

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: The Board shall decide whether or not to adopt a “banking” regulation, with limitations, such that landlords will be able to take 5% of deferred Annual General Adjustment (AGA) increases in addition to the current years AGA increase within any 12 month period, to raise the rent up to the Maximum Allowable Rent level, with proper notice under state law.

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> | |

ITEM

- | | | |
|---|--|---------------------------------|
| <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: ADOPT Regulation 17-09, regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as “banking” rent increases, with the limitation, such that the net rent increase in any 12-month period 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 Regulation (17-09) would not become effective until September 1, 2018 – Rent Program (Nicolas Traylor 620-6564).

AGENDA ITEM NO:

G-3.

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AGENDA REPORT

DATE: November 15, 2017

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director

SUBJECT: BANKING OF ANNUAL GENERAL ADJUSTMENT RENT INCREASES

STATEMENT OF THE ISSUE:

The Board shall decide whether or not to adopt a “banking” regulation, with limitations, such that landlords will be able to take 5% of deferred Annual General Adjustment (AGA) increases in addition to the current years AGA increase within any 12 month period, to raise the rent up to the Maximum Allowable Rent level, with proper notice under state law.

RECOMMENDED ACTION:

ADOPT Regulation 17-09, regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as “banking” rent increases, with the limitation, such that the net rent increase in any 12-month period 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 Regulation (17-09) would not become effective until September 1, 2018 – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

FISCAL IMPACT:

If banking of deferred AGA increases 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, Program costs will increase. Furthermore, staff research has concluded and the Executive Director has determined, after consulting with Executive Directors in peer rent control agencies, that the added administrative complexity caused by prohibiting banking would lead the Richmond Rent Program to develop into a passively enforced “compliant driven” rent control agency, with much of its emphasis and resources devoted to hearings and less resources devoted to “active enforcement” of the Ordinance through rent registration and extensive and robust outreach.

DISCUSSION:

Background

The Board has received an extensive presentation on the policy considering for adopting a banking policy, including testimonials and letters from both the Richmond Rent Program Executive Director and Executive Directors of the East Palo Alto, Berkeley and Santa Monica Rent Programs. The Board was also provided with an oral analysis on banking by subject matter expert Dr. Stephen Barton, as well as a legal analysis by the Rent Program's legal counsel, Michael Roush asserting that the Board has legal authority to establish a banking policy through a rent regulation.

Proposed Regulation

Landlords may apply deferred Annual General Adjustment rent increases; however, the net rent increase (of the current year's AGA and any deferred AGA rent increases) in any one twelve-month period shall not exceed five percent (5%).

In the event that a current year's Annual General Adjustment exceeds five percent (5%), a Landlord may not apply any deferred Annual General Adjustment increases until the next Annual General Adjustment increase less than five percent (5%) is effective.

Lastly, Regulation 17-09 clarifies that the calculation of banked Annual General Adjustment Increases is based on simple, not compound interest. 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%).

The effective date of Regulation 17-09 is proposed to be September 1, 2018, to avoid conflict with the Rent Board's adopted Regulation 17-05, which allows for a combined rent increase of 6.56 percent for tenancies in effect prior to September 1, 2015, to account for both the 2016 and 2017 Annual General Adjustment rent increases.

DOCUMENTS ATTACHED:

Attachment 1 – Draft Regulation 17-09

Attachment 2 – Letter from Jay Kelekian, Executive Director of the Berkeley Rent Board

ITEM G-3
ATTACHMENT 1

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

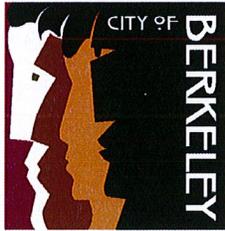
Whereas, on December 30, 2016, Landlords were entitled to increase the Maximum Allowable Rent in an amount not to exceed 3.0% for tenancies in effect prior to September 1, 2015, as provided in Section 11.100.070 (b) (3), RMC, assuming a Landlord served a Tenant with the legally required notice of a rent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



Rent Stabilization Program

October 18, 2017

Nicolas Traylor, Executive Director
Richmond Rent Program
440 Civic Center Plaza, 2ns Floor
Richmond, CA 94804

Dear Mr. Traylor:

Thank you for the opportunity to comment on the proposed regulation related to the “banking” of annual general adjustments being considered by the Richmond Rent Board. With legitimate concerns raised on both sides, I can appreciate how confusing and difficult a decision like this one is for the Board.

I have had the opportunity to read the staff report as well as the letters submitted by Tracy Condon and Victor Ramirez. I found both of their comments to be accurate. Santa Monica’s law operates very similar to Berkeley’s and I am personally familiar with the extreme peril that poorly crafted “banking” regulations placed the East Palo Alto Program in, a few years back.

The Richmond Board is faced with balancing the risk of causing the displacement of tenants receiving a large rent increase on one hand and, in the alternative, potentially forcing owners who otherwise would defer raising the rent from taking that increase for fear of losing the ability to do so in the future. Theoretically, prohibiting banking could place the Board at greater risk of an owner claiming they are being denied a fair return on their investment. Not allowing banking also potentially either precludes future administrative changes, or makes their implementation more complicated and costly.

I have administered rent stabilization programs for roughly 25 of my 33 years as a civil servant. Over that period, similar to what I read in Ms. Condon’s letter, I have had dozens of owners tell me, anecdotally, that they do **not** annually increase the rent for their tenants. Most of these owners have indicated that they “probably would” increase the rent annually if they were to permanently lose the ability to take the increase, resulting in higher rents paid by sitting tenants.

During that same 33 year period, with the exception of the court mandated “Searle” inflation increase in 1991 (when the Board increased rents by over 25%), I have only had conversations with one tenant indicating they were probably no longer able to afford their unit because the owner was taking several years of “banked AGA’s”.

Under Berkeley's ordinance, landlords, with proper notice, are able to raise the rent to the maximum allowable rent, regardless of the percentage increase or potential impact on the tenant. In reviewing the material presented in your agenda packet, I notice that an option was presented which attempts to address the concern about a large one-time increase potentially resulting in the displacement of tenants. By allowing the owner to receive the banked AGA in the future but limiting the maximum amount in which rents could go up in any individual year, seems to address the interests and concerns of both landlords and tenants.

Some cities have prohibited banking in one form or another. These cities, generally allow Annual General Adjustments (AGA's) greater than the CPI (sometimes 2 or 3 times higher), so the potential impact leading to tenant displacement is higher while, generally, the necessity for allowing the owner to charge full AGA's in order to receive a fair return is not as compelling. The risk of tenant displacement is far greater in these types of settings than what is being proposed in Richmond.

Clearly every community must decide what system of implementation is best to meet their unique set of needs. In Berkeley, we have found that annual registration of rental units is the cornerstone to an effective rent control program. From our perspective, while registration does add some costs, the benefits far exceed the additional charges. As I understand the situation, Richmond does not yet have, but is considering adding, a rent registry in the future. If this is the case, then I wanted to be clear that not allowing banking would add additional hurdles, complexities and costs to implementing an effective registration system. It will not be impossible but it will either be more costly or less effective than having a system that allows easy calculation of the maximum lawful rent for each unit.

I apologize for the late submittal of this letter. I would be happy to answer any questions Board members may have or elaborate further if the Board believes it would be of assistance.

Best wishes.



Jay Kelekian,
Executive Director