



**REGULAR MEETING OF THE RENT BOARD OF THE CITY OF RICHMOND**

***NOTE LOCATION CHANGE:***

MULTIPURPOSE ROOM (BASEMENT), COMMUNITY SERVICES BUILDING  
440 Civic Center Plaza, Richmond, CA 94804

**Wednesday, December 20, 2017**

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**Boardmembers**

Nancy Combs  
Virginia Finlay  
Emma Gerould  
David Gray  
Lauren Maddock

***Link to Rent Board Meeting Agendas and Accompanying Materials:***

[www.ci.richmond.ca.us/3375/Rent-Board](http://www.ci.richmond.ca.us/3375/Rent-Board)

**COMMUNICATION ACCESS INFORMATION**

This meeting is being held in a wheelchair accessible location. To request disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact Bruce Soublet, ADA Coordinator, at (510) 620-6509 at least three business days before the meeting date.

**NOTICE TO PUBLIC**

The City of Richmond encourages community participation at public meetings and has established procedures that are intended to accommodate public input in a timely and time-sensitive way. As a courtesy to all members of the public who wish to participate in Rent Board meetings, please observe the following procedures:

Public Comment on Agenda Items: Persons wishing to speak on a particular item on the agenda shall file a speaker form with City staff PRIOR to the Rent Board's consideration of the item on the agenda. Once the clerk announces the item, only those persons who

have previously submitted speaker forms shall be permitted to speak on the item. Each speaker will be allowed up to two minutes to address the Rent Board.

Public Forum: Individuals who would like to address the Rent Board on matters not listed on the agenda or on items remaining on the consent calendar may do so under Public Forum. All speakers must complete and file a speaker's card with City staff prior to the commencement of Public Forum. The amount of time allotted to individual speakers shall be determined based on the number of persons requesting to speak during this item. The time allocation for each speaker will be as follows: 15 or fewer speakers, a maximum of 2 minutes; 16 to 24 speakers, a maximum of 1 and one-half minutes; and 25 or more speakers, a maximum of 1 minute.

Conduct at Meetings: Richmond Rent Board meetings are limited public forums during which the City strives to provide an open, safe atmosphere and promote robust public debate. Members of the public, however, must comply with state law, as well as the City's laws and procedures and may not actually disrupt the orderly conduct of these meetings. The public, for example, may not shout or use amplifying devices, must submit comment cards and speak during their allotted time in order to provide public comment, may not create a physical disturbance, may not speak on matters unrelated to issues within the jurisdiction of the Rent Board or the agenda item at hand, and may not cause immediate threats to public safety.

City Harassment Policy: The City invites public comment and critique about its operations, including comment about the performance of its public officials and employees, at the public meetings of the City Council and boards and commissions. However, discriminatory or harassing comments about or in the presence of City employees, even comments by third parties, may create a hostile work environment, if severe or pervasive. The City prohibits harassment against an applicant, employee, or contractor on the basis of race, religious creed, color, national origin, ancestry, physical disability, medical condition, mental disability, marital status, sex (including pregnancy, childbirth, and related medical conditions), sexual orientation, gender identity, age or veteran status, or any other characteristic protected by federal, state or local law. In order to acknowledge the public's right to comment on City operations at public meetings, which could include comments that violate the City's harassment policy if such comments do not cause an actual disruption under the Council Rules and Procedures, while taking reasonable steps to protect City employees from discrimination and harassment, City Boards and Commissions shall adhere to the following procedures. If any person makes a harassing remark at a public meeting that violates the above City policy prohibiting harassment, the presiding officer of the meeting may, at the conclusion of the speaker's remarks and allotted time: (a) remind the public that the City's Policy Regarding Harassment of its Employees is contained in the written posted agenda; and (b) state that comments in violation of City policy are not condoned by the City and will play no role in City decisions. If any person makes a harassing remark at a public meeting that violates the above City policy, any City employee in the room who is offended by remarks violating the City's policy is excused from attendance at the meeting. No City employee is compelled to remain in attendance

where it appears likely that speakers will make further harassing comments. If an employee leaves a City meeting for this reason, the presiding officer may send a designee to notify any offended employee who has left the meeting when those comments are likely concluded so that the employee may return to the meeting. The presiding officer may remind an employee or any council or board or commission member that he or she may leave the meeting if a remark violating the City's harassment policy is made.

## REGULAR MEETING OF THE RICHMOND RENT BOARD

### AGENDA

4:00 PM

**A. PLEDGE TO THE FLAG**

**B. ROLL CALL**

**C. STATEMENT OF CONFLICT OF INTEREST**

**D. AGENDA REVIEW**

**E. INTRODUCTIONS FROM RENT PROGRAM STAFF MEMBERS**

**F. PUBLIC FORUM**

**G. RENT BOARD CONSENT CALENDAR**

**G-1.** APPROVE the minutes of the November 15, 2017, Regular Meeting of the Richmond Rent Board. *Cynthia Shaw*

**G-2.** RECEIVE letters from community members regarding the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, RMC 11.100. *Cynthia Shaw*

**G-3.** RECEIVE AND RECOMMEND TO THE RICHMOND CITY COUNCIL proposed amendments to Chapter 11.102 of the Richmond Municipal Code, and a revised resolution, concerning relocation requirements for Tenants of residential Rental Units. **This item was continued from the November 15, 2017, meeting.** *Michael Roush*

**H. REGULATIONS**

**H-1.** ADOPT Regulation 17-08, regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating Nuisance. *Michael Roush*

- H-2. 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. **This item was continued from the November 15, 2017, meeting.** *Nicolas Traylor*

**I. RENT BOARD AS A WHOLE**

- I-1. (1) RECEIVE an update from staff concerning billing and collection of the Fiscal Year 2016-17 and Fiscal Year 2017-18 Rental Housing Fees; and (2) APPROVE by motion a Reimbursement Agreement between the Rent Board and the City of Richmond. *Nicolas Traylor  
Michael Roush  
Paige Roosa*
- I-2. (1) RECEIVE an update from staff concerning recent community workshops regarding setting standards for changes in the maximum allowable rent; (2) RECEIVE a memorandum from Kenneth Baar regarding the Maintenance of Net Operating Income (MNOI) fair return standard; and (3) DIRECT staff to prepare implementing regulations utilizing the MNOI standard for the Rent Board’s consideration in January and February 2018. *Nicolas Traylor  
Kenneth Baar*
- I-3. RECEIVE the 2018 Rent Program Community Workshop Calendar. *Nicolas Traylor*

**J. ADJOURNMENT**

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***Any documents produced by the City and distributed to a majority of the Rent Board regarding any item on this agenda will be made available at the Rent Program Office located on the second floor of 440 Civic Center Plaza and will be posted at [www.richmondrent.org](http://www.richmondrent.org).***

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# 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 minutes of the November 15, 2017, Regular Meeting of the Richmond Rent Board require approval.

## 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

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|---|--|--|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) |  |  |
| <input type="checkbox"/> Public Hearing   | <input type="checkbox"/> Regulation  | <input checked="" type="checkbox"/> Other: <u>CONSENT CALENDAR</u> |
| <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:** APPROVE the minutes of the November 15, 2017, Regular Meeting – Rent Program (Cynthia Shaw 620-5552).

AGENDA ITEM NO:

**G-1.**

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# ITEM G-1 ATTACHMENT 1

**RICHMOND, CALIFORNIA, November 15, 2017**

The Regular Meeting of the Richmond Rent Board was called to order at 4:00 PM.

## **PLEDGE TO THE FLAG**

## **ROLL CALL**

**Present:** Vice Chair Gerould, Boardmembers Combs, Finlay, Maddock, and Executive Director Nicolas Traylor.

**Absent:** Chair Gray.

## **STATEMENT OF CONFLICT OF INTEREST**

None.

## **AGENDA REVIEW**

Items F-3 and G-3 were pulled by staff from the consent calendar to be discussed at the next Board meeting.

## **PUBLIC FORUM**

Pat Tsen recommended that the Board review the provisions of the ordinance regarding registration requirements for owners of single family homes and owners of small rental properties. She expressed that owning a property in Richmond is costly and it will inspire owners to sell rather than be willing to own in Richmond.

Kirk Essler asked questions about the applicability of the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance on accessory dwelling units (ADUs).

Cordell Hindler distributed fliers inviting the Board to attend community events in the month of December. He also invited the board to the Crime Prevention meeting taking place at the recreation center. He also proposed that the time of the Board meeting be changed to a later time to accommodate community members.

## **RENT BOARD CONSENT CALENDAR**

On motion of Boardmember Finlay, seconded by Boardmember Maddock, the item(s) marked with an (\*) were approved by the unanimous vote of the Rent Board, with item F-3 to be continued to December 20<sup>th</sup>, 2017, meeting:

**\*F-1.** Approved the minutes of the October 18, 2017, Regular Meeting of the Richmond Rent Board.

**\*F-2.** Received letters from community members regarding the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, RMC 11.100

**F-3.** CONTINUED to the December 20, 2017, Rent Board Meeting proposed amendments to Chapter 11.102 of the Richmond Municipal Code, and a revised resolution, concerning relocation requirements for Tenants of residential Rental Units.

**\*F-4.** Received a memorandum from staff concerning the City of Richmond's procurement policies.

## **G. REGULATIONS**

**G-1.** The matter to adopt Regulation 17-01, regarding the exemption of approximately 4,283 governmentally subsidized rental housing units (including the Housing Choice Voucher Program, Project-Based Section 8 Program, Low Income Housing Tax Credit Program, and Supportive Housing for the Elderly Program) from the rent control provisions of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, was presented by the Executive Director Nicolas Traylor. The presentation included information about the purpose of the proposed regulation; the definition of governmentally subsidized housing; background; and the definition of conditionally exempt units. Discussion ensued. A motion by Boardmember Maddock, seconded by Boardmember Combs, moved to adopt Regulation 17-01, exempting approximately 4,283 governmentally subsidized rental housing units (including the Housing Choice Voucher Program, Project-Based Section 8 Program, Low Income Housing Tax Credit Program, and Supportive Housing for the Elderly Program) from the rent control provisions of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance. The motion passed with Chair Gray absent.

**G-2.** The matter to adopt Regulation 17-08, regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating Nuisance was presented by Legal Counsel Michael Roush. The presentation included background information; proposed definition of a reasonable period of time; proposed general (revised) rule; proposed exception for criminal activity; proposed protections for victims of criminal activity; proposed definition of nuisance; proposed additions to subleasing provisions; proposed notice filing requirements; and a recommended action. Discussion ensued. Cordell Hindler, Marilyn Langlers, Edith Pastrano, Ana Gonzalez, Terri Mathis, Eugenio Sanchez and Michelle Milam from the Richmond Police Department gave comments. A motion by Boardmember Finlay, seconded by Vice Chair Gerould, moved to continue the item to the December 20, 2017, meeting and direct staff to prepare information for the Board regarding the eviction and unlawful detainer timeline pursuant to State law. The motion passed with Chair Gray absent.

**G-3.** CONTINUED to the December 20, 2017, Rent Board meeting, the matter to adopt a regulation 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 would not become effective until September 1, 2018.

**ADJOURNMENT**

There being no further business, the meeting adjourned at 5:55 PM.

Cynthia Shaw and Ramona Howell  
Staff Clerks

(SEAL)

Approved:

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Rent Board Chair

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# 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:** Members of the community have sent letters to the Rent Board and Rent Program staff members. Staff members recommend letters that do not pertain to a specific item on the Rent Board agenda be included as consent items for consideration by the Rent Board.

## 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 type="checkbox"/> Regulation  | <input checked="" type="checkbox"/> Other: <u>CONSENT CALENDAR</u> |
| <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:** RECEIVE letters from community members regarding the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, RMC 11.100 – Rent Program (Cynthia Shaw 620-5552).

AGENDA ITEM NO:

**G-2.**

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**From:** Ilona Clark [in70clark@gmail.com]

**Sent:** Tuesday, November 14, 2017 10:47 PM

**To:** Rent Control; Virginia Finlay; Emma Gerould; David Gray; Lauren Maddock; Paige Roosa

**Subject:** Richmond's future under rent control

To all the Members of the Richmond Rent Board,

You may have already reflected on your unique position in Richmond's history as the first rent board. As someone with past experience with the Oakland Rent control bureaucracy I've appreciated bearing witness to some of your discussions, reasoning and intention not to repeat some of the mistakes made in other jurisdictions.

You all have a very full plate. However, I would like to share with you some thoughts about your legacy and how your work can serve Richmond long after your terms are finished.

Stability and continuity:

Renters and business owners need stability in order to plan for the long term. Rather than risk a new board coming in to over turn or change much of your hard work, consider about how to make your decisions less easy to overturn by a potentially fickle new group.

For example, if a decision is voted for unanimously, it should need a unanimous vote to overturn it.

If at all possible, please do not have all of you turnover at once – there is something to be said for continuity and institutional knowledge – Think about all you've learned in the past year. Let's not re-invent the wheel every other year or, worse, become a rubber stamp for an agenda created by rent board staff – wonderful though they have been through all the mayhem.

Credibility:

As you know controversial decisions put you in opposition to both “sides” of the housing issue. This means credibility is vital to your effectiveness and that of future boards. Charging fees is necessary but not at all popular. You may need to raise fees in the future. Doing so will be difficult without knowing where the money is going, how many sake-holders are actually paying, etc.

Regular audits can help with this. Oakland rent board did not do an audit for many years and were finally pressured into it, after much foot-dragging, by both renters and landlord's groups. The process caused a lot of cynicism, bitterness and distrust of the rent board by everyone.

I suggest an audit every 2 years since that is how long members can serve – no kicking the can down to the next poor guy that comes along.

Thank you for your consideration in these matters. I remain confident that Richmond can do better.

ilona

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Be kind, for everyone you meet carries a heavy burden.

Richmond Rent Board

Re: 1821 Pennsylvania, Richmond, CA 94801

My name is Roberto J. Garcia, Jr., I am the property owner at 1821 Pennsylvania Avenue, Richmond, Ca, 94801. I am writing to provide you with background information regarding allowance for a one time rent increases beyond 3% to market level.

I have owned the above property since 1997.

**OWNER'S BACKGROUND**

I have worked my entire life as an independent worker. Unfortunately, during my youth I made bad decisions that cost me including but not limited to, a good education, socialization, job skills, etc. Once I recognized my short giving, bad decision making, I set out to reform myself. I worked very hard at becoming a skilled worker, but unfortunately, through lack of knowledge, I never found employment in a viable company. I found myself looking for work, finding and making acquaintance with other workers like myself who eventually introduced me to homeowners in need of "handy work". Eventually, and through the years I taught myself to be a very skilled laborer, a home improvement "professional".

As I never worked for a company that would provide benefits such as, 401K, healthcare, dental care, pension plans or any type of retirement fund, I did not have dental or medical health care for several years. 2013 was the first time I had dental and health care through the Obamacare.

I learned earlier on that since I did not work for a company which would enable me to retire comfortably or on any level, I would have to make solid, well thought out plans to insure my future. For this reason I purchased the above property.

**PAST RENT INCREASES**

The rents have not been increased since 2005. In other words, I have never asked for a rental increase for each of the units rented since 2005. Despite the fact that some renters have gone into arrears. I have always showed compassion and understanding for those tenants that have been in arrears by setting up payment plans, working on a solution to help get them up to date on past rents due.

**UPKEEP, UPGRADES, REMODELS**

I have maintained the property in the best possible condition. I have made numerous upgrades and complete remodels of each unit. Wherein a unit has been occupied, as soon as a renter moved out, improvements were done. The result has been that each unit has been remodeled and meticulously maintained. Despite the complete remodels rental increases were not made.

As stated above, in part because I view this as property for my retirement, I take pride in maintaining the property, caring for and securing this valuable commodity.

### INCREASED PROPERTY TAXES, HOMEOWNER INSURANCE – UTILITIES

In 1998 the property taxes for this address was \$3,738.38

In 2017 the property taxes for this address is: \$8,738.50

Home insurance: \$1,533.00 yearly

PG&E, water, gas and garbage paid

Since 2005, despite increases in all the above services, rents remained the same.

### RECENT UPGRADES

As a safety measure, approximately 5 years ago the parking lot and driveway were newly paved and a security gate installed at a cost of \$14,200.00. *This cost include roof done ten years ago.*

Rents remained the same.

### PROPERTY FORECLOSURES- FINANCIAL HARDSHIP

This property has been placed in jeopardy for reasons within my control. I continually refused to increase the rents because I considered each and every tenants own financial burdens over and above my own. Although the decision was a poor one, causing my property to foreclose twice, one in about 2009 and as recently as 2016, I stubbornly and foolishly refused to increase my rents placing me in financial hardship.

Reasons why I fell behind are:

- 1) rents had not been increased since 2005 despite increases in property taxes, homeowner's insurance, PG&E, water, garbage, etc.
- 2) Renters who were in arrears and fell behind in their rents were not brought up to date, causing me to find behind on making the mortgage payments.

The foreclosures have placed me in a financial bind where I must increase the rents if I am to keep my life savings, the property I have cared for and maintained since its purchase.

### MARKET RATE

The above rental property is broken down as follows, (Please consider: all units have been completely remodeled):

Studio: \$800.00 (comparable rate for a remodeled studio in the same neighborhood: \$1,200)

Large one bedroom apartment: \$900.00 (comparable rate for a remodeled large one bedroom apartment: \$1,400)

### FUTURE IMPROVEMENTS

I planned to make overall improvements to the outside of the apartment building. Following the improvements I would like to place an increase in rents.

It is my sincere hope that the rent board will consider the outlining reasons and allow me to adjust my rents to market value with yearly increases as set forth by the rental guidelines.

Should the board not allow the rents to be set at market value, I am requesting that, at minimum, the rent board allow for an increase of at the 3% legal rate for each year where rents were not increased beginning 2005.

Thank you for your thoughtful consideration.

Sincerely,

Roberto J. Garcia, Jr.

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# 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:** At the October 18, 2017, Regular Meeting, the Rent Board considered proposed amendments to the City's Relocation Ordinance and accompanying Resolution. A copy of the October agenda item is included in Attachment 1. The Board approved a majority of the proposed amendments, but requested several changes be incorporated and the final proposed revisions be presented to the Board at the November 2017 meeting as an item on the Consent Calendar. Staff members have incorporated Rent Boardmembers' proposed changes and are seeking final approval of the proposed amendments before presentation to the City Council for adoption.

## 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 |
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## ITEM

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| <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 AND RECOMMEND TO THE RICHMOND CITY COUNCIL proposed amendments to Chapter 11.102 of the Richmond Municipal Code, and a revised resolution, concerning relocation requirements for Tenants of Residential Rental Units – Rent Program (Michael Roush 621-1202).

AGENDA ITEM NO:  
**G-3.**

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# AGENDA REPORT

**DATE:** December 20, 2017

**TO:** Chair Gray and Members of the Rent Board

**FROM:** Michael Roush, Legal Counsel

**SUBJECT:** AMENDMENTS TO THE ORDINANCE AND A REVISED RESOLUTION CONCERNING RELOCATION REQUIREMENTS FOR TENANTS IN RESIDENTIAL RENTAL UNITS

## **STATEMENT OF THE ISSUE:**

At the October 18, 2017, Regular Meeting, the Rent Board considered proposed amendments to the City's Relocation Ordinance and accompanying Resolution. A copy of the October agenda item is included in Attachment 1. The Board approved a majority of the proposed amendments, but requested several changes be incorporated and the final proposed revisions be presented to the Board at the November 2017 meeting as an item on the Consent Calendar. A copy of the November agenda item is included in Attachment 2. After the Board received the agenda materials, staff received additional comments from a Boardmember, including the concern that certain situations, discussed below, should be addressed in the revised ordinance. Staff members have incorporated these additional changes and are seeking final approval of the proposed amendments and an enabling resolution so that the items may be presented to the City Council for adoption.

## **RECOMMENDED ACTION:**

RECEIVE AND RECOMMEND TO THE RICHMOND CITY COUNCIL proposed amendments to Chapter 11.102 of the Richmond Municipal Code, and a revised resolution, concerning relocation requirements for Tenants of Residential Rental Units – Rent Program (Michael Roush 621-1202).

## **FISCAL IMPACT:**

There will be no measurable fiscal impact either to the Rent Board budget or the City's General Fund if these amendments/revisions are adopted. It is not expected that these changes will have a significant financial impact on the administrative of the Rent Program.

**DISCUSSION:**

Background

The additional proposed amendments to the Relocation Ordinance seek to address two main concerns:

First, while the previously proposed amendments presented to the Board on November 15, 2017, adequately address situations where the Tenant must vacate to allow the Landlord to make substantial repairs to a rental unit or where there has been a governmental order for the tenant to vacate, individual Boardmembers have expressed concerns that situations may occur where the tenant may need to vacate the unit temporarily, but not for reasons related to substantial repairs or an order to vacate. For example, water from a bathroom in a unit above a tenant's unit may flood the tenant's unit causing the tenant to move out temporarily. Similarly, a fire in an adjacent unit may have damaged the tenant's unit or smoke from a fire in an adjacent unit may render the unit unhealthy or unsafe for the tenant to remain in the unit. In such situations, it is unlikely that a tenant has been served with a formal notice of a temporary termination of tenancy or that a governmental agency has "red-tagged" the unit.

Second, under the Fair Rent Ordinance, where the landlord has received the necessary permits from the City in order to undertake substantial repairs to bring the property into compliance with applicable codes affecting the health and safety of the tenants or to cure code violations affecting the health and safety of the tenants, and the work cannot be completed while the tenant remains in the unit, the landlord may serve a notice of a temporary termination of tenancy while the work is completed. Section 11.100.050 (a) (5)(A), Richmond Municipal Code. The Ordinance likewise provides that if the work can be completed within 60 days and the tenant agrees to vacate while the work is being undertaken, the tenant has the option either to receive temporary relocation payments or not. If the tenant elects to receive temporary relocation benefits, the tenant is obligated to continue to pay rent. If the tenant elects not to receive such payments, the landlord is not required to pay temporary relocation payments but the tenant does not have to pay rent. Section 11.100.050 (a)(5)(B), Richmond Municipal Code.

The Fair Rent Ordinance, however, is silent as to what is to happen if the work will take longer than 60 days or if the tenant does not agree to vacate in order for the work to be completed.

Summary of Additional Proposed Revisions

To address the first concern, staff has revised subsections (b) and (e) of Section 11.102.030. With these revisions, if the tenant is displaced due to flooding, fire, etc., the tenant will immediately begin to receive temporary relocation payments (but remain obligated to pay rent). If the tenant is still displaced after 60 days, the landlord must make Rent Differential Payments until the tenant re-occupies the rental unit or finds alternative, permanent housing. In this latter case, the landlord would also be required

## ITEM G-3

to pay a Permanent Relocation Payment. Subsection (b) of Section 11.102.030 has also been revised in recognition that there may be disputes between the landlord and the tenant where such conditions exist and/or whether the tenant (or occupants, guests or invitees) has caused such conditions. If there are such disputes, the Executive Director, after consulting with City officials or others with expertise, will make an executive decision, subject to appeal to the Board (section 11.102.030 (k)).

To address the second concern, staff has revised subsection (d) of Section 11.102.030 as follows:

If the tenant has agreed to vacate but the work takes longer than 60 days, the landlord must immediately make temporary relocation payments, during which time the tenant would be obligated to pay rent. If the displacement lasts more than 120 days, the landlord becomes obligated to make rent differential payments until the tenant re-occupies the rental unit or finds alternative permanent housing. In this latter case, the landlord must also pay a permanent relocation payment.

If the tenant does not agree to vacate and the landlord obtains a court order compelling the tenant to vacate while the work is undertaken, the tenant has a choice for the first 60 days: the tenant may accept temporary relocation payments but be obligated to pay rent or the tenant may elect not to receive such payments and have no obligation to pay rent. After 60 days, the landlord must pay the tenant rent differential payments (the tenant pays no rent) and that obligation continues until the tenant re-occupies the unit or finds alternative, permanent housing. Similar to the above scenario, the Landlord must also pay a Permanent Relocation Payment.

To provide greater clarity, these scenarios have been organized into a flow chart (Attachment 1).

### Revised Resolution Establishing the Relocation Payment Fee Schedule

In December 2016, the City Council adopted a resolution establishing a relocation payment schedule. The resolution states the payments are for Fiscal Year 2016-17 and shall be adjusted annually based on the percentage change in the Consumer Price Index (All Urban Consumers—San Francisco-Oakland-San Jose Region). The attached resolution revises the amounts of the payments based on a 2.7% change in the CPI between October 2016 and October 2017 and provides that annual adjustments shall be made each January 1, based on the percentage changes in the CPI from October to October. Consistent with the changes to the Ordinance, the resolution also reflects that tenants who are displaced due to substantial repairs, due to a governmental order or due to other conditions beyond the control of the tenant (as discussed above), are entitled to relocation payments.

