

## MEMORANDUM REPORT

January 31, 2000

TO: County Council

FROM: Sue Richards, Program Evaluator  
Office of Legislative Oversight

SUBJECT: *Office of Legislative Oversight Memorandum Report: Review of the Landlord Tenant Affairs Fund*

### EXECUTIVE SUMMARY

This project examines the operations of the Landlord Tenant Affairs Fund to respond to questions raised by Councilmembers during the FY 2000 budget worksessions. Specifically, this report examines the revenues, expenditures, and activities of the Landlord Tenant Affairs Fund, which is a special revenue fund established in the 1970's to account for revenues from the rental licensing fee.

OLO's examination found that the County established the Landlord Tenant Affairs Fund administratively for budget and accounting purposes but that there is no authority for the Fund in law. Licensing fees account for approximately 95% of the revenues to the Landlord Tenant Affairs Fund. Over the years, the County has charged activities directly related to rental licensing, inspection, and mediation to the Landlord Tenant Affairs Fund. In addition, the County has charged some activities that are not directly related to rental housing, such as inspections of owner occupied housing units or testing for the Fair Housing program.

OLO recommends that the County collect a rental licensing fee that recovers the cost of activities that are directly related to the licensing, inspection and mediation of rental housing. OLO also recommends that the Council request that the County Government study issues associated with the structure of the fee. In the interim, OLO suggests that the County reduce the current fees by \$5 to more accurately reflect the costs of activities that are directly related to rental housing. Finally, OLO recommends that the Council discontinue the use of the Landlord Tenant Affairs Fund to prevent the use of licensing fee revenues for programs that have a general public benefit in the future.

## **I. AUTHORITY, SCOPE AND METHODOLOGY**

### **A. Authority**

Council Resolution 14-242, FY 2000 Work Program of the Office of Legislative Oversight, adopted August 3, 1999

### **B. Scope**

This Office of Legislative Oversight (OLO) report responds to questions raised by Councilmembers during FY 2000 budget worksessions about the Landlord Tenant Affairs Fund. Specifically, this report examines the revenues, expenditures, and activities of the Landlord Tenant Affairs Fund, which is a special revenue fund established in the 1970's to account for revenues from the rental licensing fee.

The information in this report will help decision-makers determine whether the current rental licensing fees are set at the appropriate level, and whether a separate fund is the preferred structure for budgeting and accounting purposes. This memorandum report is divided into six sections:

- Section II provides background information about County policies and practices regarding licensing fees, funds, and the organizational structure of landlord tenant activities;
- Section III reviews the history of the rental facility licensing fee;
- Section IV describes the Landlord Tenant Affairs Fund programs and activities;
- Section V presents a financial review of the fund; and
- Section VI contains OLO's findings and recommendations.

### **C. Methodology**

OLO researched legislative, financial and budget records and documents to collect information about the history of the licensing fee and the financial activities of the Landlord Tenant Affairs Fund. OLO interviewed staff in the Department of Housing and Community Affairs, the Department of Finance, the Office of Management and Budget, the Office of the County Attorney and the Office of the Human Relations Commission to understand the activities in each program and the data collected to track activity costs.

### **D. Acknowledgements**

OLO received excellent cooperation from everyone involved in this study. OLO appreciates the information and assistance of all staff who participated. In particular, OLO thanks Elizabeth Davison, Joe Giloley, George Rose, Fred Wilcox, Linda Bird, Renee McLean, Jane Blackwell, and Luann Korona in the Department of Housing and Community Affairs. OLO also thanks Robert Kendal and Melanie Coffin in the Office of Management and Budget; Odessa Shannon, Seaquette Williams, and Charlotte Wade in

the Human Relations Commission; and Marc Hansen in the Office of the County Attorney.

## **II. BACKGROUND – FEES, FUNDS AND REORGANIZATIONS**

This section provides background information on licensing fees, funds, and the organizational location of landlord tenant activities.

### **A. Licensing Fees**

A license is a right or permission to carry on a business or activity which, without such license would be illegal. The County Government issues licenses and assesses fees for many activities. Examples include rental facility licenses, trader's licenses, public health licenses, and liquor licenses.

The amount of a licensing fee is the sum charged for the privilege of carrying on the business. In principle, according to the Office of the County Attorney, a fee imposed as part of the County's regulatory powers must not exceed the cost of issuing the permit and of inspecting and regulating the permitted activity. A court can find that a fee is legally invalid if it raises revenue that is used to offset the cost of general governmental functions.

### **B. Funds**

The County establishes funds to account for revenues and expenditures associated with a particular service or function. The County Council can establish a fund by law, or the County Government can establish a fund administratively. When a fund is established legislatively, the law will generally identify the purpose of the fund, the expected revenue sources, and how the money in the fund will be spent. If there is no authority for a fund in law, then the money in that fund is not legally restricted and may be spent for a public purpose as determined through the annual appropriations process.

#### **1. Types of Funds**

The County recognizes different types of funds for budgeting and accounting purposes. The County uses the General Fund to account for property and income tax revenues plus many other fees. The County uses enterprise funds, internal service funds, and special revenue funds to budget and account for non-tax supported programs. A recent study by the County Government's Office of Management and Budget describes the distinctions among these funds as follows:

- *Special revenue funds* account for revenues from specific taxes or other earmarked revenue sources, which by law are designated to finance particular functions or activities of government. Examples of special revenue funds are the Cable Television Fund, the Common Ownership Communities Fund, the Landlord Tenant Affairs Fund, and the Drug Enforcement Forfeiture Fund.

- ***Enterprise funds*** account for operations that are financed and operated in a manner similar to a private enterprise. The intent of the governing body is that the costs of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges. Examples of enterprise funds are the Solid Waste Collection Fund, the Solid Waste Disposal Fund, the Permitting Services Fund, and the Parking Activities Fund.
- ***Internal service funds*** account for financing of goods and services provided by one department to another on a cost reimbursement basis. Example of internal service funds are the Motor Pool Fund, the Central Duplicating Fund and the Printing and Mail Fund.

## **2. Fund Management**

The establishment of a non-tax-supported fund creates management responsibilities for: the operating department where the fund is located; the Office of Management and Budget; and the Department of Finance.

The operating department actively manages the fund and its activities and programs to achieve the program objectives. The responsibilities include: establishing an index code structure for the activities paid out of the fund; preparing an annual budget; loading the approved budget with the appropriated funds; preparing and approving payments from the fund; monitoring fund activities to avoid overpayments; and ensuring that a fund balance is maintained.

The Office of Management and Budget verifies that the department has loaded the budget correctly and monitors the fund to ensure that it will not be overspent. The Office of Management and Budget prepares two fund reports at the end of the second and third quarters to monitor the fund balance. The Office of Management and Budget also sets guidelines for the Department's preparation of the annual budget and presents the fund budget to the County Executive.

The Department of Finance establishes the fund in the accounting system, processes the financial activity into and out of the fund, and prepares reports for the Comprehensive Annual Financial Report.

## **3. Other Issues**

The budget process treats programs paid for out of a special fund or an enterprise fund differently than programs paid for out of the General Fund. Because a special fund or enterprise fund reflects sources of revenue separate from income and property taxes, the programs in a special fund or enterprise fund do not compete for funding against other programs in the General Fund. Instead, the budget for a program financed by a special fund or enterprise fund is determined using only the programs in that fund. Budget increases will require an increase in the fee that supports the program. Conversely, an unwillingness to increase fees may require a program cut.

The County also establishes spending affordability guidelines during the budget process to ensure that the growth in the budget does not exceed the growth in the tax base. The County excludes certain enterprise funds and special revenue funds from the spending affordability guidelines because the sources of revenues operate independently from the property and income tax base.

#### **4. The Landlord Tenant Affairs Fund**

The Landlord Tenant Affairs Fund is a special revenue fund that is administered by the Department of Housing and Community Affairs (DHCA). The Landlord Tenant Affairs Fund is excluded from the spending affordability calculations for budgeting purposes. As a result, the programs funded by the Landlord Tenant Affairs Fund do not compete for funding against programs funded by the General Fund.

The County Code contains no authorization for the Landlord Tenant Affairs Fund, and OLO was unable to locate any paperwork that documents the establishment of the Landlord Tenant Affairs Fund. It is likely that the Office of Landlord Tenant Affairs (which was charged with administering the Landlord Tenant law) requested the Department of Finance or the Office of Management and Budget to establish the fund administratively to account for the revenues OLTA was collecting from the rental licensing fee.

