

Rent Stabilization Board

DATE: May 6, 2021
TO: Honorable Members of the Rent Stabilization Board
FROM: Matt Brown, Acting Executive Director 
Lief Bursell, Senior Planner
SUBJECT: Recommendation to set the Fiscal Year 2021/22 Annual Registration Fee Including the Setting of an Initial Fee for Measure MM Units and to Authorize Pass-through of a Portion of the Registration Fee for Fully-controlled Units to Certain Tenants.

Recommendation

That the Board adopt four resolutions concerning the Fiscal Year (FY) 2021/22 annual registration fees:

Proposed Resolution 21-05 – adopting the annual registration fee, due July 1, 2021, at \$250 per unit for fully- covered units. This fee is calculated based on revenue necessary to cover costs of recurring operational and capital expenses for the services the program provides to fully controlled rental units.

Proposed Resolution 21-06 – adopting the annual registration fee, due July 1, 2021, at \$150 per unit for partially-covered Measure MM units. This fee is calculated based on the additional costs associated with implementing Measure MM registration and providing expanded services to the units in FY 2021/22 (\$100 per unit), and on the revenue required to cover the additional expenses associated with registering and providing services for partially covered units during FY 2020/21 (\$50 per unit).

Proposed Resolution 21-07 – adopting a lower \$37 per unit annual registration fee, due July 1, 2021, for 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.

Proposed Resolution 21-09 –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 begin prior to July 1, 2020, and must terminate no later than December 31, 2022, 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. Funds, totaling \$13,000, for the reimbursement would come from the AEPHI tenant overcharge settlement, which, pursuant to Board Regulation 1271(B), must be used for the benefit of low-income tenants.

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 2021/22. In order to provide enough time to allow staff to print and mail the annual bill prior to the last week of May, however, the Board traditionally sets the fee at a meeting no later than early to mid-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 setting of the Measure MM fee² for FY 2021/22 is technically an increase because the Board has not yet set the fee level for these units.

The Budget & Personnel Committee has met five times in calendar year 2021 to review various aspects of the agency's budget and staffing model, and to formulate the appropriate recommendation for the FY 2021/22 registration fee levels. At their March 25, 2021 meeting, the Budget & Personnel Committee voted unanimously to recommend the Board set the FY 2021/22 registration fee at \$250 per unit for controlled rental units and at \$150 per unit fee for Measure MM units. Due to the added complications of implementing new registration processes for Measure MM units, the Budget & Personnel Committee recommend that the Board pass the FY 2021/22 registration fee as soon as possible in order to give staff additional time to prepare for the registration of this new universe of units.

At the Budget & Personnel Committee's April 27, 2021 meeting, the committee discussed the Measure MM fee requirements for rental units in various affordable housing projects that are subject to the new registration requirements of Measure MM. After discussion, the committee voted unanimously to recommend that the Board set a lower \$37 per unit fee for certain affordable housing projects 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 two weeks so that they may be reviewed by staff and the Budget and Personnel Committee in time for inclusion in the final FY 2021/22 budget recommendation.

Mid-Fiscal Year 2020/21 Budget Update

The Board's adopted budget anticipated collecting \$4,850,000 for the current fiscal year. As of March 31, 2021, the agency has collected \$4,912,831 and staff now project that annual revenue will come in closer to \$4,950,000. Additionally, actual mid-year expenditures were significantly lower than anticipated by the adopted budget.

¹ California Government Code Section 66016

² Adopted by Berkeley voters in the general election of November 2020, Measure MM requires the Board to set and collect a registration fee for a new subset of partially covered residential rental units – namely, rented single family homes, condominiums, and units that qualify as new construction under the Rent Ordinance. These units, particularly since the adoption of the Costa-Hawkins Rental Housing Act, have typically been exempt from the registration requirements of the Ordinance.

Decreases in actual expenditure levels are due to savings in several areas, most significantly from salary savings due to the unfilled permanent Executive Director position and the vacant Deputy Director position. Staff also project savings in capital expenditures related to the Rent Tracking System (RTS) replacement project because 3Di, the vendor developing the agency's new database and payment portal, agreed to delay and spread-out payments for the RTS replacement project over two fiscal years. Due to these savings, staff now project that total FY 2020/21 expenditures will be around \$800,000 less than what the Board authorized in the adopted budget.

The attached February 18, 2021 Mid-Fiscal year 2020/21 Budget Report provides more detail on the status of the Board's budget. Staff will prepare a 3rd Quarter budget update for review by the Budget & Personnel Committee at their May 27, 2021 meeting. The 3rd Quarter budget update will be provided to the Board at its next meeting, scheduled for June 17, 2021.

Measure MM Fee Level

Measure MM requires that the Board set a registration fee and imposes registration requirements on certain partially covered, rented single-family homes, condominiums, and units defined as new construction under B.M.C. Sections 13.76.040Q and 13.76.050I. Measure MM did not impose any local rent regulations on these units; they remain exempt from Berkeley's rent control provisions.

On December 17, 2020, the Board adopted Resolution 20-23, which defined the additional services the agency would provide to landlords and tenants of Measure MM units and established that there would be no charge for a registration fee for these rental units in FY 2020/21. The resolution further stated that any additional expenses associated with registering or providing services for Measure MM units during this fiscal year would be considered and potentially increase the registration fee for Measure MM units in FY 2021/22.

Considerations for Setting the FY 2021/22 Registration Fee

The Board will again have to balance the agency's need for revenue with the economic uncertainty faced by both property owners and tenants who are recovering from the COVID-19 pandemic. The Board may take the following information into consideration when deciding upon the appropriate levels for the FY 2021/22 registration fees.

Status of Uncommitted Reserve

Due to both increased revenue and reduced expenditures staff anticipate the Board will likely end the year with over \$700,000 in uncommitted reserve. This represents a 12% reserve and is sufficient to cover between 1-2 months of the program's projected expenditures.

Projected FY 2021/22 Expenditures

Assuming all positions in the current staffing model are filled, staff project the program will need about \$5,700,000 in revenue to cover expenditures in FY 2021/22. This is an increase of \$400,000 from the total projected expenditures in FY 2020/21. The need to increase expenditures is primarily to cover the added salary costs for the currently vacant permanent Executive Director and Deputy Director positions.

Number of Qualifying Measure MM Units

Rent Board staff initially identified around 5,000 units, mostly in newer, multi-family rental housing that are most likely to qualify for registration under Measure MM. The Measure MM registration process has thus far resulted in the approval of over 250 exemption requests and staff, through communications with property owners, have identified over 100 units from this group that do not qualify for registration under Measure MM. Given that there are still more exemption requests under review, it appears there will be closer to 4,000 rental units that qualify for Measure MM registration.