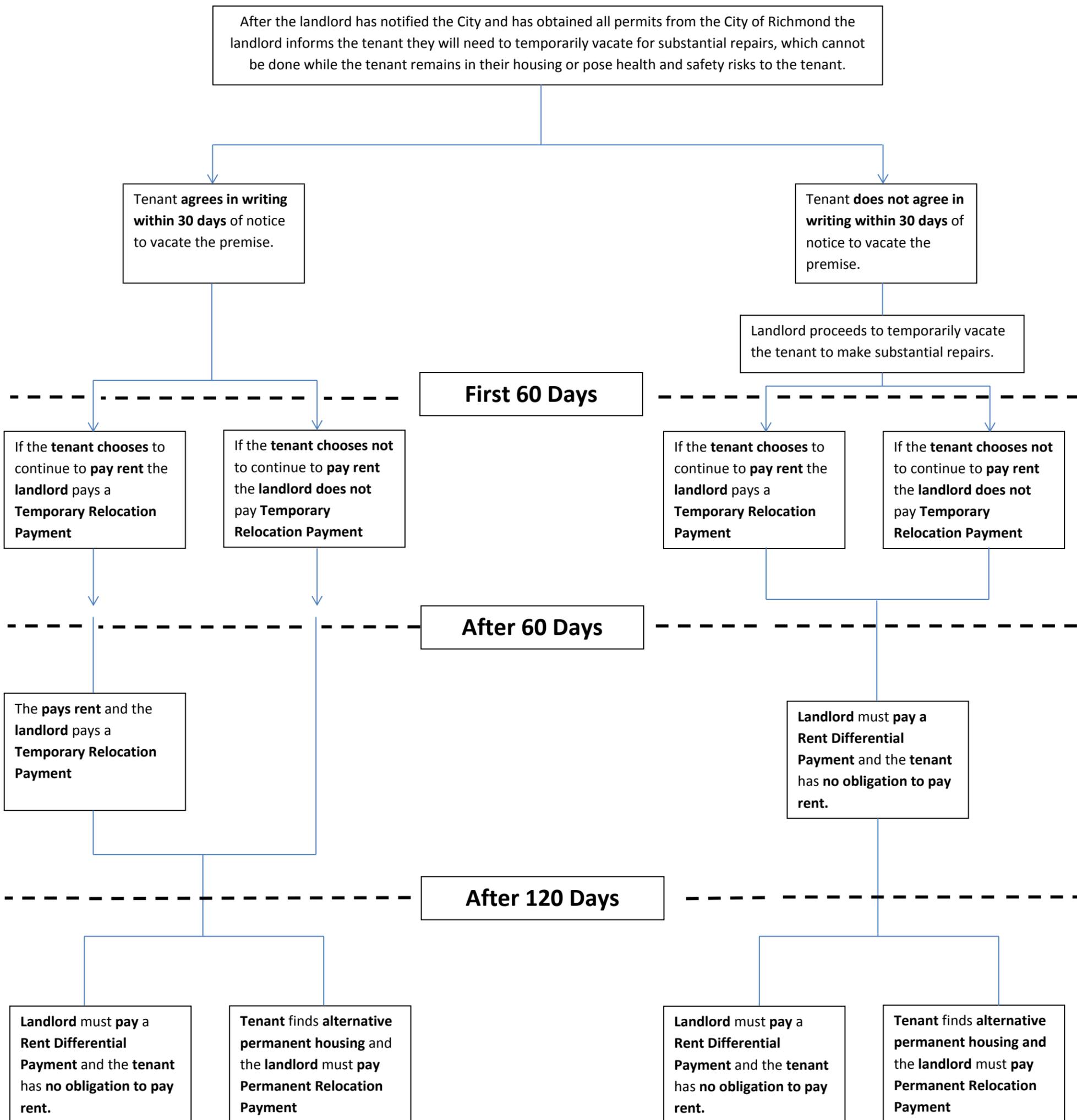
**DOCUMENTS ATTACHED:**

Attachment 1 – Temporary Relocation Flow Chart

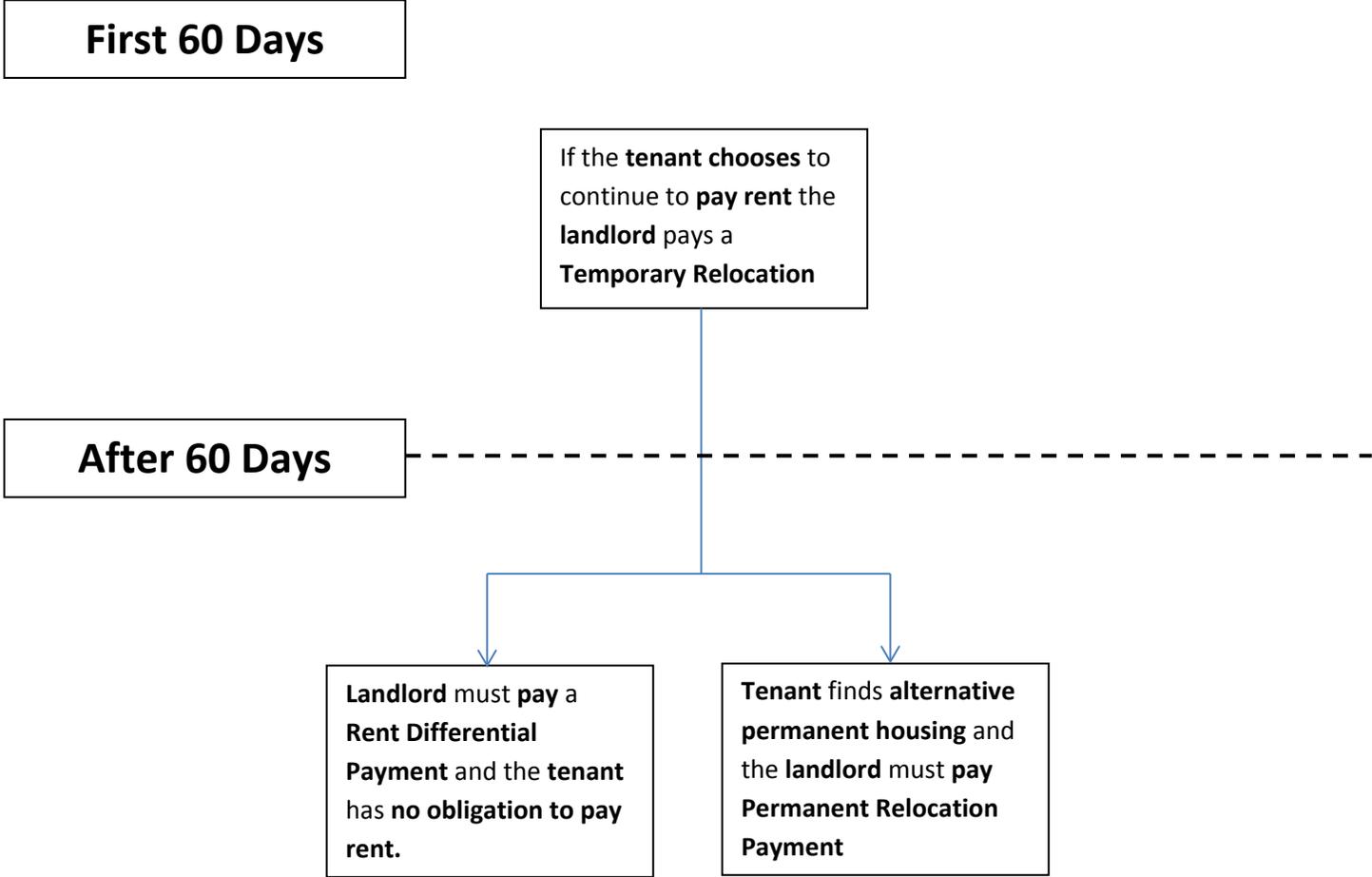
Attachment 2 – Proposed amendments to Chapter 11.102, Richmond Municipal Code,  
Concerning Relocation Requirements for Tenants of Residential Rental  
Units

Attachment 3 – Proposed Resolution Establishing the Amount of Relocation Payments  
for Displaced Tenants

**11.100.050 – When a Tenant must Temporarily Vacate in Order to Undertake Substantial Repairs**



**When a Tenant Must Vacate Due to Governmental order or  
Other Situation making it Unsafe or Unhealthy for Tenant to  
Occupy**



**ITEM G-3  
ATTACHMENT 2**

**ORDINANCE NO. XX-18 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND  
AMENDING SECTION 1 (PART) OR ORDINANCE NO. 22-16 N.S. AND SECTIONS  
11.102.020, 11.102.030, 11.102.040, 11.102.050, 11.102.060, 11.102.070, 11.102.080,  
11.102.100 AND 11.102.110 OF CHAPTER 11.102 OF THE RICHMOND MUNICIPAL  
CODE, AND ADDING SECTION 11.102.105 TO THE RICHMOND MUNICIPAL CODE,  
CONCERNING RELOCATION REQUIREMENTS  
FOR TENANTS OF RESIDENTIAL RENTAL UNITS**

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**WHEREAS**, the “Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance” initiative was passed by the voters in the City of Richmond on November 8, 2016; and

**WHEREAS**, the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance requires that landlords seeking to recover possession under certain sections of that ordinance must make relocation payments to each tenant in amounts to be determined by the City Council through a Relocation Ordinance; and

**WHEREAS**, the provision of such relocation payments shall help to mitigate the challenges faced by tenants who are ordered to vacate a rental unit through no fault of the tenant; and

**WHEREAS**, on December 20, 2016, the Richmond City Council added Chapter 11.102 to the Richmond Municipal Code to establish the relocation requirements for tenants of residential rental units (the “Relocation Ordinance”); and

**WHEREAS**, in implementing the Relocation Ordinance, the Rent Program staff has discovered that there are “gaps” or ambiguities in the Ordinance that need to be addressed.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND** does ordain as follows:

**SECTION I.** Section 1 of Ordinance No. 22-16 N.S. and Sections 11.102.020, 11.102.030, 11.102.040, 11.102.050, 11.102.060, 11.102.070, 11.102.080, 11.102.100 and 11.102.110 of Chapter 11.102 of the Richmond Municipal Code are amended, and Section 11.102.105 is added to Chapter 11.102, to read as follows:

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**“11.102.020 Definitions.**

The following terms shall have the following meanings:

Subsection (a) no change.

## ITEM G-3 ATTACHMENT 2

(b) “Displacement Plan” means a plan provided by the Landlord to satisfy the requirements of Section 11.102.060 (b), which must be approved by the Rent Board~~City~~ prior to service of notice to terminate a tenancy or within a reasonable time, as determined by the Executive Director, following a Tenant’s vacating a Rental Unit pursuant to a governmental agency’s order to vacate or due to conditions not caused by the Tenant, the occupants of the Rental Unit or the invitees/guests of the Tenant (such as flooding, fire damage or smoke damage) that would affect the health or safety of the Tenant if the Tenant were to occupy the Rental Unit while those conditions exist, and for which no notice to terminate a tenancy was served. ~~The Displacement Plan shall identify any special needs of the displaced Tenants, identify the types of assistance that will be provided and include a commitment to pay for such assistance.~~

Comment [O1]: This is now in section 11.102.060 (b)

Subsection (c), no change.

(d) “Eligible Tenant” means any Tenant entitled to be paid a Relocation Payment pursuant to this Chapter because (i) the Tenant’s whose ~~tenancy was~~ terminated for any of the reasons set forth in Section 11.100.050 (a)(5),(6) or (7) of the Richmond Municipal Code or pursuant to an approved Capital Improvement Plan or (ii) the Tenant has vacated a Rental Unit pursuant to a governmental agency’s order to vacate or due to conditions not caused by the Tenant, the occupants of the Rental Unit or the invitees/guests of the Tenant (such as flooding, fire damage or smoke damage) that would affect the health or safety of the Tenant if the Tenant were to occupy the Rental Unit while the conditions exist, and for which no notice to terminate a tenancy was served ~~this Chapter and who shall be paid a Relocation Payment pursuant to this Chapter.~~

Subsections (e) and (f), no change.

(g) “Permanent Relocation Payment” means the payment required to be paid to a Tenant by any Landlord (i) who takes action to terminate a tenancy pursuant to Richmond Municipal Code Section 11.100.050 (a) (6) (Owner Move-in), or Section 11.100.050 (a)(7) (Withdrawal from the Rental Market) or pursuant to an approved Capital Improvement Plan or (ii) when the Tenant has permanently vacated a Rental Unit pursuant to a governmental agency’s order to vacate and for which no notice to terminate a tenancy was served. .

Subsection (h), no change.

(i) “Qualified Tenant Household” means a household with a Tenant who is displaced for any reason other than failure to pay rent, breach of lease, nuisance or failure to give access (see Section 11.100.050 (a) (1), (2), (3) and (4), Richmond Municipal Code) and who (i) is a Senior Citizen, (ii) is Disabled, (iii) has at least one child under the age of 18 years living in the household or (iv) is displaced due to an Owner Move-in and the Tenant is terminally ill.

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Current subsection (i), no change, but reletter to (j).

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(k) “Relocation Payment” means the payment required to be paid by any Landlord who takes action to terminate tenancy for any of the reasons set forth in Section 11.102.030 of this Chapter, separate from any security or other refundable deposits as defined in California Civil Code, Section 1950.5.

## ITEM G-3 ATTACHMENT 2

(l) “Rent Differential Payment” means the difference between the lawful Rent that the Tenant was paying at the time of displacement and the fair market rent, as established by the payment standards for the Section 8 Housing Choice Voucher Program in the City of Richmond based on rental market information published each year by the U.S. Department of Housing and Urban Development, for a comparable Rental Unit based on the number of bedrooms.

(mk) “Rental Unit” means any dwelling unit (whether approved as such or not), building, structure, or part thereof, or land appurtenant thereto, or any rental property rented or offered for rent for residential purposes, even if the property itself is not zoned for such use, together with all Housing Services connected with the use or occupancy of such property such as common areas and recreational facilities held out for use by the Tenant.

Current subsection (l), no change, but reletter to (n).

(m)(o) “Temporary Relocation Payment” means the payment required to be paid to a Tenant by any Landlord (i) who takes action to terminate a tenancy pursuant to Richmond Municipal Code Section 11.100.050 (a)(5) (Temporarily Vacate in Order to Undertake Substantial Repairs) or pursuant to an approved Capital Improvement Plan or (ii) when the Tenant has temporarily vacated a Rental Unit pursuant to a governmental agency’s order to vacate or due to conditions not caused by the Tenant, the occupants of the Rental Unit or the invitees/guests of the Tenant (such as flooding, fire damage or smoke damage) that would affect the health or safety of the Tenant if the Tenant were to occupy the Rental Unit while those conditions exist, and for which no notice to terminate a tenancy was served.

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(n) (p) “Tenant” means a tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a Rental Housing Agreement to the use or occupancy of any Rental Unit.

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### 11.102.30 When Relocation Payment is required.

- (a) Subject to subsection (d) of this Section 11.102.030, a Landlord who takes action to temporarily terminate a tenancy for the reasons specified in Section 11.100.050 (a)(5) of the Richmond Municipal Code shall provide to the Tenant pursuant to the requirements of this Chapter (i) a Temporary Relocation Payment, (ii) a Rent Differential Payment if the displacement lasts more than 120 days and (iii) a Permanent Relocation Payment if the displacement lasts more than 120 days and the Tenant finds alternative, permanent housing, shall be provided pursuant to the requirements of this Chapter by any Landlord who takes action to terminate tenancy for the reasons specified in Section 11.100.050(a)(5) of the Richmond Municipal Code, is reproduced in part below:

The Landlord, after having obtained all necessary permits from the City of Richmond, seeks in good faith to undertake substantial repairs which are

## ITEM G-3 ATTACHMENT 2

necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of Tenants of the buildings or where necessary under an outstanding notice of code violations affecting the health and safety of Tenants of the building, and where such repairs cannot be completed while the Tenant resides on the premises.

(b) Subject to subsection (e) of this Section 11.102.030, if a Tenant has vacated a Rental Unit in compliance with a governmental agency's order to vacate affecting the health or safety of the Tenant in the Rental Unit or due to conditions not caused by the Tenant, the occupants of the Rental Unit or the invitees/guests of the Tenant (such as flooding, fire damage or smoke damage) that would affect the health or safety of the Tenant if the Tenant were to occupy the Rental Unit while those conditions exist, regardless of whether the Landlord has taken action to terminate the tenancy as provided in subsection (a) of this Section 11.102.030, the Landlord shall provide to the Tenant pursuant to the requirements of this Chapter (i) a Temporary Relocation Payment (ii) a Rent Differential Payment if the displacement lasts more than 60 days and (iii) a Permanent Relocation Payment if the displacement lasts more than 60 days and the Tenant finds alternative, permanent housing. If there is a dispute whether there are conditions that affect the health or safety of the Tenant if the Tenant were to remain in the Rental Unit while those conditions exist and/or if there is a dispute whether such conditions were caused by the Tenant, the occupants of the Rental Unit or the guests/invitees of the Tenant, the Executive Director, after conferring with City officials or other individuals who have expertise in such matters, shall decide the dispute(s).

(c) A Landlord shall provide to a Tenant a Temporary Relocation Payment, a Rent Differential Payment (if applicable) or a Permanent Relocation Payment, pursuant to the requirements of an approved Capital Improvement Plan.

(d)

A. If (i) the Landlord has served the Tenant with a notice of a temporary termination of tenancy as provided in Section 11.100.050 (a)(5), Richmond Municipal Code (Temporarily Vacate in Order to Undertake Substantial Repairs), (ii) informs the Tenant in writing the work to the Rental Unit will be completed in less than 60 days and (iii) the Tenant within 30 days after receipt of the notice of temporary termination of tenancy agrees in writing to vacate the Rental Unit during the period required to complete the repairs, the Landlord shall immediately make Temporary Relocation Payments to the Tenant or the Tenant may elect not to receive Temporary Relocation Payments. During the repair period, if the Tenant has elected to receive Temporary Relocation Payments, the Tenant remains obligated to pay the lawful Rent in effect when the Landlord served the notice of temporary termination of tenancy, plus any adjustments as permitted

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under Chapter 11.100, Richmond Municipal Code and Rent Board Regulations. During the repair period, if the Tenant has elected not to receive Temporary Relocation Payments, the Tenant shall not be obligated to pay Rent until the Tenant re-occupies the Rental Unit.

- B. If (i) the Landlord has served the Tenant with a notice of a temporary termination of tenancy as provided in Section 11.100.050 (a)(5), Richmond Municipal Code (Temporarily Vacate in Order to Undertake Substantial Repairs), (ii) informs the Tenant in writing the work to the Rental Unit will be completed in less than 60 days and (iii) the Tenant does not within 30 days after receipt of the notice of temporary termination of tenancy agree in writing to vacate the Rental Unit during the period required to complete the repairs, the Landlord may take action to terminate temporarily the tenancy and, once the Tenant has vacated the Rental Unit, the Landlord shall immediately make Temporary Relocation Payments to the Tenant or the Tenant may elect not to receive Temporary Relocation Payments. During the repair period, if the Tenant has elected to receive Temporary Relocation Payments, the Tenant remains obligated to pay the lawful Rent in effect when the Landlord served the notice of temporary termination of tenancy, plus any adjustments as permitted under Chapter 11.100, Richmond Municipal Code and Rent Board Regulations. During the repair period, if the Tenant has elected not to receive Temporary Relocation Payments, the Tenant is not obligated to pay the Landlord Rent until the Tenant has re-occupied the Rental Unit.
- C. If the conditions described in paragraph A of subsection (d) of this section 11.102.030 have occurred, but the work to the Rental Unit does not get completed within 60 days, the Landlord shall immediately make Temporary Relocation Payments to the Tenant and the Tenant, upon receipt of such Payments, shall pay the lawful Rent in effect when the Landlord served the Tenant with the notice of a temporary termination of tenancy, plus any adjustments as permitted under Chapter 11.100, Richmond Municipal Code and Rent Board Regulations.
- D. If the conditions described in paragraph B of subsection (d) of this Section 11.102.030 have occurred, but the work to the Rental Unit does not get completed within 60 days, and regardless whether the Tenant elected to receive Temporary Relocation Payments or not, Landlord shall immediately make Rent Differential Payments to the Tenant until the Tenant re-occupies the Rental Unit. A Tenant shall have no obligation to pay Rent while receiving Rent Differential Payments. When a Tenant re-occupies the Rental Unit, the Tenant shall pay the lawful Rent in effect when the Landlord served the notice of temporary termination of tenancy, plus any adjustments as

## ITEM G-3 ATTACHMENT 2

permitted under Chapter 11.100, Richmond Municipal Code and Rent Board Regulations.

- E. If the conditions described in either paragraph A or paragraph B of subsection (d) of this Section 11.102.030 have occurred, but the work to the Rental Unit does not get completed within 120 days, the Landlord shall make Rent Differential Payments to the Tenant until the Tenant re-occupies the Rental Unit or finds alternative, permanent housing. If the Tenant re-occupies the Rental Unit, the Tenant shall pay the lawful rent in effect at the time the Landlord served the notice of temporary termination of tenancy, plus any adjustments as permitted under Chapter 11.100, Richmond Municipal Code and Rent Board Regulations. If the Tenant finds permanent, alternative housing, the Landlord shall shall make a Permanent Relocation Payment to the Tenant, in addition to other Relocation Payments or Rent Differential Payments as set forth in this subsection (d).

(b)

(e) For the first 60 days from the date the Tenant vacates the Rental Unit, the Landlord shall make Temporary Relocation Payments to the Tenant until the Tenant re-occupies the Rental Unit and the Tenant, upon receipt of the Temporary Relocation Payment, shall be obligated to pay the lawful Rent that was in effect at the time the Tenant vacated the Rental Unit, plus any adjustments as permitted under Chapter 11.100 of the Richmond Municipal Code and Rent Board Regulations. If the work to the Rental Unit takes longer than 60 days to complete, the Landlord shall make Rent Differential Payments to the Tenant until either the work is completed and the Tenant re-occupies the Rental Unit or the Tenant finds alternative, permanent housing. A Tenant shall have no obligation to pay Rent to the Landlord when receiving Rent Differential Payments. If the Tenant re-occupies the Rental Unit, the Tenant shall pay the lawful Rent in effect when the Tenant vacated the Rental Unit, plus any Rent adjustments as permitted under Chapter 11.100 of the Richmond Municipal Code and Rent Board Regulations. If the Tenant finds alternative, permanent housing, the Landlord shall make a Permanent Relocation Payment, in addition to other Relocation Payments or Rent Differential Payments as set forth in this subsection (e).

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(f) A Permanent Relocation Payment shall be provided pursuant to the requirements of this Chapter by any Landlord who takes action to terminate a tenancy for the reasons specified in Section 11.100.050(a)(6) or Section 11.100.050(a)(7) of the Richmond Municipal Code, reproduced in part below and/or as specified in Rent Board Regulations:

Owner Move-In. The Landlord seeks to recover possession in good faith for use and occupancy as a Primary Residence by the Landlord, or the Landlord's spouse, registered domestic partner, child, grandchild, parent or grandparent, whether by blood, birth, adoption, marriage, or domestic registered partnership. A Tenant will have the right of first refusal

## ITEM G-3 ATTACHMENT 2

to return to the Rental Unit if the Landlord or enumerated relative vacates the Rental Unit as provided in Rent Board Regulations.

Withdrawal From Rental Market. The Landlord seeks in good faith to recover possession to withdraw all Rental Units of an entire property located in the City of Richmond. The Landlord has filed the documents with the Board initiating the procedure for withdrawing Units from rent or lease under Government Code Section 7060 et. seq. and all regulations passed by the Board, with the intention of completing the withdrawal process and going out of the rental business or demolition of the property. If demolition is the purpose of the withdrawal then the Landlord must have received all needed permits from the City of Richmond before serving any notices ~~t~~Terminating a tenancy based on Section 11.100.50(a)(7). Tenants shall be entitled to a 120-day notice or a one (1) year notice if# the case (i) a Tenant is are defined as a Senior Citizen, as defined in Section 11.102.020, or (ii) the Tenant is disabled, as defined in Section 11.102.020, (iii) the Tenant's household is a lower income household, as defined in California Health and Safety Code section 50079.5 or (iv) the Tenant has at least one minor dependent child residing in the household under Government Code Section 7060.4(6). ~~AT~~Tenants will also have a right of first refusal to return if the Rental Unit is placed back on the market as provided in Rent Board Regulations.

(g) Notwithstanding subsections (a) and (b) of this Section 11.102.030, a Landlord shall not be liable for a Temporary Relocation Payment, a Rent Differential Payment or a Permanent Relocation Payment if the governmental agency that ordered the Rental Unit, or the structure in which the Rental Unit is located, to be vacated determines the Rental Unit or the structure must be vacated as a result of:

1. A fire, flood, earthquake or other natural disaster, or other event beyond the control of the Landlord and the Landlord did not cause or contribute to the condition giving rise to the governmental agency's order to vacate; or
2. Any Tenant, or the guest or invitee of any Tenant, who has caused or substantially contributed to the condition giving rise to the order to vacate;

(h) In the situations described in paragraphs 1 and 2 of subsection (g) of this section 11.102.030, either a Landlord or a Tenant may appeal to the Rent Board the determination of the governmental agency, following the procedures, to the extent applicable, set forth in Section 11.100.070 (d), Richmond Municipal Code.

(i) Notwithstanding subsections (d) and (e) of this Section 11.102.030, a Landlord, in lieu of making Temporary Relocation Payments or Rent Differential Payments may offer the Tenant a comparable Rental Unit in Richmond while the work on the displaced Tenant's Rental Unit is being completed. For purposes of this subsection (i), a comparable Rental Unit shall mean a Rental Unit that is similar in size or larger, has the same number of bedrooms or additional bedroom(s), is located in the same geographic area of the City, has similar amenities in the Rental Unit, such as cable television or a washer/dryer, has similar amenities on the Rental Unit property, such as on-site parking, covered parking, laundry

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facilities, exercise facilities, allows pets if the displaced Tenant has a pet and, as to a Tenant who is Disabled, is disability accessible and ADA compliant. The Tenant, in the Tenant's sole discretion, may waive any of these factors in deciding that the Rental Unit is comparable. If the Landlord and the Tenant do not agree that a particular Rental Unit is comparable, either may appeal to the Executive Director who will determine, based on the factors set forth abover, whether the Rental Unit that the Landlord has offered is a comparable Rental Unit. If the Tenant accepts the offer and occupies the comparable Rental Unit, the Tenant shall pay no more than the lawful Rent the Tenant was paying at the time the Tenant was served with the notice to temporarily terminate the tenancy or at the time the Tenant vacated the Rental Unit if a governmental agency ordered the Rental Unit be vacated or due to conditions not caused by the Tenant, the occupants of the Rental Unit or the invitees/guests of the Tenant (such as flooding, fire damage, smoke damage, etc.) that would affect the health or safety of the Tenant if the Tenant were to occupy the Rental Unit while those conditions exist, and no notice of temporary termination of tenancy was served. If the Tenant accepts the offer, the Landlord shall (i) pay the Tenant's reasonable and documented moving expenses to the comparable Rental Unit and from the comparable Rental Unit to the Tenant's Rental Unit and (ii) continue to make Temporary Relocation Payments or Rent Disfferential Payments until the Tenant has fully occupied the comparable Rental Unit. If the Landlord and Tenant have not agreed that a particular Rental Unit is comparable, have appealed to the Executive Director, the Executive Director has determined the Rental Unit is comparable but the Tenant chooses not to occupy the comparable Rental Unit, the Landlord shall have no further obligation to make Temporary Relocation Payments or Rent Differential Payments and the Tenant shall have no further obligation to pay Rent until the Tenant has re-occupied the Rental Unit from which the Tenant was displaced.

- (j) If a Tenant has occupied a comparable Rental Unit as provided in subsection (i) of this Section 11.102.030 for at least 120 days, a Tenant for good cause may vacate the comparable Rental Unit and thereafter receive from the Landlord Rent Differential Payments until the Tenant has re-occupied the Rental Unit from which the Tenant was displaced or, if the Tenant has found alternative, permanent housing, has received from the Landlord a Permanent Relocation Payment. The Executive Director will determne good cause.
- (k) The Executive Director's decision under subsection (b), (i) or (j) of this Section 11.102.030 may be appealed to the Rent Board. Such appeal must be filed within 10 business days of the Executive Director's decision.

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### 11.102.040 Notice of Entitlement to Tenants/Right of First Refusal

## ITEM G-3 ATTACHMENT 2

(a) Any notice to terminate a tenancy temporarily which is served by a Landlord to a Tenant for any of the reasons set forth in subsections (a) or (c) of Section 11.102.030 shall be accompanied by the appropriate completed notice of entitlement to a Temporary ~~or Permanent~~ Relocation Payment form, a Rent Differential Payment form and a Permanent Relocation Payment form, available on the Rent ProgramCity's website. As to any Tenant who vacates a Rental Unit for any of the reasons set forth in subsection (b) of Section 11.102.030, the Landlord must provide to the Tenant within two business days of the Tenant's vacating the Rental Unit the appropriate completed notice of entitlement to a Temporary Relocation Payment, a Rent Differential Payment form and a Permanent Relocation Payment form, available on the Rent Program website. The contents of such notice shall include but are not limited to:

(Paragraphs (1) and (2), no change.)

(b) A notice of entitlement to a Temporary Relocation Payment and/or Rent Differential Payment form shall include a summary of the repairs to be undertaken and the estimated duration of relocation. The Landlord shall notify the Tenant when repairs are completed and provide the Tenant with the first right of refusal to re-occupy the unit pursuant to Section 11.100.050 (a)(5)(D), Richmond Municipal Code. If the estimated duration of relocation changes, the Landlord shall provide the Tenant with at least seven days' advance notice of any such change ~~to the anticipated relocation period.~~

(c) All Landlords shall be required to file with the Rent Board a copy of the notice of entitlement described in this section 11.102.040 with the City within two business days ~~one (1) week~~ of serving the Tenant such notice. A proof of service with time and date of service of such notice shall be included with the copy of such notice filed with the Rent BoardCity.

~~(b)~~ (Subsection (d), no change.)

### 11.102.050 Amount of Relocation Payment

(Subsections (a) through (b), no change.)

(c) The City Council may adopt a greater Relocation Payment amount for a Qualified Tenant Household. Disabled and/or Senior Citizen Tenants and/or household with least one child under the age of 18 years.

(d) The Relocation and Rent Differential Payments will be distributed on a pro-rata basis to each Eligible ~~per~~ Tenant ~~basis~~, but may include a maximum cap per Rental Unit.

### 11.102.060 Fees Required for Relocation Assistance or Displacement Plan Review

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(a) For each Rental Unit from which Tenants are displaced for any of the reasons set forth in Section 11.102.030, prior to service of a notice to terminate tenancy or within two business days of a Tenant's vacating the Rental Unit due to a governmental agency's order to vacate and for which no notice to terminate a tenancy was served, the Landlord shall pay to the Rent Board~~City~~ a Relocation Assistance Fee to be used by the Rent Board~~City~~ to pay for counseling or other assistance for Tenants who must relocate for any reason specified in Section 11.102.030 of this Chapter. The amount of the fee shall be determined periodically by a resolution of the City Council following a recommendation of the Rent Board.

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(b) In lieu of the fee required by subsection (a) of this Section 11.102.060, a Landlord may prepare a Displacement Plan which must be approved by the Executive Director~~City~~ prior to service of notice to terminate tenancy or within a reasonable time, as determined by the Executive Director, following a Tenant's vacating a Rental Unit pursuant to a governmental agency's order to do so and for which no notice to terminate a tenancy was served. The Displacement Plan shall identify any special needs of the displaced Tenants, identify the types of assistance that will be provided and include a commitment to pay for such assistance. At the time of submitting the Displacement Plan to the Executive Director~~City~~ for review and approval, the Landlord shall pay a Displacement Plan Review Fee to the Rent Board~~City~~ for such review and approval. The amount of the fee shall be determined periodically by a resolution of the City Council following a recommendation of the Rent Board.