#### **C. The Organizational Structure of Landlord Tenant Activities**

The organizational structure of landlord tenant activities affects the operation and management of the Landlord Tenant Affairs Fund because an operating department bears many of the responsibilities for managing a fund. This section highlights changes to the organization of location of landlord tenant activities in County Government that resulted from the, following the adoption of two reorganization bills in the mid-nineties.

On June 20, 1995, the County Council enacted Bill 8-95, Landlord-Tenant Affairs/Common Ownership Communities - Reorganization. This legislation transferred the Office of Landlord Tenant Affairs (and the Office of Common Ownership Communities) from the Department of Housing and Community Development to the Office of Consumer Affairs. Following this reorganization, the Office of Consumer Affairs combined the licensing programs of the Office of Landlord Tenant Affairs and the Office of Common Ownership Communities into one licensing unit.

A year later, on May 16, 1996, the Council enacted Bill 11-96, Community and Consumer Affairs - Reorganization. This reorganization:

- Transferred the Office of Consumer Affairs (including the Office of Landlord Tenant Affairs) to the Department of Housing and Community Affairs;
- Transferred certain weed and rubbish (solid waste) code enforcement activities from the Department of Environmental Protection to the Department of Housing and Community Affairs; and
- Transferred fair housing activities from the Department of Housing and Community Affairs to the Office of the Human Relations Commission.

Following this reorganization, the Department of Housing and Community Affairs reorganized internally. The Department of Housing and Community Affairs located the Code Enforcement Program and the Mediation Program in the Housing Division, and placed the Licensing Unit in the Consumer Affairs Division. This structure is still in place today.

### **III. THE RENTAL FACILITY LICENSING FEE**

The primary revenue source of the Landlord Tenant Affairs Fund is a licensing fee charged to owners of rental properties. This chapter describes the legal basis for the fee and reviews the Executive Regulations that set the fee.

#### **A. Legal Authority**

Section 29-19, Chapter 29 of the Montgomery County Code, Landlord Tenant Relations, adopted in 1972, authorizes the County to collect a fee "in an amount sufficient to pay the costs incidental to the administration of this chapter."

#### **B. Executive Regulations**

The County establishes the annual license fee for rental dwelling units by Executive Regulation. The Executive Regulation is processed as a Method 3 regulation, which means that the County Executive establishes the fee level and gives notice to the County Council. (SR: Should we add that the Council can object to the fee level?)

On January 20, 1975, the County Executive signed Executive Regulation 1-75 to establish an annual license fee for "specified rental facilities." The Executive Regulation set the fee at \$12 per dwelling unit and directed that the fee be paid "to the Office of Landlord Tenant Affairs for deposit in the Landlord Tenant Affairs Fund within a time period established by the Executive Director." Since 1975, the County has adopted 35

Executive Regulations concerning the annual licensing fee for rental dwelling units. Over the years, the regulations:

- Increased the rental licensing fee for multifamily units from \$12 to \$30;
- Added cooperatives and condominiums to the multifamily fee base;
- Established a fee for single family rental properties;
- Added and later dropped a 1% penalty charge for late payments;
- Added and later dropped a reduced charge for units constructed in the second half of the fiscal year; and
- Added language stating that the failure to license a rental unit is a Class A civil violation.<sup>1</sup>

In September 1999, Executive Regulation 16-99 established the annual rental facility license fees for multi-family and single family rental dwelling units that are currently in effect. The license fees for FY 2000 are \$30 per dwelling unit for a multifamily (Class 1) rental license facility and \$55 per dwelling unit for a single family (Class 2) rental facility license. Exhibit 1 (on the next page) summarizes those regulations that have amended the licensing fee rate or provisions.

#### **C. Initial Licensing Fee Levels**

The legislative record suggests that the Council intended to charge a licensing fee for all of the services provided in Bill 17-91, Fair Landlord Tenant Relations. On July 18, 1972, the County Council adopted Resolution 7-803, Fair Landlord Tenant Relations Bill – statement of Legislative Intent. Section 11 of this resolution, entitled “License fees,” states:

The Council has provided ... that an annual license fee per dwelling unit shall be established by the County Executive in an amount sufficient to pay the costs incidental to the administration of this law and to make this law self-sustaining. The Council intends that this fee be kept to the bare minimum necessary to accomplish the purposes stated.

In January 1975, Executive Regulation 1-75 established an annual rental licensing fee of \$12 per unit. OLO was unable to locate a written explanation of how the initial fee level was established. However, based upon a review of budget documents, it appears that the budget for the Office of Landlord and Tenant Affairs was divided by the number of licensed units to establish a per unit cost which became the fee.

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<sup>1</sup> Under Section 1-19 of the County Code, the penalty for a Class A violation is \$500 for the initial offense and \$750 for a repeat offense.

# EXHIBIT 1 HISTORY OF RENTAL FACILITY LICENSE EXECUTIVE REGULATIONS

Effective Date	Executive Regulation Number	Key Provision or Changes
January 1975	1-75	Established initial annual license fee of \$12 per unit.
January 1978	2-78	Raised annual license fee to \$14. Added 1% penalty charge for late payments.
July 1982	15-82	Raised annual license fee to \$19. Added provision for pro-rated fee of \$9.50 per dwelling unit to be charged to dwelling units constructed between January 1 and June 30, 1983.
March 1983	4-83	Established pro-rated annual fee of \$6.33 per dwelling unit for condominiums and cooperatives.
July 1983		Included condominiums and cooperatives permanently at annual fee of \$19 per dwelling unit.
July 1987	16-87	Raised annual license fee to \$20 per dwelling unit.
July 1989	25-89	Raised annual license fee to \$22 per dwelling unit.
July 1990	16-90	Raised annual license fee to \$24 per dwelling unit.
July 1991	46-91	Raised annual license fee to \$25 per dwelling unit.
August 1992	101-92E	Established initial annual license fee for single family rental properties at \$50 per dwelling unit. Regulation included a reduced fee for units constructed and occupied between January and June 1993. The regulation did not include a penalty provision for late payments.
July 1993	6-93	Established \$25 annual fee for multifamily (Class1) licenses and \$50 fee for single family (Class 2) licenses. The regulation did not include a provision for a reduced fee for newly constructed units and did not include a penalty provision for late payments.
July 1994	10-94E	Raised annual fee to \$27 per dwelling unit for multi-family (Class 1) licenses, and \$52 per dwelling unit for single family (Class 2) licenses.
July 1997	25-97	Raised annual fee to \$30 per dwelling unit for multi-family (Class 1) licenses, and \$55 for single-family (Class 2) licenses. Added language that failure to license was a Class A violation.
July 1999	16-99	Current regulation in effect maintains annual license fees at \$30 for multi-family units and \$55 for single-family units.

Source: OLO, January 2000.

In August 1992, the County Council adopted Bill 17-92, Single Family Licensing, to license single family detached, townhouse, duplex and mobile home rental units. Executive Regulation 101-92E established a single-family rental licensing fee. Memoranda from the legislative record state that the initial license fee of \$50 was established to pay for first year operational costs.



To establish the single family fee level, the County estimated the number of single family rental units in the County and then estimated the number of units that would be licensed. The County estimated there were 20,000 units and that 13,000 would be licensed in the first year. The County divided the estimate of licensed units into cost of the single family enforcement program to develop a unit cost. The legislative record indicates that over time, the County expected the number of licensed single family units to increase to 20,000. The County also anticipated that the fee would decrease as the number of licensed units increased.

#### **IV. THE LANDLORD TENANT AFFAIRS FUND PROGRAMS AND ACTIVITIES**

The current annual licensing fees are \$30 for each multi-family unit and \$55 for each single-family unit. This fee structure of two separate flat fees suggests that the costs of service are uniform among all multifamily and among all single-family properties. It also suggests that the unit cost of services related to single family properties is substantially higher than the unit cost of services for multifamily properties.

In principle, the multifamily and single licensing fees represent the direct and indirect costs of those activities related to licensing, inspections and the other activities "incidental to the administration of" Chapter 29. This chapter of the report examines the activities that are paid for by the Landlord Tenant Affairs Fund. This information is needed to determine the activity cost basis for the multifamily and single family licensing fees, and to assess whether the licensing fees are set at an appropriate level.

In reviewing the activities paid for by the Landlord Tenant Affairs Fund, OLO asked the following questions:

- How does each activity relate to licensing, inspection, and mediation activities authorized in Chapter 29?
- Does the activity benefit landlords and tenants specifically or provide a general public benefit? and
- Are the services provided uniformly to all landlords or tenants, or are the services provided repeatedly to a subset of landlords or tenants?