Staff has sent letters to an additional 4,400 properties (mostly single-family homes) that would qualify for registration if rented, but response rate has been slow, so the number of units from this group that will be required to register is still somewhat unknown. Given the present uncertainty around the number of qualifying units, staff recommends the Board base the Measure MM fee on the conservative assumption that just 4,000 units will meet the criteria for Measure MM registration in FY 2021/22.

Measure MM Unit Registration Compliance Rates

The Board will also adopt the registration fee and its operational budget for FY 2021/22 before it knows the overall compliance rate for the new Measure MM registration requirements. Staff anticipate a higher compliance rate for the larger multi-family properties. There are currently over 3,200 units in larger rental properties with 10 or more units that staff believe are subject the Measure MM registration requirements. For reference, the City of Richmond Rent Program's initial compliance rate for both partially covered and fully covered rental units was 61% in its first year of existence. Richmond's compliance rates then improved to 78% during its second year and all the way up to 93% in its third year.

Fee Calculation Options and Recommendation for Measure MM Units

In November of 2020, staff presented the City of Richmond Rent Program's fee structure as a possible model for calculating separate fee levels for both fully covered units and Measure MM units. Richmond's Rent Program calculates its fee structure by dividing the costs of their program into three distinct components: a general "program" component (55% of program costs), a "just cause" component (20% of program costs), and a "rent control" (25% of program costs).

Staff considered using an adapted version of this fee structure to calculate Berkeley's registration fees but ultimately concluded that there were still too many unknowns and that calculating a fee in this manner would require too much guess work. Once the Board knows the number of qualifying Measure MM units that register during the FY 2021/22 registration season, and has data points that will allow staff to breakdown the exact services the agency provides for Measure MM units, it will have the necessary inputs to make this type of fee calculation. Towards this purpose, staff has begun and will continue to track the number and types of services provided to measure MM units. At this time, staff recommends the Board adopt the Measure MM fee based only on the known costs for implementing the requirements and services associated with Measure MM units thus far.

Staff have been tracking both the hours and expenditures required for Measure MM implementation and the time dedicated to providing services to Measure MM units. Staff

calculate that the total cost of these efforts will be \$200,000 by the end of the current fiscal year. Since the bulk of Measure MM implementation work began in January of 2021, this \$200,000 only represents six months of costs. Assuming 4,000 qualifying Measure MM units, the Board would have had to set the Measure MM at \$100 per unit to cover these costs prorated over a full fiscal year. A \$100 per unit is 40% of the current \$250 fee for fully-covered units and staff believe that is an appropriate baseline for the Measure MM fee. The Board should note that Measure MM implementation is not complete and will continue throughout FY 2021/22.

Rent Board Resolution 20-23 states that any additional expenses associated with registering or providing services for partially covered units during this fiscal year shall be considered and potentially increase the registration fee for partially exempt units. In order to recover the total \$200,000 cost that the agency will spend on Measure MM implementation during FY 2020/21, the Measure MM fee would have to increase by an additional \$50 per unit (under the assumption that this fee will apply to a universe of 4,000 units). A base fee of \$100 per unit, and an additional \$50 fee to recover FY 2020/21 implementation costs, result in a recommendation to set the Measure MM fee at \$150 per unit for FY 2021/22.

Measure MM Fee for 100% Affordable Housing Projects

TW affordable housing service providers, Resources for Community Development (RCD) and Satellite Affordable Housing Associates (SAHA) submitted written letters to the Budget & Personnel Committee requesting an exemption from the Measure MM registration requirements for certain 100% affordable housing projects that they manage. Rent Stabilization Ordinance section 19.76.050.K exempts residential units owned by a non-profit organization that are rented to low income tenants and subject to a regulatory agreement with a governmental agency that controls their rent levels. While some of RCD's and SAHA's properties meet the criteria for this exemption, they also have hundreds of units in affordable housing projects that do not meet these criteria because they are *owned* by limited partnerships and *managed* by a non-profit.

For the properties in question, RCD and SAHA serve as the managing general partner and they claim they are otherwise similar to the affordable housing projects that qualify for exemption under the Ordinance. RCD and SAHA informed the Budget & Personnel Committee that this ownership structure this is the standard structure used for the Federal Low-Income Housing Tax Credit (LIHTC) program.

The Budget & Personnel Committee considered this issue at its April 27, 2021 meeting. The Committee heard testimony from both SAHA, RCD, the Berkeley Property Owner's Association, the Eviction Defense Center and the East Bay Community Law Center, and asked questions of staff related to the kinds of services the Rent Board provides to tenants in affordable housing projects. After discussion, the Budget & Personnel Committee ultimately decided that the agency provides valuable services to tenants of affordable housing units, including housing counseling and mediation, and that there should be a small fee to help pay for the costs associated with providing services to these units.

The Budget & Personnel Committee voted unanimously to recommend that the Board set a \$37 per unit registration fee for affordable housing projects that receive housing trust fund money. Similar to the Measure MM fee, the \$37 fee combines a \$25 per unit base fee to cover expenses in FY 2021/22, with an additional \$12 per unit fee to recover implementation costs incurred this

fiscal year.

Registration Unit staff estimate they are a total of approximately 500 affordable housing units that would qualify for the lower fee. Since these units are not part of the 4,000-unit universe that staff anticipate will qualify for full Measure MM unit registration, staff do not recommend making any adjustments to the full Measure MM fee if the Board decides to adopt a lower fee level for these affordable housing project units.

After consulting with staff in the Health, Housing and Community Service Department, Rent Board staff suggest that these units be defined as units in 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 Budget & Personnel Committee requested that staff provide the Board with additional information on the number of client contacts and evictions notices received for units in these affordable housing projects. Staff will review agency records and endeavor to present this information to the Board during the meeting.

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 largely in response to property owners’ stated desire to accommodate operational inflation in smaller, real-time adjustments and avoiding exceptionally large registration fee increases in any given year.

In the previous year, however, the Board deviated from this plan in response to the COVID-19 pandemic. Last year, 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. The Board did this both because it anticipated decreased registration revenue due to the state of the rental housing market and in order to avoid raising the fee in a time of crisis and economic uncertainty. Utilizing the uncommitted reserve allowed the Board to maintain the annual registration at \$250 per unit even though it anticipated expenditures to exceed revenues last fiscal year. Since the uncommitted reserve is projected to be well above the historic 5%-8% level at the end of FY 2020/21, the Board has the ability to again use its existing surplus to avoid raising the annual registration fee at time when the economy, and the Berkeley rental housing market in particular, continues to recover from the impacts of the COVID-19 pandemic.

Registration fee revenue, somewhat surprisingly, was not significantly impacted by the COVID-19 pandemic during the FY 2020/21 registration period and the Board does not have any reason to anticipate a decline in the number of units paying the full registration fee in FY 2021/22. The proposal to use the Board’s reserve is therefore aimed at avoiding an increase to fees while the economy continues to recover. At this time next year, Berkeley’s rental housing market should be in a better position and the agency will have more information on Measure MM’s impact to both revenues and expenditures.