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~~(a)~~ (Subsection (c), no change.)

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### 11.102.070 Distribution of Relocation Payment to Eligible Tenants.

(Subsection (a), no change.)

(b) After taking into account any adjustments in the amount of the Relocation Payment and/or Rent Differential Payment pursuant to Section 11.102.090, when the Tenant has been served with a notice to vacate the Rental Unit under Section 11.100.050 (a) (6) or (7), Richmond Municipal Code, the Landlord shall pay one-half (½) of the applicable Permanent Relocation Payment within three business days after when the Tenant has informed the Landlord in writing that of the date when the Tenant will vacate the Rental Unit on the date provided in the notice terminating the tenancy and the other half within three business days after upon certification that the Tenant has vacated the Rental Unit before, on or within two calendar days after the date provided in the notice and the Tenant has removed all of the Tenant's personal property from the Landlord's property, including a storage unit.

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(c) After taking into account any adjustments in the amount of the Relocation Payment and/or Rent Differential Payment pursuant to Section 11.102.090, when the Tenant has informed the Landlord in writing the Tenant has found permanent housing as provided in subsections (d) or (e) of Section 11.102.030, the Landlord shall pay the

## ITEM G-3 ATTACHMENT 2

full amount of the applicable Permanen Relocation Payment within three business days thereof or within three business days after the Tenant has removed all of the Tenant's personal property from the Rental Unit or other property of the Landlord, such as a storage unit, whichever is later.

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(d) After taking into account (i) any adjustment in the amount of the Relocation Payment and/or Rent Differential Payment pursuant to Section 11.102.090 and (ii) subsections (d) and (e) of Section 11.102.030, as to any Tenant who is entitled to receive a Temporary Relocation Payment and/or a Rent Differential Payment as provided in subsections (a), (b) or (c) of Section 11.102.030, the Landlord shall make such Payment in the amount and as provided in the applicable City Council Resolution.

(e) After taking into account (i) any adjustments in the amount of the Relocaton Payment and/or Rent Differential Payment pursuant to Section 11.102.090; as to any Tenant is entitled to receive a Permanent Relocation Payment under subsection (c) of Section 11.102.030, the Landlord must within three business days pay to the Tenant the full amount of the Permanent Relocation-Payment in the amount and as provided in the applicable City Council Resolution..

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(f) A Landlord shall within two business days of providing a Tenant with a Temporary Relocation Payment, a Rent Differential Payment or a Permanent Relocation Payment file with the Rent Board a proof of service with the time and date when the Landlord made such Payment.

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### 11.102.080 Prohibition against agreements and waiver of rights under this Chapter.

No Landlord shall do any of the following with respect to a TenantRental Unit(s):

- (a) Enter into an agreement or attempt to enforce an agreement with a Tenant which prohibits or limits the Tenant from participating in the City's public process, including speaking at a meeting of the City Council or any City Commission or Board, submitting written comments to the City, or otherwise communicating with City elected officials, appointed officials and employees on any subject. Any such contractual term which violates this section is against public policy and is void.
- (b) Unless otherwise specially authorized, no Landlord shall attempt to secure from a Tenant any waiver of any provision of this Chapter. Except as to such agreements that the Rent Board may authorize, such as a Buyout Agreement. Any agreement, whether written or oral, whereby any provision of this Chapter is waived, is against public policy and is void.

**(Section 11.102.090 Coordination with other relocation requirement, no change.)**

## ITEM G-3 ATTACHMENT 2

### Section 11.102.100 Remedies

(Subsections (a) and (b), no change.)

(c) If a Landlord fails or refuses to provide Relocation Payments required by this Chapter, and City and/or the Rent Board through adopted Regulations chooses to provide such Relocation Payments ~~pay such benefits~~ to a Tenant in the Landlord's place ~~through adopted regulations~~, the City and/or the Rent Board shall have the right to recover from the Landlord as restitution in any legal action such monetary outlays, plus administrative fees, investigative costs, costs of enforcement, and reasonable attorneys' fees incurred by the City and/or the Rent Board ~~from the Landlord as restitution in any legal action~~.

(d) Any person violating this Chapter shall be required to reimburse the City and/or the Rent Board its full investigative costs, costs of enforcement and reasonable attorneys' fees.

~~(e)~~ The recovery of the costs and fees of the items set forth in subsections (c) and (d) of this Section 11.102.100 may also be recovered as provided in Section 11.102.105.

(Subsection (e), no change, but re-letter to subsection (f).)

### 11.102.105. Recovery of costs.

(a) If (i) the City or Rent Board has chosen to provide Relocation Payments to a Tenant in place of the Landlord as set forth in subsection (c) of Section 11.102.100 and (ii) such Landlord fails or refuses to pay the City or Rent Board for providing Relocation Payments to a Tenant and/or the City's or Rent Board's investigative costs, costs of enforcement, administrative fees and reasonable attorneys' fees, the Director of Finance shall mail the Landlord a final request for payment for the amounts owed. The final request shall include a warning notice that if these unpaid items are not paid within thirty (30) days, they will be placed on the Landlord's real property tax rolls. The warning notice shall include information concerning the additional administrative charges that will become due if a lien is recorded against the Landlord's property, and that the City shall assess the Landlord's property on the next property tax statement if these unpaid items charged to a Landlord according to the most recent property assessment rolls of the County Assessor are unpaid.

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## ITEM G-3 ATTACHMENT 2

- (b) If the payment is not made by the Landlord within thirty (30) days, the Director of Finance shall send a certified notice which shall contain the name or names of the Landlord, the address of the property and the amount unpaid.
- (c) The notice shall set a time and place for an administrative hearing before the Director of Finance and shall be mailed to each person to whom the described property is assessed on the most recent property assessment rolls of the County Assessor. The notice shall be mailed not less than fifteen (15) days prior to the date of the hearing.
- (d) The Director of Finance shall conduct a hearing. The Director of Finance shall determine whether an assessment should be imposed upon the Landlord's property.
- (e) Afer the hearing, if the Director of Finance approves the unpaid amount against the Landlord's property and the Landlord fails to pay said amount, an assessment on the real property will be recorded with the Recorder of Contra Costa County. The recorded assessment shall carry an additional administrative charge of \$45.00.
- (f) The unpaid amount which remains unpaid by the Landlord shall constitute a special assessment against the property and shall be collected at such time as established by the County Assessor for inclusion in the next property tax assessment.
- (a)(g) The Director of Finance shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid amount and administrative charges, plus an assessment charge of \$5.00 as a special assessment against the property. The assessment shall be collected at the same time and in the same manner as municipal taxes are collected. The assessment shall be subordinate to all existing special assessment previously imposed on the property. It shall have priority over other liens except for those State, County, and municipal taxes with which it shall have parity. The assessment shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

### Section 11.102.110. Exceptions

The provisons of this Chapter shall not apply to Rental Units that are exempt ~~underfrom~~ Section ~~41.100.050~~ 11.100.030 (d) (1), (2 or (6)) of the Richmond Municipal Code, which Rental Units include certain temporary rentals, small, second units and rental of rooms, as more specifically set forth in Section 11.100.040 of the Richmond Municipal Code.”

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**ITEM G-3  
ATTACHMENT 2**

**SECTION II. Severability.**

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

**SECTION III. Effective Date.** This ordinance shall become effective thirty (30) days after its final passage and adoption.

\*\*\*\*\*

First read at a regular meeting of the Council of the City of Richmond held     , 2018, and finally passed and adopted at a regular meeting thereof held     , 2018, by the following vote:

**AYES:**

**NOES:**

**ABSTENTIONS:**

**ABSENT:**

\_\_\_\_\_  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:

\_\_\_\_\_  
Mayor

Approved as to form:

\_\_\_\_\_

**ITEM G-3  
ATTACHMENT 2**

City Attorney

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**RESOLUTION NO. 18-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND  
ESTABLISHING THE AMOUNT OF THE TEMPORARY RELOCATION PAYMENT,  
RENT DIFFERENTIAL PAYMENT AND PERMANENT RELOCATION PAYMENT IN  
ACCORDANCE WITH CHAPTER 11.102 OF THE RICHMOND MUNICIPAL CODE  
ENTITLED RELOCATION REQUIREMENTS FOR TENANTS OF RESIDENTIAL  
RENTAL UNITS**

---

**WHEREAS**, the “Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance” initiative was passed by the voters in the City of Richmond on November 8, 2016; and

**WHEREAS**, the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance requires that landlords seeking to recover possession under certain sections of that ordinance must make relocation payments to each tenant in amounts to be determined by the City Council through a Relocation Ordinance; and

**WHEREAS**, the provision of such relocation payments shall help to mitigate the challenges faced by tenants who are ordered to vacate a rental unit through no fault of the tenant; and

**WHEREAS**, the City Council adopted Ordinance No. 22-16 on December 20, 2016 (“the Relocation Ordinance”, codified in Chapter 11.102, Richmond Municipal Code); and

**WHEREAS**, in accordance with Section 11.102.050 of the Relocation Ordinance, the City Council adopted Resolution 115-16 (“the Relocation Payment Resolution”) to establish relocation payments for displaced tenants; and

**WHEREAS**, the Richmond Rent Board has recommended that the Relocation Ordinance be amended and that the Relocation Payment Resolution be revised; and; and

**WHEREAS**, the City Council has introduced Ordinance No. 17-XX to amend the Relocation Ordinance as recommended by the Rent Board and wished to revise the Relocation Payment Resolution as recommended by the Rent Board.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Richmond that pursuant to Chapter 11.102 of the Richmond Municipal Code, entitled Relocation Requirements for Tenants of Residential Rental Units, as amended, and as provided in adopted Rent Board Regulations, Landlords shall provide a Relocation Payment to each Eligible Tenant in the amounts set forth in the Relocation Payment Fee Schedule.

**ITEM G-3  
ATTACHMENT 3**

**Section 1. Relocation Payment Fee Schedule  
R.M.C. 11.102.050**

“Relocation Payment” means the per unit payment required to be paid by any Landlord on a pro-rata share to an Eligible Tenant who takes action to terminate a tenancy for reasons set forth in Section 11.102.030, separate from any security or other refundable deposits as defined in California Civil Code Section 1950.5.

**Permanent Relocation Payment**

Amounts shown are for calendar year 2018 and shall be adjusted annually, beginning January 1, 2019, based on the percentage change in the Consumer Price Index (All Urban Consumers – San Francisco-Oakland-San Jose region) as of November of each year.

<b>Maximum Cap per Unit Type (a) (b)</b>	<b>Owner Move-In (R.M.C. 11.100.050(a)(6))</b>		<b>Withdrawal from Rental Market (R.M.C. 11.100.050(a)(7)) or Substantial Repairs (R.M.C. 11.100.050(a)(5)) or Due to a Governmental Agency's Order for the Tenant to Vacate the Rental Unit or other Conditions Described in Section 11.102.030, RMC</b>	
	<b>Base Amount</b>	<b>Qualified Tenant Household Amount (c)</b>	<b>Base Amount</b>	<b>Qualified Tenant Household Amount (c)</b>
Studio	\$3,492	\$4,057	\$7,035	\$8,062
1 Bedroom	\$6,668	\$6,213	\$10,784	\$12,427
2+ Bedroom	\$7,343	\$8,421	\$14,635	\$16,843

Note:

- (a) If a Rental Unit is rented by one Tenant, then the entire Relocation Payment shall be paid to such Tenant. If more than one Tenant rents the Rental Unit, the Relocation Payment shall be paid on a pro-rata basis to each Eligible Tenant.
- (b) The Relocation Payment is calculated on a per Rental Unit basis, paid on a per Eligible Tenant basis, with a maximum amount per Rental Unit as shown.
- (c) A "Qualified Tenant Household" is defined in Section 11.102.020(i), Richmond Municipal Code.

**ITEM G-3  
ATTACHMENT 3**

**Temporary Relocation Payment**

Amounts shown are for calendar year 2018 and shall be adjusted annually, beginning January 1, 2019, based on the percentage change in the Consumer Price Index (All Urban Consumers – San Francisco-Oakland-San Jose region) as of November of each year.

<b>Substantial Repairs (R.M.C. 11.100.050(a)(5)) or Due to Tenant Vacating the Rental Unit Due to a Governmental Agency's Order for the Tenant to Vacate the Rental Unit</b>		
<b>Per Diem</b>	<b>Amount</b>	<b>Term (a)</b>
Hotel or Motel	\$149	<i>per day per household</i>
Meal Expenses	\$30	<i>per day per person</i>
Laundry	\$1	<i>per day per household</i>
Pet Accommodations	Cat - \$29 Dog - \$52	<i>per day per animal per day per animal</i>

**Note:**

(a) Applicable amounts shall be paid on a weekly basis, calculated on a daily basis, at a minimum. Alternatively, the Landlord may provide comparable housing located in Richmond as provided in subsection (i) of Section 11.102.030 RMC.

**RENT DIFFERENTIAL PAYMENT**

(Substantial Repairs (RMC, section 11.100.050 (a)(5) or because a tenant vacated a rental unit due to a governmental agency's order to do so)

Fair Market Rent as determined by the Richmond Housing Authority Payment Standards for its Housing Choice Voucher Program as of July 2017. These amounts may change annually.

0 Bedroom	\$1,363/month
1 Bedroom	\$1,637/month
2 Bedroom	\$2,064/month
3 Bedroom	\$2,866/month
4 Bedroom	\$3,303/month

The Rent Differential Payment shall be calculated by subtracting the lawful rent the tenant was paying at the time the tenant was served with a notice of temporary termination of tenancy or at the time the tenant vacated the rental unit due to a governmental agency order to do so and for which no notice of a termination of tenancy was served from the Fair Market Rent, as set forth above, based on the number of bedrooms of the tenant's rental unit. See Section 11.102.030, Richmond Municipal Code.

\*\*\*\*\*

Section 2. Resolution No. 115-16 is hereby rescinded.

Section 3. This Resolution shall be effective upon the effective date of Ordinance No. 17-XX N.S.

**ITEM G-3  
ATTACHMENT 3**

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

\_\_\_\_\_  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:

\_\_\_\_\_  
Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

State of California            }  
County of Contra Costa        }       : ss.  
City of Richmond               }

# 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:** At their meeting on November 15, 2017, the Rent Board considered adoption of Regulation 17-08, but expressed concerns about (1) the definition of "a reasonable period of time" for a Tenant to cure a breach of the lease or abate a nuisance; (2) whether the proposed regulation gave too much discretion to a Landlord concerning termination of tenancy for "criminal activity" and (3) if the Regulation adequately protected victims of certain crimes. In response to these concerns, staff members have prepared a revised regulation for the Board's consideration.

## 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 17-08, regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating Nuisance – Rent Program (Michael Roush 621-1202).

AGENDA ITEM NO:

**H-1.**

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# AGENDA REPORT

**DATE:** December 20, 2017

**TO:** Chair Gray and Members of the Rent Board

**FROM:** Michael Roush, Legal Counsel

**SUBJECT:** REGULATION REGARDING WRITTEN WARNING NOTICES REGARDING TERMINATION OF TENANCY FOR BREACH OF LEASE OR NUISANCE

## STATEMENT OF THE ISSUE:

At their meeting on November 15, 2017, the Rent Board considered adoption of Regulation 17-08, but expressed concerns about (1) the definition of “a reasonable period of time” for a Tenant to cure a breach of the lease or abate a nuisance; (2) whether the proposed regulation gave too much discretion to a Landlord concerning termination of tenancy for “criminal activity” and (3) if the Regulation adequately protected victims of certain crimes. In response to these concerns, staff members have prepared a revised regulation for the Board’s consideration.

## RECOMMENDED ACTION:

ADOPT Regulation 17-08, regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating Nuisance (Michael Roush 621-1202).

## FISCAL IMPACT:

There is no fiscal impact to the Rent Program by adopting this Regulation. The staff time to administer this part of the Ordinance is already part of the Board’s adopted budget.

## DISCUSSION:

The Board previously considered Regulation 17-08 at its October 18, 2017, and November 15, 2017, meetings. The Board indicated at its November meeting that staff had addressed most of the concerns expressed at the October meeting, but important questions remained. Each of these questions is listed below, with a response from staff.

1. What constitutes a “reasonable time period” to cure a breach of the lease or abate a nuisance?

One concern raised by the Board was the amount of time given to a Tenant to cure a breach of a lease or abate a nuisance before a Landlord could serve a notice to terminate a tenancy in light of the requirement of the Fair Rent Ordinance that the landlord must serve the written notice to cease “within a reasonable time period” prior to serving a notice to terminate the tenancy. Staff recommended that “a reasonable time period” mean not less than three business

days. Some Boardmembers expressed the view that three business days was not long enough. For the following reasons, staff continues to recommend that no less than three business days is a “reasonable time period” for a Tenant, typically, to cure the breach or abate the nuisance.

First, the written notice itself must include sufficient details of the alleged breach or nuisance such that a reasonable person understands what must be done in order to cure the breach or abate the nuisance. In addition, the written notice is to include any information necessary for the Tenant to determine the date, time place, witnesses present and other circumstances concerning the reason for the notice.

Second, the Regulation provides if the breach or nuisance is one that it is not reasonable to cure the breach or abate the nuisance within three business days, then the Tenant must have taken steps to cure the breach or abate the nuisance within the three business days and thereafter diligently pursue the cure/abatement. While it is true that the initial decision whether (a) the breach or nuisance is one that can be cured/abated within three business days, (b) the Tenant has taken steps within the three business days to cure/abate and/or (c) the Tenant is diligently pursuing the cure/abatement rests initially with the Landlord, ultimately, those issues would be decided by the trial court should the Landlord pursue an unlawful detainer. Presumably a landlord would undertake the time and expense of an eviction on these grounds only if the issues allowing an eviction weighed heavily in the Landlord’s favor. Thus, it is not likely that Landlords will act rashly where in fact a reasonable person would recognize that more than three business days are required to cure a breach or abate a particular nuisance.

Third, even after serving the written notice to cease as required by the Fair Rent Ordinance, state law requires an additional three day notice to cure or quit before the landlord may initiate legal action to terminate the tenancy before filing an unlawful detainer action. For example, see Code of Civil Procedure, section 1161.3 [A tenant is guilty of unlawful detainer who continues in possession after a failure to perform a condition of a lease following three days’ notice requiring the performance of such condition.] Accordingly, by State law, a Tenant will have additional time in which to cure a breach or abate a nuisance before the Landlord may pursue the matter in court.

Fourth, although the unlawful detainer process is intended to be and, at times, can be an expedited process, a savvy Tenant or a Tenant with experienced legal counsel can draw out the process for weeks, if not months. For example, once an unlawful detainer complaint is filed in Superior Court, it must be served on the Tenant, usually by personal service, although “substituted service” may suffice if efforts at personal service are not successful. Therefore, a Tenant could be served the same day as the complaint is filed or service might not have happen for days or weeks. Once a Tenant is served, the Tenant has five days to file “responsive pleadings”. Responsive pleadings, however, could contend if the complaint fails to state a cause of action (called a “demurrer”) on grounds, for example, that the Landlord has failed to follow precisely the noticing requirements under State law, the Fair Rent Ordinance or Rent Board Regulations. Demurrers are heard by noticed motions and typically are set at least 30 days out. Once a Tenant files an “answer” to the complaint, the Landlord may set the matter for trial and unlawful detainer matters are to be given a preference on the court’s calendar. There are also ways to delay this process; for example, by the use of discovery, such as serving written interrogatories, or taking the deposition of a landlord or property manager, any one of which procedures would delay the court hearing on the merits of the complaint. Of course, a Tenant whose primary language is not English or who does not have legal representation could be at a decided disadvantage. Staff notes, however, that the Rent Board has allocated

\$150,000 in this year's budget for the express purpose of providing legal assistance to community members with rent-related issues.

The unlawful detainer and eviction process due to a breach of lease or creating nuisance is summarized is outlined in Attachment 1.

2. What information must a landlord know before initiating an eviction based on criminal activity and would such eviction apply to all tenants in the unit who had not engaged in such activity?

A second concern raised by Boardmembers at the November 15, 2017, meeting concerned the provisions surrounding the termination of a tenancy for engaging in criminal activity. Specifically, Boardmembers took issue with the fact the Regulation would not require a landlord to provide a written warning to cease before initiating eviction proceedings in such a case. The proposed regulation, as written, seemed to suggest that a Landlord did not need to comply with State law procedures before initiating a termination of tenancy. Second, the language was not sufficiently specific as to what the landlord must know before proceeding without the written warning notice. Third, the Board was concerned that if there were more than one Tenant in the rental unit and not all Tenants had engaged in criminal activity, the Landlord could seek eviction of all Tenants. Finally, along those same lines, the Board had concerns that if a person in a household, such as a minor, engaged in criminal activity, this would potentially be grounds to evict all members of the household.

To address these concerns, staff has revised the language of Section 3 (a) so that in order to avoid the written notice to cease based on criminal activity, (1) the Landlord must still comply with State law procedures before initiating a termination of tenancy, (2) the Landlord has reported the activity to law enforcement, (3) law enforcement has investigated the activity, and (4) law enforcement has advised the Landlord there is probable cause that the Tenant has engaged in the criminal activity. Probable cause is the standard law enforcement must have in order to make an arrest for criminal activity. It is more than a hunch or a belief, but less than beyond a reasonable doubt, the standard needed to convict a person of a crime. Section 3 (a) has also been revised to make it clear it is only the Tenant that has engaged in the criminal activity to which the subsection applies, and not to a Tenant who has not engaged in criminal activity.

Staff has also revised subsection (b) of Section 3 to address criminal activity not by a Tenant but by a member of a Tenant's household or a guest or invitee of the Tenant. In that case, as when the Tenant has engaged in criminal activity, the Landlord must report the activity to law enforcement, who must investigate and determine there is probable cause that the person in question engaged in criminal activity. Before requirement to provide a written warning notice to the Tenant may be waived, the Landlord must find the Tenant failed to remove the person from the Tenant's household or that the person was removed but the Tenant has permitted such person to return to the household. And, as above, if there is more than one Tenant in the household, subsection (b) applies only to the Tenant whose household member, guest or invitee has engaged in the criminal activity and yet remains in the household; it does not apply to other Tenants.

3. When may tenants who are victims of certain crimes nevertheless be evicted?

A third concern was the potential eviction of victims of certain criminal activity, i.e., domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult. Section 7 of the Regulation has been revised in several respects, consistent with State law (Code of Civil Procedure, section 1161.3) to make it clear that a Landlord may not evict a victim of those enumerated crimes except under very narrow circumstances. Where there has been a protective order issued, or where a person has been named in a police report as committing one (or more) of the enumerated crimes, and either (a) the Tenant allows such person to visit the rental unit or (b) the Landlord reasonably believes the presence of such person on the property poses a physical threat to other Tenants and the Landlord has given a three days' notice to the Tenant that the person in question may not be on the premises, the Landlord may terminate the tenancy of the Tenant or a member of the Tenant's household (if applicable), notwithstanding the Tenant or member of the household was a victim of the enumerated crimes.

4. The role of "reasonableness" in the Regulation

Inherent in this Regulation is one of reasonableness. For example, a Tenant must be given a "reasonable time period" to cure a breach or abate a nuisance. If it is not "reasonable" to cure the breach or abate the nuisance within three business days, the Tenant must have taken steps to cure the breach within that time frame. A Landlord may waive the requirement for the written warning notice only if there are facts that "reasonably" demonstrate a Tenant has engaged in criminal activity by having law enforcement investigate and advise there is probable cause that a Tenant engaged in that activity. A Landlord may nevertheless evict a victim of certain crimes where the Landlord "reasonably" believes the presence of a person who has committed the crime on the property poses a physical threat to other Tenants (and, in this last example, the landlord has given the tenant/victim three days' notice to cure the violation).

Reasonableness is somewhat subjective and it is not realistic or possible to define the term with specificity in the Regulation; however, a landlord who decides to terminate a tenancy based on that standard will need to prove reasonableness to the trial court. Presumably, most Landlords will not act capriciously and will seek legal counsel as to whether they are acting reasonably before undertaking the time and expense to file an unlawful detainer action in reliance thereon.

Staff is concerned that if there are too many obstacles to prevent a Landlord from taking steps promptly to evict a Tenant who has engaged in criminal activity or abusive or violent behavior, other Tenants could be at risk. Staff believes the Regulation, as drafted, presents a fair balance between (1) the rights of Tenants to be given an opportunity to cure a breach before being evicted and (2) the rights of Landlords to evict Tenants with alacrity when circumstances so warrant. Accordingly, staff recommends Regulation 17-08 be adopted as revised.

**DOCUMENTS ATTACHED:**

Attachment 1 – Summary of Unlawful Detainer and Eviction Process

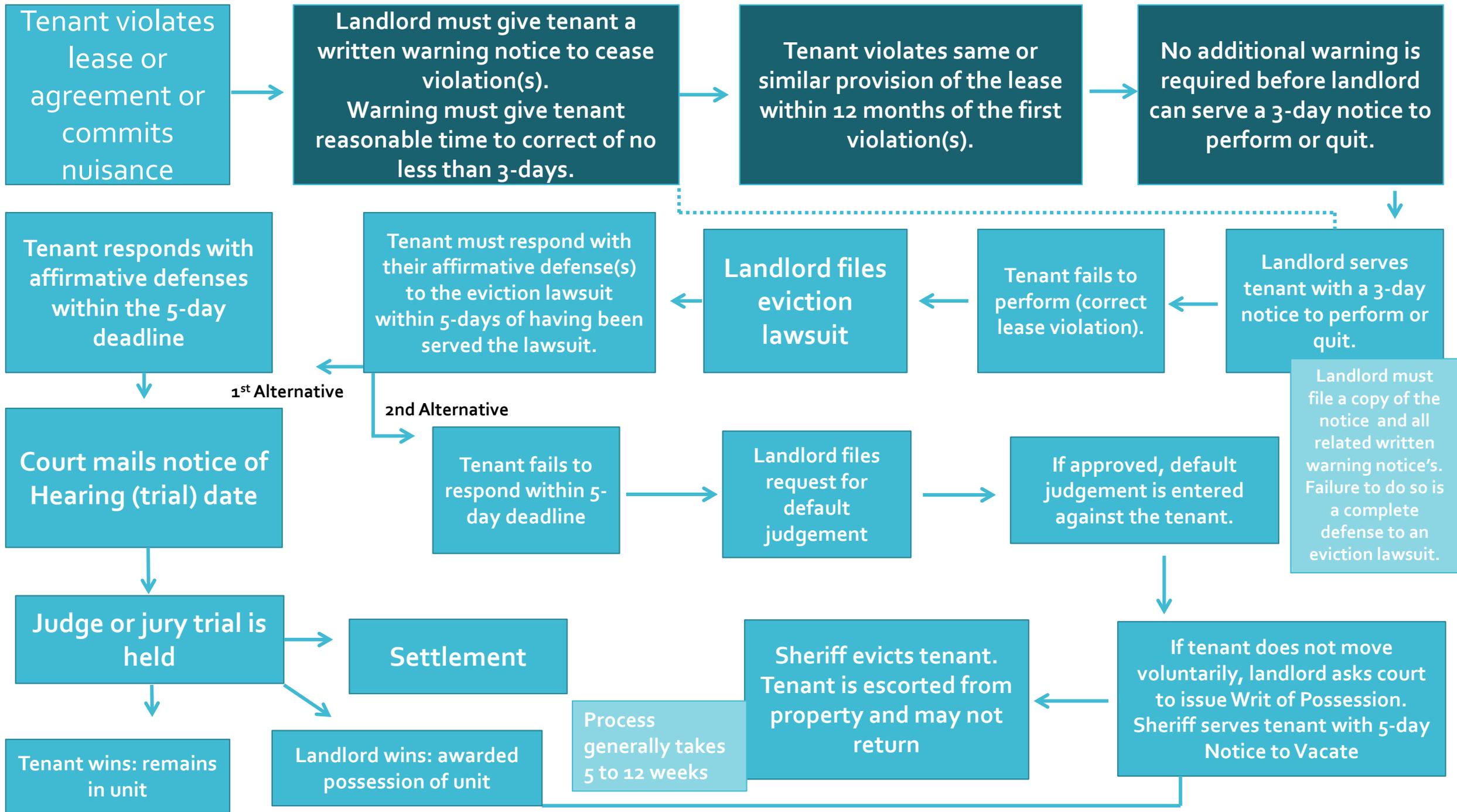
Attachment 2 – Proposed Regulation 17-08, with revisions from October 20, 2017 draft  
(Redlined)

Attachment 3 – Proposed Regulation 17-08, with revisions from October 20, 2017, draft  
(Clean)

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# General Eviction Timeline where Tenant Breaches the Lease or Creates a Nuisance

*(See next slide)*



Tenant violates lease or agreement or commits nuisance

Landlord must give tenant a written warning notice to cease violation(s).  
Warning must give tenant reasonable time to correct of no less than 3-days.

