

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: June 16, 2021

Final Decision Date Deadline: June 16, 2021

STATEMENT OF THE ISSUE: Among other things, Richmond Municipal Code Section 11.100.070(e) of the Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (hereinafter, "Rent Ordinance") authorizes a Hearing Examiner and the Rent Board to adjust Maximum Allowable Rents downwards in consideration of a Landlord's failure to substantially comply with all applicable housing, health and safety codes. Richmond Municipal Code Section 11.100.060 (e) authorizes the Rent Board to promulgate Regulations that both enforce and clarify its provisions, and advances its regulatory purpose and goals. Consistent with the Rent Ordinance mandate, on February 21, 2018, the Richmond Rent Board adopted Regulation 904(B)(4)(b) to, among other things, enforce the Rent Ordinance's standards used for downward individual rent adjustments resulting from a Landlord's failure to substantially comply with applicable housing, health and safety codes. After review of the aforementioned Regulation, Rent Program staff members have identified both an error consisting of a typo and a need to update the referenced Civil Code, as Civil Code 1941.1(a), (b), and (c), has changed.

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 checked="" type="checkbox"/> Regulation | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement | <input 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: AMEND Regulation 904(B)(4)(b), to correct the typo of Civil Code Section 1941, to Civil Code Section 1941.1, and update the nomenclature of Civil Code 1941.1 (b), (c), and (d), to Civil Code Section 1941.1 (a)(2), (a)(3), and (a)(4) – Rent Program (Nicolas Traylor 620-6564).

AGENDA ITEM NO:

H-1.

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AGENDA REPORT

DATE: June 16, 2021

TO: Chair Finlay and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director

SUBJECT: Revision of Rent Board Regulation 904 (B) (4)

STATEMENT OF THE ISSUE:

Among other things, Richmond Municipal Code Section 11.100.070(e) of the Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (hereinafter, "Rent Ordinance") authorizes a Hearing Examiner and the Rent Board to adjust Maximum Allowable Rents downwards in consideration of a Landlord's failure to substantially comply with all applicable housing, health and safety codes. Richmond Municipal Code Section 11.100.060 (e) authorizes the Rent Board to promulgate Regulations that both enforce and clarify its provisions, and advances its regulatory purpose and goals. Consistent with the Rent Ordinance mandate, on February 21, 2018, the Richmond Rent Board adopted Regulation 904(B)(4)(b) to, among other things, enforce the Rent Ordinance's standards used for downward individual rent adjustments resulting from a Landlord's failure to substantially comply with applicable housing, health and safety codes. After review of the aforementioned Regulation, Rent Program staff members have identified both an error consisting of a typo and a need to update the referenced Civil Code, as Civil Code 1941.1(a), (b), and (c), has changed.

RECOMMENDED ACTION:

AMEND Regulation 904(B)(4)(b), to correct the typo of Civil Code Section 1941, to Civil Code Section 1941.1, and update the nomenclature of Civil Code 1941.1 (b), (c), and (d), to Civil Code Section 1941.1 (a)(2), (a)(3), and (a)(4) – Rent Program (Nicolas Traylor 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Background

On February 21, 2018, the Rent Board adopted Regulation 904(B)(4)(b), to clarify the standards utilized by a Hearing Examiner and Rent Board to adjust rents downwards as a result of a housing code violations and breach of the Warranty of Habitability. Rent Board staff members occasionally identify sections of the Rent Board Regulations that require clean up and updating. Rent Program staff members have identified a typo in Rent Board Regulation 904(B)(4)(b), and a need to update the referencing to Civil Code 1941.1. Specifically, the current iteration of Rent Board Regulation 904(B)(4)(b), references Civil Code Section 1941(b), (c), and (d), in the context of habitability. Such a Civil Code does not exist in the context of habitability. Rather, the appropriate Code is Civil Code Section 1941.1(b), (c), and (d), as this Civil Code appropriately references required characteristics a dwelling unit must possess to satisfy basic habitability requirements. Secondly, Civil Code Section 1941.1(b), (c), and (d), has since been amending by the legislature to change its nomenclature, but not its substance. Civil Code Section 1941.1(b), (c), and (d), is now Civil Code Section 1941.1(a)(2), (a)(3), and (a)(4), respectively. To ensure that the intent of the Rent Board's Regulations is understood and met, staff members are recommending a correction of the typo and an update of the referenced statute to reflect the nomenclature change.

Next Steps

Upon adoption by the Board of revised Rent Board Regulation 904(B)(4)(b), Rent Program staff members will make the necessary update to the Rent Program website link to Chapter 9 of the Rent Board Regulations.

DOCUMENTS ATTACHED:

Attachment 1 – Redlined Version of Rent Board Regulation 904. Change in Space or Services.

Attachment 2 – Clean Version of Rent Board Regulation 904. Change in Space or Services.

Attachment 3 – Prior Version of Civil Code 1941.1.

Attachment 4 – Updated Version of Civil Code 1941.1.

904. Changes in Space or Services

A. Increase in Space:

The Maximum Allowable Rent may be adjusted upward when, with the written agreement of the Tenant(s), there is an increase in the usable space or in the Housing Services beyond that which was provided to a unit on July 21, 2015, or when the Base Rent was first established.