The Board has traditionally requested analysis of the impact of fee-based revenue when compared to increasing rents and changes in the Consumer Price Index (CPI) since 2009. May 2009 was selected as a comparison because the Board went several years without increasing the fees before adjusting it in four consecutive years between 2015 and 2018.

The following table shows the registration fee as a percentage of 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 it is the first time the fee has ever been less than 1% of the annual average 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%

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 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, under the stated logic of vacancy decontrol, increases to the registration fee presumably have been factored into the rent charged 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, 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.

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 to 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, 2021, and must terminate no later than December 31, 2022, 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- 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, 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, which currently contains 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 are taking the pass-through and more low-income tenants are requesting reimbursement. This trend

had continued unchanged until last year when there was a reduction in the number of both passthroughs and reimbursement requests. The COVID-19 pandemic likely contributed to the reduced number of passthroughs and reimbursement requests received this fiscal year. The following table, lists the totals from each of the past several years:

Year	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/21
Registration Fee Charged (amount of pass-through)	\$213 (\$6 per month)	\$234 (\$8 per month)	\$270 (\$11 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)
Number of Notices Property Owners Sent to Tenants	404	486	595	601	680	557 (YTD)
Number of Qualified Tenants Requesting Reimbursement	55	75	101	110	126	75 (YTD)

This year, the Program will spend roughly \$10,000 in additional allocation for reimbursements. Given the likelihood that number of requests the Program will receive will revert to pre-pandemic levels in FY 2021/22, staff estimate that that an additional allocation of \$13,000 is needed. The Budget & Personnel Committee recommend the Board continue the program and authorize the \$13,000 allocation for FY 2021/22.

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. To our knowledge, there is no unique designation for 40% of the AMI. 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 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.

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 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. The Budget & Personnel Committee recommend the mitigation pass-through for low-income tenants be adopted with this standard again for FY 2021/22.

The Budget and Personnel Committee also recommend that reimbursement for the pass-through be limited to the current registration year, which is consistent with the Board’s practice for the past two 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 \$250, the fee for partially covered units subject to Measure MM at \$150 per unit.³ The committee also recommend 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

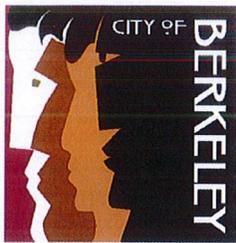
³ This would be the fourth year in a row that the fee for fully covered units would be set at \$250. Additionally, the \$150 fee for Measure MM rental units incorporates cost recovery for implementation of the Measure MM services and staff time spent during the current fiscal year.

continue in FY 2021/22, and to authorize an additional allocation of \$13,000 from the Board's AEPHI settlement account for this purpose.

Name and Telephone Number of Contact Person

Matt Brown, Acting Executive Director (510) 981-4905

Attachment – FY 2020/21 Mid-Fiscal Year Budget Report



Rent Stabilization Board
Office of the Executive Director

DATE: February 18, 2021
TO: Honorable Members of the Berkeley Rent Board
FROM: Honorable Members of the Budget & Personnel Committee
By: Matt Brown, Acting Executive Director 
SUBJECT: Mid-Fiscal Year Budget Report

Recommendation

That the Board add a permanent Community Services Specialist II position to the staffing model to serve as a Housing Counselor. The Budget & Personnel Committee reviewed a Mid-Fiscal Year Budget report prepared for the committee at its meeting on January 28, 2021, and unanimously recommended that the full Board adjust the staffing model to hire an additional housing counselor to respond to increased demand within the Public Information Unit.

Background

On June 18, 2020, the Board adopted a staffing model and budget with a maximum expenditure authorization for FY 2020/21. The Board received periodic budget updates and discussed the issue at several prior Board meetings. Prior to adopting the budget the Board voted to keep the annual registration fee at \$250 per unit. The Board maintained a larger than expected uncommitted reserve balance from the previous fiscal year, caused by staff turnover and unexpected vacancies in several previously-budgeted positions. These staffing changes resulted in some delays in delivery of services and/or deferral of some new initiatives or projects. At the time the Board adopted the budget there was considerable concern regarding how the COVID-19 pandemic and accompanying Shelter in Place Orders would affect collection of Registration Fees. Short-term revenue gaps were anticipated. At staff's recommendation, the Board adopted a cautious approach when establishing the initial staffing levels and services for the current fiscal year. To that end, the Board incorporated a formal mid-year budget review as part of the process for adopting the budget for FY 2020/21. The Board reasoned that it would be able to make more informed choices regarding to what extent it is able to fill several positions and/or fund program enhancements.

The Board anticipated having an uncommitted reserve of \$130,997, or about 2.5% of its reoccurring operational budget at the conclusion of this fiscal year. This was far below the Boards targeted 8% reserve. To that end, the Budget & Personnel Committee asked staff to take a conservative approach and wait before committing to larger capital expenditures until impacts

to revenue were known. This would allow time to adjust the budget if revenues came in even lower than anticipated. The Board adopted this approach with careful consideration and determined it to be the best path forward for the agency to continue to provide a high level of service to the public. The Board determined that it was in the agency's best interest to utilize the reserve in this manner in order to prevent raising the registration fee during a time of crisis and uncertainty.

The potential impact on the reserve funds and the uncertainty surrounding revenue collection at the time the budget was adopted underscored the need for the Commissioners to incorporate a formal mid-year review for this fiscal year. The Board reasoned that it would then be able to adjust expectations and service delivery to respond to any outstanding issues should they arise over the final six months of 2020.

Fiscal Year 2020-2021 Revenue Collection

The Board authorized an expenditure level of \$6,096,209 for FY 2020/2021 which included several major one-time costs. For three years the Board has maintained an additional Capital Reserve of \$500,000. As has been discussed regularly, \$400,000 of this Capital Reserve was earmarked for upgrades and/or a more cost-effective replacement of the Board's rent tracking database (RTS).¹ The Board authorized significantly reducing its uncommitted operational fund balance for this fiscal year in order to maintain the current level of service without raising the annual registration fee.

The Board anticipated collecting 4,850,000 for the current fiscal year. As of December 31, 2020, we have collected \$4,861,780.² There are currently 158 delinquent accounts representing 601 units that have failed to pay Registration Fees.³ Our compliance efforts continue, and Registration staff has just sent out January penalty bills.⁴ The number of delinquent accounts and unregistered units is a bit higher than we normally see, but not extraordinary (particularly given the circumstances).

¹ The Board also set aside additional funds to cover expenses associated with online registration, staff training and one-time legal fees related to confidential personnel matters.

² By comparison, our agency collected \$4,942,849 as of December 31, 2019.

³ Of these units, 115 accounts totaling 414 units have failed to pay the FY 20/21 Registration Fee. Additionally, of the 601 units listed above, 79 are fraternity "summer" rentals, so they are not full fees. In total, \$97,900 in current fiscal year and \$26,500 in prior fiscal year Registration Fees remain unpaid.

