

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: September 20, 2017

Final Decision Date Deadline: September 20, 2017

STATEMENT OF THE ISSUE: At the August 23, 2017, Special Meeting of the Richmond Rent Board, Executive Director Nicolas Traylor provided a policy report and presentation on "banking." If banking is allowed, a landlord may take deferred Annual General Adjustment increases, raising the rent up to the Maximum Allowable Rent level, with proper notice under state law. The Board requested a legal analysis on whether or not the Richmond Rent Ordinance would allow the Board to establish a policy that allows for banking. The Rent Program's legal counsel, Michael Roush has opined that the Ordinance does allow the Board to establish a policy or regulation that allows for banking of previously deferred Annual General Adjustments (AGA's). In addition, Dr. Stephen Barton, an expert in rent control and affordable housing policy, has prepared an oral report for the Board's consideration and will be available to answer any questions Board members may have on the issue.

INDICATE APPROPRIATE BODY

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|---|---|--|--|---|
| <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> | |

ITEM

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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: (1) RECEIVE a memorandum from Michael Roush, Legal Counsel, regarding the legal authority to establish "banking" rent increase provisions; (2) RECEIVE a presentation from Dr. Stephen Barton regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as "banking" rent increases; and (3) CONSIDER ADOPTION of Regulation 17-09, regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as "banking" rent increases, with limitations, such that the net rent increase in any one year as a result of the application of the current plus any deferred or "banked" AGAs does not exceed five percent (5%) plus the current AGA. This draft Regulation (17-09) would not become effective until September 1, 2018 – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

I-1.

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AGENDA REPORT

DATE: September 20, 2017

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Michael Roush, Legal Counsel
Dr. Stephen Barton, Subject Matter Expert

SUBJECT: BANKING OF ANNUAL GENERAL ADJUSTMENT RENT INCREASES

STATEMENT OF THE ISSUE:

At the August 23, 2017, Special Meeting of the Richmond Rent Board, Executive Director Nicolas Traylor provided a policy report and presentation on “banking.” If banking is allowed, a landlord may take deferred Annual General Adjustment increases, raising the rent up to the Maximum Allowable Rent level, with proper notice under state law. The Board requested a legal analysis on whether or not the Richmond Rent Ordinance would allow the Board to establish a policy that allows for banking. The Rent Program’s legal counsel, Michael Roush has opined that the Ordinance does allow the Board to establish a policy or regulation that allows for banking of previously deferred Annual General Adjustments (AGA’s). In addition, Dr. Stephen Barton, an expert in rent control and affordable housing policy, has prepared an oral report for the Board’s consideration and will be available to answer any questions Board members may have on the issue.

RECOMMENDED ACTION:

(1) RECEIVE a memorandum from Michael Roush, Legal Counsel, regarding the legal authority to establish “banking” rent increase provisions; (2) RECEIVE a presentation from Dr. Stephen Barton regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as “banking” rent increases; and (3) CONSIDER ADOPTION of Regulation 17-09, regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as “banking” rent increases, with limitations, such that the net rent increase in any one year as a result of the application of the current plus any deferred or “banked” AGAs does not exceed five percent (5%) plus the current AGA. This draft Regulation (17-09) would not become effective until September 1, 2018 – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

FISCAL IMPACT:

While the fiscal impact of the Board's policy direction is unknown at this juncture, if banking is prohibited, staff research indicates that a prohibition on banking will make it more challenging for staff to calculate the Maximum Allowable Rent (MAR) and make program administration more difficult. If program administration is more difficult, that may increase Program costs.

DISCUSSION:

Receive oral report from Michael Roush, Legal Counsel, and Dr. Stephen Barton.

DOCUMENTS ATTACHED:

Attachment 1 – Memorandum from Michael Roush, Legal Counsel

Attachment 2 – Regulation 17-09



M E M O R A N D U M

TO: Chair Gray and Members of the Rent Board

FROM: Michael Roush, Legal Counsel

THRU: Nicolas Traylor, Executive Director

SUBJECT: LEGAL AUTHORITY OF THE RENT BOARD TO ADOPT A "BANKING" REGULATION

Background

Staff has recommended the Rent Board adopt a regulation concerning "banking" of Annual General Adjustment ("AGA") rent increases. Under such regulation, a landlord who did not impose the full amount of the Annual General Adjustment rent increase in any one year would be able to impose some or all that deferred rent increase in a subsequent year, subject, perhaps, to a limit on the percentage increase in any given year.

