

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 15, 2020

Final Decision Date Deadline: January 15, 2020

STATEMENT OF THE ISSUE: At their Regular Meeting on July 17, 2019, the Rent Board received a presentation regarding possible governance policies and subsequently directed staff to consult with peer jurisdictions to understand the purpose of their existing governance policies and the reason why they were adopted for the following topics: Boardmember vacancies, conflicts of interest, requiring second readings for regulations, and when and where meetings should occur. Staff members have consulted with peer jurisdictions and are seeking Board approval of their policy recommendations.

INDICATE APPROPRIATE BODY

- | | | | | |
|---|---|--|--|---|
| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

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|---|--|---------------------------------|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) | | |
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Regulation | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement | <input checked="" type="checkbox"/> Rent Board As Whole | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) | |

RECOMMENDED ACTION: RECEIVE a presentation on possible Rent Board governance regulations and APPROVE staff policy recommendations concerning (a) procedural requirements for the adoption, amendment, or repeal of Rent Board regulations; (b) Rent Board meeting procedures; and (c) Boardmember conflicts of interest – Rent Program (Nicolas Traylor/Paige Roosa 620-6564).

AGENDA ITEM NO:

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AGENDA REPORT

DATE: January 15, 2020
TO: Chair Maddock and Members of the Rent Board
FROM: Nicolas Traylor, Executive Director
Paige Roosa, Deputy Director
SUBJECT: RENT BOARD GOVERNANCE POLICIES

STATEMENT OF THE ISSUE:

At their Regular Meeting on July 17, 2019, the Rent Board received a presentation regarding possible governance policies and subsequently directed staff to consult with peer jurisdictions to understand the purpose of their existing governance policies and the reason why they were adopted for the following topics: Boardmember vacancies, conflicts of interest, requiring second readings for regulations, and when and where meetings should occur. Staff members have consulted with peer jurisdictions and are seeking Board approval of their policy recommendations.

RECOMMENDED ACTION:

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FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Background

Section 11.100.060 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (Rent Ordinance) establishes basic provisions governing the Rent Board. Subsections include (*the following is a summary of these provisions, a full excerpt is contained in Attachment 1*):

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- a. Composition – the Rent Board is comprised of five Richmond residents
- b. Eligibility – No more than two members of the Rent Board may own or manage rental property or act as realtors. Anyone nominated to the Board must be in compliance with the Rent Ordinance and all other local, state and federal housing laws
- c. Full Disclosure of Hearings – Nominees shall submit a verified statement listing their interests and dealings in real property during the previous three years
- d. Term of Office – Boardmembers shall serve terms of two years and may be reappointed for a total of four terms for a total of fewer than 10 years
- e. Powers and Duties – Establishes the powers and duties of the Board, such as, but not limited to, establishing a Base Rent, making adjustments in rent increases and decreases, issuing orders, rules, and regulations, conducting hearings, charging fees, collecting notices of rent increase and termination of tenancy, and reporting annually to the City Council on the status of rental housing covered under the Rent Ordinance
- f. Rules and Regulations – The Board shall issue rules and regulations to further the purpose of the Rent Ordinance
- g. Community Education – The Board shall publicize the Rent Ordinance through the creation of a brochure so that all Richmond residents have the opportunity to become informed about their legal rights and duties
- h. Meetings – The Board holds regularly scheduled meetings to ensure the timely performance of its duties
- i. Quorum – Three Boardmembers constitutes a quorum
- j. Voting – The affirmative vote of three Boardmembers is required for a decision
- k. Dockets – The Board maintains in its office all hearing dockets
- l. Financing – The Board finances its reasonable and necessary expenses through charging an annual Residential Rental Housing Fee
- m. Integrity and Autonomy of Board – The Board (Rent Program) operates as an integral part of the government of the City, but exercises its powers and duties independent from the City Council, City Manager, and City Attorney except by request of the Board
- n. Budget – Prior to July 1 each year, the Board holds a public hearing and adopts an annual budget for the ensuing fiscal year

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- o. Personnel – The Board assesses annually that sufficient number of staff are employed as is necessary to perform its function
- p. Board Legal Work – The Board hires legal staff to represent and advise the Board and its staff in any civil matters, actions, or proceedings
- q. Contracts and Purchases – The Board procures goods and services as do other City agencies using existing support services within the City
- r. Conforming Regulations – The Board has the authority to enact replacement regulations consistent with the intent and purpose of any portion of the Rent Ordinance that is declared invalid or unenforceable by decision of a court of competent jurisdiction
- s. Reporting and Fee Payment Requirements – The Board may authorize the withholding of rent from Tenants of Rental Units for which the Rental Housing Fee has not been paid or for which a notice of rent increase or termination of tenancy has not been filed