##### **A. Licensing**

The Licensing Unit in the Division of Consumer Affairs administers the licensing of rental properties and the registration of Common Ownership Communities. The Licensing Unit also produces two reports annually, responds to requests for public information, and administers the accessory apartment and registered living unit programs. Approximately 90 percent of the funding for the Licensing Unit comes from the Landlord Tenant Affairs Fund, and 10 percent comes from the Common Ownership Community Fund.

## **1. Licensing**

Each year, the Licensing Unit sends out bills, processes payments and manages the collections of the rental facility license fee. Each spring, Licensing Unit staff conducts an outreach program to common ownership communities and others to identify possible unlicensed rental facilities. DHCA estimates that direct licensing activities make up approximately 75 percent of the Licensing Unit's annual workload.

## **2. Reports**

Licensing Unit staff annually prepares an apartment directory and a vacancy report. The apartment directory provides information about multifamily properties for rent. The vacancy report presents data about vacancy rates in multifamily properties. Many government agencies use information in these reports to help administer their programs. Copies of both reports are made available to the general public.

## **3. Public Information Requests**

The Licensing Unit maintains the core database for rental properties in the County. Staff regularly responds to requests from private individuals and government agencies (such as the Tax Assessors Office or the Montgomery County Public Schools) for database information. The Licensing unit staff also assists with answering landlord tenant calls one day a week.

## **B. Landlord Tenant Mediation**

The DHCA accounting (i.e., index code) structure combines the activities of the Mediation staff (in the Housing Division) and the activities of staff in the Consumer Affairs Division under the Landlord Tenant Mediation program. The Landlord Tenant Affairs Fund pays for the entire cost of the Landlord Tenant Mediation program. It also pays for a small amount of the personnel costs in the Consumer Affairs Division Chief's Office that are associated with mediation activities.

### **1. Landlord Tenant Mediation Activities**

According to DHCA, the major activities of the Landlord Tenant Mediation staff include formal written complaint investigations, informal complaint handling, information requests and other services.

***Formal Written Complaint Investigations*** - The Landlord Tenant Mediation staff receives formal written complaints from tenants and landlords concerning alleged violations of the Landlord Tenant Law.

According to program staff, the Landlord Tenant mediation program receives approximately 80 complaints a month, or 960 complaints annually. Staff estimates that they hold 10 conciliation conferences a week and that, on average, staff presents

approximately 60 to 70 cases to the Landlord Tenant Commission annually. The Landlord Tenant Commission accepts approximately 1/3 to 1/2 of these cases for hearing and review. During calendar year 1999, the Landlord Tenant Commission issued 20 decision and orders.

DCHA estimates that formal written complaint investigations comprise 60 to 65 percent of the mediation program workload. According to DHCA, approximately half of the written complaints relate to multifamily units, and the other half relate to single family units. DHCA also notes that much of the staff time spent on these investigations concerns a relatively small number of landlords.

***Informal Complaint Handling*** – The Landlord Tenant Mediation program receives and investigates complaints from landlords and tenants concerning alleged violations of the Landlord Tenant law. DHCA accepts complaints in person or over the telephone.

Investigators resolve complaints in a variety of ways, depending on the nature of the complaint. They may be able to resolve the complaint through a telephone conversation. If not, they will schedule a conciliation conference with the aggrieved parties to try and mediate a settlement. Chapter 29 requires a conference before a formal written complaint is filed with the Landlord Tenant Commission.

DHCA estimates informal complaint handling makes up approximately 20 to 30 percent of the overall mediation program workload. This service benefits both landlord and tenants in both single family and multifamily rental properties.

***Information Requests*** - Investigators provide information to landlords and tenants over the telephone and in person. For landlords, the investigators typically answer questions about the law and review leases. The investigators will answer tenant questions about security deposits or emergency housing services. The investigators also answer questions from tenants or landlords referred from District Court. The responsibility for answering information requests is rotated among the investigators during the 40-hour workweek.

DHCA believes handling information requests makes up approximately 10 to 30 percent of the mediation program workload. DHCA estimates that the information requests are evenly divided both between landlords and tenants, but does not have a breakdown of the distribution between single family and multifamily units.

***Other Services*** – The Landlord Tenant Mediation program also provides other miscellaneous services that respond to individual requests or broader public information needs. DHCA estimates these services comprise approximately five percent of the mediation program workload. Examples of these miscellaneous services include:

- **Pre Move Out Walk Through Inspections** – In properties where landlords have a pattern of not returning security deposits, the Landlord Tenant Mediation staff will tell a tenant who is preparing to move out to call and schedule a walk through

inspection before they move out. Landlord Tenant Mediation staff will accompany owner representatives and the tenant on the walk through inspection.

- Development, Publication and Distribution of Landlord Tenant handbook – The Landlord Tenant Mediation staff prepared a landlord/tenant handbook and mailed the handbook to all licensed landlords and tenants in residence.
- Outreach and Community Presentations – Landlord Tenant Mediation staff make presentations about the Landlord Tenant law to community groups and tenant associations on request.

## **2. Consumer Affairs Activities**

The Landlord Tenant Mediation program pays a portion of the salaries of the Division chief and administrative staff in the Division of Consumer Affairs. (In FY 00, the Landlord Tenant Affairs Fund pays for 3.16 workyears in the Division of Consumer Affairs. This includes one-fifth of the Division Chief's time and one-third of an Executive Administrative Aide's time.) According to DHCA, the major activities of the Division of Consumer Affairs that relate to landlord tenant affairs include answering the consumer complaint line and providing supervisory, administrative and automation assistance to the Licensing Unit.

***The Consumer Complaint Line*** - The administrative staff answers the consumer complaint telephone line. Consumer Affairs estimates that the line receives approximately 120,000 calls annually. Consumer Affairs does not track the portion of calls that are for general consumer affairs matters versus specific landlord tenant questions. However, DHCA's estimates of the volume of calls from landlord or tenants range from 10 to 50 percent.

***Supervision and Administration*** - The Division Chief supervises the manager of the licensing unit and troubleshoots problems with the computer dedicated to the licensing program. The managers of the other sections assist the manager of the Licensing Unit with hiring and other supervisory responsibilities. The Executive Aide to the Division Chief provides assistance as needed to the Licensing Unit, and the Automation Specialist provides support for the Licensing Unit's computer.

## **C. Code Enforcement**

The Housing Code Enforcement program is responsible for the preservation and improvement of housing and property standards through the enforcement of Chapter 26, Housing and Building Standards; Chapter 48, Solid Waste; and Chapter 58, Weeds. The Housing Code Enforcement program also conducts inspections required under Chapter 29. The Landlord Tenant Affairs Fund pays for three-fourths of the Housing Code

Enforcement program. The other fourth of the program's cost is charged-back to the Solid Waste Fund.<sup>2</sup>

The major activities of the Housing Code Enforcement program are inspection activities required by law, complaint investigations – including solid waste inspections and other special projects.

### **1. Legally Required Inspection Activities**

The required inspection activities of the Housing Code Enforcement program consist of triennial inspections for multifamily properties and other inspections of accessory apartments, registered living units and potential foster care homes.

The triennial multifamily inspections required under Chapter 29 also result in monthly follow-up inspections for certain properties, which DHCA considers to be “at-risk”. In FY 99, the Housing Code Enforcement program closed out approximately 2,800 required inspection cases. The majority of these were triennial inspections (2,240) and foster day care inspections (424).

### **2. Complaint Investigations**

The Housing Code Enforcement program administers a complaint investigation program to address complaints in both multifamily properties and single family neighborhoods. The complaint inspection activities include complaint investigations for both rental and owner-occupied properties. The complaint inspections enforce housing and property maintenance standards, water runoff problems, overgrown grass and weeds, unlicensed accessory apartments, the storage of inoperable vehicles and the accumulation of trash and debris.

The Housing Code Enforcement program received 1,040 complaints from the public in FY 98 and 3,000 complaints in FY 99. DHCA indicates that the volume of complaint calls continues to increase. In FY 99, DHCA closed out 3,000 publicly-generated complaint investigations. Approximately 1,400 of these calls were housing maintenance complaints for multifamily properties (850) or single family properties (540). Roughly one-third of these complaints (1,300) were solid waste. According to DHCA, the majority of the solid waste complaints relate to single-family homes (both rental and owner occupied) and commercial properties.

### **3. Special Projects**

The Housing Code Enforcement program staff handled a series of special projects since the reorganization of DHCA in 1996. These special projects go beyond the traditional code enforcement inspection activities, and include the Neighborhoods Alive!

