



**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.<sup>1</sup> The setting of the Measure MM fee<sup>2</sup> 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.

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<sup>1</sup> California Government Code Section 66016

<sup>2</sup> 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 3<sup>rd</sup> Quarter budget update for review by the Budget & Personnel Committee at their May 27, 2021 meeting. The 3<sup>rd</sup> 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.

<b>Fees as a percentage of rent</b>			
<u>Year</u>	<u>Fee</u>	<u>Mean Monthly Rent</u>	<u>% Annual Rent</u>
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%
<b>2021</b>	<b>\$250</b>	<b>\$2,110</b>	<b>0.99%</b>

**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:

<b>Year</b>	<b>2015/2016</b>	<b>2016/2017</b>	<b>2017/2018</b>	<b>2018/2019</b>	<b>2019/2020</b>	<b>2020/21</b>
<b>Registration Fee Charged (amount of pass-through)</b>	\$213 (\$6 per month)	\$234 (\$8 per month)	\$270 (\$11 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)	\$250 (\$10 per month)
<b>Number of Notices Property Owners Sent to Tenants</b>	404	486	595	601	680	557 (YTD)
<b>Number of Qualified Tenants Requesting Reimbursement</b>	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 1<sup>st</sup> 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.

<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	\$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%.

<b>HUD 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>
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.<sup>3</sup> 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

<sup>3</sup> 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

## 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:

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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:

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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:

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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