

**BUDGET ANALYST**

1390 Market Street, Suite 1025, San Francisco, CA 94102 (415) 554-7642
FAX (415) 252-0461

May 28, 2009

TO: Government Audit and Oversight Committee
FROM: Budget Analyst
SUBJECT: May 28, 2009 Government Audit and Oversight Committee Meeting

Item 6 - File 09-0278

Department: Rent Arbitration Board (Rent Board)

Item: Ordinance amending Chapter 37 of the San Francisco Administrative Code, "Residential Rent Stabilization and Arbitration Ordinance," by amending Section 37.3 to add Subsection (f) "Tenant Financial Hardship Applications," to provide tenant relief from Section 37.3 rent increases as follows:

- (a) Tenant relief would be determined solely on whether the rent increase would result in tenant's total rent exceeding 33 percent of tenant's gross income;
- (b) Rent increases would be stayed pending determination of the Rent Board's Tenant Financial Hardship application;
- (c) Rent increases would not be in effect until the increase would not cause the tenant financial hardship, or until the landlord can demonstrate that "inability to impose the rent increase is causing the landlord greater hardship than the tenant's hardship";

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- (d) Tenant Financial Hardship applications would be available in multiple languages;
- (e) Multilingual notice of the Financial Hardship application procedures would be mailed with each Administrative Law Judge Rent Board decision;
- (f) the Rent Board would implement a process for outreach to landlords and tenants whose primary language is not English regarding the availability and use of the Financial Hardship application procedures; and
- (g) the Rent Board would report to the Board of Supervisors describing the implementation process and any known results.

Background:

The following Rent Board provisions are in accordance with City Administrative Code Chapter 37, Section 37.3, which applies to most rental housing built prior to June of 1979:

- (a) Annual maximum rent increases over a tenant's base rent are calculated according to a formula based on the Consumer Price Index (CPI);
- (b) Pursuant to authorization by the Rent Board, landlords may pass through certain additional costs to tenants, including specified percentages of capital improvement costs, certain utility costs, operating and maintenance expense increases, and the repayment cost of specific General Obligation Bond measures; and
- (c) A tenant or landlord may appeal to the Rent Board to reduce or eliminate additional pass throughs on the basis of financial hardship.

The Rent Board is fully supported by annual Rent Board fees and does not receive any direct General Fund support. Annual Rent Board fees are charged to all property owners of residential units which are subject to the Rent Ordinance. Such fees are collected by the Tax Collector's Office. The Rent Board fees are included in the property owners' Property Tax bills. Currently, the Rent Board Fee is \$29 per rental unit per year. The property owner can charge one-half of the annual fee to the tenant occupying the rental unit.

In June of 2004, the Board of Supervisors amended the City's Administrative Code Section 37A (File No. 04-0745) to provide that the Controller calculates the annual Rent Board fee by July 31 of each year. The calculation of this fee is based on the projected annual cost of operating the Rent Board, including staffing, administrative, and overhead costs, less any remaining fund balance from the previous year, divided by the number of residential units subject to the annual Rent Board fee.

Description:

The proposed ordinance would amend Section 37.3 of the Administrative Code by adding Subsection (f) "Tenant Financial Hardship Applications," which would provide tenants relief from Section 37.3 rent increases as follows:

- (a) Rent increases would be determined solely on whether the rent increase would result in the tenant's total rent exceeding 33 percent of the tenant's gross income (see Comment No. 2);
- (b) Rent increases would be stayed for 60 days or until the Rent Board's Administrative Law Judge (ALJ) hearing is held and such ALJ decision is issued on the pending Tenant Financial Hardship application (see Comment No. 1);
- (c) Rent increases would not be in effect until the increase would not cause the tenant financial hardship, or until the landlord can demonstrate that "inability to impose the rent increase is causing the landlord greater hardship than the tenant's hardship" (see Comment No. 2);
- (d) Tenant Financial Hardship applications and procedures would be available and distributed by the Rent Board in multiple languages;
- (f) the Rent Board would be required to implement tenant hardship outreach to landlords and tenants whose primary language is not English; and
- (g) the Rent Board would be required to provide a report to the Board of Supervisors describing the implementation process and identified results (see Comment No. 4).