Historical Context from Peer Jurisdictions

Consistent with the Rent Board's direction, the Executive Director reached out to the Directors of the Santa Monica and Berkeley Rent Stabilization Programs to get a better understanding regarding under what context governance regulations were adopted for their respective agencies. The Executive Director's research revealed that Berkeley and Santa Monica's governance regulations were adopted in one fell swoop at the beginning of their Program's existence and then amended along the way (as issues arose, particularly around litigation and conflict of interest). In Santa Monica and Berkeley, the governance regulations were modeled around similar regulations/rules that had already been adopted by their respective City Councils. These governance regulations were further revised about 10 years after they were initially adopted in part due to changes in state law around the Brown Act.

Need for Additional Rules on Governance

Rent Board regulations help to clarify the purpose and intent of the Rent Ordinance where the Ordinance is ambiguous. While certain governance regulations may not be ripe for the Board's consideration, other essential regulations should be established to codify or amend the Board's existing procedures. Additional governance regulations may be proposed as circumstances arise and as new laws are adopted on a state or federal level that require amendments or additions to existing policy. At a minimum, and consistent with the Board's direction on July 17, 2019, staff members have developed policy questions and recommendations with respect to the following topic areas:

1. Policies regarding procedural requirements for the adoption, amendment, and repeal of Rent Board regulations

2. Policies concerning meeting procedures
3. Policies concerning conflicts of interest

Each of these topics, and related policy questions, are further contemplated in the sections below.

Policies Regarding Procedural Requirements for the Adoption, Amendment, and Repeal of Rent Board Regulations

- **Policy Question #1:** Should regulations adopted, amended, or repealed by the Board require a “second reading”?

Discussion:

Pros of Requiring Two Readings:

- Consistency with other legislative bodies: Two readings are required by the City Council to adopt an Ordinance
- Public has more notice and is given additional opportunities to weigh in on the proposed regulation
- Boardmembers have more opportunities to weigh in on the proposed regulation (e.g. if a Boardmember misses the first reading, they still have an opportunity at the second reading)

Cons of Requiring Two Readings:

- Lack of efficiency: requiring two readings could lead to unnecessary delays in the adoption of regulations (essentially leading to three meetings prior to being able to adopt a regulation)
- Decreased adaptiveness: if the Board requires two readings to adopt a regulation, the Board may not have the ability to respond to an urgent situation through the adoption of a regulation.
- Increased staff time: Requiring two readings for all regulations may result in more items on Rent Board meeting agendas, and thus more staff time would be required to prepare the agenda packets.

Staff Recommendation: Staff recommends that the Board require two readings prior to the adoption of a regulation; however, the Board should have the discretion to adopt emergency regulations or orders of repeal. Such policies would require only one reading for adoption, if the Board makes a finding that the adoption of a regulation or order of repeal is necessary for the immediate preservation of public peace, health and safety or general welfare. The Board shall also have the authority to enact an emergency regulation or repeal an existing regulation to respond to changes in state or federal law that otherwise affect the administration and/or legality of any section of Richmond Municipal Code Chapter 11.100.

- **Policy Question #2:** Should regulations adopted by the Board continue to be effective immediately?

Discussion:

Pros of Immediate Effectiveness:

- No lag time between when a regulation is adopted and when it is enforceable

Cons of Immediate Effectiveness:

- Lack of an adjustment period for staff and members of the public with respect to new or amended regulations

Staff Recommendation: Staff recommends that regulations become effective either (a) 30 calendar days from the date of adoption by the Board if only one reading is required or (b) immediately after the second reading, if the Board opts to require second readings for regulations.

Policies Regarding Meeting Procedures

- **Policy Question(s) #3:** When and where are Rent Board meetings held? When is the agenda packet published? How are meetings conducted?

Discussion: Rent Board regulations could codify the existing Rent Board Regular Meeting and agenda packet schedule. Regulations could also clarify that the Board adheres to Rosenberg's Rules of Order during public meetings.