⁴ The Board adopted Resolution 20-14 on July 16, 2020, which created an amnesty period to allow property owners the opportunity to pay the Board's Registration Fee for FY 2020/2021 without penalty if they did not timely pay and were financially impacted by COVID-19. The Board may consider further amnesty allowance depending on how successful we are in collecting penalties over the next several months.

Fiscal Year 2020-2021 Mid-Year Expenditures & Updated Projections

As of December 31, 2020, the Board has expended a total of \$2,503,499⁵. Actual mid-year expenditures are significantly less than what was anticipated in the Board's adopted budget. This is largely due to several areas of reduced expenditure, most significantly from salary savings due to the unfilled permanent Executive Director position and the vacant Deputy Director position. Staff now project that total FY 2020/21 expenditures will be around \$800,000 less than what the Board authorized in the adopted budget.

In addition to salary savings, staff project savings in capital expenditures related to the RTS replacement project. This is because 3Di, Inc., the vendor developing the RTS replacement platform, graciously agreed to delay and spread-out payments for the development of platform between two fiscal year. Payments for development will likely begin in FY 2021/22 and extend into FY 2022/23.

3Di has informed staff that the launch of the Measure MM registration solution will create some additional costs on their end that are separate from the larger RTS replacement project. Staff anticipated some additional costs to the agency related to Measure MM because 3Di's subscription costs are based on the number of rental units added to the system and the additional Measure MM units have increased the total amount of units the database will track. Staff is still going over the details of these costs with 3Di and will inform the Budget & Personnel Committee if this requires an amendment to 3Di's current contract with the Rent Board.

A preliminary mid-year budget update is attached to this report and provides details on actual expenditures by budget line-item. The actual year-end numbers in this update are not yet final and are pending final review by the City of Berkeley's contracted outside auditor.

Measure MM

The Board did not plan for the registration process or implementation of Measure MM when it adopted the FY 2020/21 budget in June of 2020. Indeed, the ballot initiative was not even adopted by Council and placed on the ballot until the end of July, so there was no way to plan for possible costs associated with these changes to the Rent Ordinance.

Measure MM imposes registration requirements on certain partially covered rented residential units; namely single-family homes, condominiums, and units defined as new construction under B.M.C. Sections 13.76.040Q. and 13.76.050I. While there may be certain state laws that restrict the amount of rent that landlords are able to charge these tenancies, Measure MM did not impose any local rent regulations on the units subject to registration. These units will remain exempt from Berkeley's rent control provisions, but they are now required to register, and the Rent Ordinance's good cause for eviction protections and security deposit interest provisions continue to apply to these tenancies.

⁵ These are preliminary numbers as of early January 2021. The Finance Department has not completed accounting of all December 2021 expenditures.

Measure MM additionally requires the Board to set a Registration Fee for these units much as it has for controlled units since the inception of the ordinance in 1980. After careful consideration of the issue, the Board adopted Resolution 20-23 which both identified the enhanced services that our agency would offer for partially covered units and clarified that the Board would not be charging a Registration Fee for the remainder of FY 20/21. Should the agency incur any expenses administering the recent changes to the ordinance or registering the new Measure MM units, these expenses may be folded into the FY 21/22 Measure MM Registration Fee.⁶ Thus, depending on the expenses that the Board incurs for administering these changes over the remainder of the current fiscal year, the amount of the Measure MM Registration Fee may be slightly higher for FY 21/22 than it otherwise would have been without consideration of the expenses from FY 20/21.

Current Agency Priorities

The Rent Board's adopted FY 2021 Budget strongly prioritized the Rent Board's five core services⁷ or areas of work, which are:

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

In addition to this “core” work, the agency currently maintains the following priority projects and initiatives:

- Implementing Measure MM
- Adapting outreach and housing counseling to changes in state & local law related to the eviction moratorium and the ongoing COVID-19 response.
- Developing the 3Di platform to allow for Measure MM unit registration.
- Developing the 3Di platform to replace the existing Rent Tracking System (RTS) and case management system.
- Working with the Centre for Organizational Effectiveness on an executive transition assessment to help inform a successful recruitment and selection of a new permanent Executive Director.
- Providing input to the 4x4 Committee and City Council on implementation of the Fair Chance and “TOPA” Ordinance.

⁶ Board staff will endeavor to conduct a more comprehensive analysis this spring to determine what the fee should be for these partially covered units, but the current presumption is that the fee charged to Measure MM units will differ from that charged to controlled units.

⁷ 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.

- Providing input to the Planning Department and HHCS Department on planned revisions to Berkeley's Demolition Ordinance and Relocation Ordinance.
- Implementing a two-phase project to recreate all Rent Board web content (including PDFs) and transfer to new website CMS and expand integration with the City's public records portal.

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

- Complete a new tenant survey and begin scoping a study/survey of property owners.
- Select a vendor to complete the scanning of all property files, and other agency files.

Two of the agency's current priority projects, the Measure MM implementation and the RTS and case management replacement project, are large, time-intensive projects that impact staff in all the work units. These larger, agency-wide projects are particularly resource-intensive 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 working on both the implementation of Measure MM and has begun to work on transition RTS and case management to the 3Di Platform.

The development of the 3Di platform 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 Measure MM implementation has been completed.

It is important to note that the initiatives/projects listed above do not impact all work units equally. For example, adapting outreach and counseling to the constant stream of changes to state and local law related to the COVID-19 response has impacted mainly the Public Information Unit and the Legal 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 23.55 Full time equivalent (FTE) career positions and one temporary position. The agency's senior staff attorney has filled in as the Acting Executive Director after the retirement of the previous Executive Director. The temporary position is for the provisional appointment of an Associate Planner that is set to end on June 30, 2021.

City of Berkeley Hiring Freeze

On April 22, 2020, the City of Berkeley instituted a citywide hiring freeze and asked each Department Director to suspend all hiring activities. The Hiring Freeze does allow limited exceptions when necessary for critical organizational functions, for safety and general welfare and to minimize risk exposure. While the Rent Board is not bound by this decision, it has been the Board's practice to only move forward with the hiring of critical positions during previous hiring freezes. This is also practical because most of the agency's positions are city classifications and shared with the other City of Berkeley Departments; past layoffs have caused the agency to absorb employees from other departments that have bumping rights under existing labor union agreements.

Filling Vacancies

The permanent Executive Director and the Deputy Director are the agency's only current staff vacancies.

Vacant Permanent Executive Director Position

The Rent Board has hired the Centre for Organizational Effectiveness to perform an executive transition assessment. The assessment is currently in progress and the results are anticipated soon. This assessment will identify key competencies that are important for a successful director of the agency to have and will help inform the recruitment and selection process for the position. After the assessment is completed, staff will return to the Budget & Personnel Committee to review the findings and make a recommendation to the full Board on how to proceed with the Executive Director hiring.