Tenant violates same or similar provision of the lease within 12 months of the first violation(s).

No additional warning is required before landlord can serve a 3-day notice to perform or quit.

Tenant responds with affirmative defenses within the 5-day deadline

Tenant must respond with their affirmative defense(s) to the eviction lawsuit within 5-days of having been served the lawsuit.

Landlord files eviction lawsuit

Tenant fails to perform (correct lease violation).

Landlord serves tenant with a 3-day notice to perform or quit.

Court mails notice of Hearing (trial) date

Tenant fails to respond within 5-day deadline

Landlord files request for default judgement

If approved, default judgement is entered against the tenant.

Judge or jury trial is held

Settlement

Tenant wins: remains in unit

Landlord wins: awarded possession of unit

Process generally takes 5 to 12 weeks

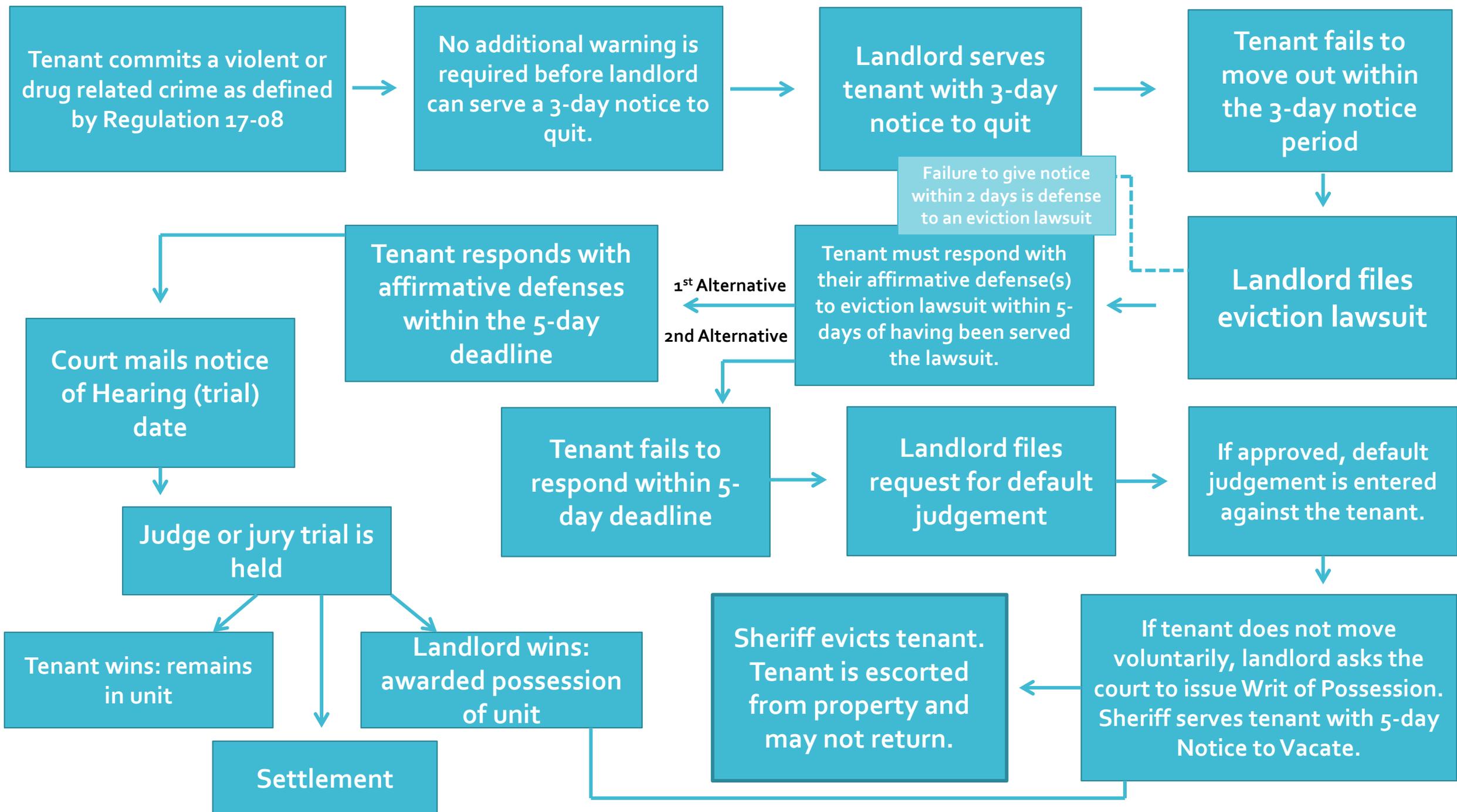
Sheriff evicts tenant. Tenant is escorted from property and may not return

If tenant does not move voluntarily, landlord asks court to issue Writ of Possession. Sheriff serves tenant with 5-day Notice to Vacate

Landlord must file a copy of the notice and all related written warning notice's. Failure to do so is a complete defense to an eviction lawsuit.

# General Eviction Timeline where Tenant Commits a Violent or Drug-Related Crime

*(See next slide)*



# ITEM H-1 ATTACHMENT 2

## RICHMOND RENT BOARD REGULATION 17-08 Regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating Nuisance

### 1. Purpose

The purpose of this Regulation 17-08 is to clarify provisions of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance concerning termination of a tenancy for a breach of the lease or creating a nuisance, and the necessity of, in most situations, providing a written warning notice to cease.

### 2. Termination of a Tenancy for Breach of Lease

The Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that a ~~landlord~~Landlord may terminate a tenancy if a ~~tenant~~Tenant has continued, after written notice to cease, to substantially violate the material terms of a rental agreement, provided such terms are reasonable, legal and have been accepted in writing by the ~~tenant~~Tenant or made part of the rental agreement. Section 11.100.050 (a) (2), RMC. Some behavior, however, may warrant a ~~landlord~~Landlord to initiate the termination of a tenancy immediately without providing a written notice to cease. This Regulation would provide that authority.

(a) Notices to cease concerning violations of the material terms of a rental agreement. Except for those items identified in paragraph 3 of this Regulation, if a ~~tenant~~Tenant violates the material terms of a rental agreement, the ~~landlord~~Landlord must provide the ~~tenant~~Tenant with a Written Warning Notice to Cease. The ~~landlord~~Landlord must serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (a), a reasonable time period shall mean either not less than three business day or, if is not reasonable that the time period to cure the violation can be accomplished within three business days, the ~~tenant~~Tenant has started to cure the violation within three business days and thereafter diligently pursues the cure of the violation. The written notice shall inform the ~~tenant~~Tenant (i) that the failure to cure the violation may result in the ~~landlord~~Landlord's initiating an eviction proceeding, (ii) of the right to request a reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reason for the notice. See Section 11.100.050 (d), RMC. If the ~~tenant~~Tenant violates the same or substantially the same material terms of the rental agreement within 12 months from the date the ~~tenant~~Tenant- received the initial Written Warning Notice to Cease, the ~~landlord~~Landlord need not serve a further Written Warning Notice to Cease but may then take action to terminate the tenancy. As to ~~tenant~~Tenants who violate paragraph 3 of this Regulation, a ~~landlord~~Landlord need not serve a Written Warning Notice to Cease for a violation of the terms of the lease ~~but may take action immediately to terminate the tenancy.~~

(b) Regarding the ~~tenant~~Tenant's right to sublease. Section 11.100.050(a)(2)(i) RMC provides: If (i) a ~~tenant~~Tenant requests the ~~landlord~~Landlord in writing to sublease the rental unit, (ii) the ~~tenant~~Tenant continues to reside in the rental unit as the ~~tenant~~Tenant's primary residence, (iii) the sublease replaces one or more departed ~~tenant~~Tenants under a rental housing agreement on a one for one basis and (iv) the ~~landlord~~Landlord fails to respond to the ~~tenant~~Tenant in writing within fourteen (14) calendar days of receipt of the ~~tenant~~Tenant's written request, the ~~tenant~~Tenant's request shall be deemed approved by the ~~landlord~~Landlord.

## ITEM H-1 ATTACHMENT 2

(1) A ~~landlord~~Landlord's reasonable refusal of the ~~tenant~~Tenant's written request may be based on, but is not limited to, the ground that the total number of occupants in a rental unit exceeds the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922, as described below:

- i. Every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two. Different rules apply in the case of "efficiency units." (See 1997 Uniform Housing Code Section 503(b), Health and Safety Code Section 17958.1.)
- ii. The standard shall be two occupants per bedroom plus one additional occupant.

### 3. Termination of a Tenancy for Engaging in Criminal Activity, including Drug-related Criminal Activity.

(a) A ~~landlord~~Landlord may initiate an action to terminate a tenancy (as provided under State law) without providing a written warning notice to cease (1) if a ~~tenant~~Tenant (i) has engaged in criminal activity, including drug-related criminal activity, in or near the ~~tenant~~Tenant's rental unit that threatens the health, safety or right to peaceful enjoyment of the property by other members of the ~~tenant~~Tenant's household or by other ~~tenant~~Tenants, (ii) has engaged in or threatened violent or abusive behavior to other members of the ~~tenant~~Tenant's household or to other ~~tenant~~Tenants or (iii) has permitted the rental unit to be used for, or to facilitate criminal activity, including drug related criminal activity, that threatens the health, safety or right to peaceful enjoyment of the property by other members of the ~~tenant~~Tenant's household or by other ~~tenant~~Tenants, (2) the ~~landlord~~Landlord has within a reasonable time reported the criminal activity or the violent or abusive behavior to law enforcement and (3) law enforcement has investigated the criminal activity or violent or abusive behavior and has advised the ~~landlord~~Landlord there is probable cause that the ~~tenant~~Tenant engaged in criminal activity or violent or abusive behavior as reported by the ~~landlord~~Landlord. Notwithstanding the foregoing, if there is ~~are~~ more than one ~~tenant~~Tenant in a rental unit, this subsection (a) shall apply only to that ~~tenant~~Tenant or those ~~tenant~~Tenants for which the law enforcement investigation determines there is probable cause that the ~~tenant~~Tenant(s) engaged in criminal activity or violent or abusive behavior.

(b) A ~~landlord~~Landlord may initiate an action to terminate a ~~tenant~~Tenant's tenancy immediately without providing a written warning notice to cease if (1) a member of ~~tenant~~Tenant's household or a guest or invitee of the ~~tenant~~Tenant engages in the activity or behavior set forth in paragraphs (i), (ii) or (iii) of subsection (a) of this Section 3, (2) the ~~landlord~~Landlord within a reasonable time has reported the activity or behavior to law enforcement, (3) law enforcement has investigated the activity or behavior and has advised the ~~landlord~~Landlord there is probable cause a member of the ~~tenant~~Tenant's household or a guest or invitee of the ~~tenant~~Tenant has engaged in the activity or behavior as reported by the ~~landlord~~Landlord and (4) the ~~tenant~~Tenant fails to demonstrate to the ~~landlord~~Landlord that

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## ITEM H-1 ATTACHMENT 2

the person who engaged in the activity or behavior has been removed from the ~~tenant~~Tenant's household or the ~~tenant~~Tenant demonstrated that the person who engaged in the activity or behavior had been removed from the ~~tenant~~Tenant's household but the ~~tenant~~Tenant has permitted such person to return to the ~~tenant~~Tenant's household. Notwithstanding the foregoing, if there ~~isare~~ more than one ~~tenant~~Tenant in the rental unit, this subsection (b) shall apply only that that ~~tenant~~Tenant or those ~~tenant~~Tenants to which paragraphs (1) and (4) of this subsection (b) applies

(c)

(e) For purposes of this Regulation, criminal activity shall include but not be limited to prostitution as defined in Penal Code, section 647 (b), criminal street gang activity as defined in Penal Code section 186.20 and following, assault and battery, as defined in Penal Code, sections 240 and 242, burglary as defined in Penal Code section 459, the unlawful use and discharge of firearms as prohibited under Penal Code section 245, sexual offenses as defined In Penal Code sections 261 and following and 286 or any other behavior that involves the imminent or actual threat to the health of safety of the ~~landlord~~Landlord or other ~~tenant~~Tenants or actual property damage in excess of \$5,000.

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(d) For purposes of this Regulation, drug related criminal activity includes, but is not limited to, the illegal manufacture, sale, distribution, use or possession with the intention to manufacture, sell, distribute or use a controlled substance as defined in Section 102 of the Controlled Substance Act [ 21 USC 802 } and/or as defined in Health and Safety Code, Section 11350, except as may be permitted under State and local law.

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(e) For purposes of this Regulation, abusive or violent behavior includes verbal as well as physical abuse or violence, including the use of racial epithets or other language, written or oral, that is customarily used to intimidate.

(f) For purposes of this Regulation, threatening refers to oral or written threats or physical gestures that communicate to a reasonable person an intent to abuse to intent to commit violence.

#### 4. Termination of a Tenancy for Creating a Nuisance

(a) **Definition.** A nuisance, as used in this Regulation, is any conduct that constitutes a nuisance as defined in subsection 4 of Section 1161 of the Civil Code of Procedure or causing substantial damage to the rental unit. Nuisance also includes conduct by the ~~tenant~~Tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance as defined in subsection 4 of Section 1161 of the Code of Civil Procedure.

(b) **Violations for Creating a Nuisance within a 12 Month Period.** If a ~~tenant~~Tenant engages in conduct that constitutes a nuisance, the ~~landlord~~Landlord must provide the ~~tenant~~Tenant with a Written Warning Notice to Cease. The ~~landlord~~Landlord mut serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (b), a reasonable time period shall mean either not less than three business days or, if it is not reasonable that the time period to abate the nuisance can be accomplished within three business days, the ~~tenant~~Tenant has taken steps to abate the nuisance within three business days and thereafter diligently pursues the abatement of the nuisance. The written notice shall inform the ~~tenant~~Tenant (i) that the failure to abate the nuisance may result in the

## ITEM H-1 ATTACHMENT 2

landlordLandlord's initiating an eviction proceeding, (ii) the right to request reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reasons for the notice. See §11.100.050 (d), RMC. If the tenantTenant creates the same or substantially similar nuisance within 12 months from the date the tenantTenant received the initial Written Warning Notice to Cease, the landlordLandlord need not serve a further Written Warning Notice to Cease, but may then take action to terminate the tenancy.

5. **Substantial Damage to the Rental Unit.** Except as provided in subsection (c) of Section 3 of this Regulation, notice that the tenantTenant has willfully caused substantial damage to the rental unit must give the tenantTenant at least 45 days after service of the notice to repair the damage or pay the landlordLandlord for the reasonable cost of repairing such damage.
6. **Illegal Use of the Rental Unit or the Property on which the Rental Unit is located.** A person who illegally sells a controlled substance in the rental unit or on the property on which the rental property is located, or uses the rental unit or the property on which the rental property is located to further that illegal purpose, is deemed to have committed the illegal act in the rental unit or on the property on which the rental unit is located, in accordance with subsection 4 of Section 1161 of the Civil Code of Procedure.

### 7. Victims of Certain Criminal Activity

(a) Notwithstanding subsection (a) and (b) of Section 3 of this Regulation, a landlordLandlord shall not take any action to terminate a tenancy under Section 11.100.050 (a)(3) RMC against a tenantTenant or a member of a tenantTenant's household who is a victim of domestic violence as defined in Section 6211 of the California Family Code, or against a tenantTenant or a member of a tenantTenant's household who is a victim of sexual assault, stalking, human trafficking or abuse or an elder or dependent adult if (i) the domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult has been documented (A) by a temporary restraining order, emergency protective order or protective order issued within the last 180 days pursuant to law that protects the tenantTenant or member of tenantTenant's household from domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (B) there is a written report, written within the last 180 days, bby a peace officer stating that the tenantTenant or a member of the tenantTenant's household has filed a report alleging that he or she is a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (ii) the person against whom the protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse or an elder or a dependent adult is not a tenantTenant of the same rental unit as the tenantTenant or a member of the tenantTenant's household.

7. (b) Notwithstanding subsection (a) of this Section 7, a landlordLandlord may terminate the tenancy of a tenantTenant or a member of a tenantTenant's household if (i) either (A) the tenantTenant allows the person against whom he protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult to visit the rental property or (B) the landlordLandlord reasonably believes the presence of the person against whom the protective order has been issued or who was named in the police report as having committing an act of domestic violence, sexual assault, stalking, human

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## ITEM H-1 ATTACHMENT 2

trafficking or abuse an elder or a dependent adult poses a physical threat to other ~~tenant~~Tenants, guests, invitees or to a ~~tenant~~Tenant's right to quiet enjoyment and (ii) the ~~landlord~~Landlord previously gave a three days notice to the ~~tenant~~Tenant to correct a violation of paragraph (i) of subsection (b) of this Section 7.

### 8. Requirement to File the Written Warning Notice to Cease with the Rent Board.

If a ~~Landlord~~Landlord seeks to terminate a tenancy on grounds of breach of lease, nuisance or failure to give access (paragraphs (2), (3) and (4) of subsection (a), Section 11.100.050 RMC), the ~~landlord~~Landlord shall file with the Rent Board, within two business days of service on the ~~tenant~~Tenant of such notice of termination of tenancy, a proof of service that such notice of termination of tenancy, along with a copy of the Written Warning Notice(s), if applicable, was served on the ~~tenant~~Tenant..

I, the undersigned, hereby certify that the foregoing Regulation was duly adopted and passed by the Richmond Rent Board in a regular meeting assembled on December \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

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Paige Roosa, Rent Board Clerk

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David Gray, Chair

Approved as to form:

**ITEM H-1  
ATTACHMENT 2**

Michael Roush, Legal Counsel

State of California                    }  
County of Contra Costa            }  
City of Richmond                    }       : ss.

**RICHMOND RENT BOARD REGULATION 17-08  
Regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of  
Lease or Creating Nuisance**

**1. Purpose**

The purpose of this Regulation 17-08 is to clarify provisions of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance concerning termination of a tenancy for a breach of the lease or creating a nuisance, and the necessity of, in most situations, providing a written warning notice to cease.

**2. Termination of a Tenancy for Breach of Lease**

The Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that a Landlord may terminate a tenancy if a Tenant has continued, after written notice to cease, to substantially violate the material terms of a rental agreement, provided such terms are reasonable, legal and have been accepted in writing by the Tenant or made part of the rental agreement. Section 11.100.050 (a) (2), RMC. Some behavior, however, may warrant a Landlord to initiate the termination of a tenancy immediately without providing a written notice to cease. This Regulation would provide that authority.

- (a) Notices to cease concerning violations of the material terms of a rental agreement. Except for those items identified in paragraph 3 of this Regulation, if a Tenant violates the material terms of a rental agreement, the Landlord must provide the Tenant with a Written Warning Notice to Cease. The Landlord must serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (a), a reasonable time period shall mean either not less than three business days or, if it is not reasonable that the time period to cure the violation can be accomplished within three business days, the Tenant has started to cure the violation within three business days and thereafter diligently pursues the cure of the violation. The written notice shall inform the Tenant (i) that the failure to cure the violation may result in the Landlord's initiating an eviction proceeding, (ii) of the right to request a reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reason for the notice. See Section 11.100.050 (d), RMC. If the Tenant violates the same or substantially the same material terms of the rental agreement within 12 months from the date the Tenant received the initial Written Warning Notice to Cease, the Landlord need not serve a further Written Warning Notice to Cease but may then take action to terminate the tenancy. As to Tenants who violate paragraph 3 of this Regulation, a Landlord need not serve a Written Warning Notice to Cease for a violation of the terms of the lease.
- (b) Regarding the Tenant's right to sublease. Section 11.100.050(a)(2)(i) RMC provides: If (i) a Tenant requests the Landlord in writing to sublease the rental unit, (ii) the Tenant continues to reside in the rental unit as the Tenant's primary residence, (iii) the sublease replaces one or more departed Tenants under a rental housing agreement on a one for one basis and (iv) the Landlord fails to respond to the Tenant in writing within fourteen (14) *calendar* days of receipt of the Tenant's written request, the Tenant's request shall be deemed approved by the Landlord.

(1) A Landlord's reasonable refusal of the Tenant's written request may be based on, but is not limited to, the ground that the total number of occupants in a rental unit

## ITEM H-1 ATTACHMENT 3

exceeds the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922, as described below:

- i. Every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two. Different rules apply in the case of "efficiency units." (See 1997 Uniform Housing Code Section 503(b), Health and Safety Code Section 17958.1.)
- ii. The standard shall be two occupants per bedroom plus one additional occupant.

### **3. Termination of a Tenancy for Engaging in Criminal Activity, including Drug-related Criminal Activity.**

- (a) A Landlord may initiate an action to terminate a tenancy (as provided under State law) without providing a written warning notice to cease (1) if a Tenant (i) has engaged in criminal activity, including drug-related criminal activity, in or near the Tenant's rental unit that threatens the health, safety or right to peaceful enjoyment of the property by other members of the Tenant's household or by other Tenants, (ii) has engaged in or threatened violent or abusive behavior to other members of the Tenant's household or to other Tenants or (iii) has permitted the rental unit to be used for, or to facilitate criminal activity, including drug related criminal activity, that threatens the health, safety or right to peaceful enjoyment of the property by other members of the Tenant's household or by other Tenants, (2) the Landlord has within a reasonable time reported the criminal activity or the violent or abusive behavior to law enforcement and (3) law enforcement has investigated the criminal activity or violent or abusive behavior and has advised the Landlord there is probable cause that the Tenant engaged in criminal activity or violent or abusive behavior as reported by the Landlord. Notwithstanding the foregoing, if there is more than one Tenant in a rental unit, this subsection (a) shall apply only to that Tenant or those Tenants for which the law enforcement investigation determines there is probable cause that the Tenant(s) engaged in criminal activity or violent or abusive behavior.
- (b) A Landlord may initiate an action to terminate a Tenant's tenancy without providing a written warning notice to cease if (1) a member of Tenant's household or a guest or invitee of the Tenant engages in the activity or behavior set forth in paragraphs (i), (ii) or (iii) of subsection (a) of this Section 3, (2) the Landlord within a reasonable time has reported the activity or behavior to law enforcement, (3) law enforcement has investigated the activity or behavior and has advised the Landlord there is probable cause a member of the Tenant's household or a guest or invitee of the Tenant has engaged in the activity or behavior as reported by the Landlord and (4) the Tenant fails to demonstrate to the Landlord that the person who engaged in the activity or behavior has been removed from the Tenant's household or the Tenant demonstrated that the person who engaged in the activity or behavior had been removed from the Tenant's household but the Tenant has permitted such person to return to the Tenant's household. Notwithstanding the foregoing, if there is more than one Tenant in the rental unit, this subsection (b) shall apply only to that Tenant or those Tenants to which paragraphs (1) and (4) of this subsection (b) applies.

## ITEM H-1 ATTACHMENT 3

- (c) For purposes of this Regulation, criminal activity shall include but not be limited to prostitution as defined in Penal Code, section 647 (b), criminal street gang activity as defined in Penal Code section 186.20 and following, assault and battery, as defined in Penal Code, sections 240 and 242, burglary as defined in Penal Code section 459, the unlawful use and discharge of firearms as prohibited under Penal Code section 245, sexual offenses as defined In Penal Code sections 261 and following and 286 or any other behavior that involves the imminent or actual threat to the health of safety of the Landlord or other Tenants or actual property damage in excess of \$5,000.
- (d) For purposes of this Regulation, drug related criminal activity includes, but is not limited to, the illegal manufacture, sale, distribution, use or possession with the intention to manufacture, sell, distribute or use a controlled substance as defined in Section 102 of the Controlled Substance Act [21 USC 802] and/or as defined in Health and Safety Code, Section 11350, except as may be permitted under State and local law.
- (e) For purposes of this Regulation, abusive or violent behavior includes verbal as well as physical abuse or violence, including the use of racial epithets or other language, written or oral, that is customarily used to intimidate.
- (f) For purposes of this Regulation, threatening refers to oral or written threats or physical gestures that communicate to a reasonable person an intent to abuse to intent to commit violence.

#### 4. Termination of a Tenancy for Creating a Nuisance

- (a) Definition. A nuisance, as used in this Regulation, is any conduct that constitutes a nuisance as defined in subsection 4 of Section 1161 of the Civil Code of Procedure or causing substantial damage to the rental unit. Nuisance also includes conduct by the Tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance as defined in subsection 4 of Section 1161 of the Code of Civil Procedure.
- (b) Violations for Creating a Nuisance within a 12 Month Period. If a Tenant engages in conduct that constitutes a nuisance, the Landlord must provide the Tenant with a Written Warning Notice to Cease. The Landlord must serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (b), a reasonable time period shall mean either not less than three business days or, if it is not reasonable that the time period to abate the nuisance can be accomplished within three business days, the Tenant has taken steps to abate the nuisance within three business days and thereafter diligently pursues the abatement of the nuisance. The written notice shall inform the Tenant (i) that the failure to abate the nuisance may result in the Landlord's initiating an eviction proceeding, (ii) the right to request reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reasons for the notice. See §11.100.050 (d), RMC. If the Tenant creates the same or substantially similar nuisance within 12 months from the date the Tenant received the initial Written Warning Notice to Cease, the Landlord need not serve a further Written Warning Notice to Cease, but may then take action to terminate the tenancy.

## ITEM H-1 ATTACHMENT 3

5. **Substantial Damage to the Rental Unit.** Except as provided in subsection (c) of Section 3 of this Regulation, notice that the Tenant has willfully caused substantial damage to the rental unit must give the Tenant at least 45 days after service of the notice to repair the damage or pay the Landlord for the reasonable cost of repairing such damage.
6. **Illegal Use of the Rental Unit or the Property on which the Rental Unit is located.** A person who illegally sells a controlled substance in the rental unit or on the property on which the rental property is located, or uses the rental unit or the property on which the rental property is located to further that illegal purpose, is deemed to have committed the illegal act in the rental unit or on the property on which the rental unit is located, in accordance with subsection 4 of Section 1161 of the Civil Code of Procedure.
7. **Victims of Certain Criminal Activity**
  - (a) Notwithstanding subsection (a) and (b) of Section 3 of this Regulation, a Landlord shall not take any action to terminate a tenancy under Section 11.100.050 (a)(3) RMC against a Tenant or a member of a Tenant's household who is a victim of domestic violence as defined in Section 6211 of the California Family Code, or against a Tenant or a member of a Tenant's household who is a victim of sexual assault, stalking, human trafficking or abuse or an elder or dependent adult if (i) the domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult has been documented (A) by a temporary restraining order, emergency protective order or protective order issued within the last 180 days pursuant to law that protects the Tenant or member of Tenant's household from domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (B) there is a written report, written within the last 180 days, by a peace officer stating that the Tenant or a member of the Tenant's household has filed a report alleging that he or she is a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (ii) the person against whom the protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse or an elder or a dependent adult is not a Tenant of the same rental unit as the Tenant or a member of the Tenant's household.
  - (b) Notwithstanding subsection (a) of this Section 7, a Landlord may terminate the tenancy of a Tenant or a member of a Tenant's household if (i) either (A) the Tenant allows the person against whom he protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult to visit the rental property or (B) the Landlord reasonably believes the presence of the person against whom the protective order has been issued or who was named in the police report as having committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse an elder or a dependent adult poses a physical threat to other Tenants, guests, invitees or to a Tenant's right to quiet enjoyment and (ii) the Landlord previously gave a three days' notice to the Tenant to correct a violation of paragraph (i) of subsection (b) of this Section.
8. **Requirement to File the Written Warning Notice to Cease with the Rent Board.**

If a Landlord seeks to terminate a tenancy on grounds of breach of lease, nuisance or failure to give access (paragraphs (2), (3) and (4) of subsection (a), Section 11.100.050 RMC), the Landlord shall file with the Rent Board, within two business days of service on the Tenant of such notice of termination of tenancy, a proof of service that such notice of termination of





# 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

- |   |  |                                 |
|---|--|---------------------------------|
| <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:  
**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

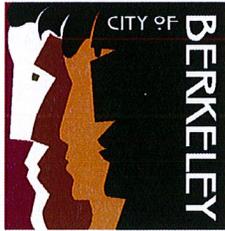
Whereas, the percentage increase in the CPI from 2016-2017, as set forth in recital 2, was 3.4%; and

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.

