



## **Rent Stabilization Board**

DATE: April 20, 2023  
TO: Honorable Members of the Rent Stabilization Board  
FROM: DéSeana Williams, Executive Director  
Lief Bursell, Senior Planner  
SUBJECT: Recommendation to Authorize Pass-through of a Portion of the Fiscal Year 2023-2024 Registration Fee for Fully-controlled Units to Certain Tenants.

### **Recommendation**

That the Board adopt resolution 23-10 authorizing the pass-through of registration fees of up to \$13.00 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, 2023 and must terminate no later than December 31, 2024, unless extended by future Board action. The increase shall not result in a pass-through of greater than \$13.00 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 of 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. Five years ago, the fee was lowered to \$10 per month to reflect the \$20-per-year decrease to the registration fee and it has remained at that level since then. Since the Board has set the FY 2023/24 fully-covered registration fee at \$290 per unit staff recommend the Board increase the pass-through by \$3 to \$13 a month. The proposed pass-through may be taken for 12 consecutive months and cannot begin prior to July 1, 2023, and must terminate no later than December 31, 2024, unless extended by future Board action. The change shall not result in a pass-through of greater than \$13.00 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**

As the registration passthrough has 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 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 \$160,000 of the original \$197,000 in the AEPHI settlement account.

If the Board wishes to continue this mitigation, it will need to authorize an additional allocation from the AEPHI settlement account, which currently contains approximately \$36,000. 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 are taking the pass-through and more low-income tenants are requesting reimbursement. This trend had continued unchanged until there was a reduction in the number of both passthroughs and reimbursement requests starting in FY 2020/21, likely due to the impacts associated with the COVID-19 pandemic. The following table, lists the totals from each of the past several years:

<b>Year</b>	<b>2017/2018</b>	<b>2018/2019</b>	<b>2019/2020</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>
<b>Registration Fee Charged (amount of pass-through)</b>	\$270 (\$11 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)
<b>Number of Notices Property Owners Sent to Tenants</b>	595	601	680	565	547	534 (YTD)
<b>Number of Qualified Tenants Requesting Reimbursement</b>	101	110	126	104	103	92 (YTD)

The Program has spent nearly \$11,000 on reimbursements so far in FY 2022/23 and staff anticipate this will increase 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 2023 calendar year. The Board authorized an additional \$13,000 allocation for the passthrough program last year and staff recommend the Board increase the allocation to \$18,000 for FY 2023/24. At this rate, there is only two years of funding left in the AEPHI settlement account. Staff and the Budget & Personnel Committee will discuss the tenant passthrough and reimbursement program, include possible alternative funding sources, and return to Board with a recommendation during FY 2023/24.

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 size of household for 30%, 40% and 50% of the AMI for Alameda County is listed below.

According to HUD guidelines, the 2022 area median income for a household in Alameda County is \$142,800. The HUD guidelines were published on April 18<sup>th</sup> of 2022. 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 2023.

<b>Income Category</b>	<b>1 Person</b>	<b>2 Person</b>	<b>3 Person</b>	<b>4 Person</b>	<b>5 Person</b>	<b>6 Person</b>	<b>7 Person</b>	<b>8 Person</b>
30% AMI	\$30,000	\$34,300	\$38,550	\$42,850	\$46,300	\$49,700	\$53,150	\$56,550
40% AMI	\$39,950	\$45,700	\$51,400	\$57,100	\$61,650	\$66,250	\$70,800	\$75,350
50% AMI	\$50,000	\$57,100	\$64,250	\$71,400	\$77,100	\$82,800	\$88,550	\$94,250

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 have not had a chance to discuss the passthrough with the Budget & Personnel Committee since their April meeting was canceled. Staff are recommending the mitigation pass-through for low-income tenants be adopted with this same standard again for FY 2023/24. If the Board feels it is more important to extend the funding in the AEPHI account, however, it may consider lowering the income qualification requirements to 30% or 40% of AMI. Staff will update income limits for 2023 as soon as they are published by HUD.

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 do not apply to Measure MM units.

**Name and Telephone Number of Contact Person**

DéSeana Williams, Executive Director (510) 981-6903

## RESOLUTION 23-10

### **AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2023/2024 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 \$6,800,000 in FY 2024 will be necessary to meet the Program's operating and capital needs and it will require an annual registration fee of \$290 per unit for fully covered units \$178 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, 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 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 2024, the landlord may, by serving legal notice pursuant to California Civil Code section 827, increase the rent by up to \$13.00 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 2024 Annual General Adjustment; and

BE IT FURTHER RESOLVED that this twelve-month temporary general adjustment of up to \$13.00 may not be imposed prior to July 1, 2023, and, regardless of when first collected, shall terminate no later than December 31, 2024, unless extended by further Board action; and

BE IT FURTHER RESOLVED that the maximum increase shall not result in a pass-through greater than \$13.00 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 23-10**

**AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2023/2024 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 20, 2023

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