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<sup>2</sup> The sources of revenue for the Solid Waste Fund include solid waste fees and charges paid by property owners throughout the County.

program, inspections of certain single family rental properties, a survey of condemned and vacant properties, and a series of inspections in Hyattstown.

These special projects are carried out by a team of inspectors typically taken from both the multifamily and single family inspection teams. The scope of the project typically determines who benefits from the service. For example, the Neighborhoods Alive! program conducts exterior inspections of owner occupied properties in a select area plus exterior and interior inspections of rental properties in an area.

The Housing Code Enforcement program collects workload data and case management information but does not track individual staff time by project or activity. When the single-family license fee was established in 1992, the County noted that approximately 70 percent of the single family code enforcement program served rental properties and 30 percent responded to complaints for owner-occupied properties. Today, DHCA estimates that approximately 80 percent of the activities of the Housing Code Enforcement program serve rental properties.

**D. Administration (DHCA Director's Office)**

The Director provides overall guidance, supervision, and support to the Department of Housing and Community Affairs. The administrative staff in the Director's office handles calls from concerned citizens and provides administrative support for the Director's activities and personnel decisions.

**E. Fair Housing (Office of the Human Relations Commission)**

In 1996, Bill 11-96 transferred administration of the County's Fair Housing program from the Department of Housing and Community Development to the Office of the Human Relations Commission. Since that time, the County has annually changed the sources of funding for Fair Housing activities, shifting among the General Fund and the Landlord Tenant Affairs Fund.

- In FY 97, the Council approved \$30,000 for the Fair Housing program from the Landlord Tenant Affairs Fund. This included \$20,000 to develop a strategic plan and \$10,000 for personnel expenses.
- In FY 98, the Council approved \$81,000 (1.5 workyears) for the Fair Housing program from the Landlord Tenant Affairs Fund.
- In FY 99, the Council transferred the staffing costs (1.5 workyears) for Fair Housing from the Landlord Tenant Affairs Fund to the General Fund, and provided \$40,510 from the Landlord Tenant Affairs Fund in operating expenses.
- In FY 00, the Council increased staffing and operating costs for the Fair Housing program. The Council evenly divided the (old and new) staffing costs (3.5 workyears) and the operating costs between the General Fund and

the Landlord Tenant Affairs Fund, for a total charge to the Landlord Tenant Affairs Fund of \$205,000.

Over the past four years, the Office of the Human Relations Commission restructured and expanded the County's Fair Housing program. The major activities of the Fair Housing program are to: (1) conduct market testing and studies; (2) develop public education, advertisement and outreach campaigns; and (3) training and education.

### **1. Market Testing and Litigation**

The Fair Housing program contracts for market testing as well as for studies to measure discrimination in Montgomery County and assemble evidence for cases to be tried in federal court. The program has administered several contracts during the past two and one-half years to conduct market studies and for discrimination testing. The County expects to use information from the testing studies to bring cases in federal court against landlords or mortgage brokers who are violating the federal fair housing laws.

The table on the next page (Exhibit 2) presents a list of recent contracts. The sources of funds for these studies come primarily from federal money (CDBG and HOME) and the General Fund. In one case, the Landlord Tenant Affairs Fund paid \$24,999 for a sales testing study.

### **2. Information, Outreach and Advertising**

The Fair Housing staff contracts for advertisements in newspapers and on television to inform the public about the fair housing law. In the past year, advertisements ran in minority newspapers and on CSPAN during the broadcasting of soccer games. Fair Housing staff also meet with tenant associations and visit complexes that the Landlord Tenant Mediation staff believe may have problems.

### **3. Training and Education**

The Fair Housing program sponsors training seminars to educate the public on the provisions, requirements, and remedies of the fair housing law. The Fair Housing program convenes a seminar every April in association with Fair Housing Month. In FY 99, the half-day seminar focused on fair housing and condominiums. Approximately 135 people attended, including attorneys, property managers, attorneys for neighborhood associations, landlords, tenants, real estate agents and students. This April, the seminar will be a mock trial of a landlord who refuses to rent an apartment because he/she is unwilling to make reasonable accommodations for a potential tenant's disability.

**EXHIBIT 2 LIST OF FAIR HOUSING CONTRACTS, JUNE 1997 TO MAY 1999**

<b>Start Date</b>	<b>Contractor</b>	<b>Scope/Purpose of Contract</b>	<b>Amount of Contract</b>	<b>Source of Funds</b>
June 1997	Fair Housing Council of Greater Washington	Educational Outreach	\$30,000	CDBG
June 1997	Fair Housing Council of Greater Washington (FHCGW)	Conduct rental testing	\$90,000	CDBG
April 1998	Extension #1 to contract with FHCGW	Conduct retest of some rental tests	\$10,000	General Fund
April 1998	Zena Green and Associates	Conduct study of fair lending practices in Montgomery County	\$21,000	CDBG/HOME
June 1998	Street law	Fair Housing Curriculum	\$22,000	General Fund
	Extensions #1 and #2 with Street Law		\$10,000 each	General Fund/HOME
July 1998	Extension #2 with FHCGW	Conduct sales testing	\$70,000	HOME
August 1998	Fair Housing Council	Conduct lending tests	\$24,999	LLTF
May 1999	Calvin Bradford and Associates	Examine rate of foreclosures in specific census tracts	\$24,999	HOME
May 1999	Peggy Sands	Rental housing report using DHCA data	\$15,000	HOME

Source: OLO and Office of the Human Relations Commission, January 2000.

Staff also provides ongoing training courses for property managers and real estate agents. The customers are primarily multifamily landlords. Staff would like to reinstate training for property managers and realtors who both sell and rent. Previously the County sponsored training sessions for a small fee.

The Fair Housing staff also works closely with the schools to educate students about the fair housing law. The Fair Housing program sponsors a poster contest in the schools every April. The Fair Housing program has also contracted with Street Law, a



nonprofit association. Street Law has developed a curriculum and training course for tenth grade social studies classes. The curriculum consists of four modules that:

- Address the importance of housing and describes the forms of discrimination;
- Look specifically at the aspects of housing discrimination;
- Identify the steps to rent and buy homes; and
- Introduce a proposal for a fair housing amendment to the United States Constitution.

## **V. A FINANCIAL REVIEW OF THE LANDLORD TENANT AFFAIRS FUND**

Part A of this chapter presents a history of the revenues, expenditures, and fund balance for the Landlord Tenant Affairs Fund and a detailed review of the FY 99 operating revenues and expenditures by program. Part B presents a six year fund projection and the approved budget by program for FY 00.

### **A. Fund History**

The table below (Exhibit 3) shows the revenues, expenditures, and fund balance of the Landlord Tenant Affairs Fund for FY 95 - FY 99. The data show that revenues and expenditures increased gradually during this time period. The fund balance has grown from \$387,700 in FY 95 to \$923,300 in FY 99.

**EXHIBIT 3 REVENUES, EXPENDITURES AND FUND BALANCE, FY 95 – FY 99**

<b>Fiscal Year</b>	<b>Revenues</b>	<b>Expenditures</b>	<b>Fund Balance</b>
95	\$2,223,575	\$1,834,557	\$387,654
96	\$2,214,139	\$1,908,847	\$479,926
97	\$2,325,849	\$2,102,813	\$478,282
98	\$2,590,205	\$2,048,507	\$699,310
99	\$2,627,400	\$2,175,016	\$923,266

Source: OLO and Comprehensive Annual Financial Reports.

### **B. A Review of FY 99 Operating Revenues**

The table below (Exhibit 4) shows the detail of operating revenues that the Landlord Tenant Affairs Fund received in FY 99. The Landlord Tenant Affairs Fund has four sources of revenues. The fund received \$2.4 million in licensing fees, almost \$97,000 in interest income, \$39,000 in miscellaneous revenues, and \$30,600 from civil citations. Gross revenues of \$2.6 million were offset by a transfer of \$228,460 to the General Fund, resulting in net revenues for FY 99 of approximately \$2.4 million.

#### EXHIBIT 4 FY 99 OPERATING REVENUES

Revenue Source	Amount
Licensing Fees	\$2,459,598
Interest Income	\$96,820
Miscellaneous Revenues	\$39,187
Civil Citations	\$30,637
GROSS REVENUES	\$2,626,242
Transfer to General Fund	\$(228,460)
REVENUE TOTAL	\$2,398,972

Source: Famis and OLO, January 2000.

