

SANTA MONICA RENT CONTROL BOARD MEMORANDUM

TO: Santa Monica Rent Control Board
FROM: J. Stephen Lewis, General Counsel
FOR BOARD MEETING: June 11, 2020
RE: Public hearing to consider imposing a \$32 ceiling to the 2020 annual general adjustment of 1.4%

The Board lacks discretion over whether to announce something other than a 1.4% general adjustment.

At its May 25 meeting, the Board asked the General Counsel to include in this staff report a brief analysis of whether the Board is required to announce this year's general adjustment in conformity with the formula set forth in the Charter or could instead impose a rent freeze, as some other rent-control jurisdictions have done. Because the answer to this question is clear, the analysis provided here is relatively brief and straightforward.

Article XVIII of the Santa Monica City Charter, also known as the Rent Control Law, grants the Board no discretion over whether there will be an annual general adjustment in a given year, or what percentage that adjustment will be. Rather, Charter § 1805 mandates that the Board calculate each year's adjustment in accordance with a prescribed formula, then "announce" (not decide) the product of that calculation. The Charter generally, and Charter § 1805 specifically, was enacted by the people of Santa Monica as a voter initiative. Under the California Constitution, when the People act through their state-constitutional authority to legislate by initiative, they have the last word, subject only to very limited judicial review.¹ Neither the legislative nor executive branches, including any administrative or regulatory body, may alter, overturn, or disregard the voter-enacted legislation.² Based on this principle alone, the Board has no authority to do other than what the Charter expressly calls for.

But even if the Charter had not been enacted by voter initiative, the Board would still be bound to apply the Charter, including § 1805, as written. That is because the Board does not exist as a state-constitutionally mandated entity like a branch of the state government, a city council, or a county board of supervisors, but rather is purely a creature of statute. Because the Board is a regulatory body

¹ See, e.g., *People v. Lopez* (2020) 20 Cal. Daily Op. Serv. 3807, 2020 WL 2107917

² Cal.Const. Art.2, § 10; *People v. Kelly* (2010) 47 Cal.4th 1008.

created by statute, it may do only those things that the legislation that created it permits, and must do everything that that legislation calls for. As the California Supreme Court held in 1962, and as the Court of Appeal reaffirmed specifically with respect to this Board in 2004, “[i]t is fundamental in our law that an administrative agency may not, under the guise of its rule-making power, abridge or enlarge its authority or act beyond the powers given to it by the statute which is the source of its power.”³

Because many other government officials and bodies have enacted emergency regulations and issued emergency orders during the current emergency, the question naturally arises: why can they do those things if the Board can’t? The California governor has no “inherent power” to legislate, appropriate funds, or suspend or disregard the legislative enactments. The sole authority for the Governor to do those things in the event of an emergency, as he has done during the current pandemic, is a statute, without which he could not have done so.⁴ That statute is the California Emergency Services Act (CESA), set forth in the California Government Code beginning at Section 8550. Absent that statute, the Governor would not have the constitutional authority to issue orders contradicting existing legislation, as he is forbidden to exercise legislative power without express authority from the Legislature.⁵ The Emergency Services Act also includes express authority for cities and counties to issue emergency orders and regulations.⁶ But those emergency orders and regulations cannot be issued just by any city or county official; they may be issued only by duly created disaster councils or by the governing body of that city or county.⁷ They have this authority because it has been granted by statute and, absent the statutory grant of authority, they would not have it.

³ *Ocean Park Associates v. Santa Monica Rent Control Bd.* (2004) 114 Cal.App.4th 1050, 1064, quoting from *Kerr’s Catering Service v. Department of Industrial Relations* (1962) 57 Cal.2d 319, 329-330. In *Ocean Park*, the Court struck invalidated the Board’s practice, which was not provided for by the Charter, of permitting the Administrator to file rent decreases on behalf of all tenants in a building when an individual application revealed the existence of a common-area issue.

⁴ *California Correctional Peace Officers Assn. v. Schwarzenegger* (2008) 163 Cal.App.4th 802. Regarding the limitation on the Governor’s emergency authority, see, e.g., *Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989, fn. 34.

⁵ *United Auburn Indian Community of Auburn Ranchia v. Brown* (2016) 4 Cal.App.5th 36. For an interesting article examining the limitation of executive emergency authority, see “The Governor’s Powers Under the Emergency Services Act,” (Duvernay and Stracener), at scocablog.com (April 6, 2020).

⁶ Gov’t. C. § 8634.

⁷ Gov’t C. § 8634, 8610.

The Board, unlike the Governor, a city, or a county, has not been granted emergency powers. The Board is not the governing body of the City of Santa Monica, and for that reason has no emergency powers under the Emergency Services Act. Nor does any other state law grant emergency powers to a municipal administrative agency; so the Board's emergency powers, if any exist, must be found in the statute that created it, the City Charter. As noted above, nothing in the City Charter, from which the Board solely derives its authority, grants it such powers. To the contrary, the Board's powers are circumscribed by the Charter, which lists only 15 things that the Board may or must do.⁸ One of those things is "to make adjustments in the rent ceiling *in accordance with [Charter] section 1805*, under which, as noted above, the adjustment is made according to a mandatory formula.