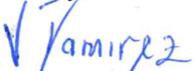
Applying AGAs to the actual rent charged, tracking and enforcing compliance of banking requirements made the administration of the Ordinance more expensive. The Program had to dedicate a substantial amount of time to manually entering banking notice information and rent increase notice information into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

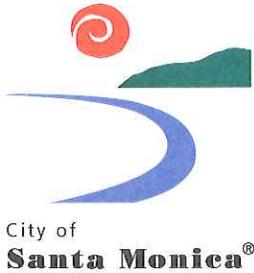
In 2016, the East Palo Alto voters amended the Ordinance by adopting new language regulating rents based on the maximum allowable rent rather than actual rent and eliminating banking requirements. This has reduced reporting and data entry requirements. To still protect tenants against major increases 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



**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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# 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:** At their meeting on October 18, 2017, the Rent Board considered approval of a Reimbursement Agreement with the City to repay the City for funds advanced to the Rent Program since December 2016. Boardmembers had concerns that they would be unable to meet certain obligations under that Agreement as drafted, particularly with respect to the two-year repayment period. Rent Program staff members discussed the agreement further with the City Manager and Finance Director and are presenting a revised agreement that is anticipated to adequately meet the needs of both entities.

## 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:** (1) RECEIVE an update from staff concerning billing and collection of the Fiscal Year 2016-17 and Fiscal Year 2017-18 Rental Housing Fees; and (2) APPROVE by motion a Reimbursement Agreement between the Rent Board and the City of Richmond – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

**I-1.**

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# AGENDA REPORT

**DATE:** December 20, 2017

**TO:** Chair Gray and Members of the Rent Board

**FROM:** Nicolas Traylor, Executive Director  
Michael Roush, Legal Counsel  
Paige Roosa, Deputy Director

**SUBJECT:** REIMBURSEMENT AGREEMENT BETWEEN RENT BOARD AND CITY OF RICHMOND

## STATEMENT OF THE ISSUE:

At their meeting on October 18, 2017, the Rent Board considered approval of a Reimbursement Agreement with the City to repay the City for funds advanced to the Rent Program since December 2016. Boardmembers had concerns that they would be unable to meet certain obligations under that Agreement as drafted, particularly with respect to the two-year repayment period. Rent Program staff members discussed the agreement further with the City Manager and Finance Director and are presenting a revised agreement that is anticipated to adequately meet the needs of both entities.

## RECOMMENDED ACTION:

(1) RECEIVE an update from staff concerning billing and collection of the Fiscal Year 2016-17 and Fiscal Year 2017-18 Rental Housing Fees; and (2) APPROVE by motion a Reimbursement Agreement between the Rent Board and the City of Richmond – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

## FISCAL IMPACT:

The Reimbursement Agreement provides the documentation to enable the City to be reimbursed by the Rent Board through collection of the Residential Rental Housing Fee. To date, the Rent Program Department has expended approximately \$1,109,460 and collected approximately \$353,469 in Rental Housing Fee revenue (Attachment 1).<sup>1</sup>

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<sup>1</sup> The Rental Housing Fee is not due (postmarked) until January 2, 2018. As such, staff members expect the amount of funds collected to increase significantly in the near-term.

**DISCUSSION:**

Status of Rental Housing Fee Billing and Collections

As of December 13, 2017, Rent Program staff members, with assistance from the City's IT Department, have invoiced approximately 6,790 individuals and ownership entities who collectively own 21,178 units.<sup>2</sup>

Payment of the Rental Housing Fee is due (postmarked) no later than January 2, 2018, after which penalties for late payment will begin to accrue in accordance with Ordinance 16-17, adopted by the City Council at their meeting on July 25, 2017 (Attachment 2).

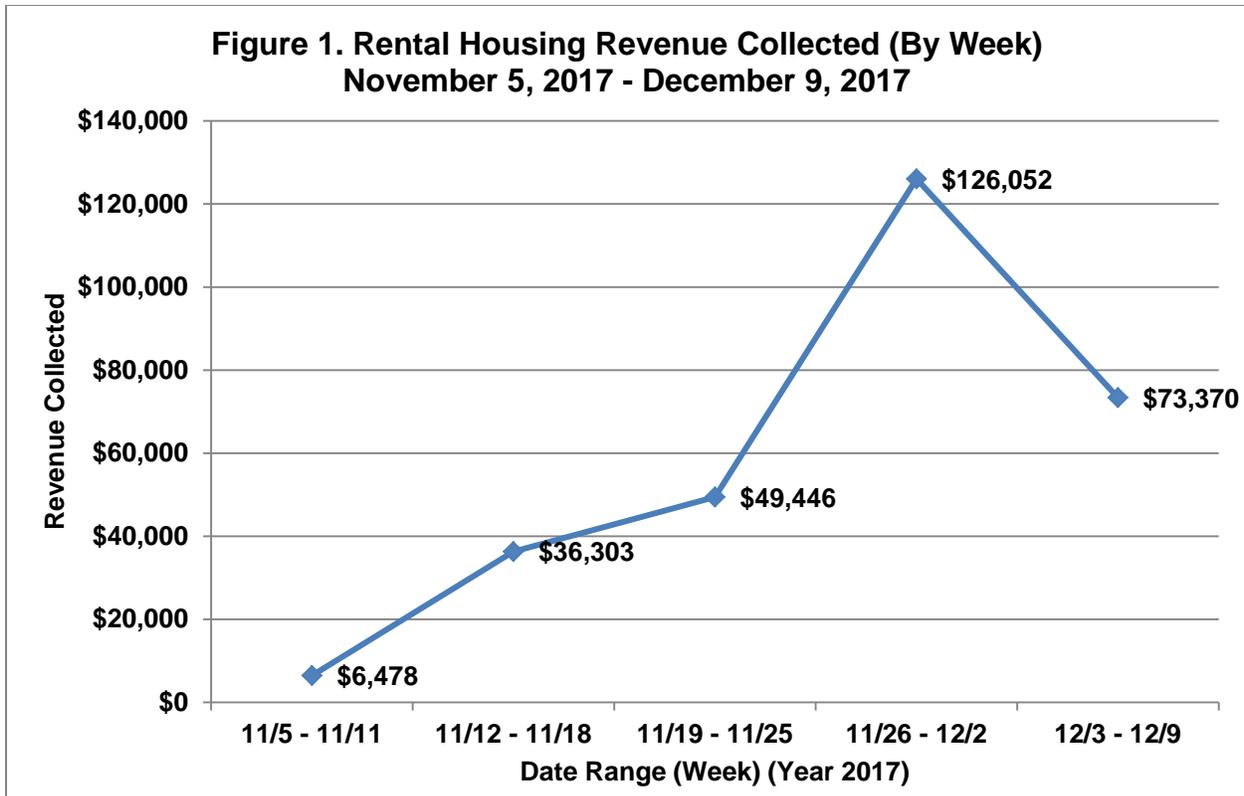
As of December 13, 2017, the Rental Housing Fee has been collected from 2,438 rental units, which sums to \$353,469 in total revenue. While this translates to a low overall collection rate of 11.5% (with respect to the number of units for which the Rental Housing Fee was billed), it is important to note that some property owners may be waiting until January to pay the fee, allowing for the expense to be recorded in the new year for accounting purposes. Additionally, the Rent Program is awaiting payment from several large developments. Payments from these large property owners will have a significant impact on collection rates. For example, one development consists of over 1,000 rental units, resulting in an invoice for over \$146,000. Once payment from this development alone is received, total collection rates will increase approximately five percentage points.

Figure 1 on the following page illustrates the amount of Rental Housing Fee revenue collected each week since the first invoices were mailed on November 3, 2017. Here, one can see the impact that the receipt of payment from large developments has on revenue collection. For example, during the week of 11/26 – 12/2, the Rent Program received payment from the owners of Heritage Park at Hilltop Apartments, which includes 192 rental units.

Robust and ongoing collection efforts will be necessary in order to compel compliance and increase collection rates. Rent Program staff members will continue to keep the Rent Board informed of the status of collection, especially following the fee due date.

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<sup>2</sup> Rent Boardmembers may recall the Rental Housing Fee was calculated based on an estimated total 24,797 applicable rental units. This figure was arrived at using County Assessor Data. The data source for initial billing of the Rental Housing Fee was those rental units identified by the administrators of the City's Residential Rental Inspection Program (RRIP). Rent Program staff members anticipate that there is much work to be done to identify the delta of those units identified by the RRIP and those enrolled in the Rent Program. As these units are identified, invoices will be sent with payment due thirty days after billing.



Original Reimbursement Agreement

As presented in September, the original Reimbursement Agreement provided that the Board would make the City whole as soon as practically possible but no later than within two years of the date of the City’s expenditures, unless extended by the City. Although the City Council adopted a Rent Program Fee consistent with the Board’s adopted budgets, the Rent Program only began collecting revenue in November 2017. Since the City has been providing startup funds to the Rent Program department since December 2016, and the Rental Housing Fee is not due until January 2, 2018, the Board was concerned that, as a practical matter, the Board may not have adequate funding to “make the City whole” within two years from the time the City made the expenditures, as required by the proposed agreement.

Rent Program staff discussed those concerns with the City Manager and Finance Director, who were sympathetic to the concerns raised by the Board. Accordingly, the City Manager sent the Board’s Executive Director language that seeks to clarify the obligation to reimburse the City, which has been incorporated into the revised Agreement.

Revised Reimbursement Agreement

As revised, the Reimbursement Agreement provides the Board will make the City whole by reimbursing the City for advanced funds “as soon as possible” and will pay invoices

so long as there are funds available to do so, with the caveat that the amounts “should” be paid within two years from the invoiced date. The Rent Board received its first invoice from the City on October 6, 2017, in the amount of \$347,616. Accordingly, the expectation is that the Rent Program Department would reimburse the City that amount by no later than October 6, 2019. Staff members are confident that, absent extenuating circumstances, the Rent Board should be able to remit payment in full by that date, as the Board will have collected Rental Housing Fees for Fiscal Years 2016-17, 2017-18, and 2018-19.

The table below provides a summary of the amount of funds expended by the Rent Program Department in Fiscal Years 2016-17 and 2017-18 in relation to the amount of Rental Housing Fee revenue collected. This information reveals that the revenue collected as of December 13, 2017, is enough to offset approximately 32 percent of the funds expended since the Rent Program was established. It is important to note, however, that the current billing cycle must generate enough revenue to support the Department through June 2018 (the end of the fiscal year.) Since the next billing cycle will likely not occur until fall 2018, staff members anticipate additional cash advances from the General Fund will be necessary to support operations until a reserve is generated. The goal remains, however, for the Rent Program to be self-sustaining without the need for financial assistance from the City’s General Fund in the long-term.

**Table 1. Financial Summary**

Fiscal Year	Budgeted Amount (Excluding Reserves)	Funds Expended (as of 12/15/17)	Revenue Collected (as of 12/13/17)	
			\$	% of Expended Funds
2016-17	\$920,347	\$789,592	\$114,573	14.5%
2017-18 (Partial)	\$1,940,271	\$319,868 <sup>3</sup>	\$238,896	75% <sup>4</sup>
<b>Total</b>	<b>\$2,860,618</b>	<b>\$1,109,460</b>	<b>\$353,469</b>	<b>32%</b>

<sup>3</sup> Note funds expended in Fiscal Year 2017-18 are only as of 12/15/17; this amount does not reflect the projected amount of expended funds for the entire Fiscal Year.

<sup>4</sup> Amount of expended funds and revenue collected reflect only 5.5 months of the 12-month fiscal year.

**DOCUMENTS ATTACHED:**

Attachment 1 – Fiscal Years 2016-17 and 2017-18 Budget Summary

Attachment 2 – Ordinance No. 16-17, An Ordinance of the City Council of the City of Richmond Creating the Residential Rental Housing Fee in the Master Fee Schedule for Services Rendered by the City of Richmond Rent Program

Attachment 3 – Reimbursement Agreement between the Rent Board and City of Richmond (redlined)

Attachment 4 – Reimbursement Agreement between the Rent Board and City of Richmond (clean)

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**RENT PROGRAM DEPARTMENT BUDGET SUMMARY**

**FISCAL YEAR 2016-17**

<b>Budget Category</b>	<b>Budgeted Amount</b>	<b>Expended Amount</b>	<b>Percent Expended</b>
Salaries, Wages, and Benefits	\$392,876.00	\$402,292.02	102%
Cost Pool and Risk Management	\$105,620.00	\$105,620.00	100%
Professional Services (including legal services)	\$298,500.00	\$202,046.52	68%
IT Services	\$58,851.00	\$66,607.20	113%
Other Operating Expenses	\$64,500.00	\$13,026.31	20%
<b>Total (excluding reserves)</b>	<b>\$920,347.00</b>	<b>\$789,592.05</b>	<b>86%</b>

**FISCAL YEAR 2017-18 (PARTIAL - AS OF 12/15/17)**

<b>Budget Category</b>	<b>Budgeted Amount</b>	<b>Expended Amount</b>	<b>Percent Expended</b>
Salaries, Wages, and Benefits	\$978,953.00	\$201,958.98	21%
Cost Pool and Risk Management	\$181,710.00	\$54,113.00	30%
IT Services	\$48,183.00	\$0.00	0%
Legal Costs	\$430,000.00	\$28,500.00	7%
Other Operating Expenses	\$146,000.00	\$28,652.43	20%
Professional and Administrative Services	\$155,425.00	\$6,643.60	4%
<b>Total (excluding reserves)</b>	<b>\$1,940,271.00</b>	<b>\$319,868.01</b>	<b>16%</b>

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**ORDINANCE NO. 16-17 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND  
CREATING THE RESIDENTIAL RENTAL HOUSING FEE IN THE MASTER FEE  
SCHEDULE FOR SERVICES RENDERED BY THE CITY OF RICHMOND RENT  
PROGRAM**

The City Council of the City of Richmond do ordain as follows:

**SECTION 1.** Section 2.34.040 of the City of Richmond Municipal Code is hereby amended to include the following fees within the various categories:

Description	Percentage of Costs to be Recovered	Proposed Fees
RMC 6.38.110 Section 5 allows the City to collect fees solely to defray actual cost. RMC 6.02.180		
<b>RENT PROGRAM RESIDENTIAL RENTAL HOUSING FEE</b>		
Administration of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (RMC Chapter 11.100)	100%	As determined by City Council resolution and as set forth in the Master Fee Schedule

**SECTION 2.** Pursuant to Section 2.34.040 of the Municipal Code of the City of Richmond which provides for the establishment of a Master Fee Schedule for the fees to be charged by the various City departments for City services, the City Council of the City of Richmond hereby amends the Master Fee Schedule to create the Residential Rental Housing Fee in accordance with Section 11.100.060(l) of the Municipal Code of the City of Richmond.

**SECTION 3.** Delinquency. Any Landlord as defined in Section 11.100.030(f) of the Municipal Code of the City of Richmond who fails to file any required statement and pay the amount of the Residential Rental Housing Fee prescribed by City Council resolution within thirty (30) days after it becomes due shall be deemed delinquent and shall be assessed the following penalty:

- (1) Ten percent of the Residential Rental Housing Fee if the payment is made within one to thirty days after it became delinquent;
- (2) Twenty-five percent of the Residential Rental Housing Fee if the payment is made within thirty-one to sixty days after it became delinquent; and
- (3) Fifty percent of the Residential Rental Housing Fee if the payment is made more than sixty days after it became delinquent.

Such penalty shall become part of the Residential Rental Housing Fee then required to be paid under this Section 2.34.040 and enabling resolution, and if such delinquency continues thereafter, such person shall be subject to all further penal provisions and remedies contained in this chapter.

**SECTION 4.** City entitled to payment.

- (a) The City shall be entitled to payment from any Landlord as defined in Section 11.100.030(f) of the Municipal Code of the City of Richmond for services rendered by the City of Richmond Rent Program.
- (b) If any Landlord fails to pay the Residential Rental Housing Fee, the Director of Finance shall mail the Landlord a final request for payment for the amounts owed, plus penalties, such as those described in Section 3. The final request shall include a warning notice that

if the Residential Rental Housing Fee is not paid within thirty (30) days, they will be placed on the real property tax rolls. The warning notice shall include information concerning the additional administrative charges that will become due if a lien is recorded against the property, and that the City shall assess the property on the property owner's next property tax statement if the Residential Rental Housing Fee plus any applicable penalties charged to each owner according to the most recent property assessment rolls of the County Assessor is unpaid.

- (c) If the payment is not made by the owner within thirty (30) days, the Director of Finance shall send a certified notice which shall contain the name or names of the owner, the address of the property served, the period of the service, and the amounts due plus penalties.
- (d) The notice shall set a time and place for an administrative hearing before the Director of Finance and shall be mailed to each person to whom the described property for which the service is rendered is assessed on the most recent property assessment rolls of the County Assessor. The notice shall be mailed not less than fifteen (15) days prior to the date of the hearing.
- (e) The Director of Finance shall conduct a hearing. The Director of Finance shall determine whether an assessment should be imposed upon the owner's property.
- (f) If the Director of Finance approves the delinquent charges against the owner of the property and the owner fails to pay said charges, an assessment on the real property for which the service was rendered will be recorded with the Recorder of Contra Costa County. The recorded assessment shall carry an additional administrative charge of \$45.00.
- (g) Delinquent charges which remain unpaid by the owner shall constitute a special assessment against the property to which the service was rendered and shall be collected at such time as established by the County Assessor for inclusion in the next property tax assessment.
- (h) The Director of Finance shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent charges plus penalties as described in Section 3 and administrative charges, plus an assessment charge of \$5.00 as a special assessment against the parcel of property situated within the City to which the service was rendered. The assessment shall be collected at the same time and in the same manner as municipal taxes are collected. The assessment shall be subordinate to all existing special assessment previously imposed on the property. It shall have priority over other liens except for those State, County, and municipal taxes with which it shall have parity. The assessment shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

**SECTION 5.** Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each and every section, subsection, phrase or clause of this ordinance irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared invalid or unconstitutional, whether on its face or as applied.

**SECTION 6.** This ordinance shall be effective 30 days after passage and adoption.

\*\*\*\*\*

First read at a regular meeting of the Council of the City of Richmond held July 18, 2017, and finally passed and adopted at a regular meeting thereof held July 25, 2017, by the following vote:

AYES: Councilmembers Choi, Martinez, Myrick, Willis, Vice Mayor Beckles, and Mayor Butt.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

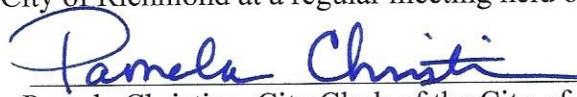
**PAMELA CHRISTIAN**  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:  
**TOM BUTT**  
Mayor

Approved as to form:  
**BRUCE GOODMILLER**  
City Attorney

State of California            }  
County of Contra Costa        }       : ss.  
City of Richmond                }

I certify that the foregoing is a true copy of **Ordinance No. 16-17 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 25, 2017.

  
\_\_\_\_\_  
Pamela Christian, City Clerk of the City of Richmond

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## ITEM I-1 ATTACHMENT 3

Page 1 of 4

### REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the "Agreement") is entered into on this ~~Dec~~<sup>Sept</sup>ember \_\_\_\_, 2017, between the Richmond Rent Board (the "Rent Board") and the City of Richmond, a municipal corporation (the "City") to pay for services and advanced funds provided by the City to the Rent Board to carry out its powers, duties, and functions as set forth in Measure L, now codified in Chapter 11.100, Richmond Municipal Code, and in other rent control/eviction protection ordinances adopted by the City ("Rent Program").

#### I. RECITALS

- A. Whereas, Measure L (The Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance) was approved by the voters on November 8, 2016 and became effective on December 30, 2016; and
- B. Whereas, Measure L establishes a Richmond Rent Board, requires the City to perform the duties of the Board during the transition period before Board Members are appointed and an Executive Director is hired, and requires the City to provide infrastructural support to the Board as it would to any other City Department; and
- C. Whereas, all City departments pay a cost allocation for infrastructural and administrative support; and
- D. Whereas, since November 8, 2016, the City has provided to the Rent Board, and continues to provide, the following services, including but not limited to: consultants, employees and staff, start-up costs and fees, overhead, IT services, administrative services, legal assistance; and
- E. Whereas, since November 8, 2016, the City has through its General Fund advanced on behalf of the Board, and continues to advance on behalf of the Board, funds to operate the Rent Program; and
- F. Whereas, the City will charge and collect fees ("Rent Program Fees") to landlords to recover costs for operating the Rent Program, the City Council adopted Rent Program Fees on July 25, 2017, and the Rent Program is beginning to collect but has not yet collected all of the Rent Program Fees; and
- G. Whereas, the City and the Rent Board desire to enter into this Agreement: (1) to set forth activities, services and facilities which the City will provide and make available to the Rent Board in furtherance of Rent Program; and (2) to provide that the Rent Board will reimburse the City for any and all costs and expenses incurred by it on behalf of the Rent Board; ~~and-~~
- H. Whereas, the City and the Rent Board intend that the Rent Program be self-sufficient and not require either permanent funding or cash advances from the General Fund of the City of Richmond; and
- I. Whereas, in taking steps to implement the Fair Rent and Just Cause for Eviction ordinance following voter approval in November 2016, it was necessary for the Rent Program to make expenditures prior to the time when the Rent Program could meet its annual revenue requirements through program registration fees and other funding sources that the Rent

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**ITEM I-1  
ATTACHMENT 3**

Page 2 of 4

Board may ultimately authorize, and these expenditures were necessarily advanced by the General Fund; and

G.J. Whereas, the Rent Board and the City acknowledge that, due to the billing cycle that may be adopted by the Rent Board, the General Fund may need to advance cash from time to time to meet working capital requirements of the Rent Program, and such cash advances are anticipated especially in the early years of the program.

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**II. AGREEMENTS**

In exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Rent Board agree as follows:

**1. RECITALS**

The parties hereby acknowledge and confirm the Recitals in this Agreement.

**2. REIMBURSEMENT**

- (a) The City may provide for the Rent Board such staff assistance, supplies, technical services, and other services and facilities of the City as the Rent Board may require in carrying out the Rent Program. Such assistance and services may include the services of City employees and consultants.
- (b) The City may, but is not required to, advance funds to the Rent Board or to expend funds on behalf of the Rent Board to carry out the Rent Program, particularly during the initial months of the Rent Program's operation prior to the receipt of any Rent Program Fees. The Rent Board shall adopt a budget to cover the estimated Rent Program expenditures, including adequate reserves to cover any shortfalls in revenue, based on the level of services reflected in the adopted budget. The City and the Rent Board agree that the City is not required to advance funds to the Rent Board from its General Fund, and that the long term goal is for the Rent Program to fund its operations without advances from the City General Fund.
- (c) The City will establish a separate Rent Program fund for the Rent Board and will keep a separate accounting for all of the Rent Board's revenues, expenditures, and fund balances. The revenues will generally consist of the Rent Program Fees, which will be deposited into this fund. The expenditures will generally consist of services paid, provided, and invoiced by the City and will be directly charged to the Rent Program fund.
- (d) The City will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof in order that an accurate record of the Rent Board's fund balance and liability to the City can be ascertained. The City shall periodically, and at a minimum annually, submit to the Rent Board a statement of the costs incurred by the City in rendering activities and services to the Rent

**ITEM I-1  
ATTACHMENT 3**

Page 3 of 4

Board pursuant to this Agreement. The City will submit an initial invoice for costs incurred from November 2016 through June 30, 2017.

- (e) From the Rent Program fund, the Rent Board shall reimburse the City for any and all costs incurred for services and facilities provided by the City pursuant to this Agreement, including but not limited to the proration of administrative, overhead, IT, salary and benefits expenses provided, and any other cost allocations for infrastructural and administrative support, as well as consultant, attorney, and risk management expenses attributed to services rendered for the Rent Board.
  
- (f) It is the express intent of the parties that the City shall be entitled to reimbursement of any and all costs incurred by the City under this Agreement. The Rent Board will make the City whole as soon as practically possible but in no event later than within two years of the date of the City's expenditures, unless extended by the City. The Rent Board will make the City whole and reimburse the City's General Fund for all funds that are advanced as soon as possible, and will pay all invoices in a timely manner so long as it has funds available to do so; however, in no instance should amounts invoiced by the City remain unpaid by the Rent Board for more than a two-year period.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

Richmond Rent Board:

CITY:

By: \_\_\_\_\_  
\_\_\_\_\_, Rent Board, Chair  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Bill Lindsay, City Manager  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Bruce Reed Goodmiller

**ITEM I-1  
ATTACHMENT 3**

Page 4 of 4

City Attorney

Approved as to form:

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Rent Board Attorney

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the “Agreement”) is entered into on this December \_\_\_\_, 2017, between the Richmond Rent Board (the “Rent Board”) and the City of Richmond, a municipal corporation (the “City”) to pay for services and advanced funds provided by the City to the Rent Board to carry out its powers, duties, and functions as set forth in Measure L, now codified in Chapter 11.100, Richmond Municipal Code, and in other rent control/eviction protection ordinances adopted by the City (“Rent Program”).

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- A. Whereas, Measure L (The Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance) was approved by the voters on November 8, 2016 and became effective on December 30, 2016; and
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- C. Whereas, all City departments pay a cost allocation for infrastructural and administrative support; and
- D. Whereas, since November 8, 2016, the City has provided to the Rent Board, and continues to provide, the following services, including but not limited to: consultants, employees and staff, start-up costs and fees, overhead, IT services, administrative services, legal assistance; and
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- F. Whereas, the City will charge and collect fees (“Rent Program Fees”) to landlords to recover costs for operating the Rent Program, the City Council adopted Rent Program Fees on July 25, 2017, and the Rent Program is beginning to collect but has not yet collected all of the Rent Program Fees; and
- G. Whereas, the City and the Rent Board desire to enter into this Agreement: (1) to set forth activities, services and facilities which the City will provide and make available to the Rent Board in furtherance of Rent Program; and (2) to provide that the Rent Board will reimburse the City for any and all costs and expenses incurred by it on behalf of the Rent Board; and
- H. Whereas, the City and the Rent Board intend that the Rent Program be self-sufficient and not require either permanent funding or cash advances from the General Fund of the City of Richmond; and
- I. Whereas, in taking steps to implement the Fair Rent and Just Cause for Eviction ordinance following voter approval in November 2016, it was necessary for the Rent Program to make expenditures prior to the time when the Rent Program could meet its annual revenue requirements through program registration fees and other funding sources that the Rent

Board may ultimately authorize, and these expenditures were necessarily advanced by the General Fund; and

- J. Whereas, the Rent Board and the City acknowledge that, due to the billing cycle that may be adopted by the Rent Board, the General Fund may need to advance cash from time to time to meet working capital requirements of the Rent Program, and such cash advances are anticipated especially in the early years of the program.

## **II. AGREEMENTS**

In exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Rent Board agree as follows:

### **1. RECITALS**

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### **2. REIMBURSEMENT**

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- (b) The City may, but is not required to, advance funds to the Rent Board or to expend funds on behalf of the Rent Board to carry out the Rent Program, particularly during the initial months of the Rent Program's operation prior to the receipt of any Rent Program Fees. The Rent Board shall adopt a budget to cover the estimated Rent Program expenditures, including adequate reserves to cover any shortfalls in revenue, based on the level of services reflected in the adopted budget. The City and the Rent Board agree that the City is not required to advance funds to the Rent Board from its General Fund, and that the long term goal is for the Rent Program to fund its operations without advances from the City General Fund.
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**ITEM I-1  
ATTACHMENT 4**

- (e) From the Rent Program fund, the Rent Board shall reimburse the City for any and all costs incurred for services and facilities provided by the City pursuant to this Agreement, including but not limited to the proration of administrative, overhead, IT, salary and benefits expenses provided, and any other cost allocations for infrastructural and administrative support, as well as consultant, attorney, and risk management expenses attributed to services rendered for the Rent Board.
  
