

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: December 20, 2017

Final Decision Date Deadline: December 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

- Presentation/Proclamation/Commendation (3-Minute Time Limit)
- Public Hearing                       Regulation                       Other:
- Contract/Agreement                       Rent Board As Whole
- Grant Application/Acceptance                       Claims Filed Against City of Richmond
- Resolution                       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:  
**H-2.**

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# AGENDA REPORT

**DATE:** December 20, 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 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 – Proposed Regulation 17-09

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

Attachment 3 – Letter from Victor Ramirez, Administrator of the City of East Palo Alto Rent Stabilization Program

Attachment 4 – Letter from Tracy Condon, Administrator of the City of Santa Monica Rent Control Board

## ITEM H-2 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

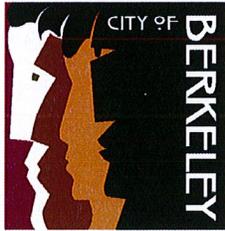
Whereas, the percentage increase in the CPI from 2016-2017, as set forth in recital 2, was 3.4%; and

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

## ATTACHMENT 3



**City of East Palo Alto  
Office of the City Manager  
Rent Stabilization Program**

2415 University Avenue, 2<sup>nd</sup> Floor  
East Palo Alto, CA 94303

Tel: 650-853-3157 / Fax: 650-853-3115  
[rentprogram@cityofepa.org](mailto:rentprogram@cityofepa.org)

Via email ([nicolas\\_traylor@ci.richmond.ca.us](mailto:nicolas_traylor@ci.richmond.ca.us))

October 11, 2017

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

Re: East Palo Alto's AGA Banking Regulations

Dear Mr. Traylor:

Per your request and to provide the Richmond Rent Board with more information that the Board may wish to consider when deciding what the best way to regulate banking of Annual General Adjustments in Richmond is, I would like to share with the Board the East Palo Alto's experience on this issue.

In 2010, the East Palo Alto voters adopted a new Rent Stabilization Ordinance to protect tenants against major increases based on years of unused Annual General Adjustments (AGAs) which had forced many low income families out of their homes between 2007 and 2009. Thus, the 2010 Ordinance regulated "banking" of rent increases when the landlord did not impose a rent increase allowed under the AGA. The Ordinance allowed unused AGAs to be implemented in future years, subject to some limitations:

- The overall rent increase in any one year pursuant to the AGAs and banked AGAs could not exceed 10%.
- By February 1 of each year, the landlord had to provide an annual notice to the tenant that had to list which, if any, authorized AGAs had not yet been implemented. Landlords also had to provide a copy of the banking notice to the Rent Stabilization Program.
- A landlord could not bank increases in rent from more than three AGAs during occupancy by the same tenant. Implementation of banked rent increases was limited to the last three banked AGAs.

The Ordinance then became much more complicated, difficult and expensive to administer. If the landlord did not invoke banking, each year's AGA percentage was then applied to the then actual legal rent rather than the base rent plus all previous AGAs. The Program had to collect annual information on the actual rent charged and the used and unused AGAs on every existing tenancy. This process was further complicated by a banking system that allowed landlords to use up to three years of the reported and unused AGAs, but only if they had provided a required banking notice to the tenant by February 1 each year. To further complicate the administration of the Ordinance, many rent increase anniversary dates fell after February 1, so some landlords did not issue a banking notice when they were planning on using the AGA for that specific year. To preemptively respond to possible illegal rent increase challenges, other landlords decided to issue banking notices even if they were actually planning to use their authorized AGA for that specific year.

Enforcement of banking, with a limitation of three years on increases banked, required the Program to not only track actual rents but also change the maximum allowable rent (MAR) once banking exceeded three years even if not more than 10% or if the landlord failed to provide the required banking notice to tenants. The Program had to either maintain files of copies of landlord banking notices to tenants or contact landlords for such notices in order to properly maintain MAR records. Issuing banking notices and then rent increase notices also caused confusion among tenants, and it became a point of contentions between tenants and landlords. On many cases, especially small landlords failed to understand and properly comply with banking requirements even when they tried. Many landlords, especially small landlords, failed to issue banking notices and had to then reissue rent increase notices, lose AGAs, and reimburse tenants after months of collecting rent increased amounts which were within the AGAs limits but improperly increased due to their failure to comply with banking notice requirements. Also, this banking system did not allow landlords to charge a rent below the MAR without jeopardizing their ability to raise the rent to the MAR in the future.

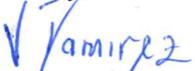
Applying AGAs to the actual rent charged, tracking and enforcing compliance of banking requirements made the administration of the Ordinance more expensive. The Program had to dedicate a substantial amount of time to manually entering banking notice information and rent increase notice information into the Program's database, counseling tenants and landlords on banking requirements and resolving disputes arise from misinterpretations of a complicated system.

In 2016, the East Palo Alto voters amended the Ordinance by adopting new language regulating rents based on the maximum allowable rent rather than actual rent and eliminating banking requirements. This has reduced reporting and data entry requirements. To still protect tenants against major increases based on years of unused AGAs, the Ordinance imposes a 10% annual limitation on rent increases including the approved AGA for the Program year when the rent increase is to take effect. Thus, once an initial MAR is established, the Program can now determine the subsequent years' MARs by simply adding the cumulative AGA percentages to the base year rent. An additional protection was also added in 2016. If the calculation of the AGA results in a percentage higher than ten percent (10%), the annual general adjustment is now limited to ten percent (10%). At the beginning of each year, the Program also sends a notice to all the tenants informing them of the MAR that was initially certified and what a landlord could be legally collecting if all AGAs which have been approved during the life of the tenancy have been used.

Lastly, I can only hope that having briefly shared the East Palo Alto's experience with the Richmond Rent Board regarding AGA banking regulations helps the Rent Board make a determination that best fits the needs of the Richmond Rent Program to effectively implement the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance.

Should you have any questions or believe we can be of more assistance, please do not hesitate to contact us.

Sincerely,

  
Victor I. Ramirez, Administrator  
Rent Stabilization Program



City of  
**Santa Monica®**

**Rent Control Board**  
1685 Main Street, Room 202  
PO Box 2200  
Santa Monica, CA 90407-2200  
Phone: 310-458-8751

ITEM H-2  
ATTACHMENT 3

October 9, 2017

Nicolas Traylor, Executive Director  
Richmond Rent Program  
440 Civic Center Plaza  
2<sup>nd</sup> Floor  
Richmond, CA 94804

Dear Mr. Traylor:

I'm writing in response to your request for information on Santa Monica's rent control program, specifically the issue of banking annual general adjustments.

The Santa Monica Rent Control Law authorizes the maximum allowable rent for eligible units to be adjusted by the annual general adjustment with no limitation on when the increase may be implemented once it's authorized. The Board tracks each unit's maximum allowable rent which allows the Agency to answer questions from the public about the lawful rent for any properly-registered controlled unit in the city. The Board itself has never considered the pros and cons of limiting the implementation of general adjustments

Some property owners have suggested that without the ability to bank general adjustments, they would be forced to implement the maximum increase each year. Although we have no way of verifying whether this statement is true, it could suggest an unintended consequence that might result from an owner's inability to bank general adjustments.

If you have any questions, please let me know.

Sincerely,

Tracy H. Condon  
Administrator

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