- (1) Additional or reconfigured space: Where a Landlord adds habitable living space to a unit or reconfigures it, the Maximum Allowable Rent for such unit shall be permanently increased as provided under Section 8XX Capital Improvements.
- (2) Additional services: Where a Landlord adds non-habitable space or increases the services provided to a unit, the Maximum Allowable Rent for such unit shall be increased by an amount representing the commercially reasonable value of the additional space or increased services. If the additional or reconfigured space or the services are subsequently reduced or eliminated, the rent increase authorized herein shall be reduced or terminated. Any increase for an additional bedroom shall result in an increase to the Base Occupancy Level for an additional occupant.
- (3) Increases may be denied if the added or reconfigured space or services do not clearly benefit a majority of the affected Tenants and a Tenant objects.
- (4) If the added or reconfigured space or services clearly benefit a majority of the affected Tenants, then increases may be denied if a majority of the affected Tenants object.

B. Decrease in Space or Services; Substantial Deterioration; Failure to Provide Adequate Services; Failure to Comply with Codes, the Warranty of Habitability or the Rental Agreement:

- (1) Decreases in Space or Services. The Maximum Allowable Rent shall be adjusted downward where a Landlord is aware of and causes a Tenant to suffer a decrease in housing services or living space from the services and space that were provided on July 21, 2015, or from any services or space provided at the beginning of the tenancy. The amount of the rent decrease shall be calculated by multiplying the percentage of impairment of the Tenant's use of and benefit from the unit (as a result of the reduction in living space or housing services) by the Maximum Allowable Rent in effect at the time of the impairment, and for past decreases, multiplied by the period of time the impairment existed. In determining the amount of the

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downward rent adjustment by the percentage of impairment of use/benefit method, the hearing examiner may consider the reasonable replacement cost of the space or service in question. Decreases in the Maximum Allowable Rent shall not be granted due to a decrease in space or services that is a direct result of intentional actions on the part of the Tenant to purposefully cause a decrease in space or services.

- (2) Denial of Petitions for Unilateral Removal: The Board will not accept petitions from Landlords who seek a Maximum Allowable Rent decrease for the unilateral removal or reduction of space or services from a Tenant's base level space or services. Landlord petitions shall be accepted only when a Tenant has expressly agreed in writing to the removal of such space or services. "Base level space or services" are the housing services or living space that was provided at the unit on July 21, 2015, or at the beginning of the tenancy.
- (3) Inadequate Services & Substantial Deterioration: The Maximum Allowable Rent shall be adjusted downward for any substantial deterioration in a Rental Unit and/or for any failure to provide adequate Housing Services occurring during the petitioner's tenancy. For purposes of this subsection, a substantial deterioration means a noticeable decline in the physical quality of the Rental Unit resulting from a failure to perform reasonable or timely maintenance and adequate Housing Services means all services necessary to operate and maintain a Rental Unit in compliance with all applicable state and local laws and with the terms of the Rental Housing Agreement. The amount of the rent decrease shall be calculated by multiplying the percentage of impairment of the Tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide adequate service, violation, breach or failure to comply) by the Maximum Allowable Rent in effect at the time of the impairment.
- (4) Code Violations & Breach of the Warranty of Habitability:
 - a. Where a condition at the Rental Unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the Maximum Allowable Rent decrease shall be in an amount that reflects the reduction in value of the Rental Unit due to the unsafe or unhealthy condition.
 - b. A substantial lack of any of the affirmative standard characteristics for habitability set forth in Civil Code section 1941.1 shall be deemed a violation of the warranty of habitability and the Maximum Allowable Rent shall be decreased by no less than 10% or, for a violation of subsections ~~(a)(2), (a)(3)(b), (a)(4)(e)~~ or ~~(d)~~ of Civil Code section

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- 1941.1, as amended, no less than 20%, until the condition is corrected, notwithstanding seasonal variations in or an absence of impairment to a Tenant's use of or benefit from the unit.
- c. The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of Tenants (e.g., dangerous window bars, missing smoke detector) shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Board within thirty-five (35) calendar days of mailing of the hearing examiner's decision unless the Landlord establishes that the violation cannot be corrected within that time due to circumstances beyond the Landlord's control.
 - d. No rent shall be charged for a period in which the Landlord is found to be in violation of California Civil Code Section 1942.4.
 - e. For purposes of this subsection, a breach of the warranty of habitability occurs when the Rental Unit is not in substantial compliance with applicable building and housing code standards, which materially affect health and safety. Minor housing code violations which do not interfere with normal living requirements do not constitute a breach of the warranty of habitability.
- (5) Maximum Allowable Rent reductions pursuant to this Section shall be effective from the date the Landlord first had notice of the space or service reduction, deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the condition for which the reduction was granted no longer exists.
- (6) A Tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the Landlord first received notice of the decreased service, deterioration, code violation or habitability violation. Notice may be actual or constructive. A Landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been disclosed by a reasonable inspection of the Rental Unit. A copy of a housing code inspection report from the City of Richmond should be submitted with the petition.