- (f) It is the express intent of the parties that the City shall be entitled to reimbursement of any and all costs incurred by the City under this Agreement. The Rent Board will make the City whole and reimburse the City's General Fund for all funds that are advanced as soon as possible, and will pay all invoices in a timely manner so long as it has funds available to do so; however, in no instance should amounts invoiced by the City remain unpaid by the Rent Board for more than a two-year period.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

Richmond Rent Board:

CITY:

By: \_\_\_\_\_  
David Gray, Chair

By: \_\_\_\_\_  
Bill Lindsay, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Bruce Reed Goodmiller

City Attorney

Approved as to form:

\_\_\_\_\_

Rent Board Attorney

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# 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:** Section 11.100.070(g) provides Landlords have the right to a reasonable return on rental property investments. Since the definition or methodology for determining whether a "fair return" is achieved in the Ordinance, staff members are recommending the Rent Board adopt a fair return standard through regulations. Staff members are requesting guidance from the Board on the desired type of fair return standard to inform the drafting of future regulations.

## 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:** (1) RECEIVE an update from staff concerning recent community workshops regarding setting standards for changes in the maximum allowable rent; (2) RECEIVE a memorandum from Kenneth Baar regarding the Maintenance of Net Operating Income (MNOI) fair return standard; and (3) DIRECT staff to prepare implementing regulations utilizing the MNOI standard for the Rent Board's consideration in January and February 2018.

AGENDA ITEM NO:

**I-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:** FAIR RETURN METHODOLOGIES

## **STATEMENT OF THE ISSUE:**

Section 11.100.070(g) provides Landlords have the right to a reasonable return on rental property investments. Since the definition or methodology for determining whether a “fair return” is achieved in the Ordinance, staff members are recommending the Rent Board adopt a fair return standard through regulations. Staff members are requesting guidance from the Board on the desired type of fair return standard to inform the drafting of future regulations.

## **RECOMMENDED ACTION:**

(1) RECEIVE an update from staff concerning recent community workshops regarding setting standards for changes in the maximum allowable rent; (2) RECEIVE a memorandum from Kenneth Baar regarding the Maintenance of Net Operating Income (MNOI) fair return standard; and (3) DIRECT staff to prepare implementing regulations utilizing the MNOI standard for the Rent Board’s consideration in January and February 2018.

## **FISCAL IMPACT:**

There is no fiscal impact to the Rent Board related to this item.

## **DISCUSSION:**

### Background

Section 11.100.070(g) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (“Rent Ordinance”) establishes a landlord’s right to a reasonable return on their investment. The Ordinance does not specify the precise calculation that must be used in order to determine whether a fair return is achieved. Instead, the Ordinance provides a list of relevant factors the Rent Board or Hearing Examiner shall

consider when factors when determining individual increases or decreases in the Maximum Allowable Rent. These factors include but are not limited to:

- 1) Increases or decreases in property taxes;
- 2) Unavoidable increases or any decreases in maintenance and operating expenses;
- 3) The cost of planned or completed capital improvements to the rental unit;
- 4) Increases in rent due to an increase in number of occupants allowed to live in the unit; and,
- 5) Increase in rent due to increase in services, space or amenities.

To ensure the intent of the Ordinance is preserved, the Rent Board contracted with Ken Baar, a consultant with considerable expertise in fair return law and policy to assist in drafting those regulations that will ultimately guide the Rent Board and Hearing Examiner in their allowance of upward adjustments in the Maximum Allowable Rent to ensure Landlords are afforded a fair return.

Ken Baar has prepared a memo for the Board's consideration to orient the Rent Board on the types of fair return standards that may be employed (Attachment 1). Staff members are requesting guidance from the Board on the desired type of fair return standard to inform the drafting of future regulations.

### Community Workshops

Regulations governing the rent adjustment petition process will have community-wide impact and are a critical task to further the intent and purpose of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance.

As a first step towards achieving this task, Rent Program staff members held Community Workshops on December 4, 2017, and December 9, 2017, to inform and solicit feedback from community members about possible models and standards for adjusting the Maximum Allowable Rent due to any of the following four broad topic areas:

1. Increases in operating expenses
2. Increases or decreases in space, services, or habitability
3. Capital improvements
4. Historically low rents

The presentation provided during the Community Workshop is included as Attachment 2. Approximately 90 community members attended one of the workshops, from which a total of 63 Feedback Worksheets were collected (Attachment 3).

As requested by attendees of the Community Workshops, Rent Program staff members are in the process of creating electronic community groups (using the google groups platform) to facilitate further communication among interested community members and stakeholders. Staff members anticipate additional workshops will be held during the month of January in conjunction with the public review period.

Blank Feedback Worksheets are accessible at <http://www.ci.richmond.ca.us/3521/Rent-Adjustment-Regulations>, and may be completed and submitted to the Rent Program by individuals who were unable to attend a Community Workshop.

Updates regarding the process of developing Rent Adjustment Regulations will be posted at <http://www.ci.richmond.ca.us/3521/Rent-Adjustment-Regulations> and disseminated via the Rent Program listserv.

Proposed Timeline and Next Steps

<b>Proposed Date</b>	<b>Event</b>
Early December	Staff held first Community Workshops
Late December	Rent Board receives memo from Ken Baar and provides direction to staff
Late December/Early January	Regulations drafted for review
Mid-January – Rent Board Meeting #1	Rent Board considers procedural regulations
Mid-January	Public review period begins; staff hold review sessions with community members
Late January – Rent Board Meeting #2 (Special Meeting)	Rent Board considers additional regulations
Mid-February	Public review period ends; feedback incorporated; Hearing Examiner onboarded
Mid-February – Rent Board Meeting #3	Rent Board considers additional regulations
Late February – Rent Board Meeting #4 (Special Meeting)	Rent Board adopts regulations; first hearings are scheduled

**DOCUMENTS ATTACHED:**

Attachment 1 – Memorandum from Ken Baar

Attachment 2 – Community Workshop Presentation

Attachment 3 – Completed Feedback Worksheets (submitted by Community Workshop attendees)

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MEMORANDUM

**TO:** Chair Gray and Members of the Rent Board  
**FROM:** Kenneth Baar, Consultant<sup>1</sup>  
**DATE:** December 20, 2017  
**SUBJECT:** FAIR RETURN METHODOLOGIES

---

*Executive Summary*

This memo discusses fair return concepts and makes recommendations to the Rent Board for the selection of a fair return standard.

Richmond's "Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance" provides for a right to a fair return ("a Reasonable Return on ... Investment") and includes a list of factors to be considered in individual rent adjustment cases. However, it does not provide a methodology or standard for or calculating fair return.

The State Supreme Court has held that an ordinance with a list of factors, but without a specific fair return standard is constitutional. Also, the Courts have held that no single type of fair return formula is required. Instead, "a governmental entity may choose to regulate pursuant to any fairly constructed formula. While the selection of a fair return standard is a legislative task, the Courts are the ultimate arbiters of whether a particular standard or the application of the standard in a rent adjustment case permits a fair return. It is strongly recommended that the Rent Board adopt a specific standard to provide guidance to tenants, landlords and hearing officers and ensure consistency in decisions. In the absence of specific standards, fair return hearings commonly turn into legislative type hearings over what standard shall be used as well determinations of what rent increase is justified under the standard.

**Maintenance of Net Operating Income (MNOI) Standard**

Most jurisdictions with apartment rent controls (including Los Angeles and San Jose) have adopted a maintenance of net operating income (MNOI) fair return standard. "Net operating income" is rental income net of operating expenses. Mortgage interest is not considered an operating expense. In the apartment rental business typically 30 to 50% of rental income covers operating expenses and the balance is net operating income, which covers mortgage payments and provides cash flow.

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<sup>1</sup> Baar's publications and testimony on fair return issues have been cited frequently in published California appellate courts opinions. He has prepared fair return reports for 18 California jurisdictions in fair return cases.

## ITEM I-2 ATTACHMENT 1

Under the MNOI standard, current year net operating income is compared with base year net operating income. "Fair return" is defined as base year net operating income adjusted by the percentage increase in the Consumer Price Index (CPI) since the base year or a portion of the percentage increase in the CPI since the base year. The amortized costs of capital improvement expenses are included as operating expenses. To the extent that reasonable increases in maintenance costs are not covered and growth in net operating income is not provided by annual allowable increases, the MNOI provides for the recovery of these increases.

For example, under a standard which provides for indexing the net operating income at 100% of the rate of increase in the CPI, if the net operating income was \$100,000 in the base year and the CPI has increased by 70% since the base year, the current fair net operating income would be \$170,000.

### **Fair Rate of Return on Investment Standard**

A second type of fair return standard is a "rate of return on investment" (ROI) standard. Under that standard, a fair return is a net operating income equal to a designated percentage of the investment.

$$\text{FAIR RENT} = \text{OPERATING EXPENSES} + X\% \text{ of INVESTMENT}$$

From an intuitive perspective a rate of return of investment standard is often viewed as very logical. Richmond's ordinance includes a provision stating that one of its purposes is to provide a fair "return on investment." (Sec. 11.100.070 (g)(8)). This type of provision is common among rent stabilization ordinances. However, none of the jurisdictions with apartment rent controls use a rate of return on investment standard.

Rate of return on investment is commonly used as a measure of return by real estate analysts in evaluating real estate investments and is based on the commonly accepted concept that investors should always be permitted a fair rate of return on their investments. However, in the context of a fair return determination under a rent regulation, the use of a fair rate of return on investment standard in rent regulation works in a **circular** manner.

In the market place, investment is determined by the expected returns. If the allowable returns in a rent-regulated environment are set at designated percentage of the amount invested in a property, the process of determining what is a fair return becomes circular. Under this type of standard, the investment (and, therefore, the investor) determines what return and, therefore, what rents will be fair. Apart from this conceptual defect, rates of return vary substantially among properties and experts have widely diverging opinions about what rate is fair.

### **A Standard Providing for Rent Adjustments Based on Increases in Operating Expenses over the Prior Year**

A third methodology for setting allowable rents pursuant to individual rent adjustments provides for rent increases to cover operating cost increases since the prior year, which are not covered by the allowable annual rent increase. This type of standard is in effect under San

## ITEM I-2 ATTACHMENT 1

Francisco rent regulations. San Jose had this type of standard until it was replaced by an MNOI standard in 2017.

A concern about this type of standard is that substantial variations in annual maintenance expenses can be typical. This type of standard enables apartment owners to obtain increases due to unusually high operating expenses in a particular year or may reward intentional bunching of maintenance expenses which do not recur annually into a particular year.

### **The Exclusion of Debt Service Costs in Fair Return Standards**

The Richmond ordinance is silent on whether or not debt service costs should be considered.

Eight of the eleven apartment rent control ordinances in California (Los Angeles, San Jose, Oakland, Berkeley, Santa Monica, West Hollywood, East Palo Alto, and Mountain View) specifically **exclude** consideration of debt service in setting allowable rent levels, (except when the debt service is associated with capital improvements).

In three cases, the California Court of Appeal has ruled that a regulation which takes into account debt service and provides for varying allowing rents based on mortgage payments has no rational basis.

### **Recommendation**

It is recommended that the Rent Board adopt regulations that include a specific fair return standard. A fair return standard provides guidance not only to the hearing officer but also to the parties impacted by the Ordinance and provides an objective methodology for consistent decisions.

Furthermore, the adoption of a maintenance of net operating income (MNOI) standard is recommended. The standard guarantees a right to rent increases which cover operating cost increases and provide for growth in net operating income over a base year. The standard has been approved by the courts and in challenges to individual decisions applying the standard, its use has been consistently upheld.

### **I. Introduction**

This memo discusses fair return concepts and makes recommendations to the Rent Board for the selection of a fair return standard.

Under price regulation, including rent control, constitutional property rights include the right to a "fair return." The courts have held legislatures have the power to establish fair return standards. However, the Courts are the ultimate arbiters of what constitutes a fair return. As a consequence, the drafting of fair return standards is strongly guided by judicial precedent.

## ITEM I-2 ATTACHMENT 1

Within this framework, rent stabilization ordinances provide for a petition process for adjudicating petitions based on claims that additional rent increases above the allowable annual rent increases and vacancy increases are needed in order to permit a fair return.

Cities with rent stabilization laws (except for a few cities with a small number of units) have adopted a specific method for calculating fair return and allowable rent increases pursuant to individual rent adjustment petitions. These methods are either set forth in the ordinance or in regulations that have been promulgated pursuant to more general fair return requirements in the ordinance.

Richmond's "Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance" provides for a right to a fair return ("a Reasonable Return on ... Investment") and includes a list of factors to be considered in individual rent adjustment cases. However, it does not provide a method for calculating fair return.

The applicable section states:

### **Landlords Have the Right to a Reasonable Return on Their Investment.**

**In making individual adjustments of the rent ceiling, the Board or hearing examiner shall consider the purposes of this chapter and shall specifically consider all relevant factors, including (but not limited to):**

- (1) Increases or decreases in property taxes;**
- (2) Unavoidable increases or any decreases in maintenance and operating expenses;**
- (3) The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;**
- (4) Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings; equipment, or other housing services provided, or occupancy rules;**
- (5) Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;**
- (6) Failure on the part of the Landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement;**
- (7) The pattern of recent rent increases or decreases;**
- (8) It is the intent of this chapter that individual upward adjustments in the rent ceilings on units be made only when the Landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment. (Sec. 11.100.070)**

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While Richmond's ordinance does not set forth a methodology for calculating fair return or allowable rent increases pursuant to individual rent increase petitions, it states that: "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." (Sec. 11.100.060 (f)).

Although a list of factors without a specific fair return standard may be constitutional, it is strongly recommended that the Rent Board adopt a specific standard to provide guidance to tenants, landlords and hearing officers and ensure consistency in decisions. In the absence of specific standards, fair return hearings commonly turn into legislative type hearings over what standard shall be used as well determinations of what rent increase is justified under a particular standard.

### II. Alternate Fair Return Methodologies

#### A. *Judicial Guidance - General Directions Regarding Fair Return*

Since rent regulations became widespread in California at the end of the 1970's and early 1980's fair return has been extensively litigated. Some of the cases have involved facial challenges to ordinances or regulations; however, most have involved challenges to individual rent board decisions in fair return cases. While most of the challenges have been to individual decisions commonly they have raised general issues about what methodologies are valid in making fair return determinations.

Since the mid-1980's, most of the cases have involved regulations of mobilehome park space rents. However, apartment and mobilehome park space rent regulations are guided by the same judicial doctrines and precedents regarding fair return.

The Courts have held that no single type of fair return formula is required.<sup>2</sup> Instead, "a governmental entity may choose to regulate pursuant to any fairly constructed formula."<sup>3</sup> The California Supreme Court has also held that a rent regulation does not have to include a specific method for calculating fair return.<sup>4</sup>

Some of the judicial guidance has been very general. In one case a court explained that fair return involves a "balancing...of investor and...consumer interests" and allowing for rents adequate to "maintain financial integrity."

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<sup>2</sup> *Carson Mobilehome Park Owners' Assn. v. City of Carson*, 35 Cal.3d 184, 191 (1983)

<sup>3</sup> *Carson Harbor Village, Ltd. Carson Mobilehome Park Rent Review Board* (1999) 70 Cal. App. 4<sup>th</sup> 281, 290.

<sup>4</sup> In 1983, in *Carson Mobilehome Park Owners' Assn. v. City of Carson*, the California Supreme Court rejected a claim that a fair return standard in a rent control ordinance which left the selection of a fair return standard open ended and did not prescribe the use of a particular formula was overly vague. The Court stated: That the ordinance does not articulate a formula for determining just what constitutes a just and reasonable return does not make it unconstitutional.

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“Determining prices that will provide a fair return “involves a balancing of the investor and the consumer interests” [cite omitted]. ... One of these investor interests is a “return ... commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover should be sufficient to ... attract capital.” ... a “court must determine whether the [regulation] may reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection for the relevant public interests, both existing and foreseeable.”<sup>5</sup>

The California Supreme Court has held that fair return is a “constitutional minimum” and the fact that a regulation reduces the value of a property does not render it unconstitutional.<sup>6</sup>

In *Galland v. Clovis*, the California Supreme Court stated:

“Although the term “fair rate of return” borrows from the terminology of economics and finance, it is as used in this context a legal, constitutional term. It refers to a constitutional minimum within a broad zone of reasonableness. As explained above, within this broad zone, the rate regulator is balancing the interests of investors, i.e. landlords, with the interests of consumers, i.e. mobilehome owners, in order to achieve a rent level that will on the one hand maintain the affordability of the mobilehome park and on the other hand allow the landlord to continue to operate successfully. [cite omitted]. For those price-regulated investments that fall above the constitutional minimum, but are nonetheless disappointing to investor expectations, the solution is not constitutional litigation but, as with nonregulated investments, the liquidation of the investments and the transfer of capital to more lucrative enterprises.”<sup>7</sup>

Another California Supreme Court opinion notes:

“[a]ny price-setting regulation, like most other police power regulations of property rights, has the inevitable effect of reducing the value of regulated properties. But it has long been held that such reduction in property value does not by itself rend a regulation unconstitutional.”<sup>8</sup>

The Courts have repeatedly reiterated the principle that a “range” of rents may be considered reasonable. One court explained:

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<sup>5</sup> *Galland v. City of Clovis*, 24 Cal. 4<sup>th</sup> 1003 (2001), *Kavanau v. Santa Monica Rent Control Board*, 16 Cal.4<sup>th</sup> 761, 771-772 (1997).

<sup>6</sup> Other types of land use regulations such as zoning amendments commonly reduce property values.

<sup>7</sup> *Galland v. City of Clovis*, 24 Cal.4<sup>th</sup> 1003, 1026 (2001)

<sup>8</sup> *Fisher v City of Berkeley*, 37 Cal.3d. at 686.

There is a range of rents which can be charged, all of which could be characterized as allowing a "just and reasonable" return. [cite omitted] [the terms "just and reasonable" and "confiscatory" are not precise formulations]; [cite omitted] [there is a zone of reasonableness which is higher than a confiscatory rate].) Thus, many decisions by rent control boards will focus on the issue of where the requested increases fall within the range of possible rents -- all of which rents would allow the owner a return sufficiently "just and reasonable" as to not be constitutionally confiscatory.<sup>9</sup>

The debate over what constitutes a fair return has been complicated by the fact the Courts have reached conflicting conclusions on fair return issues at times and the decisions contain some very general statements open to multiple interpretations.

One California Court of Appeal commented about the complexity of fair return issues and the lack of precision and sometimes conflicting nature of judicial guidance on the issues.

"What appears at first blush to be a simple question of substantial evidence turns out to be something considerably more complex when one realizes that the formula for determining a 'fair return' is hotly debated in economic circles and has been the subject of sparse, scattered, and sometimes conflicting comment by appellate courts. In particular, only the broad outlines have been discussed in California decisions."<sup>10</sup>

### ***B. "Specific" Judicial Guidance***

Apart from setting forth general principles about what constitutes a fair return, in the past few decades, there has been substantial precedent in regard to particular types of fair return concepts and standards that have either been commonly advocated and/or adopted.

### **The Courts Have Held that Return on "Value" Standards are Not Required and Are Circular in the Context of Rent Regulation**

In response to fair return claims made in the early 1980s, the Courts rejected the view that a fair *rate* of return on the *value* of a regulated property must be permitted in order to provide a fair return. The Courts have concluded that this type of standard is "circular" in the context of a rent regulation. In 1984, the State Supreme Court explained:

"The fatal flaw in the return on value standard is that income property most commonly is valued through capitalization of its income. Thus, the

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<sup>9</sup> *San Marcos Mobilehome Park Owners' Ass'n v. City of San Marcos*, 192 Cal.App.3d. 1492, 1502-1503 (1987)

<sup>10</sup> *Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.* 16 Cal.App.4th 481, 484 (1993).

process of making individual rent adjustments on the basis of a return on value standard is meaningless because it is inevitably circular: value is determined by rental income, the amount of which is in turn set according to value. Use of a return on value standard would thoroughly undermine rent control, since the use of uncontrolled income potential to determine value would result in the same rents as those which would be charged in the absence of regulation. Value (and hence rents) would increase in a never-ending spiral."<sup>11</sup>

### **The Right to an Increasing Net Operating Income**

Other guidance from the court has come to play a central role in fair return doctrine. One guiding principal is that growth in net operating income (NOI) must be permitted. In *Fisher v. Berkeley* (1984), the State Supreme Court held that a regulatory scheme "may not indefinitely freeze the dollar amount...profits without eventually causing confiscatory results. ...If the net operating profit of a landlord continues to be the *identical* number of dollars, there is in time a real diminution to the landlord which eventually becomes confiscatory."<sup>12</sup> In other words, allowable rent increases must be adequate to cover increases in operating costs and permit growth in net operating income.

In the apartment rental business typically 30 to 50% of rental income covers operating expenses and the balance is net operating income, which covers mortgage payments and provides cash flow.

**Comment on Alternate Standards:** The following discussion addresses conceptual issues and judicial precedent associated with three types of fair return standards. – 1) maintenance of net operating income (MNOI), 2) rate of return on investment (ROI) , and 3) a pass-through of increases in operating costs over the level of the prior year. This section also includes a discussion of judicial precedent regarding consideration of debt service, which indicates that debt service may not be considered in setting allowable rents.

#### **C. Maintenance of Net Operating Income "MNOI" Standard**

##### **a. The MNOI Standard Is the Most Widely Used Standard**

The most widely adopted fair return standard has been the maintenance of net operating income (MNOI) standard. This standard has been adopted by the following jurisdictions with apartment rent controls: Los Angeles, San Jose, Oakland, Berkeley, Santa Monica, West Hollywood, East Palo Alto and Mountain View. Also, a substantial

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<sup>11</sup> . *Id.* 37 Cal.3d.at 680, fn 33.

<sup>12</sup> *Id.* 37.Cal.3d. at 683.

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number of the mobilehome park rent stabilization ordinances in California include an MNOI standard and this standard is commonly used to make fair return determinations pursuant to mobilehome park space rent stabilization ordinances which list factors to be considered in determining what is a fair return, without setting forth a formula.

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Jurisdiction	Type of Fair Return Standard (MNOI = maintenance of net operating income)
<b>Berkeley</b>	MNOI, adopted by regulation
<b>East Palo Alto</b>	MNOI, in ordinance
<b>Santa Monica</b>	MNOI, adopted by regulation
<b>Los Angeles</b>	MNOI adopted by regulation
<b>West Hollywood</b>	MNOI in ordinance
<b>Alameda</b>	list of factors, no specific standard
<b>Oakland</b>	MNOI and pass-through of cost increases over prior year
<b>San Jose</b>	MNOI, in ordinance
<b>San Francisco</b>	increase in costs over prior year
<b>Beverly Hills</b>	MNOI, in ordinance
<b>Mountain View</b>	MNOI, adopted by regulation
<b>Los Gatos</b>	consider increases in operating costs and debt service, no specific standard
<b>Hayward</b>	list of factors, no specific standard, limited pass-through increases in debt service

**b. Description of the Maintenance of Net Operating Income Standard**

This method is not an “intuitive” measure because it is not the measure that investors or laypersons commonly use to measure rate of return. Under the MNOI standard, current year net operating income is compared with base year net operating income. “Fair return” is defined as base year net operating income adjusted by the percentage increase in the Consumer Price Index (CPI) since the base year or a portion of the percentage increase in the CPI since the base year.

For example, under a standard which provides for indexing the net operating income at 100% of the rate of increase in the CPI, if the net operating income was \$100,000 in the base year and the CPI has increased by 70% since the base year, the current fair net operating income would be \$170,000. Under most MNOI standards, the year specified as the base year precedes the adoption of rent regulation.

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The hypothetical example below illustrates how an MNOI standard works, under a standard which defines a fair return as the base period net operating income adjusted by 100% of the percentage increase in the NOI since the base year

In this example, the gross income increased by \$50,000. The net operating income increased from \$60,000 in the base year to \$80,000 in the current year, a 33% increase, compared to a 50% increase in the CPI during this period. This amount would be adequate to cover operating cost increases, but would not provide adequate growth in net operating income. Through an individual rent adjustment petition (with adequate documentation of income and operating expenses) the owner would be able to obtain an additional rent increase. The allowable increase would be \$10,000 in order to raise the net operating income to a level that is 50% above the base year net operating income.

**(Table 1)  
Illustration of MNOI Standard**

	<b>CPI</b>	<b>Gross Income</b>	<b>Operating Expenses</b>	<b>Net Operating Income</b>	<b>Fair Return Allowable Rent Increase</b>
<b>Base Year</b>	<b>100</b>	<b>\$100,000</b>	<b>\$40,000</b>	<b>\$60,000</b>	
<b>Current Year</b>	<b>150</b>	<b>\$150,000</b>	<b>\$70,000</b>	<b>\$80,000</b>	
<b>Pct. Increase Base Year to Current Year</b>	<b>50%</b>	<b>50%</b>	<b>75%</b>	<b>33%</b>	
<b>Fair NOI (Base Year NOI Adjusted by the 50% increase in CPI)</b>				<b>\$90,000</b>	
<b>Allowable Fair Return Rent Adjustment (= Fair NOI - Current NOI) (\$90,000 - \$80,000)</b>					<b>\$10,000</b>

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Jurisdictions with MNOI standards provide for adjusting (“indexing”) base period of net operating income by varying percentages of the percentage increase in the Consumer Price Index, ranging from 40% to 100%. Berkeley and Santa Monica provide for 40% indexing. A majority of mobilehome ordinances provide for indexing by less than 100%. All of these indexing standards have been upheld by the Courts, which have consistently rejected the contention that indexing the net operating income by less than 100% of the percentage increase in the CPI is confiscatory<sup>13</sup>

### c. Rationale for Using the MNOI Standard

To the extent that reasonable increases in maintenance costs are not covered by annual allowable increases, the MNOI provides for the recovery of these increases.

By providing for growth in net operating income, the MNOI standard allows for growth in the portion of rental income (the net operating income) that is available to pay for increases in debt service, to fund capital improvements, and/or to provide additional cash flow (net income). Therefore, the growth in net operating income also provides for appreciation in the value of a property.

The standard provides all owners with the right to an equal rate of growth in NOI regardless of their particular purchase and financing arrangements. By measuring reasonable growth in net operating income by the rate of increase in the CPI, this approach meets the twin objectives of protecting tenants from excessive rent increases that are not justified by operating cost increases and increases in the CPI, and of providing regulated owners with a “fair return on investment.”

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<sup>13</sup> See *Berger v. City of Escondido*, 127 Cal.App.4<sup>th</sup> 1, 13-15 (2007); *Stardust v. City of Ventura*, 147 Cal.App. 4<sup>th</sup> 1170, 1181-1182 (2007); *Colony Cove Properties v. City of Carson*, 220 Cal. App.4<sup>th</sup> 840, 876 (2013) The rationale for less than 100% indexing has been that the rate of increase in equity may exceed 100% of the rate of increase in the CPI even if the rate of increase in the overall value of a property is lower. For example, the value of an apartment building may increase by 20% from \$1,000,000 to \$1,200,000, but the increase in the equity of an owner who purchased with a 70% loan may increase from \$300,000 to \$500,000.

In the Colony Cove opinion, the Court stated:

In *H.N. & Frances C. Berger Foundation v. City of Escondido*, the court explained why 100 percent indexing was not required for a rent controlled mobilehome park to achieve a fair return: "A mobilehome park's operating expenses do not necessarily increase from year to year at the rate of inflation, and . . . a 'general increase at 100% of CPI . . . would be too much if expenses have increased at a lower rate.'" (*H.N. & Frances C. Berger Foundation v. City of Escondido* [cite omitted].) Moreover, "the use of indexing ratios may satisfy the fair return criterion because park owners typically derive a return on their investment not only from income the park produces, but also from an increase in the property's value or equity over time." (*Ibid.*; accord [cite omitted] [explaining that "one reason for indexing NOI at less than 100 percent of the change in the CPI" is that "real estate is often a leveraged investment" in which "[t]he investor invests a small amount of cash, but gets appreciation on 100 percent of the value"]. *Id.*876-877.