The Executive Director is clearly a critical position for the agency and filling it is necessary for the agency to move forward.

Vacant Deputy Director Position

The Rent Board's adopted budget proposed to maintain this position as part of the agency's staffing model but to delay filling until the after the hiring of a permanent Executive Director. The Agency has not had an active staff person in the Deputy Director role for several years. The agency has adapted to operating without a Deputy Director and is able to provide its core services without filling this position.

There is not a critical need to fill this Deputy Director position immediately.

Potential New Positions

The Budget & Personnel Committee has expressed interest in both creating a General Counsel position and adding an additional housing counselor to the staffing model.

General Counsel Position

On November 6, 2020, the staff provided the committee with an initial memo on this topic and plans to return with a more thorough memo with more detailed information on what needs to be done to create his new position.⁸ During this initial discussion, the committee did not get a chance to deliberate on a recommendation on how the existing staffing model should be adjusted if a General Counsel is added. While the exact duties of a General Counsel position still require development, the duties of this position would in many ways correspond with the current duties of the Board's senior staff attorney. The agency's senior staff attorney is currently a Staff Attorney III position.

It is also important to note that, unlike the Staff Attorney III position the Board currently has, the General Counsel position would report directly to the elected Board. Staff will seek further information regarding how incorporating a General Counsel position into the staffing model affects the other staff attorney positions (e.g. will they report to the General Counsel or Executive Director?).

Staff seeks input from this committee on the impacts of adding a General Counsel position to the overall staffing model. If the Board does create a new General Counsel position it would make some sense to eliminate the Staff Attorney III position and maintain a single lead attorney for the agency.

The agency's existing senior staff attorney has served as the Acting Executive Director since April of 2020. Once a permanent Executive Director is hired, the Board will know the status of the Staff Attorney III position and would be in a better position to decide whether eliminating it and replacing it with a General Counsel is in the agency's best interest. Staff's current recommendation is that the committee recommend the Board fill the permanent Executive Director position first before finalizing plans to hire a new General Counsel position.

If the General Counsel position were to replace the existing Staff Attorney III position, it would fill a critical and needed role for the agency. There is no existing salary level set for a General Counsel, but we estimate it would cost at least 10% more than a Staff Attorney III.⁹

⁸ The Acting Executive Director contacted HR to discuss what the Board would need to do to create and fill this position, but the analyst has yet to respond with an answer to that question.

⁹ The Santa Monica Rent Board has a General Counsel position as part of their permanent staffing model. That position is paid 2.4% less than the Executive Director. Staff recommends a similar salary differential if the Board chooses to hire a General Counsel.

Additional Housing Counselor Position

Both the committee and agency staff have expressed interest in adding to staff capacity in response to the additional workload created by the passage of Measure MM. The Public Information Unit has recently experienced increase demand for service, and the housing counselors have played a critical role in responding to community concerns regarding housing insecurity. Furthermore, adding an additional Housing Counselor to the staffing model would not only help the agency respond to Measure MM client contacts but would add needed staff capacity for an expanded enforcement effort to ensure all rented Measure MM properties are properly registered. This additional capacity could also help the agency absorb potential additional work related to the Fair Chance Ordinance, TOPA and possibly the Relocation Ordinance. All the Agency's Housing Counselors are currently in the Community Services Specialist II position.

As mentioned in the section on current agency priorities, the housing counselors in the Public Information Unit have been particularly impacted by the constant changing of laws related to the COVID-19 response. Adding additional staff capacity to this unit will also help address the needed capacity to adapt to future laws addressing responding to the pandemic. Adding an additional housing counselor will provide critical staff capacity to assist with a successful implementation of Measure MM.

Next Steps

While the agency waits for the Centre for Organizational effectiveness to complete the executive transition assessment so it can proceed with the hiring process of a permanent Executive Director the Board may wish to consider if any adjustments are needed to the current staffing model. The timing of adding any new positions, whether they happen during the remainder of the current fiscal year or sometime next fiscal year is an important consideration and will help staff and the Board determine the appropriate fee level for the FY 2022 registration fee. This is especially true since most of the positions discussed in this report are management or executive level position that have a large impact on the agency's recurring budget. For context, adding a new General Counsel positions permanent would cost the agency more than adding two additional housing counselor positions.¹⁰

Adding only those positions that are critical to providing the agency's cores services should avoid the need to increase the current registration fee above \$250 per unit and allow the agency to learn the actual number of units that are eventually registered due Measure MM. Staff will not know the actual number of units that register under MM until after the Board sets FY 2022 registration fee and adopts its annual budget.

Given that the additional Measure MM funding will not be known until next fiscal year, adding additional staff positions that rely on this funding source would require the Board to either deficit

¹⁰ The financial impact of adding a General Counsel to the staffing model would be largely mitigated by eliminating the Staff Attorney III position given that these two positions would likely have somewhat similar salaries.

spend or raise the registration for controlled rental units at a time when many property owners have experienced rent shortfalls due to the pandemic.

The Board has yet to hire any new employees during the COVID-19 pandemic. The hiring process has been complicated due to the need to rely on a remote process for the interviews, onboarding, and training of any new hires. When considered in tandem with both the citywide hiring freeze and the pandemic's overall impact to the rental housing market, staff recommends that the Board consider limiting the creation of any additional positions to those that are critical to the agency's core services, including the ongoing implementation of Measure MM, with the intent of avoiding any significant increase to the registration fee for controlled rental units for the FY 21/22 registration season.

Budget & Personnel Committee Recommendation

Having reviewed a similar report and hearing from staff, on January 28, 2021, the Budget & Personnel Committee unanimously recommended that the full Board authorize a staffing model adjustment to add a permanent Community Services II to serve as a Housing Counselor in the Public Information Unit. If the Board adopts this change, staff will immediately look to advertise for a position so as to expedite the interview process and onboarding a potential employee.

The Budget & Personnel Committee will continue to discuss the other positions discussed in this report at future meetings and bring recommendations to the Board.

Conclusion

The Deputy Director and Executive Director positions are already a part of the existing staffing model adopted by the Board in June of 2020, so the Board would simply have to follow standard HR protocols before hiring those positions. Should the Board choose to add positions, such as another Housing Counselor or a General Counsel position¹¹, it will have to adopt a new staffing model at a full Board meeting. While there are challenges associated with hiring new employees in a remote working environment, there are certainly advantages to increasing staff's capacity to respond to the myriad projects on which the Board is currently working. Staff awaits the Board's direction regarding the Budget & Personnel Committee's recommendation before taking further action.

Attachments:

1. Mid-Fiscal Year Budget Update Spreadsheet
2. Adopted Fiscal Year 2020/2021 Staffing Model
3. Proposed Staffing Model with addition of Community Services Specialist II to Public Information Unit
4. Proposed Resolution 21-01 Adjusting Staffing Model to add a Community Services Specialist II position to the Public Information Unit

¹¹ There may be additional steps to adding a General Counsel position (such as possible approval from the Personnel Board). As stated earlier, an HR representative has yet to answer that question.

