

SANTA MONICA RENT CONTROL BOARD MEMORANDUM

TO: Santa Monica Rent Control Board

FROM: J. Stephen Lewis, General Counsel

FOR BOARD MEETING: June 13, 2019

RE: Public hearing to consider imposing a \$44 ceiling on the 2019 annual general adjustment of 2%

Methodology and Calculation

Under City Charter § 1805(b), the Board may, in its discretion, impose a dollar-amount limit to the annual general adjustment. Under Charter § 1803(g), the Board must hold a public hearing before deciding whether to do so. At its May 9, 2019 regular meeting, the Board set a June 13, 2019 public hearing to consider whether to impose a dollar-amount limit to the 2019 general adjustment.

Should the Board elect to impose a dollar-amount ceiling, it must do so following the methodology prescribed by Charter § 1805(b), as amended by Measure GA in the November 2012 general municipal election. That methodology is as follows:

- 1) Determine the eighty-fifth percentile of the maximum allowable rent (MAR) of all controlled units;
- 2) Determine the eighty-fifth percentile of the maximum allowable rent of all controlled units with a base rent established before January 1, 1999;
- 3) Average the two rents arrived at in steps 1 and 2 and multiply that amount by the annual general adjustment.

Under this methodology, the dollar-amount ceiling on the 2019 general adjustment would be \$44, should the Board elect to impose it:

- 1) The 85th percentile MAR of all controlled units = \$3,000¹;
- 2) The 85th percentile MAR of units with base rents established before January 1, 1999 = \$1,367¹.
- 3) $\$3,000 + \$1,367 = \$4,367 \div 2 = \$2,183.50 \times 2\%^2 = \44 .

Because a \$44 ceiling would apply only when it would yield a lower rent increase than application of the 2% general adjustment, the ceiling necessarily

¹ Reported from SMRCB's database as of April 2019.

² Percentage Increase in the Consumer Price Index (All Urban Consumers, Los Angeles, Riverside, Orange County region), for the 12-month period ending as of March 2019 = 2.7%. GA = 75% of the percentage increase rounded to the nearest tenth decimal place. $2.7 \times 75\% = 2.02\%$ rounded to 2.0%.

applies only to higher rents. This means that imposing a ceiling would result in a proportionately smaller increase for market-level tenancies than for many long-term controlled tenancies. For example, a tenant paying \$1,500 per month will see an increase of 2%, which amounts to a dollar amount of \$30.00. A tenant paying \$3,000 per month would pay the \$44 ceiling that, while greater in dollar terms, is a percentage increase slightly less than 1.5%.

Who May Vote on Whether to Impose a Ceiling

Under Government Code Section 87100, a local government official may neither participate in making, nor influence the making of, a government decision in which he or she has a financial interest. To constitute a financial interest giving rise to an impermissible conflict of interest under Government Code Section 87100, the government official's interest must be "material," and must affect the official in a way that is different from the way that the decision would affect the public generally. Neither of these things is true with respect to the decision by a government official, who rents his or her residence, about whether to impose a dollar ceiling on the annual general rental adjustment.

A renter does not have a material financial interest in whether a dollar-ceiling is imposed.

Under Government Code Section 87013(b), a government official's interest in real property is "material" only if his or her interest in the property exceeds \$2,000. Over the course of a year, nearly any conceivable rent increase under either the 2% General Adjustment or a \$44 ceiling would amount to only a few hundred dollars at most. For most renters, the difference between a 2% adjustment and one capped at \$44 is likely to be under \$300 per year.

Any effect on a tenant's finances could be lesser still. There is no guarantee that a renter will remain in the affected unit for the entire one-year period. The landlord could Ellis the property or otherwise displace the tenant for any lawful no-fault reason, or the tenant could vacate on thirty days' notice.

Nor does a tenant have any direct or indirect interest in the value of the real property itself. Thus, both the California Fair Political Practices Commission and the California Court of Appeal have uniformly held that renters, like market-rate renters on the Board, lack a material interest in decisions relating to the broader community, even if that decision of general application might affect how much rent they pay.³

³ See, e.g., *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1172, fn. 19; FPPC Advice Letter I-87-145; FPPC Opinion 80-010; FPPC Advice letter I-09-062.

A decision about whether to impose a dollar ceiling affects a Board member no differently than the public generally.