Separate from what the provisions of such regulation would be, the Rent Board has asked whether it has the authority, under the Ordinance, to adopt such a regulation because if such a regulation were adopted, a landlord could impose a rent increase greater than the AGA adopted for that year and without petitioning for an individual upward adjustment of rent as provided in subsection (c) of Section 11.100.070, Richmond Municipal Code. (Further references to Sections or to Chapters refer to the Richmond Municipal Code.) Some persons speaking at the Board's August 23 meeting expressed a point of view the Board had no legal authority under the Ordinance to impose banking.

For the following reasons, the Board does have the legal authority to adopt such a regulation. Whether it chooses to do so and what the terms thereof (assuming it chooses to adopt such a regulation) should be is left to the discretion of the Board.

Discussion

The Ordinance provides broad authority to the Board to issue rules and regulations, including those which are contained in Chapter 11.100, as will further the purposes of Chapter 11.100. Subsection (f), Section 11.100.060. The purpose of the Chapter/Ordinance is to promote neighborhood and community stability, healthy housing, affordability for renters in the City of Richmond by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring landlords a fair and reasonable return on their investment. Section 11.100.010.

Subsection (a) of Section 11.100.070 provides that as of the effective date of Chapter 11.100 (December 30, 2016), no landlord shall charge rent for any controlled rental unit in an amount greater than the rent in effect on July 21, 2015, except for increases expressly allowed under Chapter 11.100. Subsection (b) of Section 11.100.070 implies that a landlord may increase rents by an Annual General Adjustment, equal to 100% of the percentage increase in the Consumers Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region) for the 12 month period ending as of March of the current year. That subsection, however, expressly permits a landlord to increase the Maximum Allowable Rent to include one additional Annual General Adjustment for the time between the effective date of the Ordinance (December 30, 2016) and the Annual General Adjustment for 2017 (which the Board adopted in June 2017: “[F]or the period between the effective date of this Charter [sic] and the first Annual General Adjustment announced September 1, the landlord may increase the Maximum Allowable Rent to include an Annual General Adjustment for September 2016.” Accordingly, the Ordinance itself permits a landlord to impose a rent increase greater than the separate Annual General Adjustment, similar to what a banking regulation would allow.

Moreover, although section 11.100.070 refers to an “Annual General Adjustment”, subsection (a) of Section 11.100.030 (Definitions) defines “Annual Allowable Rental Adjustment” to refer to the limit on the Maximum Allowable Rent increase which a landlord may charge on any Controlled Rental Unit without order from a hearing officer. Therefore it seems that the term “Annual Allowable Rental Adjustment” should have been used in Section 11.100.070, rather than the term “Annual General Adjustment”, as that would have specifically referred to an allowable rent increase other than a rent increase permitted by a hearing officer.

In any event, for purposes of this analysis, it is assumed that a landlord may increase rents by the Annual General Adjustment and that a landlord may petition for an adjustment upward of the Maximum Allowable Rent as set forth in subsections (d), (e) and (g) of Section 11.100.070. See subsection (c) of Section 11.100.070.

In interpreting voter approved initiatives, such as the Fair Rent Ordinance, courts apply the same principles that govern its interpretation of statutes and ordinances. Courts look first to the language of the initiative, giving words their ordinary meaning, but construing the language in context of the initiative as a whole and the initiative’s overall scheme. Absent ambiguity, courts presume the voters intend the meaning apparent on the face of the initiative and courts may not add words to the initiative or rewrite it to conform to an assumed intent that is not apparent in the language. Where there is ambiguity, ballot summaries and arguments may be considered when determining the voters’ intent and understanding of the ballot measure.

The Ordinance here provides that rents may be increased in two ways: through an Annual Allowable Rental Adjustment/Annual General Adjustment or through a petition process for an

upward adjustment of the Maximum Allowable Rent. The Ordinance is silent, however, as to whether any Annual Allowable Rental Adjustments/Annual General Adjustments may be “banked” and, as indicated above, words may not be added to the Ordinance nor may the Ordinance be rewritten to conform to what some members of the public believe is the Ordinance’s intent.