**Rent Stabilization Program
FUND 440
Preliminary FY 2020 Year-End & FY 2021 Mid-Year Budget Update**

Code	Description	Adopted FY 2020	Actual Year-End FY 2020	Adopted FY 2021	Mid-Year FY 2021	Projected FY 2021
11-01	Monthly Employees	2,500,000	2,278,607	2,482,000	1,133,745	2,240,000
11-03	Hourly Employees	200,000	193,425	0	0	0
13-01	Overtime	10,000	4,149	5,000	421	5,000
27-20	Benefits	1,650,000	1,546,846	1,620,000	663,914	1,500,000
30-12	Stipends	53,000	51,200	53,500	24,850	53,500
30-23	Misc. Legal Expenses	7,500	121,372	360,000	219,025	260,000
30-36	Temp. Agency Employees	1,000	0	0	0	0
30-38	Misc. Professional Services	352,500	354,175	410,000	147,837	410,000
30-42	Office Equip. Mtc. Svcs. / Furniture	13,000	9,901	13,000	4,775	13,000
30-43	Bldg. & Structures Mtc. Svc.	400	340	400	190	400
30-51	Bank Credit Card Charges	35,000	17,519	25,000	6,429	25,000
40-10	Professional Dues & Intern Fees	4,000	2,779	3,000	2,060	3,000
40-31	Telephones	4,200	5,246	5,000	2,484	5,000
40-50	Printing and Binding	38,000	32,340	25,000	16,689	30,000
40-62	Meals & Lodging	4,000	0	1,000	0	1,000
40-63	Registration Fees/Training	1,000	0	12,000	0	10,000
40-61/64	Transportation & Commercial Travel	14,000	802	5,000	0	5,000
40-70	Advertising/public access	45,000	39,454	30,000	16,818	30,000
40-80	Books & Publications	13,000	11,138	13,000	5,009	13,000
50-10	Rental of Land / Buildings	340,000	345,261	355,000	194,180	355,000
51-10	Postage	45,000	43,236	25,000	14,173	25,000
51-20	Messenger / Delivery	800	201	500	0	500
55-11	Office Supplies	13,500	12,778	15,000	5,568	15,000
55-50	Food and Water	3,000	647	2,000	352	1,000
70-43	Office Equipment and Furniture	5,000	418	5,000	0	5,000
70-44	Computers, Printers, Software	10,000	2,464	10,000	6,500	10,000
75-25	PC Replacement/City Software Licences	9,500	0	50,709	25,356	50,709
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**	5,377,500	5,079,397	5,531,209	2,492,174	5,071,209
	Special Projects (RTS Upgrade, online registration, training)	182,500	50,020	565,000	11,325	200,000
	Annual Capital Reserve	400,000	0	0	0	0
	Total Authorized Fund Expenditures*	5,960,000	5,129,417	6,096,209	2,503,499	5,271,209
	Total Authorized Fund Revenue*	5,150,000	5,092,558	4,850,000	4,861,780	4,950,000
	Annual Surplus/Shortfall	(810,000)	(36,859)	(1,246,209)	2,358,281	(321,209)
	<i>Previous FY Carryover Expenditures</i>		51,190			
	FUND BALANCE (cash basis)	814,196	1,536,147	289,938	2,648,219	1,214,938
	FUND BALANCE (accrual basis)	814,196	1,536,147	289,938	2,648,219	1,214,938
	TOTAL UNCOMMITTED OPERATIONAL FUND BALANCE	714,196	1,036,147	254,938	2,613,219	779,938

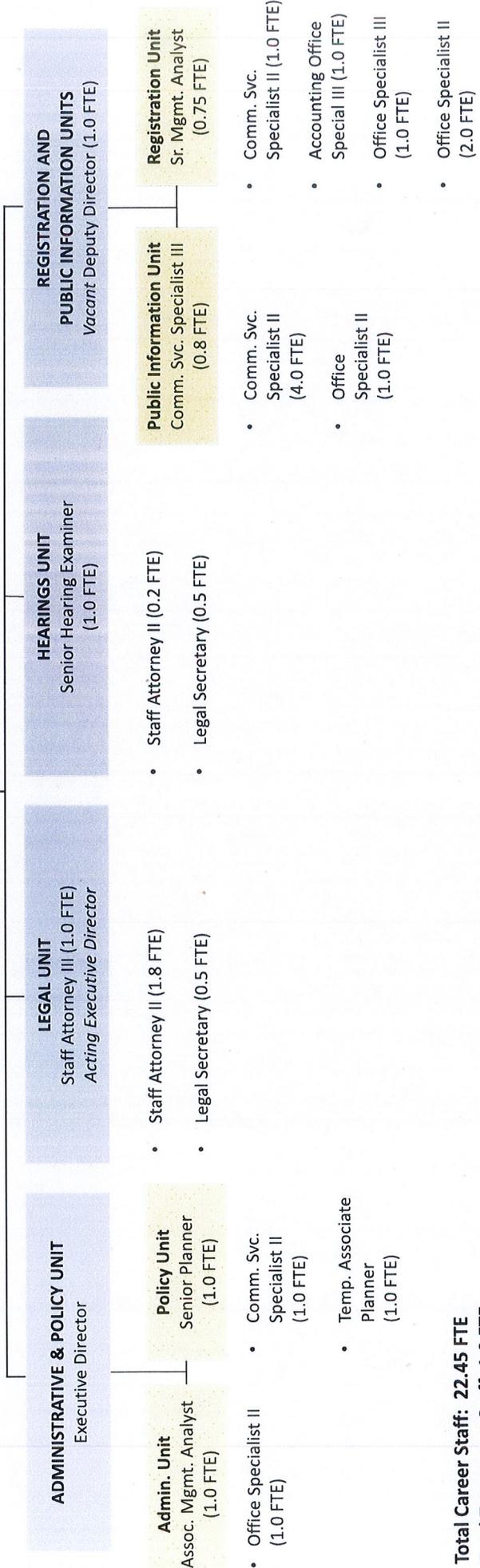
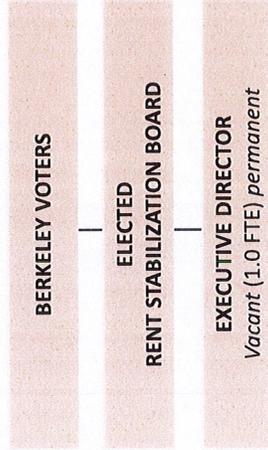
* Note: this report only reflects charges & revenues against the Rent Board Fund (Fund 440) and does not include services charged to or received from other funds