Fiscal Impact:

Printing and Translation Costs

Ms. Delene Wolf, Director of the Rent Board, advises that, to date, there is no estimate for the costs of authoring,

translating, printing, and distributing the required Tenant Financial Hardship application materials and procedures in unspecified multiple languages.

Ms. Wolf advises that such translations would likely be performed by staff at Access on Languages, a private translation vendor which is included in the City's approved vendor list. Ms. Wolf advises that, in addition to being available in English, the Tenant Financial Hardship applications and procedures would most likely be translated into (a) Spanish and (b) Chinese.

Outreach Expenses

Ms. Wolf advises that the Rent Board currently has five outreach contracts with non-profit Community Based Organizations (CBOs),¹ at a total cost of approximately \$30,000 in FY 2008-2009. Under those outreach contracts, the non-English speaking population is targeted and informed with regard to the City's rental rights. Ms. Wolf further advises that outreach required by this proposed ordinance could potentially be combined with outreach efforts currently conducted by these existing CBOs. As such, Ms. Wolf does not anticipate requiring either additional staff, contract costs, or other costs for outreach efforts required pursuant to the terms of the proposed ordinance.

Staffing Costs

Ms. Wolf advises that, the Rent Board is not able to project the specific increase in client caseloads which would result from the proposed ordinance. However, Ms. Wolf advises that, in order to manage the potential increase in caseload, Ms. Wolf estimates:

- (a) At least one additional 8177 FTE Administrative Law Judge (ALJ) will be needed to conduct the additional required hearings in order to determine whether the subject rent increases would result in the tenant's total rent exceeding 33 percent of the

¹Ms. Wolf advises that the five non-profit CBOs are the Asian Law Caucus, the Housing Rights Committee, San Francisco Apartment Association, Chinatown Community Development Corporation, and St. Peter's Housing Committee.

tenant's gross income, and evaluate responsive Landlord Financial Hardship applications;² and
(b) Filling one currently vacant 2975 FTE Legal Counselor position, which is now being held vacant for salary savings. Responsibilities of the 2975 Legal Counselor would include explaining the proposed ordinance provisions to tenants and landlords.

Assuming a start date of January 1, 2010 for these two positions, which would result in a FTE of 0.5 for each position in FY 2009-2010, the proposed ordinance would result in an estimated cost in FY 2009-2010 of \$156,885 for salary and fringe benefits (\$106,519 for one additional 0.5 FTE 8177 ALJ plus \$50,366 for one 0.5 FTE currently vacant 2975 Legal Counselor position).

The combined annualized cost of one 8177 ALJ and one 2975 Legal Counselor positions, including salary and fringe benefits, would be \$313,770 based on FY 2008-2009 salary data.

The Budget Analyst notes that the proposed ordinance provides broad definitions for tenant relief, but does not include a provision to review ongoing eligibility of tenants who have, at one point, qualified for tenant relief from rent increases. If a large pool of tenants were to (a) initially apply to the Rent Board for financial relief, and (b) potentially qualify for a longer period of time than they are currently eligible, this could potentially require more Rent Board staff than those specified above (see Comment No. 3).

Report Costs

Ms. Wolf estimates that the cost to provide a report to the Board of Supervisors, describing the implementation process and identified results of the tenant financial hardship relief, would be minimal and could be absorbed within the Rent Board's existing budget.

² Responsive Landlord Financial Hardship applications, in response to Tenant Financial Hardship applications, would create additional work for Rent Board staff. However, Rent Board staff currently evaluates Landlord Financial Hardship applications which are not in response to Tenant Financial Hardship applications.