##### 1. Rental licensing fees

The County collects rental licensing fees from approximately 15,000 public and private property owners for approximately 75,000 rental units. Private landlords own approximately 70,000 units and the Housing Opportunity Commission owns approximately 5,300 units. A memorandum from DHCA attached at the end of this report lists licensed rental property by unit type as of January 2000.

In FY 99, the County collected \$2,459,600 in licensing fees. The County collected \$1,764,000 from 5,400 property owners for 62,440 multifamily, cooperatives, condominiums, and accessory apartments (Class 1) units. The County collected \$696,000 from 5,400 landlords for 12,800 single-family (Class 2) units. The table below (Exhibit 5) shows the fees collected by type of unit in FY 99.

#### EXHIBIT 5 FY 99 LICENSING FEES BY TYPE OF UNIT

Type of Unit	Licensing Fees
Multifamily apartments	\$ 1,589,408
Cooperative and Condominiums	\$ 166,626
Accessory apartments	\$ 7,590
Single Family Licenses	\$ 695,974
TOTAL	\$ 2,459,598

Source: Famis and OLO, January 2000

## **2. Citations**

Chapter 29 of the Montgomery County Code authorizes the County to issue a Class A civil citation for:

- Failure to license a rental facility to comply with a commission order,
- Failure to comply with a commission order or summons, and
- Violation of the property standards for mobile home parks.

In addition to the violations in Chapter 29, the Housing Code Enforcement program issues citations for owners who violate the County's housing and building maintenance standards, solid waste laws, and weed laws in Chapters 26, 48, and 58 of the Montgomery County Code.

Under Section 1-19 of the County Code, the penalty for a Class A violation is \$500 for the initial offense and \$750 for a repeat offense. In FY 99, the Landlord Tenant Affairs Fund received \$30,600 in fines. DHCA believes some of these fines were paid by owners who failed to license their rental facilities, others were paid by owners who failed to maintain their properties; and by were paid by owners with solid waste violations. DHCA tracks who pays the fines but does not summarize the amounts by type of fine.

## **1. Interest Income and Miscellaneous Revenues**

Special revenue funds collect interest on the balance in the fund account that is credited to the fund. In FY 99, the Landlord Tenant Affairs Fund earned \$96,820 in interest.

The fund also realized approximately \$39,200 in miscellaneous revenues. Examples of these miscellaneous revenues are payments for transcripts, document copying, or fees for inspections of potential foster homes. The miscellaneous revenue category also captures reimbursements for emergency repairs, extermination, and water bill payments. According to DHCA, the revenues in FY 99 were abnormally high because of reimbursements for water bills. In FY 98, DHCA paid the water bills for Manchester Manor Apartments. Eventually these units were sold to HOC and HOC reimbursed DHCA for those water bills.

## **4. Transfer to the General Fund**

The amount of revenues in the Landlord Tenant Affairs Fund is offset by an annual transfer of money to the General Fund to pay for indirect, overhead costs. This transfer pays for services provided by the County Attorney, the Office of Management and Budget, the Department of Finance, and the Department of Human Resources. In FY 99, the County transferred \$228,000 from the Landlord Tenant Affairs Fund to the General Fund for these expenses.

### **C. FY 99 Operating Expenditures by Program**

The budget structure for the Department of Housing and Community Affairs consists of nine funds which include the General Fund operating and Capital Improvement program funds, Community Development Block Grant operating and Capital Improvement Program funds, the Cable Fund, the Weatherization Grant and Emergency Shelter Grant and Solid Waste Fund, the Landlord Tenant Affairs Fund, the Office of Common Ownership Community Fund, and the federal HOME fund. DHCA has established an index code structure to reflect the budget organization of the department and a set of index codes to track expenditures by program. DHCA has established five index codes for programs that charge to the Landlord Tenant Affairs Fund. These programs are:

- Landlord Tenant Licensing;
- Landlord Tenant Mediation;
- Code Enforcement;
- Landlord Tenant Administration; and
- Fair Housing.

#### **1. An overview of personnel expenses charged to the fund**

For budgeting purposes, DHCA uses formulas to estimate the amount of staff time spent on landlord tenant activities. DHCA developed these estimates by program budget unit in 1996 and adjusts the estimates each year. DHCA uses these estimates to charge personnel costs to the Landlord Tenant Affairs Fund. Staff do not separately track and record their time to assess the accuracy of these estimates. OLO's review of payroll records shows that most staff routinely charge the formulated amount, although some staff charge more or less than this amount.

Exhibit 6 shows the workyears from each DHCA budget unit charged to the Landlord Tenant Affairs Fund in FY 99 and FY 00. The table shows a total of 29.21 workyears charged to the fund in FY 99. DHCA expects that 35.6 workyears will be charged to the fund in FY 00. The increase in the Director's Office and Code Enforcement reflects the addition of a Hispanic Coordinator in the Director's Office and four new inspectors in Code Enforcement.

The workyear estimates for Code Enforcement and Mediation include estimates for overtime. DHCA budgets approximately \$40,000 in overtime expenses to cover situations where investigators and inspectors work overtime to handle a backlog of cases, or where staff need to conduct inspections on weekends.

The total for Mediation includes an estimate for charges from the County Attorney. This is a new charge in FY 00 added to reflect County Attorney time spent on Landlord Tenant Mediation cases. This charge is in addition to the County Attorney charges assumed in the charge for overhead services.

**EXHIBIT 6 WORKYEARS CHARGED TO THE LANDLORD TENANT  
AFFAIRS FUND IN FY 99 AND FY 00**

<b>Program Budget Unit</b>	<b>Workyears Charged in FY 99</b>	<b>Workyears Charged in FY 00</b>
Licensing	2.0	4.2
Mediation	6.4	6.8
Consumer Affairs	3.16	2.5
Housing Administration	0.65	0.6
Code Enforcement	14.6	17.8
Director's Office	2.4	2.2
Human Relations Comm	0	1.5
<b>TOTAL</b>	<b>29.21</b>	<b>35.6</b>

Source: OLO and DHCA, January 2000.

Exhibit 7 shows the relationship between the Landlord Tenant Affairs Fund index codes and the DHCA budget units. The table shows a one to one correlation between the program index code and budget unit for code enforcement, fair housing, licensing, and administration. The program index code for the mediation program captures charges from the mediation, consumer affairs, and housing administration budget units.

**EXHIBIT 7 RELATIONSHIP BETWEEN DHCA PROGRAM INDEX CODES AND  
PROGRAM BUDGET UNITS FOR THE LANDLORD TENANT AFFAIRS FUND**

<b>Program Index Code</b>	<b>Program Budget Unit</b>
Landlord Tenant Licensing	Landlord Tenant Licensing
Mediation	Mediation, Consumer Affairs and Housing Administration
Code Enforcement	Code Enforcement
Landlord Tenant Administration	Director's Office
Fair Housing	Office of the Human Relations Commission

Source: OLO and DHCA, January 2000.

**2. Detailed FY 99 Personnel and Operating Expenditures by Program**

Exhibit 8 summarizes the FY 99 personnel and operating expenditures by program. A more detailed explanation of the operating expenditures for each program follows.

## EXHIBIT 8 FY 99 EXPENDITURES BY PROGRAM

Program	Personnel	Operating	Total
Licensing	\$ 245,344	\$ 19,985	\$ 265,329
Mediation	\$ 605,707	\$ 89,993	\$ 695,700
Code Enforcement	\$ 951,236	\$ 128,037	\$ 1,079,273
Director's Office	\$ 108,873	\$ 3,913	\$ 112,786
Fair Housing	\$ 1,046	\$ 38,216	\$ 39,262
TOTAL	\$ 1,912,206	\$ 280,144	\$ 2,192,350

Source: OLO and Famis, January 2000.

**Licensing** - In FY 99, the Landlord Tenant Affairs Fund paid \$245,000 in personnel costs and \$20,000 in operating costs for the Licensing Unit in the Division of Consumer Affairs. The personnel costs paid a portion of the salaries and benefits for two program specialists, a planning assistant, and an automation manager. The major operating expense categories for the Licensing Unit were:

- \$7,546 for central duplicating;
- \$6,285 for computer equipment; and
- \$3,315 for other central duplicating.

**The Landlord Tenant Mediation Program** - In FY 99, the Landlord Tenant Affairs Fund paid approximately \$605,700 in salaries and benefits and \$90,000 in operating expenses for the Landlord Tenant Mediation program. The personnel costs included salaries and benefits for the Landlord Tenant Mediation program staff, a portion of the Housing Division Chief's salary, and 3.16 workyears for staff in the Consumer Affairs Division. According to the budgeting plan for DHCA, this total included roughly one-tenth of the division chief's salary and one-tenth of a manager's salary. The major operating expense categories in FY 99 included:

- \$28,174 for outside printing;
- \$22,550 for computer equipment; and
- \$12,184 for other central duplicating.

