Members of the Rent Stabilization Board

FROM: DéSeana Williams, Executive Director
Shamika Cole, Finance Director

SUBJECT: Recommendation to Authorize Pass-through of a Portion of the Fiscal Year 2024-2025 Registration Fee for Fully-controlled Units to Certain Tenants.

Recommendation

That the Board adopt Resolution 24-11 authorizing the pass-through of registration fees of up to \$14.00 per month to tenancies that began prior to January 1, 1999. The pass-through requires proper notice and may be taken for 12 consecutive months. It cannot begin prior to July 1, 2024, and must terminate no later than December 31, 2025, unless extended by future Board action. The increase shall not result in a pass-through of greater than \$14.00 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

In 2003, the Berkeley Property Owners Association (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 of this change in how the AGA was calculated. Prior to the change in the AGA methodology, all increases in the registration fee between 1980 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, increases to the registration fee presumably have been factored into the rent charged a new tenant. Over 90% of the units have experienced at least one decontrol event since 1999. The Board has been extremely careful to guarantee that owners of units that have never decontrolled continue to receive compensation for actual increased costs, such as adjustments to the registration fee. Since 2004, the Board has found that it would be fair and equitable, in view of the purposes of the Ordinance, to pass along to tenants a part or all of the increase in fees as a temporary adjustment of rent ceilings. The Rent Stabilization Ordinance states that registration

fees shall not be passed on to tenants in the form of rent increases except with express prior approval from the Board (see subsections 13.76.060.N and 13.76.080.I).

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. The pass-through amount remained until 2023; the fee was increased to \$13 per month. Since the Board has set the FY 2024/25 fully-covered registration fee at \$344 per unit, therefore, staff recommends the Board increase the pass-through by \$1 to \$14 a month. The proposed pass-through may be taken for 12 consecutive months, cannot begin prior to July 1, 2024, and must terminate no later than December 31, 2025, unless extended by future Board action. The pass-through request shall not result in an amount greater than \$14.00 per month to any tenant. The pass-through request must be filed with the agency, and the tenant must provide documents to verify income status. It should be noted that once these funds are fully expended, the agency will no longer have funds earmarked for this Program unless by Board action.

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

As the pass-through fees have increased over time, the Board has been concerned about the impact that the pass-through of the fee could have on tenants on a fixed income. 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 beginning in 2010. Funds for the reimbursement came from the settlement of the AEPHI case. Pursuant to Board Regulation 1271(B), in the event of overcharges from a case in which a tenant has not claimed reimbursement within a year, the Board may designate a program of the City of Berkeley that benefits low- and/or moderate-income tenants. Because the AEPHI settlement was entirely from overcharges to tenants and did not include any registration fee, the Board elected to use this as a source to fund the mitigation of the pass-through. Since 2010, over 800 low-income individuals have taken advantage of this program and utilized around \$180,000 of the original \$197,000 in the AEPHI settlement account.

If the Board wishes to continue this mitigation for FY 2024/25, it will need to authorize an additional allocation from the AEPHI settlement account, which currently contains approximately \$17,600. As the registration fees have increased over the years, we have noticed two trends: More owners are taking the pass-through, and more low-income tenants are requesting reimbursement. This trend continued unchanged until there was a reduction in FY 2023/24.

The following table lists the totals from each of the past several years:

FY 2024-2025 Registration Fee Pass-through Report

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Year	2017/2018	2018/2019	2019/2020	2020/21	2021/22	2022/23	2023/24
Registration Fee Charged (amount of pass-through)	\$270 (\$11 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$290 (\$13 per month)
Number of Notices Property Owners Sent to Tenants	595	601	680	565	547	546	438 (YTD)
Number of Qualified Tenants Requesting Reimbursement	101	110	126	104	103	126	85 (YTD)

The Program has spent nearly \$18,000 on reimbursements so far in FY 2023/24, and staff anticipates this trend will continue in the next fiscal year due to both the increase in the passthrough associated with the fee increase and the higher-than-normal AGA increase for the 2024 calendar year. The Board authorized an \$18,000 funding allocation for the passthrough program last year and staff recommends the Board allocate the remaining \$17,600 left in the AEPHI settlement account in FY 2024/25. At this rate, there is only one year of funding left in the AEPHI settlement account.

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 greater than 30/50ths (60 percent) of 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 size of household for 30%, 40%, and 50% of the AMI for Alameda County is listed below.

According to HUD guidelines, the 2023 area median income for a household in Alameda County is \$147,900. The HUD guidelines were published on May 15, 2023. The table below lists income standards for 1-8 person households calculated at 30%, 40%, and 50% of the AMI, rounded per HUD’s practice. HUD income limits have not yet been updated for 2024.

Income Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% AMI	\$31,050	\$35,500	\$39,950	\$44,350	\$47,900	\$51,450	\$55,000	\$58,550
40% AMI	\$41,440	\$47,360	\$53,280	\$59,160	\$63,920	\$68,640	\$73,360	\$78,120
50% AMI	\$51,800	\$59,200	\$66,600	\$73,950	\$79,900	\$85,800	\$91,700	\$97,650

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; it was not until FY 2018/19 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 50% AMI or "Very Low Income" limit, which included a "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 presented a passthrough program update to the Budget & Personnel Committee at its April 11 meeting. Staff are recommending the extenuation of pass-through reimbursement for low-income tenants with this same standard for FY 2024/25.

Staff and the Budget and Personnel Committee also recommend that reimbursement for the pass-through be limited to the current registration year.

Please note that the registration fee pass-through for low-income tenant reimbursement is only applicable to fully controlled rental units and do not apply to Measure MM units.

Name and Telephone Number of Contact Person

DéSeana Williams, Executive Director (510) 981-4949

RESOLUTION 24-11

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2024/25 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 \$7,300,000 in FY 2024/25 will be necessary to meet the Program's operating and capital needs and it will require an annual registration fee of \$344 per unit for fully covered units \$212 for partially covered Measure MM units; and

WHEREAS, Sections 6.N and 8.K of the Rent Stabilization Ordinance authorizes 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, under 10% of the rental units in the City have a tenancy that began prior to January 1, 1999, when vacancy decontrol was fully implemented; and

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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 2025 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 but the AEPHI Lawsuit Settlement Fund; and

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 2024/25, the landlord may, by serving legal notice pursuant to California Civil Code section 827, increase the rent by up to \$14.00 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 2025 Annual General Adjustment; and

BE IT FURTHER RESOLVED that this twelve-month temporary general adjustment of up to \$14.00 may not be imposed prior to July 1, 2024, and, regardless of when first collected, shall terminate no later than December 31, 2025; and

BE IT FURTHER RESOLVED that there is approximately \$17,600 left in the AEPHI Lawsuit Settlement Fund, which covers reimbursement for a portion of FY 2024/25 unless further Board action is taken; and

BE IT FURTHER RESOLVED that the maximum increase shall not result in a pass-through greater than \$14.00 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

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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, in the order in which such tenant households apply and for so long as there remains money in the AEPHI Lawsuit Settlement Fund.

Dated: April 18, 2024

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