[Adopted February 21, 2018]

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downward rent adjustment by the percentage of impairment of use/benefit method, the hearing examiner may consider the reasonable replacement cost of the space or service in question. Decreases in the Maximum Allowable Rent shall not be granted due to a decrease in space or services that is a direct result of intentional actions on the part of the Tenant to purposefully cause a decrease in space or services.

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 - b. A substantial lack of any of the affirmative standard characteristics for habitability set forth in Civil Code section 1941.1 shall be deemed a violation of the warranty of habitability and the Maximum Allowable Rent shall be decreased by no less than 10% or, for a violation of subsections (a)(2), (a)(3), (a)(4) or of Civil Code section 1941.1, as

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ATTACHMENT 2**

- amended, no less than 20%, until the condition is corrected, notwithstanding seasonal variations in or an absence of impairment to a Tenant's use of or benefit from the unit.
- c. The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of Tenants (e.g., dangerous window bars, missing smoke detector) shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Board within thirty-five (35) calendar days of mailing of the hearing examiner's decision unless the Landlord establishes that the violation cannot be corrected within that time due to circumstances beyond the Landlord's control.
 - d. No rent shall be charged for a period in which the Landlord is found to be in violation of California Civil Code Section 1942.4.
 - e. For purposes of this subsection, a breach of the warranty of habitability occurs when the Rental Unit is not in substantial compliance with applicable building and housing code standards, which materially affect health and safety. Minor housing code violations which do not interfere with normal living requirements do not constitute a breach of the warranty of habitability.
- (5) Maximum Allowable Rent reductions pursuant to this Section shall be effective from the date the Landlord first had notice of the space or service reduction, deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the condition for which the reduction was granted no longer exists.
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[Adopted February 21, 2018]

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West's Annotated California Codes

Civil Code

Division 3. Obligations ([Refs & Annos](#))

Part 4. Obligations Arising from Particular Transactions ([Refs & Annos](#))

Title 5. Hiring

Chapter 2. Hiring of Real Property ([Refs & Annos](#))

This section has been updated. Click [here](#) for the updated version.

West's Ann.Cal.Civ.Code § 1941.1

§ 1941.1. Untenantable dwellings

Effective: [See Text Amendments] to December 31, 2002

A dwelling shall be deemed untenantable for purposes of [Section 1941](#) if it substantially lacks any of the following affirmative standard characteristics:

- (a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- (b) Plumbing or gas facilities which conformed to applicable law in effect at the time of installation, maintained in good working order.
- (c) A water supply approved under applicable law, which is under the control of the tenant, capable of producing hot and cold running water, or a system which is under the control of the landlord, which produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.
- (d) Heating facilities which conformed with applicable law at the time of installation, maintained in good working order.
- (e) Electrical lighting, with wiring and electrical equipment which conformed with applicable law at the time of installation, maintained in good working order.
- (f) Building, grounds and appurtenances at the time of the commencement of the lease or rental agreement in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.
- (g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter, and being responsible for the clean condition and good repair of such receptacles under his control.
- (h) Floors, stairways, and railings maintained in good repair.

Credits

(Added by Stats.1970, c. 1280, p. 2314, § 1. Amended by Stats.1979, c. 307, p. 1125, § 1.)

West's Ann. Cal. Civ. Code § 1941.1, CA CIVIL § 1941.1

Current with urgency legislation through Ch. 19 of 2021 Reg.Sess

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CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3273.16] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.16] (*Part 4 enacted 1872.*)

TITLE 5. HIRING [1925 - 1997.270] (*Title 5 enacted 1872.*)

CHAPTER 2. Hiring of Real Property [1940 - 1954.06]

(*Chapter 2 enacted 1872.*)

1941.1. (a) A dwelling shall be deemed untenable for purposes of Section 1941 if it substantially lacks any of the following affirmative standard characteristics or is a residential unit described in Section 17920.3 or 17920.10 of the Health and Safety Code:

- (1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
 - (2) Plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order.
 - (3) A water supply approved under applicable law that is under the control of the tenant, capable of producing hot and cold running water, or a system that is under the control of the landlord, that produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.
 - (4) Heating facilities that conformed with applicable law at the time of installation, maintained in good working order.
 - (5) Electrical lighting, with wiring and electrical equipment that conformed with applicable law at the time of installation, maintained in good working order.
 - (6) Building, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.
 - (7) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter and being responsible for the clean condition and good repair of the receptacles under his or her control.
 - (8) Floors, stairways, and railings maintained in good repair.
 - (9) A locking mail receptacle for each residential unit in a residential hotel, as required by Section 17958.3 of the Health and Safety Code. This subdivision shall become operative on July 1, 2008.
- (b) Nothing in this section shall be interpreted to prohibit a tenant or owner of rental properties from qualifying for a utility energy savings assistance program, or any other program assistance, for heating or hot water system repairs or replacement, or a combination of heating and hot water system repairs or replacements, that would achieve energy savings.

(*Amended by Stats. 2012, Ch. 600, Sec. 1. (AB 1124) Effective January 1, 2013.*)

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