**The Code Enforcement Program** - In FY 99, the Landlord Tenant Affairs Fund paid approximately \$901,550 in personnel costs and \$130,000 in operating costs for the Housing Code Enforcement program. The personnel costs paid for the salaries and benefits of 14.6 workyears in Housing Code Enforcement. The salaries of an additional four inspectors and one aide in the Housing Code Enforcement program were charged to the Solid Waste Fund. The major operating expense categories for Code Enforcement were:

- \$58,160 in motor pool costs;
- \$14,675 in cellular phone costs;
- \$13,955 in miscellaneous operating expenses;

- \$12,450 for central duplication; and
- \$10,800 for temporary office services.

**Administration (Director's Office)** - In FY 99, the Landlord Tenant Affairs Fund paid \$109,000 in personnel costs and \$3,900 in operating costs for the Director's office. The personnel costs paid for a portion of the salaries and benefits of staff in Director's office including the Director and six other positions. The major operating expense categories for Administration were:

- \$2,198 in miscellaneous operating expenses;
- \$978 in temporary professional support; and
- \$405 in central duplicating costs.

**Fair Housing** - In FY 99, the Landlord Tenant Affairs Fund paid \$39,300 in operating costs and \$1,050 in personnel costs to support the Fair Housing program. The majority of personnel costs were transferred from the Landlord Tenant Affairs Fund to the General Fund in FY 99.

**D. FY 00 Landlord Tenant Affairs Fund Appropriation, Six Year Projection and FY 00 Budget by Program**

Council Resolution 14-147, adopted May 27, 1999, appropriates \$2,734,580 to the Landlord-Tenant Affairs Fund, \$2,307,650 in personnel costs and \$426,930 in operating expenses.

As part of the County Executive's Recommended Operating Budget, the Office of Management and Budget prepared a six year fiscal projection for the fund which is attached at the end of this report. This projection shows the fund balance dropping from 30 percent in FY 00 to 12 percent in FY 05. In fact, the fund balance could be lower because the projection for the Executive's Recommended Operating Budget did not reflect additional activities that the Council added to the budget.

DHCA has budgeted the FY 00 appropriation for the Landlord Tenant Affairs Fund to pay for the programs shown in Exhibit 9 below.

**EXHIBIT 9 FY 00 BUDGETED EXPENDITURES BY PROGRAM**

Program	Personnel	Operating	Total
Licensing	\$ 269,740	\$ 48,420	\$ 318,160
Mediation	\$ 722,110	\$ 61,830	\$ 783,940
Code Enforcement	\$ 1,064,660	\$ 189,890	\$1,254,550
Administration	\$ 167,650	\$ 5,280	\$ 172,930
Fair Housing	\$ 83,490	\$ 121,510	\$ 205,000
<b>TOTAL</b>	<b>\$ 2,307,650</b>	<b>\$ 426,930</b>	<b>\$2,734,580</b>

Source: OLO and DHCA, January 2000.

## **VI. FINDINGS AND RECOMMENDATIONS**

### **A. Findings**

- 1. The Landlord Tenant Affairs Fund exists as a special revenue fund for budget and accounting purposes. Because there is no legal authority for the fund in law, any surplus in the fund is not subject to any legal restriction, except that it must be spent for a public purpose as determined by Council through the appropriation process.**

In principle, a special revenue fund accounts for revenues from specific taxes or other earmarked revenue sources, which by law are designated to finance particular functions of activities of government. When a fund is established legislatively, the law, typically states the purpose of the fund, the expected revenue sources, and how money in the fund will be spent.

Chapter 29 authorizes the County Executive to impose a licensing fee in “an amount sufficient to pay the costs incidental to the administration of this chapter.” However, Chapter 29 (or any section of the County Code) does not create a Landlord Tenant Affairs Fund.

In practice, the County has used the Landlord Tenant Affairs Fund to account for rental licensing fee revenues, and to budget and pay for rental housing programs. However, the lack of legal authority for the fund means that money in the fund is not legally restricted. Absent any legal restrictions, the fund balance may be spent for a public purpose as determined by Council through the appropriation process. This practice is at odds with the concept of a special revenue fund, which is supposed to protect certain fees and how they are spent.

- 2. Rental licensing fees account for approximately 94 percent of the Landlord Tenant Affairs Fund gross revenues.**

The Landlord Tenant Affairs Fund collects approximately \$2.6 million in revenues annually. Licensing fees are the major revenue source. Other sources of revenues are interest income, miscellaneous revenues, and civil citations.

#### **EXHIBIT 1 FY 99 REVENUE FOR THE LANDLORD TENANT AFFAIRS FUND**

Single family fees	\$695,974
Multifamily fees	\$1,763,624
Total Licensing Fees	\$2,459,598
Interest Income	\$96,820
Miscellaneous Revenues	\$39,187
Civil Citations	\$30,637
GROSS REVENUES	\$2,626,242

Source: Famis and OLO, January 2000.



3. **Over the years, the County has used the Landlord Tenant Affairs Fund to pay for activities that relate directly to the licensing and inspection of rental housing. The County has also used the Landlord Tenant Affairs Fund to pay for some activities that do not directly relate to the licensing and inspection of rental housing.**

Activities charged to the Landlord Tenant Affairs Fund that directly relate to the licensing and inspection of rental housing and the administration of Chapter 29 include:

- activities of DHCA's Licensing Unit,
- DHCA's landlord tenant mediation activities,
- triennial multifamily housing inspections conducted by DHCA's Code Enforcement program, and
- complaint inspections related to rental housing conducted by DHCA's Code Enforcement program; and
- some administrative activities in the DHCA Director's office,

Activities charged to the Landlord Tenant Affairs Fund that are not directly related to licensing and inspection of rental housing or that provide a broader public benefit include:

- complaint investigations of owner occupied homes conducted by DHCA's Code Enforcement program,
- some of the special projects carried out by the Code Enforcement program,
- some of the activities of the Consumer Affairs staff in the Division Chief's office, and
- the activities of the Fair Housing program.

In sum, the major activities of the different units that charge to the Landlord Tenant Affairs Fund are as follows:

**Licensing** – The activities of the Licensing program include sending out bills and managing the payment and collection of the rental facility license fee, preparing an apartment directory and annual vacancy report, and responding to information requests from government agencies and private citizens about the County's rental property database.

**Mediation** – The activities of the Mediation program include investigating formal and informal complaints, providing information to landlords and tenants about issues such as leases, security deposits or emergency housing services, and offering other miscellaneous services, such as outreach and community presentations and, in special cases, walk-through inspections before a tenant moves out.

The Mediation program also supplements the personnel costs of some staff in the Chief of the Consumer Affairs division. These staff assist with managing the Division of Consumer Affairs, addressing automation issues in the division, and answering the consumer affairs complaint line.

**Code Enforcement** – The activities of the Housing Code Enforcement program include conducting legally required inspections, conducting inspections for housing, solid waste and other property maintenance complaints, and carrying out special projects. The Code Enforcement program conducts the triennial inspections of multifamily units required in Chapter 29, as well as other required inspections for accessory apartments, registered living units and foster day care homes. There are no required inspections for single family rental units.

The Housing Code Enforcement complaint program serves both rental and owner occupied neighborhoods. Of the 3,000 complaints in FY 99, approximately 1,400 complaints were for multifamily or single family housing complaints and 1,300 complaints were for solid waste complaints. According to DHCA, the majority of solid waste complaints are for single family homes and commercial properties; however, DHCA does not have data on the number of owner occupied complaints.

The Housing Code Enforcement program also undertakes special projects which are carried out by inspectors taken from both the multifamily and single family inspection teams. The special projects include activities that benefit both owners and renters. The Neighborhoods Alive! program conducts exterior inspections of owner occupied units. The single family rental survey inspected a subset of single family rental properties.

**Fair Housing** - The Fair Housing program conducts tests to measure discrimination in housing markets (rentals and sales), contracts for advertisements to inform the public about the fair housing law, and sponsors seminars to educate the public about the fair housing law.