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

Current Berkeley Rent Stabilization Program FY 2020/21 Organization Chart

Current Career and Temporary Positions FY 2020/21

Sorted by Division Supervision



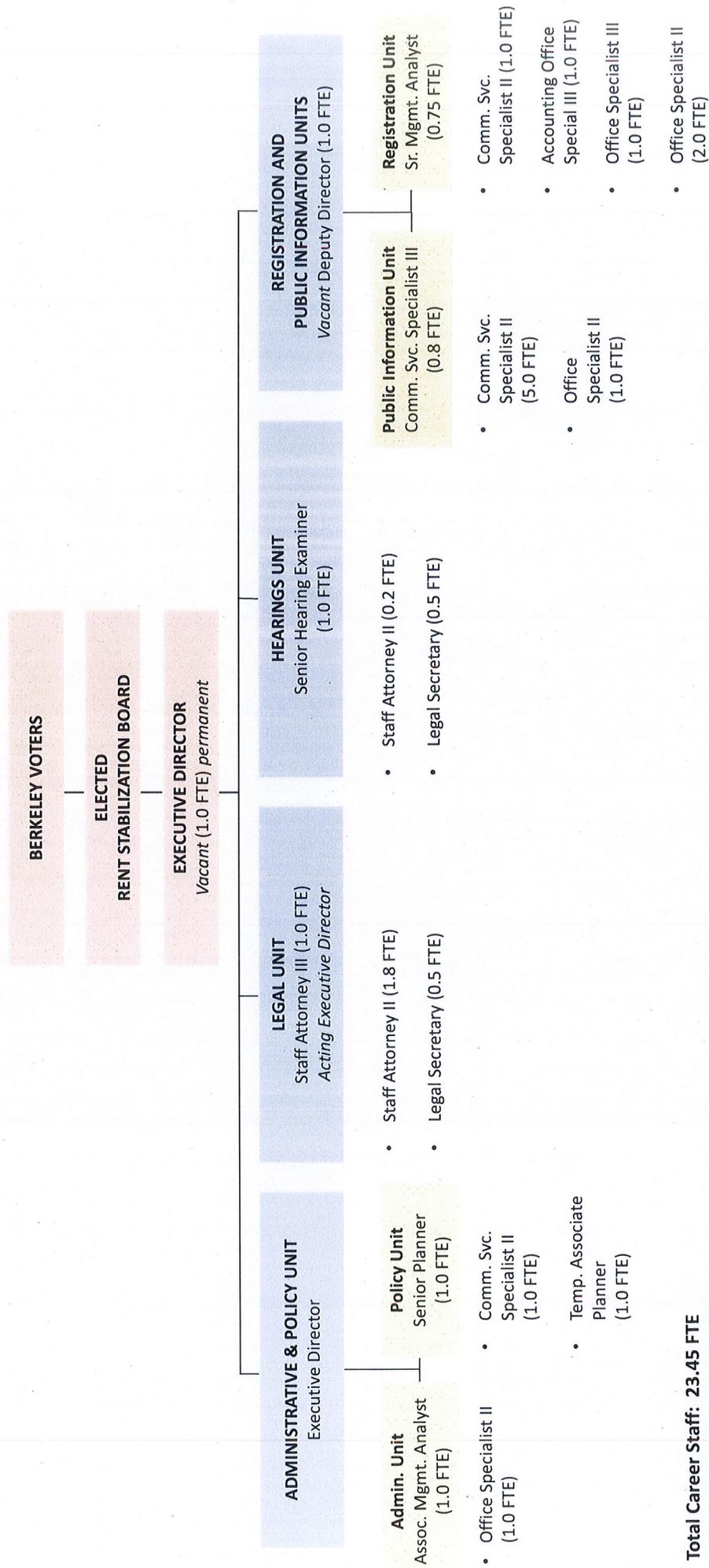
Total Career Staff: 22.45 FTE
Total Temporary Staff: 1.0 FTE

Proposed Berkeley Rent Stabilization Program 2020/21 Organization Chart*

Proposed Career and Temporary Positions FY 2020/21

Sorted by Division Supervision

*Recommended by the Rent Stabilization Board's Budget & Personnel Committee



Total Career Staff: 23.45 FTE
Total Temporary Staff: 1.0 FTE

RESOLUTION 21-01**ADJUSTING THE FISCAL YEAR 2020-2021 STAFFING MODEL POSITION DETAIL TO INCLUDE AN ADDITIONAL PERMANENT COMMUNITY SERVICES SPECIALIST II POSITION TO SERVE AS A HOUSING COUNSELOR IN THE PUBLIC INFORMATION UNIT**

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, prior to adopting the budget and staffing model, the Budget & Personnel Committee met several times to monitor the budget and the Program's progress meeting the goals established by the Board; and

WHEREAS, on April 30, 2020, 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 at \$250 per unit; and,

WHEREAS, on May 13, 2020, June 5, 2020, and June 11, 2020, the Budget & Personnel Committee and the Acting Executive Director met and discussed a line-item operating budget and staffing model for FY 2021 for the Board's review and consideration; and,

WHEREAS, on June 18, 2020, the Board adopted Resolution 20-07 adopting the Fiscal Year 2020-2021 authorizing the staffing model position detail and maximum expenditure level; and

WHEREAS, the operating budget (including contracts) for FY 2020-2021 authorized new expenditures totaling \$6,096,209, which includes both recurring operational and capital needs; and

WHEREAS, the Board has realized some savings in its overall operating budget for the current fiscal year given that several positions remain unfilled; and

RESOLUTION 21-01

ADJUSTING THE FISCAL YEAR 2020-2021 STAFFING MODEL POSITION DETAIL TO INCLUDE AN ADDITIONAL PERMANENT COMMUNITY SERVICES SPECIALIST II POSITION TO SERVE AS A HOUSING COUNSELOR IN THE PUBLIC INFORMATION UNIT
(Page 2)

WHEREAS, in light of the unprecedented economic circumstances caused by the global COVID-19 pandemic and the related potential for a shortfall in registration fee revenue, the Board incorporated a formal, mid-fiscal year review to the budget process to assess revenues, reserves, and the need for staffing model and/or programmatic changes; and,

WHEREAS, after performing the mid-fiscal year budget review and examining the current workload and filled positions along with the goals and objectives for FY 2020-2021 articulated by the Board, the Acting Executive Director, and the Budget & Personnel Committee, the Board believes that it is necessary to add an additional permanent Community Services Specialist Position II to serve as a Housing Counselor in the Board's Public Information Unit;

NOW, THEREFORE, BE IT RESOLVED that the Board directs staff to add an additional permanent Community Services Specialist Position II to serve as a Housing Counselor in the Board's Public Information Unit (there would then be a total of five Housing Counselors); and

BE IT FURTHER RESOLVED THAT the addition of this position will not cause the Board to exceed the overall spending level totaling \$6,096,209 (\$5,631,209 in recurring operational and special projects, and \$465,000 in funding from the capital reserve and \$400,000 of which was authorized previously) for the Fiscal Year 2020-2021.