Staff Recommendation: Staff recommends that the Board codify through regulation the following procedures:

- Regular Rent Board Meetings are held on the third Wednesday of each month beginning at 5:00 P.M. in the City Council Chambers.
- Amendments to the start time or location of Regular or Special Meetings will be published and publicly noticed when the agenda is posted.
- Meeting agendas are posted at City Hall for public inspection and all supporting documents are posted online no later than 72 hours before the meeting.
- The Board adheres to Rosenberg's Rules of Order during public meetings.

Policies concerning conflicts of interest

- **Policy Question(s) #4:** Should the Board define and adopt procedures to address circumstances that present a conflict of interest?

Discussion: Aside from financial and political conflicts of interest, which are codified in state and federal law, the Board currently does not have any adopted policies

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concerning how personal conflicts of interest are to be handled. For example, imagine a circumstance where a Boardmember is a party to a petition that is appealed to the Board. Regulations could clarify whether or not the Boardmember should be required to recuse themselves in such situations.

Staff Recommendation: Staff recommend that the Board consider a regulation that would define conflicts of interest as those in which a Boardmember has a self-interest (separate from the interest of the public) in the outcome of an action taken by the Board and would require a Boardmember to recuse themselves from voting on that item. For example, Boardmembers would be required to recuse themselves if they are a party to a petition that is appealed to the Rent Board.

Timeline and Next Steps

Following approval and/or amendment of the policy recommendations put forth by staff, staff members will draft a series of proposed regulations for the Board's consideration and adoption at a future meeting.

DOCUMENTS ATTACHED:

Attachment 1 – Richmond Municipal Code Section 11.100.060

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January 15, 2020

RENT BOARD MEETING

ATTACHMENT 1

render the Landlord liable to the Tenant for actual damages, including damages for emotional distress, in a civil action for wrongful eviction. The Tenant or the Rent Board may seek injunctive relief and money damages for wrongful eviction. A Tenant prevailing in an action for wrongful eviction shall recover costs and reasonable attorney's fees.

11.100.060 **Richmond Rent Board**

(a) **Composition.** There shall be in the City of Richmond a Rent Board. The Board shall be made up of Richmond residents. The Board shall consist of five Board Members appointed by the City Council. The Board shall elect annually as chairperson one of its members to serve in that capacity.

(b) **Eligibility.** Duly qualified residents of the City of Richmond are eligible to serve as Members of the Board. There shall be no more than two members that own or manage any rental property or are realtors. Anyone nominated to this board must be in compliance with this Chapter and all other local, state and federal laws regulating the provision of housing.

(c) **Full Disclosure of Holdings.** Nominees for the position of Board Member shall submit a verified statement listing all of their interests and dealings in real property, including but not limited to its ownership, sale or management, during the previous three (3) years. The Board may promulgate additional regulations.

(d) **Term of Office.** Board Members shall serve terms of two (2) years and maybe reappointed for a total of four (4) full terms for a total of fewer than ten (10) years.

(e) **Powers and Duties.** The Board shall have the following powers and duties:

- (1) Establish a Base Rent under Section 11.100.070 (a).
- (2) Make adjustments in the Rent Increase and Decreases in accordance with Section 11.100.070.
- (3) Set Rents at fair and equitable levels in order to achieve the intent of this Chapter.
- (4) Issue orders, rules and regulations, conduct hearings and charge fees as set forth below.
- (5) Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
- (6) Report annually to the City Council of the City of Richmond on the status of rental housing covered by this chapter. Reports shall include a summary of the numbers of notices served, the basis upon which they were served, the amount of the Rent increases and the addresses for which they were served.
- (7) Charge and collect registration fees, including penalties for late payments.

- (8) Collect and/or receive copies of notices of termination of tenancy and changes in terms of tenancy.
- (9) A searchable database will be created so that service of notice may be determined as well information for the reports described above.
- (10) Administer the withdrawal process for the removal of Rental Units from rental housing market under sections 11.100.050 (a)(6) and (7).
- (11) Administer oaths and affirmations and subpoena witnesses.
- (12) Establish rules and regulations for deducting penalties and settling civil claims under Section 11.100.100.
- (13) Refer violations of this Chapter to appropriate authorities for prosecution.
- (14) Seek injunctive and other civil relief under Section 11.100.100 - 110.
- (15) Any other duties necessary to administer and enforce this Chapter.