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Under the MNOI standard, it becomes the investor's task to determine what investment and financing arrangements make sense in light of the growth in net operating income permitted under the fair return standard.

### d. Judicial Acceptance of the MNOI Standard

California appellate Courts have repeatedly upheld the use of an MNOI standard.<sup>14</sup> For example, one court found the MNOI standard was reasonable because it allowed an owner to maintain prior levels of profit<sup>15</sup>, and another concluded the MNOI formula is a "fairly constructed formula" which provides a "just and reasonable" return on ... investment," even if an alternative fair return standard – such as the rate of return on investment standard (discussed further below) – would provide for a higher rent.<sup>16</sup>

Several California courts have approved the MNOI fair return standard (*Oceanside Mobilehome Park Owners' Ass'n v. City Oceanside*, 157 Cal. App. 3d. 887 (1984). See also *Baker v. City of Santa Monica*, 181 Cal. App. 3d. 972 (1986). California appellate courts upheld maintenance of net operating income fair return standards. In *Oceanside* the Court found that the standard was reasonable because it allowed an owner to maintain prior levels of profit. See 157 Cal. App. 3d. 887, 902-905 (1984). "The maintenance-NOI approach has been praised by commentators for both its fairness and ease of administration." See *Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.*, 16 Cal.App.4th 481, 486 (1993)

In *Rainbow Disposal v. Mobilehome Park Rental Review Board*, 64 Cal. App. 4th 1159, 1172 (1998), the Court of Appeal stated: [the] MNOI approach adopted by the Board is a "fairly constructed formula" which provided Rainbow a sufficiently "just and reasonable" return on its investment. The Board was not obliged to reject [an] MNOI analysis just because an historical cost/book value formula using Rainbow's actual cost of acquisition and a 10 percent rate of return would have yielded a higher rent increase.

In 2013, in *Colony Cove v. City of Carson*, the Court explained the rationale for an MNOI standard.

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<sup>14</sup> Most of the published appellate court opinions regarding fair return under rent regulation have involved mobilehome park rent regulations. This is a consequence of the facts that: 1) the mobilehome rent regulations are stricter – not allowing for increases upon vacancies, 2) some of the mobilehome rent ordinances have not allowed for annual across-the-board rent increases, thereby compelling owners to submit fair return petitions each time they desire to obtain a rent increase, 3) the stakes in mobilehome park cases are substantial due to the size of mobilehome parks, typically involving from one to several hundred spaces. However, in regards to fair return issues the fair return concepts are interchangeable with the courts relying on fair return opinions from apartment cases in mobilehome park cases and vice versa.

<sup>15</sup> *Oceanside Mobilehome Park Owners' Ass'n v. City Oceanside*, 157 Cal.App.3d.887 (1984); Also see *Baker v. City of Santa Monica*, 181 Cal.App.3d. 972 (1986)

<sup>16</sup>

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The MNOI approach does not focus on how much the owner chose to pay for a rent-controlled property or how the purchase was financed. That fact does not render it constitutionally invalid. In *Donohue v. Santa Paula West Mobile Home Park*, where the rent control ordinance permitted adjustments to " 'maintain net operating income' " and specifically excluded from consideration " '[m]ortgage principal [and] interest payments,' " the court rejected the owner's facial challenge to the ordinance: "Numerous courts ... have acknowledged that the [MNOI] approach is constitutionally valid ... ," even though it ignores "certain expenses incurred by landlords" in determining NOI, including "land acquisition costs ... ." (*Donohue v. Santa Paula West Mobile Home Park*, supra, 47 Cal.App.4th at p. 1178; see *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd.*, supra, 64 Cal.App.4th at p. 1172 [rent board need not reject MNOI merely because formula using owner's actual cost of acquisition yielded higher rent increase].) Indeed, the MNOI standard has been praised by courts and commentators for "its fairness and ease of administration" (*Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.*, supra, 16 Cal.App.4th at p. 486), because it " 'recognizes that in the rental housing market, ratios of rental income to value, equity, and gross income vary substantially among buildings. Therefore, rather than designating a particular rate of return as fair, [MNOI] standards pursue the best available option, which is to preserve prior [net operating income] levels' " (*H.N. & Frances C. Berger Foundation v. City of Escondido* (2005) 127 Cal.App.4th 1, 9 [25 Cal. Rptr. 3d 19]). The advantage of the MNOI approach over other methods of determining fair rent was further explained in *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside*, where the court stated: " 'Use of a return on value standard would thoroughly undermine 220 Cal. App. 4th 840, \*868; ...rent control, since the use of uncontrolled income potential to determine value would result in the same rents as ... would be charged in the absence of regulation. Value (and hence rents) would increase in a never-ending spiral.' " [cites omitted] ....

Use of the MNOI formula " ' "avoids the necessity of having to undertake the administratively difficult (if not impossible) task of calculating equity and/or fair market value.["] ' " [cite omitted] ... Instead, it "permits park owners to obtain a just and [\*\*\*60] reasonable return under general marketing conditions in any given year" and "reflect[s] the tenant's interest by giving the park owner an incentive to incur all reasonable expenses for maintenance and services." [cite omitted].<sup>17</sup>

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<sup>17</sup> 220 Cal. App. 4<sup>th</sup> 849, 869-870 (2013)

**e. Adjustment of Low Base Year Rents (“Vega” Adjustments) under the MNOI Standard**

If an MNOI standard only permitted consideration of actual base year net operating levels, owners with very low base period rents may be locked into rents that do not reflect market conditions. This would occur because the current fair net operating income under the MNOI standard would be based on a CPI adjustment of a low base period net operating income.

However, this issue has been addressed by authorizing adjustments of base period rent which do not reflect market conditions in order to provide a level that reflects market conditions and provides a reasonable base period net operating income. Such adjustments are known as “Vega” adjustments, because the right to such adjustments was established in the case of *Vega v. West Hollywood*.<sup>18</sup>

The *Vega* case involved an apartment owner who charged rents that ranged from \$70 to \$180 per month, compared to a city average which was three times higher. The rents of several units had not been raised in 15 to 20 years and the tenants had taken over responsibility for maintaining the property, from the 84 year old owner. The Court held the peculiar circumstances in this case, in addition to low base period rents, justified a base period rent adjustment.

The entitlement to an increase in the base rent depends on the existence of circumstances that prevented the base rent from reflecting market conditions.”<sup>19</sup> Subsequent to *Vega*, an appellate court rejected the view that owners had a general entitlement to adjust base date rents which were below market rents and ruled that:

**Respondents' position that "Birkenfeld and Vega establish a constitutional standard of general application to all historically low rent properties without exception" is not supported by the opinions in those cases, and we hold that there is no general entitlement to an increase in base date rents predicated on market conditions.**<sup>20</sup>

In the context of mobilehome park space rent controls the historically low rent issue was considered in *Concord Communities v. City of Concord*,<sup>21</sup> in 2001. In that case the Court found a recent purchaser of the park met the “unique and extraordinary circumstances” test set forth in *Vega* based on the following facts:

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<sup>18</sup> 223 Cal.App.3d 1342 (1990); also, see *Concord Communities v. City of Concord*, 91 Cal. App.4th 1407 (2001)

<sup>19</sup> 24 Cal. App.4th 1730, 1737

<sup>20</sup> *Apartment Association of Greater Los Angeles v. Santa Monica Rent Control Board* [AGLA] 24 Cal. App.4th 1730, 1737.( 1994)

<sup>21</sup> 91 Cal. App.4th 1407 (2001)

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- 1) the applicant was locked into below market rents set by the prior owner, who had “not raised rents in a consequential manner since 1985”,
- 2) the current owner entered into a purchase contract just before the city adopted a rent regulation and
- 3) the current owner was not favored by particularly low property taxes of the previous owner.<sup>22</sup>

**D. Fair Rate of Return on Investment Standard**

A second type of fair return standard is a rate of return on investment (ROI) standard. From an intuitive perspective a rate of return of investment standard is often viewed as very logical. Furthermore, Richmond’s ordinance includes a provision stating that one of its purposes is to provide a fair “return on investment.” (Sec. 11.100.070 (g)(8)). This type of provision is common among rent stabilization ordinances. Sometimes it has sometimes been viewed as commanding the use of a rate of return on investment formula; however, usually this view has not been adopted.

**a. Description of Standard**

In the context of rent regulations, the most common rate of return on investment formula has been:

$\text{FAIR RENT} = \text{OPERATING EXPENSES} + X\% \text{ of INVESTMENT}$
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The allowable rent depends on what rate of return is considered fair. The following examples illustrate the outcomes under a 6% and a 9% rate of return on investment standard.

(Table 2)

**Variations in Outcomes under Rate of Return on Investment Standard  
Depending on What Rate is Deemed Fair  
(Hypothetical Investment - \$1.2 million)**

OPERATING EXPENSES		X% OF INVESTMENT (fair net operating income)		FAIR RENT
\$70,000	+	\$72,000 (6% of \$1,200,000)	=	\$142,000
Or				
\$70,000	+	\$108,000 (9% of \$1,200,000)	=	\$178,000

<sup>22</sup> *Id.*, 91 Cal. App.4<sup>th</sup> at 1417-1419.

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Investment is defined as the total investment (purchase price + improvements) rather than only as the cash investment (total investment minus mortgage borrowing). The return is the net operating income (income before mortgage payments), rather than only the cash flow (net operating income left after mortgage payments).<sup>23</sup> The fair net operating income is a net operating income which is a designated percentage of the total investment.

### **b. Use of Fair Rate of Return Standard in other jurisdictions**

None of the California jurisdictions with apartment rent regulations use the “rate of return on investment” standard. However, this type of standard has been used in making fair return determinations in some mobilehome park rent stabilization fair return cases.

### **c. Comment on the Fair Rate of Return on Investment Standard**

#### **i. Circularity Issues**

Rate of return on investment is commonly used as a measure of return by real estate analysts in evaluating real estate investments. and is based on the commonly accepted concept that investors should always be permitted a fair rate of return on their investments. However, in the context of a fair return determination under a rent regulation, the use of a fair rate of return on investment standard in rent regulation works in a **circular** manner.

In the market place, investment is determined by the expected returns. However, if the allowable returns in a rent-regulated environment are set at designated percentage of the amount invested in a property, the process of determining what is a fair return becomes circular. Under this type of standard, the investment (and, therefore, the investor) determines what return and, therefore, what rents will be fair.

A leading utility text identifies potential drawbacks using the investment (purchase price or “transfer cost”) as the measure of investment in order to calculate fair return, in the context of a rent regulation.

Transfer cost does not represent a contribution of capital to public service. Instead, it represents a mere purchase by the present company of

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<sup>23</sup> In some jurisdictions a fair return on cash investment (as opposed to total investment) standard has been used. However, such standards discriminate among owners based on their financing arrangements. In three cases, a California Court of Appeal has ruled that consideration of debt service in a rent setting standard has no rational basis. *Palomar Mobilehome Park Ass’n v. Mobile Home Rent Review Commission* [San Marcos], 16 Cal.App.4th 481, 488 (1993) and *Westwinds Mobilehome Park v. Mobilehome Park Rental Review Board* [Escondido], 30 Cal.App.4th 84, 94 (1994), *Colony Cove v. City of Carson*, 220 Cal.App.4th 840, 871 (2013).

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whatever legal interests in the properties were possessed by the vendor. Even under an original-cost standard of rate control, investors are not compensated for buying utility enterprises from their previous owners any more than they are compensated for the prices at which they may have bought public utility securities on the stock market. Instead, they are compensated for devoting capital to public service. ...

The unfairness, not to say the absurdity, of a uniform rule permitting a transferee of a utility plant to claim his purchase price was noted by Judge Learned Hand ...

The builder who does not sell is confined for his base to his original cost; he who sells can assure the buyer that he may use as a base whatever he pays in good faith. If the builder can persuade the buyer to pay more than the original cost the difference becomes part of the base and the public must pay rates computed upon the excess. Surely this is a most undesirable distinction. (*Niagara Falls Power Company v. Federal Power Commission*, 1943 ...) <sup>24</sup>

This reasoning has not been generally applied in rent control cases. However, federal courts in New York have concluded the return on investment approach does not make sense in the context of land use controls and rent regulation, noting how, the "regulated" investor can, in fact, regulate the allowable return under the rate of return on investment approach by determining the size of the investment. In a zoning case, the Court held:

In addition to being inconsistent with the case law, appellants' [return on investment] approach could lead to unfair results. For example, a focus on reasonable return would distinguish between property owners on the amount of their investments in similar properties (assuming an equal restriction upon the properties under the regulations) favoring those who paid more over those who paid less for their investments. Moreover in certain circumstances, appellants theory "would merely encourage property owners to transfer their property each time its value rose, in order to secure ... that appreciation which could otherwise be taken by the government without compensation..." [cites omitted] <sup>25</sup>

While the California courts have not held that a rate of return on investment standard may not be used they have noted the practical limitations of the rate of return on investment approach In the *Fisher* case, the California Supreme Court

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<sup>24</sup> Bonbright, Danielson, and Kamerschen, *Principles of Public Utility Rates*, 240-241 (1988, Arlington, Virginia, Public Utilities Reports, Inc.)

<sup>25</sup> *Park Avenue Tower Associates v. City of New York*, 746 F.2d. 135, 140 (1984).

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noted that the “mechanical” application of a return on investment standard could produce “confiscatory results in some ...cases” and alternatively in other cases could provide for “windfall” returns for recent investors, who paid high prices:

At the same time that mechanical application of the fair return on investment standard may have the potential to produce confiscatory results in some individual cases [cites omitted] it is also recognized that the that standard has the potential for awarding windfall returns to recent investors whose purchase prices and interest rates are high. If the latter aspect were unregulated, use of the investment standard might defeat the purpose of rent price regulation.<sup>26</sup>

Sometimes a “prudent” investor standard is used to try to rectify the shortcomings of a rate of return on investment standard by limiting what size investments will be considered in measuring what net operating income would be fair. However, under this the results become circular, especially if the investment may be considered “prudent” only if the current rents are already adequate to generate a return that would be considered fair.

Subsequent to the *Fisher* opinion, one Court of Appeal concluded that evaluation of a claim that a purchase cost may be viewed as high (imprudent) presents a “Catch-22.” situation. The Court explained:

... it is a “Catch-22” argument. It posits that a prudent investor will purchase only rent-controlled property for a price which provides a fair rate of return at the then-current (i.e. frozen) rental rates. Having done so, however, the fair market value is frozen ad infinitum because no one should pay more than the frozen rental rate permits; and existing rental rates are likewise frozen, since the investor is already realizing a “fair rate of return”.<sup>27</sup>

The foregoing judicial responses to the issues associated with rate of return on investment standards reflect the outcomes of two sides of a circular concept. On the one hand, there is the view that rate of return on investment standards should not provide windfall returns to recent investors who paid high prices. On the other hand, if a “prudent” investment concept is adopted, an investment may be considered imprudent if the current rents do not yield a fair return on that investment.

### **ii. Subjectivity in Measuring Fair Rate of Return under a Rate of Return on Investment Standard**

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<sup>26</sup> 37 Cal.3d. 644, 691 (1984)

<sup>27</sup> *Westwinds Mobile Home Park v. City of Escondido*, (1994), 30 Cal.App.4th. 84, 93-94.

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Apart from the circularity issues associated with the use of a rate of return on investment standard, the determination of an appropriate rate presents substantial problems.

In fact, rates of return vary substantially among properties, especially in times of significant inflation in property values. Therefore, the net operating income (and, consequently the rent) that will yield a fair return on an investment made decades ago might be a fraction of the rent required to provide the same rate of return on the investment of a recent purchaser.

Varying theories and/or statistical constructions” about how to compute what is a “fair rate” can lead to widely differing outcomes. One commentary, in a textbook on utility rate regulation, even characterizes expert presentations on which particular rate is as “witches brews of statistical elaboration and manipulation”:

“... as we begin sheer disgust to move away from the debacle of valuation, we will probably substitute a new form of Roman holiday – long-drawn-out, costly, confusing, expert contrived presentations, in which the simple directions of the *Hope* and *Bluefield* cases are turned into veritable witches’ brews of statistical elaboration and manipulation.<sup>28</sup>

In mobilehome park rent stabilization fair return cases, expert witness’ projections of a fair rate of return have ranged from 4% to 12% (and even higher). Typically, in recent years, experts on behalf of mobilehome park owners have testified that a rate of return of about 9% is fair, while experts on behalf of cities and/or residents have contended that a fair rate is equal to the prevailing capitalization rate, now about 5 to 6%.<sup>29</sup> Adjudicators’ (retired judges acting as arbitrators, rent commissions, trial courts, and appellate courts) conclusions about what rate is fair have ranged from 5% to 9%.

When rate of return on investment standards are used, a host of options appear for measuring the investment and for the determination of a reasonable rate of return. In an adjudicatory process the fair return determination can turn into a mix and match process, in which alternate measures of investment and of a fair rate are “juggled” in order to obtain a desired result.

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<sup>28</sup> Shepard and Gies, *Utility Regulation, New Directions in Theory and Policy*, 242-243 (1966, New York, Random House)

<sup>29</sup> The prevailing capitalization rate is the net operating income/purchase price rate that new purchasers are obtaining at the outset of their investments. When the purchase price is inflation adjusted in the fair return analysis the fair return also becomes inflation adjusted.

*iii. Issues Associated Measuring the Investment (The Rate Base)*

The selection of a rate base raises another set of issues. Large variations in the outcome of a fair return calculation result from alternate choices in regard to the measure of the investment (rate base). Whether the original investment should be used as a rate base or whether that investment costs should be adjusted for inflation has been debated. Typically, long-term owners have investments that are low by current standards, while recent purchase prices have low rates of return relative to their investment. In periods of inflation in the prices of real property, the fair return becomes a function of the length of ownership. As a result, the rate of return on investments in apartment buildings with comparable rents and operating costs will vary substantially based on the purchase date of the building.

Some courts have held the investment should be inflation adjusted to reflect the real amount of the investment in current dollars. In *Cotati Alliance for Better Housing v. City of Cotati*, the court concluded that Cotati's return on investment standard was not confiscatory because "[t]he landlord who purchased property years ago with pre-inflation dollars is not limited to a return on the actual dollars invested; the Board may equate the original investment with current dollar values and assure a fair return accordingly."<sup>30</sup> Commonly, if not usually, when rate of return on investment standards are used, the rent setting body has adjusted the original investment by inflation.

However, in other instances California courts have upheld the use of a standard under which investment was calculated in a manner virtually opposite to adjusting the original investment by inflation. Instead they have upheld "...taking the price paid for the property and deducting accumulated depreciation to arrive at a net historic value" See e.g. *Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.* (1993), 16 Cal.App.4th 481, 487, the Court reasoned:

[The park owner] argues that "historic cost" approach effectively transfers to tenants the use of \$11 million in assets (the difference between the historic cost of the property and its current value) free of charge. It is true that in calculating a "fair" return, the City's proffered formula does not give park owners credit for any appreciation in the value of their property. Yet this is true any time a "fair return on investment" approach is used in lieu of a "fair return on value" formula. As we have explained ... both the United States and California Supreme Courts have approved the "investment" approach as constitutionally permissible. We are in no position to hold to the contrary by accepting Palomar's value-based test as a constitutional minimum. (*Id.* 16 Cal.App. 4<sup>th</sup> at 488)

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<sup>30</sup> 148 Cal.App.3d. 280, 289 (1983)

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**iv. Outcomes under Alternate Variations of the Rate of Return on Investment Standards**

The table on the following page illustrates how the wide range of possible rate bases and fair rates can lead to vastly diverging results under a rate of return on investment formula.

(Table 5)

**Alternate Outcomes under Rate of Return on Investment Standard  
(Investment x Fair Rate = Fair Net Operating Income)**

<b>Investment (Rate Base)</b>	<b>Fair Rate</b>	<b>Fair Net Operating Income* (fair rate x investment)</b>
<b>\$2,000,000</b> original investment (e.g. 40 apartments x \$50,000 / apartment unit)	5% capitalization rate (prevailing noi/purchase price ratio purchases in 2016)	<b>\$100,000</b>
	7%	<b>\$140,000</b>
	9%	<b>\$180,000</b>
<b>\$1,200,000</b> original investment minus depreciation of improvements	5%	<b>\$60,000</b>
	7%	<b>\$84,000</b>
	9%	<b>\$108,000</b>
<b>\$4,000,000</b> original investment adjusted by CPI	5%	<b>\$200,000</b>
	7%	<b>\$280,000</b>
	9%	<b>\$360,000</b>

\* Allowable rent = fair net operating income + operating expenses

Even if the original investment is inflation adjusted (adjusted by the percentage increase in the CPI since the purchase date), the outcome under a rate of return on investment standard depends heavily on whether an apartment owner purchased during an upward or downward cycle in real estate values. An owner who paid the same price for a property in 2010 (at the end of a flat cycle in apartment values) as an owner paid in 2000 (at the end of a surge in values) is permitted a much lower rent under standard, because the period of inflation used to adjust the purchase price is much shorter.

**v. An MNOI Standard Provides a Fair Return on Investment by Providing the Net Operating income that the Property Yielded in the Base Year**

The use of an MNOI fair return standard in the implementation of ordinances which contain the term “fair return on investment” has been standard.

While an MNOI standard does not incorporate the amount of an owner’s investment into a fair return calculation, it can be viewed as providing a fair return in the sense that it provides the return (net operating income) that the property yielded prior to rent regulation. As noted a California Court of Appeal held that the MNOI standard provides a fair return on investment.

**E. A Standard Providing for Rent Adjustments Based on Increases in Operating Expenses over the Prior Year**

A third methodology for setting allowable rents pursuant to individual rent adjustments provides for rent increases to cover operating cost increases since the prior year, which are not covered by the allowable annual rent increase. This type of standard is in effect under San Francisco and Oakland rent regulations. San Jose used this type of standard until it was replaced by an MNOI standard in 2017.

Under San Francisco’s standard, rent increases above the amount authorized by the annual increase, which are based on operating cost increases, are limited to seven percent.<sup>31</sup> In the past four years, the number of petitions pursuant to this standard has ranged from 43 to 70.<sup>32</sup>

A concern about this type of standard is that substantial variations in annual maintenance expenses can be typical. This type of standard enables apartment owners to obtain increases due to unusually high operating expenses in a particular year or may reward intentional bunching of maintenance expenses which do not recur annually into a particular year. In any case, as a result, this standard can provide for rent increases which cover a surge in operating expenses and allow for increases that are more than adequate in the following years when the operating expenses return to normal levels.

In contrast under the MNOI standard if claimed expenses for a particular year are unusually high, typically they will be adjusted or particular unusual expenses will be amortized.

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<sup>31</sup> S.F.Residential Rent Stabilization and Arbitration Board Rules and Regulations, Sec. 6.10

<sup>32</sup> See Rent Board, Annual Report 2015-2016, p. 11. San Jose’s experience with this type of standard is not “instructive” because it allowed annual rent increases of 8% from the 1982 through 2015.

**F. The Exclusion of Debt Service Costs in Fair Return Standards**

The Richmond ordinance is silent on whether or not debt service costs should be considered.

Eight of the eleven apartment rent control ordinances in California (Los Angeles, San Jose, Oakland, Berkeley, Santa Monica, West Hollywood, East Palo Alto, and Mountain View) specifically **exclude** consideration of debt service in setting allowable rent levels, (except when the debt service is associated with capital improvements).

(Table 6)  
**Treatment of Purchase Mortgage Interest Expenses  
Under Apartment Rent Stabilization Ordinances**

<i>Jurisdiction</i>	<i>Consideration of Purchase Mortgage Interest Expenses</i>	<i>Limitations on Allowance of Debt Service Expenses</i>
<b>Los Angeles</b>	<b>Excluded</b>	
<b>Oakland</b>		Debt service pass-through repealed on April 1, 2014. Pre-repeal purchasers exempted from repeal.
<b>Berkeley</b>		
<b>Santa Monica</b>		
<b>West Hollywood</b>		
<b>Mountain View</b>		
<b>East Palo Alto</b>		
<b>Beverly Hills</b>		
<b>San Jose</b>		

Most of the MNOI standards in mobilehome park rent stabilization ordinances preclude consideration of debt service. Also, consideration of debt service is usually excluded under rate of return on investment standards- because fair return is measured by the return on the total investment, rather than just the cash portion of the investment. (Consistent with using this measure of return, the rate base for measuring the return is the total investment, and the calculation of the return is based on consideration of the whole return, rather than return net of mortgage interest payments.)

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Under the San Francisco, Los Gatos, and Hayward ordinances, increases in debt service may be passed through. However, under the San Francisco ordinance, increases based on debt service increases are limited to 7% and in buildings with six or more units are allowed only once every five years.

### **Rationale for Exclusion of Consideration of Debt Service**

If debt service is considered, owners who make equal investments in terms of purchase price and have equal operating expenses, may be entitled to differing rents depending on differences in the size of their mortgages and/or the terms of their financing arrangements.

Passing through increases in debt service, apart from other allowable rent increases, sets the allowable rent at a level that both:

- 1) provides for reimbursement for the financed cost of purchasing a building, and
- 2) provides the allowable rent increases that would otherwise provide a fair return by providing for increases in net operating income which can be used to finance increasing debt service.

### **Judicial Precedent Regarding Consideration of Debt Service in Fair Return Cases**

The legal precedent, expands on the rationale for the standard policy of excluding consideration of debt service in calculating fair return.

As indicated, Courts have held there is no rational basis for consideration of debt service in a rent setting process.<sup>33</sup> Once court explained:

“Assume two identical parks both purchased at the same time for \$1 million each. Park A is purchased for cash; Park B is heavily financed. Under Palomar's approach, calculating return based on total historic cost and treating interest payments as typical business expenses would mean that Park A would show a considerably higher operating income than Park B. Assuming a constant rate of return, the owners of Park B would be entitled to charge higher rents than the owners of Park A. We see no reason why this should be the case.”<sup>34</sup>

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<sup>33</sup> *Palomar Mobilehome Park Ass'n v. Mobile Home Rent Review Commission* [of San Marcos], 16 Cal.App. 4th 481, 488 (1993);

<sup>34</sup> *Id.*, at 489.

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The same Court of Appeal reaffirmed its conclusion regarding the treatment of debt service expenses. “We have previously rejected the notion that permissible rental rates based on a fair rate of return can vary depending solely on the fortuity of how the acquisition was financed.”<sup>35</sup> More recently, another Court of Appeal again affirmed the view that tying rents to individual owners’ financing arrangements has no rational basis.

Apart from the inequities that would result from permitting a party who financed its purchase of rent-controlled property to obtain higher rents than a party who paid all cash, there are additional reasons for disregarding debt service. ...debt service arrangements could easily be manipulated for the purpose of obtaining larger rent increases, by applying for an increase based on servicing a high interest loan and then refinancing at a lower interest rate or paying off the loan after the increase was granted. Alternatively, an owner might periodically tap the equity in a valuable piece of rental property, thus increasing the debt load. In any event, we discern no rational basis for tying rents to the vagaries of individual owners' financing arrangements.<sup>36</sup>

However, in an earlier case, one Court of Appeal held that consideration of debt service costs was required when it held that mobilehome park owners have a vested right to have their debt service considered if debt service was specifically allowed as an expense under the fair return standard in effect under an ordinance at the time the property was purchased.<sup>37</sup> In that case, The Court concluded the guidelines in effect when the mobilehome park was purchased created vested rights. In 1991, the same court reaffirmed this conclusion.<sup>38</sup>

### III. RECOMMENDATION

As stated above, it is recommended that the Rent Board regulations that include a specific fair return standard. A fair return standard provides guidance not only to the hearing officer but also to the parties impacted by the Ordinance and provides an objective methodology for consistent decisions.

Furthermore, the adoption of a maintenance of net operating income (MNOI) standard is recommended. The standard guarantees a right to rent increases which cover

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<sup>35</sup> *Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.*, 30 Cal.App.4th 84, 94 (1994)

<sup>36</sup> *Colony Cove Properties v. City of Carson*, 220 Cal.App. 840,871 (2013), . Courts in other states have reached similar conclusions. In 1978, when considering the constitutionality of an apartment rent control ordinance, the New Jersey Supreme concluded that: “Similarly circumstanced landlords ... must be treated alike. Discrimination based upon the age of mortgages serves no legitimate purpose.” *Helmsley v. Borough of Fort Lee*, 394 A.2d. 65, 80-81 (1978).