Even in the unlikely event that a Board member who is also a renter could be found to have a material interest in whether to impose a dollar-amount ceiling, that decision would affect the Board member no differently than members of the public generally. Almost three quarters of Santa Monica residents are renters. A significant number of them are rent-control tenants. Of those, close to two thirds rent at market level, and a significant percentage of them would likely be affected by the \$44 cap. Thus, any effect on a voting Board member is no different from the effect on the public generally. When that is true, there is no financial conflict of interest under the Political Reform Act as a matter of law.⁴

To appreciate the breadth of this “public generally” exception to the conflict-of-interest statute, it is worth noting that even landlords, who are in the business of renting units, and whose business might be materially affected by a general-adjustment decision, are permitted to vote on general adjustments if they own properties with three or fewer units. This is because such ownership is extremely common⁵. Given that a general adjustment decision affects those who actually own controlled rental property no differently than “the public generally” (albeit only those who own only three or fewer units), the “public generally” exception applies, to an even greater extent, to renters, who make up the vast bulk of the city’s population.

Recommendation

After hearing from the public, the Board should vote on one of the two following alternatives.

Alternative One:

Adopt attached Resolution 19-004, announcing the 2% general adjustment for 2019 and imposing **no** dollar-amount ceiling. (*Attached to this staff report as Exhibit A*)

Alternative Two:

Adopt Resolution 19-004, announcing the 2% general adjustment for 2019 and imposing a **\$44** ceiling. (*Attached to this staff report as Exhibit B*)

⁴ See, FPPC Advice Letter A-95-371.

⁵ See, 4 FPPC Op. 62

Resolution 19-004

A Resolution of the Rent Control Board of the City of Santa Monica announcing that the 2019 annual general adjustment for rent-controlled units is 2% effective September 1, 2019.

The Rent Control Board of the City of Santa Monica does hereby resolve and order as follows:

Section 1. Under § 1805(a) of the City Charter, the Board shall, by June 30 each year, announce the percentage by which rent ceilings for eligible units will be generally adjusted effective September 1 of that year.

Section 2. Under § 1805(a)(1) and (2) of the City Charter, the general adjustment shall be equal to 75% of the percentage increase in the Consumer Price Index (All Urban Consumers, Los Angeles, Riverside, Orange County region) as reported in published by the U.S. Department of Labor Statistics, for the 12-month period ending as of March of the current year, rounded to the nearest tenth decimal point.

Section 3. The percentage increase in the CPI index specified by Charter § 1805(a)(1) for the 12 months ending March 2019 is 2.7%. Seventy five percent of 2.7% is 2.02, which, rounded to the nearest tenth decimal point is 2.0%.

Section 4. Under § 1805(b) of the City Charter, the Board may, in its discretion, impose a dollar-amount limit to any annual general adjustment, calculated by averaging the 85th percentile of the maximum allowable rents (“MARs”) for all controlled units with the 85th percentile of the MARs for all controlled units with a base rent established before January 1, 1999, and multiplying the result by the annual general adjustment percentage.

Section 5. The 85th percentile of the MARs for all controlled units is \$3,000. The 85th percentile of the MARs for all controlled units with a base rent established before January 1, 1999 is \$1,367. The average of \$3,000 and \$1,367 is \$2,183.50. \$2,183.50 multiplied by the 2019 annual general adjustment of 2% is \$43.67, which, rounded to the next whole dollar, is \$44.00.

Section 6. In the exercise of its discretion, the Board has elected by majority vote of its members not to impose a \$44 monthly limit on the amount by which

any controlled unit's MAR may be increased pursuant to the 2019 annual general adjustment. Thus, the MAR for any controlled unit eligible¹ for a general adjustment shall be increased by 2% effective September 1, 2019.

Now, therefore, be it hereby resolved that:

- The 2019 annual general adjustment is 2%.

Passed, approved, and adopted by the Rent Control Board of the City of Santa Monica at a regular meeting held this 13th day of June, 2019.

Caroline Torosis, Chair

Attest:

Lonnie Guinn, Board Secretary

¹ See Board Regulations 3035 and 3301 for rules governing eligibility to impose annual general adjustments.

Resolution 19-004

A Resolution of the Rent Control Board of the City of Santa Monica announcing that the 2019 annual general adjustment for rent-controlled units is 2%, and imposing limit on the general adjustment of \$44, effective September 1, 2019.

The Rent Control Board of the City of Santa Monica does hereby resolve and order as follows:

Section 1. Under § 1805(a) of the City Charter, the Board shall, by June 30 each year, announce the percentage by which rent ceilings for eligible units will be generally adjusted effective September 1 of that year.

Section 2. Under § 1805(a)(1) and (2) of the City Charter, the general adjustment shall be equal to 75% of the percentage increase in the Consumer Price Index (All Urban Consumers, Los Angeles, Riverside, Orange County region) as reported in published by the U.S. Department of Labor Statistics, for the 12-month period ending as of March of the current year, rounded to the nearest tenth decimal point.