**4. The growing balance of the Landlord Tenant Affairs Fund coupled with the fact that not all activities being charged to the fund directly relate to licensing and inspection of rental housing suggest that the current rental licensing fees are set “too high”.**

The table below shows the growth in the fund balance of the Landlord Tenant Affairs Fund from FY 95 to FY 99. During this period, the fund balance more than doubled, increasing from \$387,654 in FY 95 to \$923, 266 in FY 99. During this same period, the County increased the annual licensing fees two times:

- In July 1994, the County increased the multifamily licensing fee from \$25 to \$27 per unit; in July 1997, the County increased the multifamily licensing fee from \$27 to \$30 per unit.

- In July 1994, the County increased the single family licensing fee from \$50 to \$52 per unit; in July 1997, the County increased the single family licensing fee from \$52 to \$55 per unit.

**EXHIBIT 2 REVENUES, EXPENDITURES AND FUND BALANCE, FY 95 – FY 99**

<b>Fiscal Year</b>	<b>Revenues</b>	<b>Expenditures</b>	<b>Fund Balance</b>
95	\$2,223,575	\$1,834,557	\$387,654
96	\$2,214,139	\$1,908,847	\$479,926
97	\$2,325,849	\$2,102,813	\$478,282
98	\$2,590,205	\$2,048,507	\$699,310
99	\$2,627,400	\$2,175,016	\$923,266

Source: Comprehensive Annual Financial Reports, OLO, January 2000

- 5. The County does not currently collect the activity cost data that would be needed to determine what the appropriate licensing fee levels should be.**

OLO and DHCA encountered several obstacles in trying to determine the appropriateness of the current fees. These issues arose largely because the program budgets combine the costs of many different types of activities. DHCA has established an index code structure that identifies total program costs in the Landlord Tenant Affairs Fund for budgeting and accounting purposes. The chart below shows the approved FY 00 budget for these programs.

**EXHIBIT 3 FY 00 BUDGETED EXPENDITURES BY PROGRAM**

<b>Program</b>	<b>Personnel</b>	<b>Operating</b>	<b>Total</b>
Licensing	\$ 269,740	\$ 48,420	\$ 318,160
Mediation	\$ 722,110	\$ 61,830	\$ 783,940
Code Enforcement	\$ 1,064,660	\$ 189,890	\$1,254,550
Administration	\$ 167,650	\$ 5,280	\$ 172,930
Fair Housing	\$ 83,490	\$ 121,510	\$ 205,000
<b>TOTAL</b>	<b>\$ 2,307,650</b>	<b>\$ 426,930</b>	<b>\$2,734,580</b>

Source: OLO and DHCA, January 2000.

The program budgets for licensing and administration reflect costs that are directly related licensing and inspection of rental housing. However, the program budgets for Mediation and Code Enforcement combine costs for rental housing services with the costs of other unrelated activities. For example, the Code Enforcement program includes the costs of owner occupied complaint inspections and Neighborhoods Alive! program and the Mediation program includes the incidental personnel costs in the Division Chief's Office.

DHCA estimates the amount of time spent on rental activities in the Code Enforcement program and regularly adjusts the budget for personnel costs in the Division Chief's office. However, DHCA does not currently collect data to evaluate the accuracy of these estimates.

The program budgets also combine the costs of single family and multifamily activities. Because the County charges different fees for multifamily and single family properties, OLO asked DHCA about separating the costs for multifamily and single family activities. In the case of the Code Enforcement program, DHCA was able to separate multifamily and single family complaints but could not segregate the rental activities in each group. In the case of the Landlord Tenant Mediation program, DHCA believes the public information services are divided evenly between landlords and tenants. However, DHCA could not provide activity data to establish a basis for these estimates so that separate costs for multifamily and single family services could be identified.

Finally, the program budgets combine the costs of services provided to everyone with services provided to a select subset of users. OLO asked DHCA to provide data for one time versus repeat users of a service to address the fact that a fee applied uniformly suggests that services are distributed equally. According to DHCA, the formal mediation complaint activities primarily serve a subset of landlords; however, DHCA could not provide data to develop a cost basis for this activity.

With the current information available, OLO can calculate a per unit licensing and administration cost of approximately \$6.50 per unit.<sup>3</sup> However, OLO cannot calculate a cost for the triennial inspection services for only multifamily units, for the multifamily complaint investigations for only rental properties, or for the mediation services provided to only select single family or multifamily properties.

In sum, although DHCA has estimates of the amount of time spent on rental activities for some programs, DHCA cannot provide workload data to calculate the portion of the program costs attributable to general services versus landlord tenant activities, the portion of program costs attributable to multifamily versus single family properties, or the portion of costs attributable to one time users versus repeat customers. Absent this information, it is difficult to know what a more appropriate fee level should be.

## **B. Recommendations**

- 1. The County should continue to collect an annual per unit licensing fee for multifamily and single family rental units. However, OLO recommends that the County establish the rental licensing fees so that the revenue collected is**

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<sup>3</sup> Currently there are 75,264 licensed units in the County and the FY 00 approved budgets for licensing and administration equal approximately \$492,000. Assuming a uniform rate to license each unit, the cost of licensing and administration is approximately \$6.50 per unit.

**limited to the costs of the County Government's programs to license, inspect, and mediate rental housing activities.**

OLO recommends that the County continue to collect a rental licensing fee to pay for the licensing, inspection, and mediation of rental housing activities in the County. OLO recommends that the County discontinue using revenue from this fee to pay for programs not directly related to the licensing and inspection of rental housing units.

Activities currently charged to the Landlord Tenant Affairs Fund that OLO recommends no longer be charged to the Fund are: special projects in the Code Enforcement program, owner occupied complaint inspections, incidental personnel expenses associated with the Consumer Affairs Complaint line and the Division Chief's office, and the Fair Housing program. In OLO's opinion, the costs of these activities should not be included in the licensing fee because these activities provide general public benefits that are not directly related to the regulation of rental housing.

To implement this change, OLO recommends that the Council amend the language in County Code Chapter 29 that sets the rental licensing fee "at an amount incidental to the administration of this Chapter." Specifically, OLO recommends the Council enact legislation to limit the amount of the rental licensing fee to cover the costs of activities directly associated with the County's programs to license, inspect, and mediate rental housing activities.

- 2. The County should establish one year interim rental licensing fees of \$25 per unit for Class 1 licenses (multifamily units, cooperatives and condominiums, and accessory apartments), and \$50 per unit for Class 2 licenses (single family and townhouse units).**

The current license fees are \$30 for Class 1 licenses and \$55 for Class 2 licenses. OLO recommends that the County Executive issue an Executive Regulation as soon as possible to reduce the current fee levels.

OLO estimates that even after a reduction of \$5 for each license class, the rental licensing fees will yield approximately \$2,202,125 in revenues. (This assumes 75,000 rental units are licensed.) Using the approved FY 00 program budgets, this revenue would offset the entire cost of the licensing, mediation and administrative programs and almost three-fourths percent of the cost of the housing code enforcement program. Even after adjustments for growth are taken into account. OLO believes these fee levels would more accurately reflect the costs of rental housing activities across these programs.

- 3. The Council should request that the County Government identify activity costs for discrete rental housing activities and report to the Council no later than September 30, 2000 on a recommended fee structure for calendar year 2001.**

OLO's review of program activities suggests that the current licensing fee structure no longer matches the diversity of rental housing services the County provides. Specifically, OLO found that licensing, administration and public information are the only activities provided uniformly to all landlords and tenants. Required inspection services are provided only for multifamily units and the frequency varies depending on the livability of the unit. Complaint inspection services and landlord/tenant investigations are provided to a subset of landlords and tenants, typically on request. Finally, in the case of mediation services, OLO found that DHCA believes that the services are provided primarily to a relatively small number of landlords.

OLO recommends that the Council request the County Government to identify and document the discrete activity costs that are needed to determine whether a new fee structure is necessary and/or what the appropriate fee levels should be. Specifically, OLO recommends the Council ask that the analysis present data that will enable the Council to answer the following questions:

- Is a flat fee for all activities still appropriate or should there be separate fees for licensing, inspection, mediation and other services?
- Are different multifamily and single family fee levels still appropriate?
- Is a base fee for a package of typical user services with additional charges for extra services (such as re-inspections) appropriate and/or feasible?
- Would a multiyear fee be appropriate and/or cost effective?

The Council should request the County Government to present a report of cost data, findings and recommendations to the Council by September 30, 2000, so that the licensing fee structure can be revised as needed.