(f) **Rules and Regulations.** The Board shall issue and follow such rules and regulations, including those which are contained in this Chapter, as will further the purposes of the Chapter. The Board shall publicize its rules and regulations prior to promulgation on its website and any other appropriate medium. All rules and regulations, internal staff memoranda, and written correspondence explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying.

(g) **Community Education.** The Board shall publicize this Chapter so that all residents of Richmond will have the opportunity to become informed about their legal rights and duties under this Chapter. The Board shall prepare a brochure which fully describes the legal rights and duties of Landlords and Tenants under The Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance. The brochure shall also include helpful information for homeowners. The brochure will be available to the public, and each Tenant of a Rental Unit shall receive a copy of the brochure from his, her or their Landlord. Landlords shall provide the brochure at the commencement of the tenancy and with each notice of rent increase. This brochure will be made available for download from the City of Richmond website and/or other appropriate technology. Information about the Ordinance shall be made available in all other languages that are requested by the community.

(h) **Meetings.** The Board shall hold such regularly scheduled meetings as are necessary to ensure the timely performance of its duties under this Chapter. All regular and special meetings shall be called and conducted in accordance with state law. There shall be minimally one (1) meeting a year so that the Board may comply with 11.100.070.

(i) **Quorum.** Three (3) Members shall constitute a quorum for the Board.

(j) **Voting.** The affirmative vote of three (3) Members of the Board is required for a decision, including all motions, regulations, and orders of the Board.

(k) **Dockets**. The Board shall maintain and keep in its office all hearing dockets.

(l) **Financing**. The Board shall finance its reasonable and necessary expenses by charging Landlords annual registration fees in amounts deemed reasonable by the Board. The Board is also empowered to request and receive funding when and if necessary from any available source for its reasonable and necessary expenses.

(1) **Residential Rental Housing Fee**. All Landlords shall pay a business license fee if required by Richmond Municipal Code plus a Residential Rental Housing Fee. The City shall charge the Residential Rental Housing Fee at the same time as the business license fee. The amount will be determined by the City Council after a recommendation by the Board is provided to the City Council. The City Council will vote on the recommendation at the next regularly scheduled meeting. The budget shall be funded by the Rental Housing Fee.

(2) This fee shall become due within thirty (30) days of inception of new tenancy if no fee was paid the prior year. Ongoing tenancies shall have fees collected at the same time as the City business license each year.

(m) **Integrity and Autonomy of Board**. The Board shall be an integral part of the government of the City, but shall exercise its powers and duties under this Chapter independent from the City Council, City Manager, and City Attorney, except by request of the Board. The City shall provide infrastructural support on an ongoing basis as it would with any other department. During the transition period before the Board Members are appointed and an Executive Director is hired, the City shall take whatever steps necessary to perform the duties of the Board and implement the purpose of this Chapter.

(n) **Budget**. The Board shall, prior to July 1 of each year, hold a public hearing on a proposed budget and adopt an annual budget for the ensuing fiscal year. At least thirty-five days prior to the beginning of each fiscal year, the Board's Executive Director shall submit to the Board the proposed budget as prepared by the Executive Director. After reviewing the same and making such revisions as it may deem advisable, the Board shall determine the time for the holding of a public hearing thereon and shall cause to be published a notice thereof not less than ten days prior to said hearing, by at least one insertion in the official newspaper. Copies of the proposed budget shall be available for inspection by the public in the office of the Board at least ten days prior to said hearing. The City Council and the City Manager shall have no authority to oversee, supervise, or approve this budget. Upon final adoption, the budget shall be in effect for the ensuing fiscal year and the amounts stated therein shall be and become appropriated by the Board for the respective objects and purposes therein specified. At any meeting after the adoption of the budget the Board may amend or supplement the budget by the affirmative votes of at least three members. Copies of the adopted budget and any amendments or supplements shall be filed with the City Clerk, and City Manager. Necessary adjustments to city administrative procedures shall be made.

(o) **Personnel**. The Board shall review and assess yearly that sufficient number of staff are employed, including an Executive Director, hearing examiners, housing counselors and legal staff, as may be necessary to perform its function efficiently in order to fulfill the purpose of this Chapter. The Executive Director shall be hired by the Board. All employees of

the Board shall be hired, terminated, suspended, and demoted in accordance with the Charter and implementing provisions of the Municipal Code.