Section 3. The percentage increase in the CPI index specified by Charter § 1805(a)(1) for the 12 months ending March 2019 is 2.7%. Seventy five percent of 2.7% is 2.02, which, rounded to the nearest tenth decimal point is 2%.

Section 4. Under § 1805(b) of the City Charter, the Board may, in its discretion, impose a dollar-amount limit to any annual general adjustment, calculated by averaging the 85th percentile of the maximum allowable rents (“MARs”) for all controlled units with the 85th percentile of the MARs for all controlled units with a base rent established before January 1, 1999, and multiplying the result by the annual general adjustment percentage.

Section 5. The 85th percentile of the MARs for all controlled units is \$3,000. The 85th percentile of the MARs for all controlled units with a base rent established before January 1, 1999 is \$1,367. The average of \$3,000 and \$1,367 is \$2,183.50. \$2,183.50 multiplied by the 2019 annual general adjustment of 2% is \$43.67, which, rounded to the next whole dollar, is \$44.00.

Section 6. In the exercise of its discretion, the Board has elected by majority vote of its members to impose a \$44.00 monthly limit on the amount by which any controlled unit's MAR may be increased pursuant to the 2019 annual general adjustment. Thus, effective September 1, 2019 the MAR for any controlled unit eligible for a general adjustment¹ shall be increased by 2% or \$44, whichever is lower.

Now, therefore, be it hereby resolved that:

- The 2019 annual general adjustment is 2%
- No general adjustment may increase the maximum allowable rent for a controlled unit by more than \$44 per month.

Passed, approved, and adopted by the Rent Control Board of the City of Santa Monica at a regular meeting held this 13th day of June, 2019.

Caroline Torosis, Chair

Attest:

Lonnie Guinn, Board Secretary

¹ See Board Regulations 3035 and 3301 for rules governing eligibility to impose annual general adjustments.

The following pages are written communications that have been received from the public on this item of the June 13 agenda and are part of the Board record.

From: Danielle Peretz [<mailto:danielle@aagla.org>]

Sent: Thursday, June 13, 2019 10:45 AM

To: RentControl Mailbox <RentControl.Mailbox@SMGOV.NET>

Cc: Daniel Yukelson <dan@aagla.org>

Subject: AAGLA Letter in Opposition to the Board's proposed \$44 Ceiling on the annual general adjustment of 2% (agenda item 11A)

Good Morning, Members of the Santa Monica Rent Control Board;

Attached for your review is a letter submitted by the Apartment Association of Greater Los Angeles (AAGLA) expressing our opposition to the Board's proposed \$44 ceiling on the annual general adjustment of 2% scheduled for discussion at the June 13, 2019 Board meeting, agenda item 11A.

Thank you for your time and consideration.

Very truly yours,



Danielle Leidner-Peretz
Director, Government Affairs & External Relations
Apartment Association of Greater Los Angeles
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Los Angeles, California 90005
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The Voice of Multifamily Housing Since 1917 ©



"Great Apartments Start Here!"

Danielle Leidner-Peretz
Director, Government Affairs &
External Relations
danielle@aagla.org
213.384.4131; Ext. 309

June 13, 2019
Via Electronic Mail

Santa Monica Rent Control Board
City Hall
1685 Main Street
Santa Monica, California

Re: Consideration of imposing a \$44.00 "Ceiling" on the 2019 Annual General Adjustment of 2% (*Agenda Item 11A*)

Dear Members of the Santa Monica Rent Control Board:

The purpose of this letter is to express the Apartment Association of Greater Los Angeles' (AAGLA) opposition to the imposition of a \$44.00 per month limitation or "ceiling" on the 2019 annual general adjustment of 2%. As stated in the General Counsel's memorandum to the Board "for most renters, the difference between a 2% adjustment and one capped at \$44.00 is likely to be under \$300.00 per year." While imposition of the "cap" would marginally effect renters, as its applicability is limited to a small number of renters; it would only serve to further chip away at the limited funds received by small rental housing providers subject to ever increasing expenses and costs to properly maintain their buildings. In reality, the cap would only serve to assist the more affluent renters while presumably lower-income renters, paying lower rents, are subject to the full increase.

AAGLA represents thousands of smaller rental housing providers, including many that own rental housing within Santa Monica. Most of our Santa Monica members are small, "mom and pop" owners that come from many different backgrounds and income levels, including those that are retired seniors on fixed incomes, recent immigrants, teachers or first responders. So many of our members once worked or continue to work regular "9-5" jobs through which they have made a small investment in their community by purchasing rental property, which they acquired through hard work, sacrifice and risk in order to secure and supplement their retirement.