Rent Board Fee Increases

On July 31, 2009, the Controller will adjust the amount of Rent Board fees, paid by landlords to the Rent Board to fund anticipated staffing, administrative, and overhead costs for FY 2009-2010. Ms. Wolf advises that such increases are currently anticipated to increase by 3.4 percent, from \$29 to \$30. Based on our review of the FY 2009-2010 budget for the Rent Board, the Budget Analyst notes that, if the proposed ordinance is approved the anticipated \$30 Rent Board fees for FY 2009-2010 would not be sufficient to fund the additional estimated costs of \$156,885 for the anticipated staffing increases noted above. To fund the additional \$156,885 cost required for these two positions at 0.5 FTE in FY 2009-2010, the Rent Board fee would be increased by \$1, to approximately \$31. To fund the annualized cost of approximately \$313,770 required for these two positions, the Rent Board fee would be increased by an additional \$1 in FY 2010-2011, to approximately \$32. As noted above, the property owner can charge one-half of the annual Rent Board fee to the tenant occupying the rental unit.

As noted above, the Rent Board has not estimated a cost for preparing, translating, printing, and distributing the required Tenant Financial Hardship application materials and procedures.

The Rent Board is entirely supported by Rent Board fees and as such does not receive any direct General Fund support.

Comments:

1. According to Ms. Wolf, assuming the tenant submits all of the required materials, the proposed 60 day timeframe to evaluate the Landlord and Tenant Financial Hardship applications would be sufficient time for the Rent Board to evaluate the required material and render a decision.

2. Pursuant to the proposed ordinance, in order to determine the tenant's financial hardship, the Rent Board would be required to review the tenants' total rent and gross income, to determine if such total rent exceeds 33 percent of the tenants' gross income. However, neither total rent nor gross income is defined in the proposed

ordinance. In order to evaluate the landlord's financial hardship, Ms. Wolf advises that the Rent Board would continue the current process for determining the landlord's hardship, which includes a review of the landlord's debt, mortgage, income and expenses on all buildings owned by the landlord, and other income, resources, and expenses, and compare the overall financial status of the landlord to the financial status of the tenant.

3. The proposed ordinance specifies that the Rent Board would only consider gross income, such as wages, dividends, and pension income, but not consider additional tenant resources, such as stocks, trust funds, and other assets, when evaluating whether the subject rent increases would result in the tenant's total rent exceeding 33 percent of the tenant's gross income. The Budget Analyst notes that, because the parameters for tenant relief are broadly defined in the proposed ordinance, a large pool of tenants may apply to the Rent Board for financial relief from rent increases, which, in turn, could have a significant impact on the resources of the Rent Board. Furthermore, the proposed ordinance does not include a provision to review the ongoing eligibility of tenants who have, at one point, qualified for tenant relief from rent increases. As such, tenants could potentially qualify for a longer period of time than they are eligible, or the Rent Board could be required to perform ongoing reviews of such applications, which may, in turn, require additional Rent Board staff in addition to the two positions noted above.

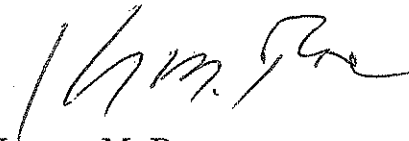
4. The Budget Analyst notes that there is no anticipated date for the Rent Board to submit to the Board of Supervisors the Rent Board's report, which is to describe (a) the implementation process and (b) any known results of this proposed Tenant Financial Hardship Relief ordinance.

The Budget Analyst therefore recommends that the Board of Supervisors request a report submission date by the Rent Board to the Board of Supervisors, one year from the approval of this proposed ordinance.

5. On May 18, 2009, the Controller's Office of Economic Analysis (OEA) issued a Fiscal Impact Report, addressing the proposed amendments to the Rent Ordinance, including this subject proposed amendment to provide tenant financial hardship relief.

Recommendations:

1. In accordance with Comment No. 2 above, amend the proposed ordinance to define total rent and total gross income.
2. In accordance with Comment No. 4 above, amend the proposed ordinance to include a date by which the Rent Board is to submit a report to the Board of Supervisors, describing the implementation and results of this proposed Tenant Financial Hardship Relief ordinance.
3. Approval of the proposed ordinance, as amended, is a policy matter for the Board of Supervisors.



Harvey M. Rose

cc: Supervisor Mirkarimi
Supervisor Mar
Supervisor Maxwell
President Chiu
Supervisor Alioto-Pier
Supervisor Avalos
Supervisor Campos
Supervisor Chu
Supervisor Daly
Supervisor Dufty
Supervisor Elsbernd
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