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 14, 2020 regular meeting, the Board set a June 11, 2020 public hearing to consider whether to impose a dollar-amount limit to the 2020 general adjustment.

Should the Board elect to impose a dollar-amount ceiling, it must do so following the methodology prescribed by Charter § 1805(b). 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 2020 general adjustment would be \$32, should the Board elect to impose it:

- 1) The 85th percentile MAR of all controlled units = \$3,119⁹;
- 2) The 85th percentile MAR of units with base rents established before January 1, 1999 = \$1,392¹.
- 3) $\$3,119 + \$1,392 = \$4,511 \div 2 = \$2,256 \times 1.4\% = \$32$.

⁸ SMMC § 1803(f). See, also, *Westsideers Opposed to Overdevelopment v. City of Los Angeles* (2018) 27 Cal.App.5th 1079, 1086 ("A charter city may not act in conflict with its charter, and any act that is ... not in compliance with the charter is void [citation]. A city charter operates as a limitation over all the municipal affairs which the City is assumed to possess; it is not a grant of power.")

⁹ Reported from SMRCB's database as of April 13, 2020.

Because a \$32 ceiling would apply only when it would yield a lower rent increase than application of the 1.4% general adjustment, the ceiling necessarily 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, the rent for a tenant paying \$2,000 per month will increase by 1.4%, which amounts to a dollar-amount of \$28.00. A tenant paying \$3,000 per month would pay the \$32 ceiling that, while greater in dollar terms, is a percentage increase slightly less than 1.2%. The higher the rent, the smaller the percentage yielded by a \$32 ceiling.

Staff expressed no view as to whether the Board should impose a dollar-amount ceiling.

Recommendation

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

Alternative One:

Adopt attached Resolution 20-002, announcing the 1.4% general adjustment for 2020 and imposing **no** dollar-amount ceiling. (*Attached to this staff report as Exhibit A*)

Alternative Two:

Adopt Resolution 20-002, announcing the 1.4% general adjustment for 2020 and imposing a **\$32** ceiling. (*Attached to this staff report as Exhibit B*)

Alternative 1

Resolution 20-002

A Resolution of the Rent Control Board of the City of Santa Monica announcing that the 2020 annual general adjustment for rent-controlled units is 1.4% effective September 1, 2020.

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 and published by the U.S. Bureau 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 2020 is 1.9%. Seventy five percent of 1.9% is 1.425, which, rounded to the nearest tenth decimal point is 1.4%.

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 \$3,119. The 85th percentile of the MARs for all controlled units with a base rent established before January 1, 1999 is \$1,392. The average of \$3,119 and \$1,392 is \$2,256. \$2,256 multiplied by the 2020 annual general adjustment of 1.4% is \$31.58, which, rounded to the next whole dollar, is \$32.00.

Section 6. In the exercise of its discretion, the Board has elected by majority vote of its members not to impose a \$32 monthly limit on the amount by which

Alternative 1

any controlled unit's MAR may be increased pursuant to the 2020 annual general adjustment. Thus, the MAR for any controlled unit eligible¹ for a general adjustment shall be increased by 2% effective September 1, 2020.

Now, therefore, be it hereby resolved that:

- The 2020 annual general adjustment is 1.4%.

Passed, approved, and adopted by the Rent Control Board of the City of Santa Monica at a regular meeting held this 11th day of June, 2020.

Nichole Phillis, Chair

Attest:

Lonnie Guinn, Board Secretary

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

Alternative 2

Resolution 20-002

A Resolution of the Rent Control Board of the City of Santa Monica announcing that the 2020 annual general adjustment for rent-controlled units is 1.4%, and imposing a limit on the general adjustment of \$32, effective September 1, 2020.

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 and published by the U.S. Bureau 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 2020 is 1.9%. Seventy five percent of 1.9% is 1.425, which, rounded to the nearest tenth decimal point is 1.4%.

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 \$3,119. The 85th percentile of the MARs for all controlled units with a base rent established before January 1, 1999 is \$1,392. The average of \$3,119 and \$1,392 is \$2,256. \$2,256 multiplied by the 2020 annual general adjustment of 1.4% is \$31.58, which, rounded to the next whole dollar, is \$32.00.

Alternative 2

Section 6. In the exercise of its discretion, the Board has elected by majority vote of its members to impose a \$32.00 monthly limit on the amount by which any controlled unit's MAR may be increased pursuant to the 2020 annual general adjustment. Thus, effective September 1, 2020 the MAR for any controlled unit eligible for a general adjustment¹ shall be increased by 1.4% or \$32, whichever is lower.

Now, therefore, be it hereby resolved that:

- The 2020 annual general adjustment is 1.4%
- No general adjustment may increase the maximum allowable rent for a controlled unit by more than \$32 per month.

Passed, approved, and adopted by the Rent Control Board of the City of Santa Monica at a regular meeting held this 11th day of June, 2020.

Nicole Phillis, Chair

Attest:

Lonnie Guinn, Board Secretary

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