(p) **Board Legal Work.** Legal staff hired by the Board shall represent and advise the Board, its Members, and its staff in any civil matters, actions, or proceedings in which the Board, its Members, or its staff, in or by reason of their official capacity, are concerned or are a party. The Board may, in its sole discretion, and without approval of the City Council, retain private attorneys to furnish legal advice or representation in particular matters, actions or proceedings.

(q) **Contracts and Purchases.** The Board shall procure goods and services as do other City agencies using existing support services within the City as would any other department, i.e. Finance, Information Technology, and Public Works among others. Provided, however, that the Board shall have sole and final authority to employ attorneys, legislative lobbyists, and other professionals, and to approve contracts for such professional services.

(r) **Conforming Regulations.** If any portion of this Chapter is declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by state or federal legislation, the Board and not the City Council shall have authority to enact replacement regulations consistent with the intent and purpose of the invalidated provision and applicable law. Such replacement regulations shall supersede invalidated or unenforceable provisions of this Chapter to the extent necessary to resolve any inconsistency. The subject matter of such replacement regulations shall be limited to rent control matters as enumerated in this Chapter.

(s) **Reporting and Fee Payment Requirements.**

(1) Within sixty (60) days after the adoption of this Chapter, all Landlords shall be required to file a copy of all rental increase notices, change of terms of tenancy and tenancy termination notices with the Board before serving the tenant the notice. A proof of service with time and date of service of notice shall be included with notice filed with the City.

(2) If the Board, after the Landlord has proper notice and after a hearing, determines that a Landlord has willfully and knowingly failed to properly report, as described above, any rental increase notices, change of terms of tenancy or tenancy termination, or pay the Rental Housing fee, the Board may authorize the Tenant of such a non-reporting unit or where the Rent housing fee is unpaid to withhold all or a portion of the Rent for the Rental Unit until such time as the Rental Housing fee is paid or notice filed. After a notice is properly filed or fee paid, the Board shall determine what portion, if any, of the withheld Rent is owed to the Landlord for the period in which the notice was not properly filed or fee paid. Whether or not the Board allows such withholding, no Landlord who has failed to properly report or pay the fee shall at any time increase Rents for a Rental Unit until such fee or notice is reported. This shall go into effect thirty (30) days after determination of the Board.

(3) Further, failing to pay the fee or filing a copy of a notice before the filing of an unlawful detainer is a complete defense to an unlawful detainer. No Board action is required for defense to be alleged or litigated in an unlawful detainer.

(t) In the event the establishment of the Board under this Section is adjudged to be invalid for any reason by a court of competent jurisdiction, the City Council shall designate one or more City departments, agencies, boards, or commissions to perform the duties of the Board prescribed by this Chapter.

11.100.070 **Rent Control; Right of Reasonable Return for Landlords**

(a) **Establishment of Base Rent.** Beginning the effective date of this Chapter, no Landlord shall charge Rent for any Controlled Rental Units in an amount greater than the Rent in effect on July 21, 2015 except for increases expressly allowed under this Chapter. The Rent in effect on that date is the Base Rent. If there was no Rent in effect on July 21, 2015, the Base Rent shall be the Rent that was charged on the first date that Rent was charged following July 21, 2015. For tenancies commencing after the adoption of this Chapter, the Base Rent is the initial rental rate in effect on the date the tenancy commences. As used in this Subsection, the term "initial rental rate" means only the amount of Rent actually paid by the Tenant for the initial term of the tenancy. The Base Rent is the reference point from which the Maximum Allowable Rent shall be adjusted upward or downward in accordance with Section 11.100.070 (c).

(b) **Annual General Adjustment.** No later than June 30 each year, the Board shall announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year.

(1) The Annual General Adjustment shall be equal to one hundred (100%) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year.

(2) Subparagraph 1 of this Subsection notwithstanding, in no event shall the Annual General Adjustment be less than zero percent (0%).

(3) For the period between the effective date of this Charter and the first Annual General Adjustment announced September 1, the landlord may increase the Maximum Allowable Rent to include one Annual General Adjustment for September 2016.

(c) **Petitions.** Upon receipt of a petition by a Landlord and/or a Tenant, the Maximum Allowable Rent of individual Controlled Rental Units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Section. The petition shall be on the form provided by the Board and shall include a declaration by the Landlord that the Rental Unit meets all requirements of this Chapter. Notwithstanding any other provision of this Section, the Board or hearing examiner may refuse to hold a hearing and/or grant a Rent