Small rental housing providers are struggling to maintain their buildings and provide their renters with safe, clean homes. Water and electric rates are ever increasing and insurance premiums such as fire insurance have been subject to premium increases due the California fires. Many small owners are reaching the point where they are facing a difficult but somewhat inevitable decision to

The logo for the Apartment Association of Greater Los Angeles (AAGLA) features the acronym "AAGLA" in a bold, blue, sans-serif font. To the right of the text is a solid gold-colored square.

"Great Apartments Start Here!"

sell their building which only serves to further deplete the limited affordable housing supply. We urge the Board to approve the 2% annual adjustment without the imposition of a "cap" or consider varying "cap" adjustments based upon unit size (e.g., studio, one-bedroom, etc.).

Thank you for your consideration. If you have any questions, please call me at (213) 384-4131; Ext. 309 or contact me via electronic mail at danielle@aagla.org.

Very truly yours,

Danielle Leidner-Peretz

From: Kelly Wilmer [<mailto:kellywilmer@aol.com>]
Sent: Wednesday, June 12, 2019 10:26 AM
To: RentControl Mailbox <RentControl.Mailbox@SMGOV.NET>
Subject: Comments to Rent Control Board meeting 6/13

We would like the board to take the position of a 2% increase for this year. Our water rates were just increased 9%! All other costs are increasing every year too - garden service, electrical, gas etc, building maintenance. Please use that formula.

Sincerely
Kelly Wilmer

From: David Miller <millerdca@yahoo.com>
Sent: Monday, June 10, 2019 8:47 AM
To: RentControl Mailbox; Caroline Torosis
Subject: Comment on Agenda Item 11A -- June 13, 2019 Meeting of Santa Monica Rent Control Board

Dear Commissioners,

I am writing to comment on Agenda Item 11A. I have lived in Santa Monica for over 30 years. I am what the Board might call a "Mom and Pop" housing provider.

First, let's be clear. Imposing a cap on the annual rent adjustment will not help the long-time tenant whose rent is \$900 per month, as the cap does not apply to that rent level.

Likewise, imposing a cap will not help the long-time tenant whose rent is \$1,800 per month, as the cap does not apply to that rent level either.

The main effect of imposing an arbitrary cap on a sub-inflationary annual adjustment is to deny housing providers the funds they need to maintain their aging buildings. An ancillary effect of imposing a cap is to encourage Mom and Pop housing providers to sell their buildings, often to developers.

Let's look at the figures:

The CPI increased 2.7%. Under the rent control law, the annual adjustment will be 2.0%. If the Board imposes a cap, my building's annual adjustment drops to 1.7%.

Now, let's contrast an increase of 1.7% with my actual expenses:

My gardener has increased his rates by 10%. He explained that gas prices have increased, and he has given multiple raises to his assistant. With a strong job market, it's harder to find people who are willing to work in the hot sun.

My water bill has gone up by 9%, as mandated by the City.

My electric bill is going up by 9%, as part of the switch to the Clean Power Alliance. Yes, it is possible to opt out of clean power, but the responsible thing is to join the community in helping to prevent global warming.

My fire and liability insurance premium went up by 4.9%. Moreover, my insurance agent tells me that my fire insurance company has been hit with billions of dollars in claims from the California wildfires, and that my fire insurance premium will be much higher next year, assuming the carrier doesn't quit the California market.

But my biggest expense is repairs, maintenance, improvements and cleaning. It's a constant struggle. Drains clog. Faucets break. Toilets malfunction. Stoves need repair (or, more likely, replacement). Roofs wear out. Heaters need service. Some years have more repairs than others,

but looking at my tax returns for the last three years, my average yearly expense for these items is \$32,168. My repair costs are increasing faster than the CPI. Have you hired a licensed contractor lately? Proper maintenance costs real money. Skilled labor is really expensive.

I could give you a lot more examples, but the bottom line is that we have an unsustainable situation, where expenses are governed by the free market, and rent adjustments are limited to sub-inflationary increases that are then further decreased by an arbitrary cap that is simply punitive. And there is worse to come for housing providers: tax assessments for Measure SMS are coming. Using the estimate stated in the ballot materials, the property taxes on my building will increase by \$684, with virtually no chance to pass any of the assessment through to my tenants. That expense alone would take 25% of my total annual adjustment for the year.

In conclusion, I urge the Board to approve the 2% annual adjustment as specified under the rent control law, without decreasing the annual adjustment by imposing an arbitrary cap.

Respectfully submitted,
David Miller