Dated: February 18, 2021

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

Leah Simon-Weisberg, Chairperson
Rent Stabilization Board

Attest: _____
Matt Brown, Acting Executive Director

RESOLUTION 21-05

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR FULLY COVERED UNITS; DUE JULY 1, 2021

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 2022 will be necessary to meet the Program's operating needs and maintain an uncommitted reserve Fund balance approaching 8% throughout FY 2022; 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 7 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 34% and average rents of controlled units have increased by approximately 67% 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 0.99% 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 21-05

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR FULLY-COVERED UNITS; DUE JULY 1, 2021 (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 FY 2021 the Board adopted a fee of \$250 to cover only necessary operational costs; and

WHEREAS, because of salary related savings in FY 2021, 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 2021.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2022 registration fee for fully covered rental units, due July 1, 2021, is hereby set at \$250 per unit; and,

BE IT FURTHER RESOLVED that the Acting 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 2021.

Dated: May 6, 2021

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: _____
Matt Brown, Acting Executive Director

RESOLUTION 21-06

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2021

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 2022 will be necessary to meet the Program's operating needs and maintain an uncommitted reserve Fund balance approaching 8% throughout FY 2022; 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 21-06

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2021 (Page 2)

WHEREAS, the Acting Executive Director and Rent Stabilization Board estimate that there are approximately 4,000 units that require registration under Measure MM; and

WHEREAS, the additional expenses associated with registering and providing services for partially exempt Measure MM units during FY 2021 is \$200,000; and

WHEREAS, the Acting Executive Director and Rent Stabilization Board believe that \$400,000 in annual revenue will be necessary to register and provide services to Measure MM units 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

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 \$100 per unit fee for partially exempt Measure MM units is required; and

WHEREAS, to recover expenses associated with registering and providing services for partially exempt Measure MM units during FY 2021, an additional \$50 per unit fee is required; and

WHEREAS, the Budget & Personnel Committee approved calculating the Measure MM fee using this methodology this year but specifically stated that the Board may wish to adjust the way it calculates this fee in subsequent years to more closely align with the Rent Board services offered to all landlords and tenants and how much it costs to fund those services agency-wide; 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 2021.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2022 registration fee for partially exempt Measure MM units, due July 1, 2021, is hereby set at \$150 per unit; and,

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 FY 2022; and,

RESOLUTION 21-06

SETTING THE FISCAL YEAR 2021/2022 ANNUAL REGISTRATION FEE FOR PARTIALLY COVERED MEASURE MM UNITS; DUE JULY 1, 2021 (Page 3)

BE IT FUTHER RESOLVED that the Rent Stabilization Board will consider the all data and information gathered on the impacts and expenses associated providing services to partially exempt Measure MM units in FY 2022 when setting the registration fee levels for FY 2023.

Dated: May 6, 2021

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: _____
Matt Brown, Acting Executive Director

RESOLUTION 21-07

SETTING THE FISCAL YEAR 2021/2022 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, 2021

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 2022 will be necessary to meet the Program's operating needs and maintain an uncommitted reserve Fund balance approaching 8% throughout FY 2022; 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 21-07

SETTING THE FISCAL YEAR 2021/2022 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, 2021 (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, 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 Acting Executive Director and Rent Stabilization Board estimate that there are approximately 500 units in affordable housing projects that require registration under Measure MM; 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, 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 \$25 per unit fee for partially exempt Measure MM units is required; and

RESOLUTION 21-07

SETTING THE FISCAL YEAR 2021/2022 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, 2021 (Page 3)

WHEREAS, to recover expenses associated with registering and providing services for partially exempt Measure MM units during FY 2021, an additional \$12 per unit fee 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 2021.

NOW THEREFORE, BE IT RESOLVED that the annual FY 2022 registration fee for partially exempt Measure MM units, due July 1, 2021, is hereby set at \$37 per unit; and,

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 2022; and,

BE IT FURTHER RESOLVED that the Rent Stabilization Board will consider all data and information gathered on the impacts and expenses associated providing services to partially exempt Measure MM units in affordable housing projects in FY 2022 when setting the registration fee levels for these units in FY 2023.

Dated: May 6, 2021

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: _____
Matt Brown, Acting Executive Director

RESOLUTION 21-09

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2021/2022 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 2021 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 take into account 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 9.6% 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 21-09

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2021/2022 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 2022 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 2022, 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 2022 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, 2021, and, regardless of when first collected, shall terminate no later than December 31, 2022, 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 21-09

AUTHORIZATION TO PASS THROUGH TO CERTAIN TENANTS A PORTION OF THE FISCAL YEAR (FY) 2021/2022 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; and

BE IT FURTHER RESOLVED that in order to fund the reimbursements to low-income tenants, the Director is authorized to spend up to an additional \$13,000 from the AEPHI Lawsuit Settlement Fund.

Dated: May 6, 2021

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: _____
Matt Brown, Acting Executive Director

Distributed at the Meeting
Item 7.a.(2)

Fiscal Year 2021/22 Registration Fees

Budget & Personnel Committee
and Acting Executive Director





FY 2021 Budget Status

- Increased Revenue
- Decreased Expenditures
- FY 2022 Uncommitted Reserve Projected at \$700,000



Considerations
For Setting
Registration Fees

Program requires
\$5.7M for FY 2022
expenditures

Rental Housing Market
still Impacted by
COVID-19 Pandemic

Considerations
For Setting
Registration Fees

Number of Qualifying
Measure MM Units
 $\approx 4,000$

Measure MM Unit
Registration Compliance
Rate Unknown

BUDGET & PERSONNEL COMMITTEE RECOMMENDATION

1

Maintain
Fully Covered
Registration Fee
at \$250

2

Maintain
Summer Fraternity
Registration Fee
at \$70

3

Maintain
Registration Fee
pass-through
at \$10

4

\$13,000 from
AEPHI Fund for
passthrough
reimbursement

MEASURE MM FEE RECOMMENDATION

Set Fee Based on Known Implementation Costs



\$150 per unit fee

\$50 per unit
to recover
FY 2021 costs

\$100 per unit
for
FY 2022 costs

Measure MM Fee for Affordable Housing Projects



100% Affordable Housing Projects owned by a non-profit are exempt from registration requirements (19.76.050.K)



RCD and SAHA are managing partner for projects owned by a limited partnership



RCD and SAHA request for an exemption from Measure MM registration requirements

Services Provided to Affordable Housing Projects



Proposed Lower Measure MM Fee
For Units in 100% Affordable Housing
Projects

\$37 per unit fee

Managing partner is a
non-profit and within
COB Housing
Trust Fund
Regulatory Period



Projected FY 2022 Revenue

- Conservative revenue projection of \$5,400,000
 - Projected expenditures for current staffing model would reduce uncommitted reserve by \$300,000.
 - Uncommitted reserve would end FY 2022 at 7% of total expenditures (below 8% target)
 - Adding additional staff or new expenditures reduces the reserve
- 



Questions