Moreover, permitting banking is entirely consistent with the purposes and intent of the Ordinance in that the Ordinance expressly permits rent increases based on Annual Allowable Rental Adjustments/Annual General Adjustments. It simply does not say when those Adjustments must be taken or if those Adjustments are lost if not taken in the year in which the Board announces the Adjustments. In other words, since one of the purposes of the initiative is to control excessive rent increase, that purpose is served by limiting rent increases to annual adjustments tied to the CPI, even if some or all of the annual adjustments are deferred in a particular year but permitted subsequently. As pointed out in the presentation by Executive Director Traylor, deferring adjustments works to the overall financial advantage of a tenant, thereby further the purpose of the initiative to control excessive rents.

In addition, allowing a landlord to bank annual adjustments also furthers the purpose of the Ordinance to ensure that a landlord does not lose the right to impose the annual adjustment, thereby ensuring landlords receive a fair and reasonable return on their property.

Moreover, to the extent ballot materials may be considered because of ambiguity in the Ordinance concerning this issue, the ballot materials likewise are silent as to banking. For example, the City Attorney’s Impartial Analysis provides that the maximum allowable rent would be based on the rent in effect on July 21, 2015 subject to certain annual increases based on the percentage increase in the CPI or subject to a petition and hearing procedure for upward adjustments. Similarly, the argument in favor of the measure provides the Ordinance mandates that rents [for certain rental units] cannot be raised more 3% annually, based on the CPI. (This argument misstates what is in the Ordinance as the rent increase limitation is pegged to the CPI, not to 3%.) In any event, the Impartial Analysis and the argument in favor of the Measure, like the Ordinance itself, are silent as to whether annual increases may be “banked”.

Conclusion

The Board has the legal authority under the Ordinance to adopt a banking regulation. Whether it chooses to do so and, if it so chooses, what the terms thereof should be is left to the discretion of the Board.

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ITEM I-1
ATTACHMENT 2

RICHMOND RENT BOARD REGULATION 17-09

Regarding the right of Landlords to raise the Rent up to the Maximum Allowable Rent level, also known as “banking” rent increases, under certain limitations

Whereas, the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that no later than June 30 of 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. Section 11.100.070 (b), RMC; and

Whereas, the Annual General Adjustment shall equal one-hundred (100%) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any other successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics)(CPI) 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 and

Whereas, on December 30, 2016, Landlords were entitled to increase the Maximum Allowable Rent in an amount not to exceed 3.0% for tenancies in effect prior to September 1, 2015, as provided in Section 11.100.070 (b) (3), RMC, assuming a Landlord served a Tenant with the legally required notice of a rent increase under State law; and

Whereas, the percentage increase in the CPI from 2016-2017, as set forth in recital 2, was 3.4%; and

Whereas, in recognition that some Landlords may elect not to impose in any given year the full amount of the Annual General Adjustment but have concerns that if they do not, they will lose the opportunity to impose some or all of the Annual General Adjustment in a subsequent year or years, the Board, by this Regulation, providing Landlords the right to raise Rent up to the Maximum Allowable Rent to address those concerns, but include limitations such that to protect tenants, the application of any deferred Annual General Adjustment rent increases for which the Landlord was eligible but chose not to apply shall not exceed five percent (5.0%) plus the current year’s Annual General Adjustment in any one twelve-month period.

NOW, THEREFORE, THE RICHMOND RENT BOARD ADOPTS THE FOLLOWING REGULATION:

1. A Landlord may, but is not required to, increase Rent by the Annual General Adjustment as provided by Board Regulation.
2. To the extent a Landlord has not increased Rent up to the Maximum Lawful Rent level, the Landlord shall have the ability to apply deferred Annual General Adjustment rent increases; however, the net rent increase in any one twelve-month period shall not exceed the current year Annual General Adjustment Rent Increase plus five percent (5.0%) of the Rent charged at any time during the preceding 12-month period.
3. In the event that a current year’s Annual General Adjustment exceeds five percent (5.0%), a Landlord may not apply any deferred Annual General Adjustment increases until the next Annual General Adjustment increase less than five percent (5.0%) is effective.
4. “Banking” of Annual General Adjustment Increases shall be calculated based on simple addition, without compounding. For example, an increase of three percent (3.0%) plus three point four percent (3.4%) is equal to a combined increase of six point four percent (6.4%), not six point five six percent (6.56%).