**4. The Council should discontinue the use of the Landlord Tenant Affairs Fund in future budgeting and appropriation actions. The Council should decide how to use the existing fund balance in the Landlord Tenant Affairs Fund as part of the Council's upcoming worksessions on the FY 01 budget.**

OLO recommends that the Council discontinue the use of the Landlord Tenant Affairs Fund for budgeting and appropriation actions. This will eliminate the risk of using future licensing fees for services that are not directly related to rental housing activities. Specifically, OLO recommends that the Council not appropriate money to the Landlord Tenant Affairs Fund for the FY01 budget and that the Council specify how to use the balance currently in the fund. The Council will need to appropriate money in the General Fund to pay for the programs currently budgeted out of the Landlord Tenant Affairs Fund; however, the cost of these programs that are related to rental housing activities will be offset by licensing fee revenues.



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Douglas M. Duncan  
County Executive

**MEMORANDUM**

Elizabeth B. Davison  
Director

January 13, 2000

To: Sue Richards  
Office of Legislative Oversight

From: Jane Blackwell, Program Specialist, Licensing/Registration  
Department of Housing and Community Affairs

Subject: Licensing/Registration Information

In response to your request, the following updated information is provided:

**LICENSED RENTAL PROPERTIES**

	Total Units Licensed	HOC-Owned Units	Other
Single-Family/ Townhouse Rentals (Class 2)	12,821	1,151	11,670
Condo/Coop Apartment Rentals (Class 1)	5,656	299	5,357
Accessory Apt Rentals (Class 1)	251	-0-	251
Multi-family Rentals (Class 1)	*56,536 (**617 properties)	3,878 (38 properties)	52,658 (579 properties)
Total	75,264	5,328	69,936

**Division of Consumer Affairs**

### MULTI-FAMILY RENTALS SORTED BY NUMBER OF UNITS

*Number Of Units	**Properties
1-4	192
5-8	108
9-12	19
13-16	12
17-20	9
21-50	42
50-100	62
100-200	73
201-299	43
300-599	48
500-999	6
1000-1390	3

### REGISTERED PROPERTIES

	Total Units Registered	Total Units w/ Registration Pending
Registered Living Units	60	509 (Affidavits received, but not yet inspected/registered)
Registered Common Ownership Communities	103,065 (672 communities)	N.A.

Please do not hesitate to contact me if I can be of further assistance.



## CE RECOMMENDED

RESOURCES & USE OF RESOURCES		LANDLORD TENANT AFFAIRS								
FISCAL PROJECTIONS	FY98 ACTUAL	FY99 BUDGET	FY99 2nd Qtr	FY99 3rd QTR	FY00 REC	FY01 PROJECTED	FY02 PROJECTED	FY03 PROJECTED	FY04 PROJECTED	FY05 PROJECTED
<b>ASSUMPTIONS</b>										
#Single Family Rental Units	12,866	13,000	13,000	13,000	13,180	13,380	13,580	13,780	13,980	14,180
#Apartment/Condominium Units	57,600	57,655	58,200	58,200	59,260	59,560	59,860	61,160	61,460	61,760
Single Family Rental Fees	\$55	\$55	\$55	\$55	\$55	\$55	\$55	\$55	\$55	\$55
Apartment/Condominium Rental Fees	\$30	\$30	\$30	\$30	\$30	\$30	\$30	\$30	\$30	\$30
CPI (Fiscal Year)	2.8%	2.9%	1.9%	1.9%	2.3%	2.4%	2.6%	2.6%	2.7%	2.7%
<b>BEGINNING FUND BALANCE</b>	<b>448,210</b>	<b>588,480</b>	<b>676,990</b>	<b>676,990</b>	<b>843,420</b>	<b>989,800</b>	<b>1,052,150</b>	<b>1,020,880</b>	<b>920,880</b>	<b>714,000</b>
<b>REVENUES</b>										
<b>Charges For Services</b>	<b>2,439,028</b>	<b>2,444,650</b>	<b>2,461,000</b>	<b>2,461,000</b>	<b>2,502,700</b>	<b>2,522,700</b>	<b>2,542,700</b>	<b>2,592,700</b>	<b>2,612,700</b>	<b>2,632,700</b>
Single Family Rental Fees	709,610	715,000	715,000	715,000	724,900	735,900	746,900	757,900	768,900	779,900
Apt./Condo Rental Units	1,729,418	1,729,650	1,746,000	1,746,000	1,777,800	1,786,800	1,795,800	1,834,800	1,843,800	1,852,800
<b>Miscellaneous</b>	<b>175,413</b>	<b>100,000</b>	<b>139,000</b>	<b>139,000</b>	<b>139,000</b>	<b>139,910</b>	<b>140,920</b>	<b>141,960</b>	<b>143,070</b>	<b>144,210</b>
Investment Income	92,715	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000
Misc	61,883	20,000	38,000	38,000	38,000	38,910	39,920	40,960	42,070	43,210
Fines	20,815	0	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000
<b>Subtotal Revenues</b>	<b>2,614,441</b>	<b>2,544,650</b>	<b>2,600,000</b>	<b>2,600,000</b>	<b>2,641,700</b>	<b>2,662,610</b>	<b>2,683,620</b>	<b>2,734,660</b>	<b>2,755,770</b>	<b>2,776,910</b>
<b>INTERFUND TRANSFERS (NET/Non-CIP)</b>	<b>(320,670)</b>	<b>(228,460)</b>	<b>(228,460)</b>	<b>(228,460)</b>	<b>(233,370)</b>	<b>(243,640)</b>	<b>(254,850)</b>	<b>(266,570)</b>	<b>(279,100)</b>	<b>(292,220)</b>
<b>Xfers To The General Fund</b>	<b>(320,670)</b>	<b>(228,460)</b>	<b>(228,460)</b>	<b>(228,460)</b>	<b>(233,370)</b>	<b>(243,640)</b>	<b>(254,850)</b>	<b>(266,570)</b>	<b>(279,100)</b>	<b>(292,220)</b>
Indirect Costs	(320,670)	(228,460)	(228,460)	(228,460)	(233,370)	(243,640)	(254,850)	(266,570)	(279,100)	(292,220)
<b>TOTAL RESOURCES</b>	<b>2,741,981</b>	<b>2,904,670</b>	<b>3,048,530</b>	<b>3,048,530</b>	<b>3,251,750</b>	<b>3,408,770</b>	<b>3,480,920</b>	<b>3,488,970</b>	<b>3,397,550</b>	<b>3,198,690</b>
<b>APPROPRIATIONS/EXPENDITURES</b>										
<b>Operating Budget</b>	<b>(2,057,742)</b>	<b>(2,247,010)</b>	<b>(2,205,110)</b>	<b>0</b>	<b>(2,261,950)</b>	<b>(2,356,620)</b>	<b>(2,460,040)</b>	<b>(2,568,090)</b>	<b>(2,683,550)</b>	<b>(2,804,290)</b>
Personnel Costs	(1,864,866)	(1,976,340)	(1,934,440)	0	(2,018,780)	(2,107,610)	(2,204,560)	(2,305,970)	(2,414,350)	(2,527,820)
Operating Expenses ( w/o Fixed Costs)	(192,876)	(270,670)	(270,670)	0	(243,170)	(249,010)	(255,480)	(262,120)	(269,200)	(276,470)
Adj for Prior Yr Encumbrances/Reserves	(7,253)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Subtotal Appropriations</b>	<b>(2,064,995)</b>	<b>(2,247,010)</b>	<b>(2,205,110)</b>	<b>0</b>	<b>(2,261,950)</b>	<b>(2,356,620)</b>	<b>(2,460,040)</b>	<b>(2,568,090)</b>	<b>(2,683,550)</b>	<b>(2,804,290)</b>
<b>OTHER CLAIMS ON FUND BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL USE OF RESOURCES</b>	<b>(2,064,995)</b>	<b>(2,247,010)</b>	<b>(2,205,110)</b>	<b>0</b>	<b>(2,261,950)</b>	<b>(2,356,620)</b>	<b>(2,460,040)</b>	<b>(2,568,090)</b>	<b>(2,683,550)</b>	<b>(2,804,290)</b>
<b>YEAR END FUND BALANCE</b>	<b>676,986</b>	<b>657,660</b>	<b>843,420</b>	<b>3,048,530</b>	<b>989,800</b>	<b>1,052,150</b>	<b>1,020,880</b>	<b>920,880</b>	<b>714,000</b>	<b>394,400</b>
<b>Fund Balance as % of Resources</b>	<b>24.7%</b>	<b>22.6%</b>	<b>27.7%</b>	<b>100.0%</b>	<b>30.4%</b>	<b>30.9%</b>	<b>29.3%</b>	<b>26.4%</b>	<b>21.0%</b>	<b>12.3%</b>