<sup>37</sup> *Palacio de Anza v. Palm Springs Rent Review Com.*, 209 Cal.App.3d. 116 (1989)

<sup>38</sup> *El Dorado Palm Springs, Ltd.v. Rent Review Com.*, 230 Cal.App.3d. 335 (1991)

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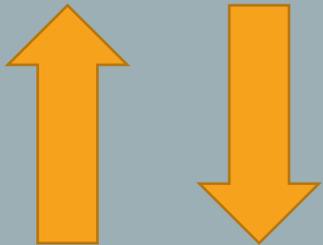
operating cost increases and provide for growth in net operating income over a base year. The standard has been approved in principle by the courts and in challenges to individual decisions applying the standard, its use has been consistently upheld.

In contrast, a rate of return standard would lead to a situation in which rent regulations could be overridden with investments which are not justified by the current rents. While the courts have not rejected a rate of return on investment standard in principle, courts have repeatedly qualified the scope of its use (e.g. for example, by holding that there is no right to a fair return on excessive investments.) In practice rate of return hearings require the application of a particular rate, when there is no single rate that is fair and the opinions of courts and experts about what rates of fair have widely diverged.

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# City of Richmond Rent Program

## SETTING STANDARDS FOR CHANGES IN THE MAXIMUM RENT



Community Workshops | December 2017



# AGENDA

- 1. Presentation**
  - 1. Purpose and Background**
  - 2. Standards for Maximum Rent Decreases**
  - 3. Standards for Maximum Rent Increases**
- 2. Breakout Groups**
- 3. Next Steps**
- 4. Closing**

# PURPOSE AND BACKGROUND



## PURPOSE OF THIS WORKSHOP

- 1. Provide an overview of the reasons for filing petitions for an individual increase or decrease in the maximum rent**
- 2. Gather community feedback on specific policy options**
  - All comments and notes will be shared with subject matter experts drafting regulations**
  - The Rent Board will consider regulations governing the petition process in December 2017 and January and February 2018**

# RENT REGULATION BASICS

- **The Richmond Rent Ordinance regulates the amount of rent that may be charged for a rental unit in two key ways:**
  1. **The Annual General Adjustment (Inflation, or Cost-of-Living Increase)**
    - **Equal to 100% of the change in the Consumer Price Index**
    - **2016: 3.0%**
    - **2017: 3.4%**
  2. **Individual increases or decreases in the maximum rent granted by the Rent Board Hearing Examiner during the petition process**

## NOT ALL RENTAL UNITS ARE REGULATED

- The following types of properties are exempt from limits on the amount of rent that may be charged (RMC 11.100.070):
  - Single family homes (one dwelling unit on one parcel)
  - Condominiums
  - New construction (unit built after 2/1/1995)
  - Units regulated by another governmental agency (e.g. Section 8, Tax Credit units)
  - Permitted small second dwelling units
  - Tenancies where the Landlord lives and shares a kitchen or bathroom with the Tenant(s)

# STANDARDS FOR MAXIMUM RENT DECREASES

# REASONS FOR FILING A PETITION TO DECREASE THE MAXIMUM RENT

- **Tenants may file a petition for a decrease in the maximum rent for the following reasons:**
  - 1. Habitability problems (e.g. broken appliances, pests) and/or code violations**
  - 2. Decrease in space or services**
  - 3. Decrease in the number of occupants allowed in the unit**
- **Tenants may also file an administrative complaint if the Landlord has failed to comply with the Rent Regulation standards and has charged more than the maximum allowable rent**

## HABITABILITY PROBLEMS: GENERAL STANDARD FOR RENT REDUCTION

- Generally, the amount of the rent reduction for habitability issues is calculated based on the following formula:

$$\text{Rent Decrease} = (\% \text{ of impairment of use}) \times (\text{maximum rent at the time})$$

### EXAMPLE

The washer and dryer in the rental unit have been broken for months. Upon reviewing the evidence, the Hearing Examiner determines the impairment of use to be 5%. At the time, the maximum rent was \$1,200.

$$\text{Rent Decrease} = (5\%) \times (\$1,200) = \$60 \text{ per month until washer and dryer are fixed.}$$

# CODE ENFORCEMENT VIOLATION: POTENTIAL MODELS FOR RENT REDUCTION

- The Landlord may be cited with a code violation if the “implied warranty of habitability” (Civil Code 1941.1) is breached.
- Rent reductions are calculated differently across rent control jurisdictions.

## Model #1: Percentage Decreases (Berkeley):

**Minor code violation (e.g. broken handrail) = no less than 10% rent reduction**

**Severe code violation (e.g. lack of heat) = 20% + rent reduction**

# CODE ENFORCEMENT VIOLATION: POTENTIAL MODELS FOR RENT REDUCTION (CONTINUED)

## [Model #2: Dollar Amount Ranges \(Santa Monica\):](#)

**Pest code violation: \$15 - \$175 reduction in monthly rent**

## [Model #3: Discretionary \(West Hollywood\):](#)

**Rent decreases are calculated on a case-by-case basis, depending on factors such as:**

- The extent to which the violation affected the Tenant(s)**
- Relative significance of the reduced habitability in relation to the safety, health, convenience and comfort of the tenants**
- Other factors deemed relevant by the Board**



## DECREASE IN SPACE OR SERVICES: GENERAL STANDARD FOR RENT REDUCTION

- **A rent reduction is typically granted in cases where the Landlord has caused the Tenant to suffer a decrease in housing services (e.g. security) or living space as compared to the space and services provided when the tenancy began.**
- **Generally, the amount of the rent reduction for a decrease in space or services is calculated based on the following formula:**

**Rent Decrease = (% of impairment of use) x (maximum rent at the time)**

### **EXAMPLE**

The Landlord was working to replace the windows in the living room. The contractors impaired the Tenant's ability to use the living room. Upon reviewing the evidence, the Hearing Examiner determines the impairment of use to be 10%. At the time, the maximum rent was \$1,200.

**Rent Decrease = (10%) x (\$1,200) = \$120 per month until the Tenant can utilize the living room**

## DECREASE IN SPACE OR SERVICES: ALTERNATIVE STANDARD FOR RENT REDUCTION

- **Alternatively, the Rent Board could adopt a formula based on the “commercially reasonable value of the service” at the time.**

$$\text{Reduced Rent} = (\text{maximum rent at the time}) - (\text{value of service})$$

### EXAMPLE

A Landlord takes away a Tenant’s parking space. The Hearing Examiner determines the commercially reasonable value of a parking space in the area is \$100. At the time, the maximum rent was \$1,200.

$$\text{Reduced Rent} = (\$1,200) - (\$100) = \$1,100 \text{ per month}$$

## DECREASE IN NUMBER OF OCCUPANTS: GENERAL STANDARD FOR RENT REDUCTION

- **The Richmond Rent Ordinance allows a Tenant to petition for a reduction in rent due to a decrease in the number of occupants allowed to live in the rental unit (based on the number of occupants allowed by the landlord at the beginning of the tenancy)**
- **Generally, the amount of the rent reduction for a decrease in occupants is calculated based on the following formula:**

$$\text{Rent Decrease} = (\% \text{ of reduction of allowable occupants}) \times (\text{maximum rent at the time})$$

### **EXAMPLE**

**A lease allows four Tenants to occupy a rental unit. One Tenant (25% of the total number of occupants) moves out. The Landlord does not allow that Tenant to be replaced.**

$$\text{Rent Decrease} = (25\%) \times (\$1,200) = \$300 \text{ per month}$$

# STANDARDS FOR MAXIMUM RENT INCREASES



# REASONS FOR FILING A PETITION TO INCREASE THE MAXIMUM RENT

- **Landlords may file a petition for an increase in the maximum rent for the following reasons:**
  - 1. Increase in maintenance or operating expenses (related to Fair Return)**
  - 2. Increase in property taxes (related to Fair Return)**
  - 3. Increase in the number of occupants**
  - 4. Increase in services, space, or amenities**
  - 5. Landlord has needed to make necessary capital improvements to comply with building, health, and/or safety codes**
  - 6. Landlord has charged extraordinarily low rents for an extended period of time**

# INCREASE IN NUMBER OF OCCUPANTS: STANDARDS FOR RENT INCREASE

- The Rent Board may adopt a percentage by which the maximum rent may be increased for each additional occupant above the base number.
- For legal reasons, the maximum rent may not be increased due to the addition of a Tenant's mother, father, child, or spouse.

**Example: Three Tenants live together in a rental unit. The rent is \$1,200. A sibling moves in with one of the Tenants, increasing the number of occupants to four.**

**The Rent Board determines the standard for increasing the rent is 10% for each additional occupant.**

**The new rent that may be charged is equal to:**

$$\mathbf{\$1,200 + (\$1,200 \times 10\%) = \$1,320}$$

## INCREASE IN SERVICES OR SPACE: POSSIBLE STANDARDS FOR A RENT INCREASE

City	Standard
<b>Berkeley</b>	Rent may be increased by a percentage (determined by the Rent Board) of the cost of adding additional space. For services, the rent increase is equal to the market value of the increased services or amenities.
<b>Santa Monica</b>	Utilizes a dollar amount range to calculate an increase in services provided (e.g. for the addition of laundry services rent may be increased \$30 - \$175)
<b>West Hollywood</b>	Utilizes a dollar amount range to calculate an increase in services provided (e.g. for the addition of parking rent may be increased \$77 - \$154)

**NOTE: Rent increases due to an increase in space or services must be pre-approved by the Tenant.**



## CAPITAL IMPROVEMENTS: POSSIBLE STANDARDS FOR A RENT INCREASE

- **Purpose of a Capital Improvement policy is to balance (1) a Landlord's ability to maintain and preserve quality rental units while receiving a fair rate of return, and (2) Tenants are afforded reasonable rent increases**
- **There is no single definition of the term "capital improvement" used by jurisdictions with rent control.**
  - **Narrowest definitions: Limited to structural improvements**
  - **Broadest definitions: May include aesthetic improvements**



## CAPITAL IMPROVEMENTS: POSSIBLE STANDARDS FOR A RENT INCREASE (CONTINUED)

- **Additional considerations for a Capital Improvement Policy:**
  - **Temporary vs. permanent rent increases**
  - **Capped percentages of pass-through costs (e.g. Landlord may pass-through 50% of cost, amortized such that rent increases may not exceed 10%)**
  - **Considering revenue associated with vacancy rent increases (“resetting” the rent to market rate) to offset costs of capital improvements**



## INCREASE IN EXPENSES: “FAIR RETURN” BASICS

- **Owners covered by rent regulations have a constitutional right to a fair rate of return on their rental property investment.**
- **The Courts are the ultimate arbitrators of what constitutes a fair rate of return.**
- **The Courts have not required the adoption of a particular standard for determining whether or not a fair return is achieved.**
- **Since a fair return standard is not specified in the Ordinance, determining what a fair return means in the City of Richmond must be done legislatively, through regulations adopted by the Rent Board.**



## INCREASE IN EXPENSES: “FAIR RETURN” BASICS ACCORDING TO THE COURTS

- In determining if a fair return has been achieved, Rent Boards must allow for growth in the Net Operating Income (NOI)

**Net Operating Income = All Revenue – All Expenses (excluding debt service)**

- The courts have determined that consideration of debt service has no rational basis. An owner’s individual financing scheme may not merit differences in the maximum rent that may be charged.

**Philosophical question: Should a Landlord who obtained less optimal financing terms (e.g. a higher interest rate) be able to charge higher rents?**

# INCREASE IN EXPENSES: POSSIBLE “FAIR RETURN” STANDARDS

Fair Return Standard	Calculation	Example Cities
<b>Maintenance of Net Operating Income (MNOI)</b>	Fair Rent = Base Year NOI adjusted by CPI increase since base year + operating expenses	Berkeley, East Palo Alto, Santa Monica, Los Angeles, West Hollywood, Oakland*, San Jose, Beverly Hills, Mountain View
<b>Return on Investment (ROI)</b>	Fair Rent = Operating expenses + X% of investment	None - Board would need to determine reasonable rate of return on investment
<b>Return on Value (ROV)</b>	Fair Rent = Operating expenses + X% of value	Not used – Courts determined this is circular
<b>Cost Pass-Through</b>	Fair Rent = Prior year rent + increase in operating costs over prior year	Oakland, San Francisco



# INCREASE IN EXPENSES: MNOI FAIR RETURN STANDARD

Definition of Maintenance of Net Operating Income (MNOI): The net operating income of the current year is compared to a base year, allowing for growth based on CPI and increases in operating expenses.

## Example Calculation:

- A Landlord owns a four-plex. In 2015, the rent was \$1,200 in each unit.

**Monthly revenue = \$1,200 x 4 units = \$4,800**

**Monthly expenses (30% of revenue) = \$1,440**

**Base Year (2015) monthly NOI = \$4,800 - \$1,440 = \$3,360**

## INCREASE IN EXPENSES: MNOI FAIR RETURN STANDARD (EXAMPLE CONTINUED)

- It is now the year 2020, and the Landlord's expenses have increased. The Landlord files a petition on the grounds that they are no longer able to receive a fair return since expenses have increased more than the rent pursuant to the Annual General Adjustment (*let's assume the combined AGA rent increases were 15% between 2015 and 2020.*)

**New monthly revenue = \$1,380 x 4 units = \$5,520**

**Monthly expenses (40% of revenue) = \$2,208**

**Year 2020 monthly NOI = \$5,520 - \$2,208 = \$3,312**

- The Hearing Examiner applies the change in the Consumer Price Index between 2015 and 2020 to the Net Operating Income and rents (*let's assume the combined change in the CPI was 15% between 2015 and 2020.*)

**Permitted 2020 Net Operating Income based on 15% change in CPI = \$3,864**

- The Hearing Examiner determines the rent in each unit may be increased to \$1,518, which allows the Landlord to maintain the same Net Operating Income as the Base Year, including the change in the Consumer Price Index.

- Examples: Berkeley, East Palo Alto, Santa Monica, Los Angeles, West Hollywood, San Jose, Beverly Hills, Mountain View

## INCREASES IN EXPENSES: ALTERNATIVE FAIR RETURN STANDARDS USED IN RENT CONTROL CITIES

**Modified MNOI:** The MNOI standard is modified slightly, to allow for pass-through of cost increases over the prior year without consideration of a base year NOI

- **Examples: Oakland, San Francisco**

**Some Rent Boards have not adopted one standard. Instead, they have a list of factors the Hearing Examiner can consider in making their determination.**

- **Examples: Alameda, Los Gatos, Hayward**



## HISTORICALLY LOW RENTS: POSSIBLE STANDARDS FOR A RENT INCREASE

- **Purpose of such a policy is to allow an adjustment of the Base Rent when the Base Rent drastically misrepresented market conditions at the time**
- **Option 1: Rent Program staff could prepare a study of market-rate rents for the base year (e.g. 2015) and current year. Landlord would then bring corresponding evidence of historically low rents.**
- **Option 2: Landlords could be required to present an appraisal report to substantiate the request; Rent Program staff would prepare an independent analysis**
- **Rent Board could consider a cap on the resulting rent increase to curb excessive rent increases**

# BREAKOUT GROUPS

**Group 1: Increases in Operating Expenses, Fair Return Standards**

*City Council Chambers – Main Room*

**Group 2: Increases or Decreases in Space, Services or Habitability**

*City Council Chambers – Side Staff Room #1*

**Group 3: Capital/Building Improvements**

*City Council Chambers – Side Staff Room #2*

**Group 4: Historically Low Rents**

*City Council Chambers – Shimada Room*

## NEXT STEPS

- Individual comment cards and breakout session notes will be shared with subject matter experts drafting regulations
- The Rent Board will consider standards for increasing and decreasing the maximum rent in December 2016, January 2017, and February 2017
- Comments may also be submitted in writing at the following addresses:
  - Email: [rent@ci.richmond.ca.us](mailto:rent@ci.richmond.ca.us) (please put “ATTN: BOARDMEMBERS” in subject line)
  - Mail: City of Richmond Rent Program, Attn: Rent Board, 440 Civic Center Plaza, Suite 200, Richmond, CA 94804

# THANK YOU

**Nicolas Traylor, Rent Program Executive Director**

**440 Civic Center Plaza, Suite 200**

**Richmond, CA 94804**

**(510) 620-6564**

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



City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops

FEEDBACK WORKSHEET

Group I: Increases in Operating Expenses, Fair Return Standards

Name: [Redacted]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [Redacted]

1.) What do you think are the most important factors to consider in setting a fair return standard?

Improvement cost, ~~Rep~~ Repair cost, Legal cost, insurance cost to landlord, ~~insurance cost~~ <sup>cost</sup> ~~lost in rent~~ due to not able to ~~enforce~~ ~~enforce~~ add addendum to the current lease. (Such as tenant not buy tenant insurance but landlord cannot enforce it, and now subject landlord of high risk and higher ~~cost~~ ~~of~~ ~~lost~~ and liabilities.

2.) What did you like or dislike about any of the fair return models presented?

~~Interest~~ mortgage is very different from one investor to another, my mortgage is not on the book of this calculation. So unfair for me to consider mortgage rate.

3.) Please share any additional comments in the space below:

[Empty lined space for additional comments]

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 1: Increases in Operating Expenses, Fair Return Standards**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in setting a fair return standard?

*So imp't that we don't have to jump through hoops to get a fair return - maybe something long in writing to give to tenants.*

2.) What did you like or dislike about any of the fair return models presented?

3.) Please share any additional comments in the space below:

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group I: Increases in Operating Expenses, Fair Return Standards**

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one):    Tenant    Landlord    Realtor    Attorney    Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in setting a fair return standard?

*insurance*  
monthly costs - mortgage amt, ~~total~~ utilities, services (landscaping maintenance)  
yearly costs - fees - rent board, inspection, business license, property taxes  
+ % for maintenance - plumber services, painting, caulking, roof repairs  
depreciation of  
do not consider property value as this can't be realized unless selling property

2.) What did you like or dislike about any of the fair return models presented?

MNOI - OK but excluding debt service in face at roll back is a trap that has put some LL in red  $\bar{u}$  (no) return or negative return *see back*  
ROI what is the investment? - includes mortgage payment?  
ROV - vague - what is "value"  
Cost Pass-Through add in CPI: prior rent + CPI + increase in operating costs

3.) Please share any additional comments in the space below:

Renters protected by laws that keep rents low at the expense of others (property owners, taxpayers etc) should have to qualify for this benefit by showing financial need

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group I: Increases in Operating Expenses, Fair Return Standards**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>  
Identity (check one): Tenant Landlord Realtor Attorney Other  
Phone Number [REDACTED]

1.) What do you think are the most important factors to consider in setting a fair return standard?

Allow the landlord to set their own fair rent for their unit. After that the rule can apply with a 3% per year increase if they choose to raise it.

2.) What did you like or dislike about any of the fair return models presented?

Why is Richmond ~~considering~~ adopting a Rent program?  
What is the rent fee used for?

If a landlord decides to lower the rent for whatever reason they want, do they need to file a petition?

3.) Please share any additional comments in the space below:

It's not fair that a single family dwelling is exempt but a duplex has to fall ~~under~~ under rent program. Another issue is a duplex shouldn't have pay for each unit. It should only be a single charge for the building. We are already paying business license fee per year.

NEXT PAGE

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 1: Increases in Operating Expenses, Fair Return Standards**

Name: \_\_\_\_\_ Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one):  Tenant  Landlord  Realtor  Attorney  Other

Phone Number: \_\_\_\_\_

1.) What do you think are the most important factors to consider in setting a fair return standard?

Tax courts

2.) What did you like or dislike about any of the fair return models presented?

To be adopted by the Rent Board

3.) Please share any additional comments in the space below:

I am very distrust about the fact  
that a Developer with tax credits  
and getting millions of dollars in  
grants they can increase and  
increase the rent

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 1: Increases in Operating Expenses, Fair Return Standards**

Name: \_\_\_\_\_

Date (circle one): Dec. 4<sup>th</sup>      Dec. 9<sup>th</sup>

Identity (check one):     Tenant       Landlord       Realtor       Attorney       Other

Phone Number: \_\_\_\_\_

1.) What do you think are the most important factors to consider in setting a fair return standard?

FOR 85 YEARS, FROM 1926 TO 2011, THE AVERAGE RETURN OF S.P 500 IS 11.69%. NOW THE GOVERNMENT DECIDE THAT MY ~~CAN~~ FAIR RETURN IS NGK TO NGK WITH INFLATION

2.) What did you like or dislike about any of the fair return models presented?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.) Please share any additional comments in the space below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group I: Increases in Operating Expenses, Fair Return Standards**

Name: \_\_\_\_\_ Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: \_\_\_\_\_

1.) What do you think are the most important factors to consider in setting a fair return standard?

A - ~~the~~ Buildings with over 4-units are subject to refinancing every 3-5 years. That's a costly affair, plus the risk of increase in interest rate. A reserve must be built up to deal with this issue.

B - Amount of time it takes to manage all repairs and operations.

2.) What did you like or dislike about any of the fair return models presented?

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3.) Please share any additional comments in the space below:

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**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 1: Increases in Operating Expenses, Fair Return Standards**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in setting a fair return standard?

What to do about increase costs due to utilities?

we pay P&E, WATER + GARBAGE

2.) What did you like or dislike about any of the fair return models presented?

3.) Please share any additional comments in the space below:

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 1: Increases in Operating Expenses, Fair Return Standards**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in setting a fair return standard?

QUALITY OF LIVABILITY OF PREMISES - ADDITIONAL IMPROVEMENT FOR RESIDENCE COMPARTMENT & UTILITIES

2.) What did you like or dislike about any of the fair return models presented?

PRIOR TO RENT CONTROL - ADDITIONAL MEMBERS ADDED W/O RENT INCREASES - CAN THIS BE RETROACTIVE FOR RENT INCREASE -

3.) Please share any additional comments in the space below:

[Empty lined space for additional comments]

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 1: Increases in Operating Expenses, Fair Return Standards**

Name: \_\_\_\_\_

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one):    Tenant    Landlord    Realtor    Attorney    Other

Phone Number: \_\_\_\_\_

1.) What do you think are the most important factors to consider in setting a fair return standard?

*Annual NOI stays above the AGI*

2.) What did you like or dislike about any of the fair return models presented?

*Did Not Agree 2 Any models!*

3.) Please share any additional comments in the space below:

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 1: Increases in Operating Expenses, Fair Return Standards**

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

Identity (check one):

Tenant

Landlord

Realtor

Attorney

Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in setting a fair return standard?

That operating expenses can increase suddenly based on changes in tax policy / code regulations / laws. Landlords have no control over this & the process should be simple to understand & simple for landlords to apply for rent increases based on the fair return standard.

2.) What did you like or dislike about any of the fair return models presented?

I do not like the ROI model. I do not trust the Rent Board to set a reasonable ROI. I like the MROI model since it allows the fact that the landlord made a good investment in the first place to be taken into account.

3.) Please share any additional comments in the space below:

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 1: Increases in Operating Expenses, Fair Return Standards**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in setting a fair return standard?

Setting new lease in timely fashion; following the rules (all like/want to), if a new lease is produced by landlord (addendums of old) but tenant refuses to comply? Just paying at old lease rate [month-to-month] constitute tenant non-conformity?

2.) What did you like or dislike about any of the fair return models presented?

Inabilities to establish transparent remedial courses of action regarding tenant & landlord responsibilities for claims and actions.

3.) Please share any additional comments in the space below:

Previous to Rent Control Board (RCB) leases could provide advice only for "Renter's Insurance" as a maintenance of the lease; Would landlord creating a rule to require renter's insurance be considered a "rent increase"?

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name:

[REDACTED]

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

Identity (check one):

Tenant

Landlord

Realtor

Attorney

Other

Phone Number:

[REDACTED]

- 1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

Rents should be based on values extrapolated from non rent controlled properties.  
Rents should be increased gradually over time rather than adjusted all at once.  
Two to three year time period.

- 2.) What did you like or dislike about any of the standards or policy options presented?

No account has been taken of the economic changes in the area, gentrification & high property values that are continuing to increase.

- 3.) Please share any additional comments in the space below:

The rent control program is an insurance program for tenants, it serves the tenants interests exclusively. It is galling that the landlord should be required to pay for a service that serves the tenant and damages the landlord. Furthermore the city of Richmond collects the insurance premiums and then make the landlord provide the service without compensation.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

*\*  
call me please*

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

*Thanks*

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one):    Tenant    Landlord    Realtor    Attorney    Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

*It is essential to have the city do a basic analysis of market rate based on 2015*

2.) What did you like or dislike about any of the standards or policy options presented?

3.) Please share any additional comments in the space below:



**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [Redacted]

Date (circle one): Dec. 4<sup>th</sup> **Dec. 9<sup>th</sup>**

Identity (check one): Tenant Landlord Realtor Attorney **Other**  
*Spouse*

Phone Number: [Redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

*Historically low rent should be exempt to rent control - with the understanding that the rent stays at a certain pay point.*

2.) What did you like or dislike about any of the standards or policy options presented?

*I dislike rent control all together - we only have three tenants and they are paying more than half the rent they could be paying - We are in the hole and are paying the City for what?*

3.) Please share any additional comments in the space below:

[Empty lined space for additional comments]

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED] Date (circle one) Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

Establishing a \$ amount for a unit + rent increases instead of taking the rents changed in 2015! This base year is ~~unjust~~ <sup>unfair</sup> for landlords!

2.) What did you like or dislike about any of the standards or policy options presented?

What would the appraisal report entail?  
The landlord can not be burdened with more <sup>research</sup> work. It is relatively easy to find out what a certain unit rents in a certain area.

3.) Please share any additional comments in the space below:

We have a situation with historically low rents, too many occupants per units (compared to the leases) + a building that needs a ton of work.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents? INCREASE - DECREASE

Amount of tenants in the unit  
IF Tenant is disabled SSI SDI  
IF Tenant has disabled children

OPTION 2

2.) What did you like or dislike about any of the standards or policy options presented?

IL looks like is adress to landlords

3.) Please share any additional comments in the space below:

I wish there were more tenants in the audience.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 4: Historically Low Rents**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

- ① LENGTH OF OWNERSHIP OF PROPERTY
- ② LENGTH OF TENANT OCCUPANCY
- ③ HUD CONTRA COSTA RENTAL RATE 2015 (RENT ROLLBACK) (BASE RENT)

2.) What did you like or dislike about any of the standards or policy options presented?

THE ROLLBACK TO 2015 (BELOW MARKET)  
RENTAL RATES DUE TO RENTAL ORDINANCES

3.) Please share any additional comments in the space below:

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**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 4: Historically Low Rents**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

- ① What are standard rents for a certain <sup>type of</sup> unit.
- ② How far below the standard is your current rent?
- ③ How much would you have to raise it to reach standard?
- ④ What other factors except # of bedrooms will determine value of unit? Sq. ft.; locations

2.) What did you like or dislike about any of the standards or policy options presented?

~~As~~ Landlords who are maintaining units in excellent condition or making improvements should be able to raise rents a certain amount. Historically low rents should be able to raise it up to average <sup>for condition, location, etc</sup>

3.) Please share any additional comments in the space below:

The City inspected my rental units and required me to repair certain things, which I did. However, that did not give me the right to raise the rent. If you maintain it, then you should be allowed to raise it if it is much lower than the average or standard.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

X

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup>    Dec. 9<sup>th</sup>

Identity (check one):    Tenant    Landlord    Realtor    Attorney    Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

There are websites that report average rents - Base rent should be some percentage of average rent  
Average rent in July 2015 Average rent \$2000  
so base rent 80% of 2000 = \$1600 For 2 Bedr  
One Bath

2.) What did you like or dislike about any of the standards or policy options presented?

All About Rent  
Value of income property => RENT

3.) Please share any additional comments in the space below:

[Empty lined space for additional comments]

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

make it fair. It should not be based on what we historically charged

2.) What did you like or dislike about any of the standards or policy options presented?

3.) Please share any additional comments in the space below:

What about sweat equity?  
What about ~~what we have~~ doing our own work?

Rent-O-Meter 2015 was 2000 for 2 BR  
Rent Jungle 2015 was 2000 for 2 BR

Some landlords, like us, would be happy to help.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

*what is current market rate?*

2.) What did you like or dislike about any of the standards or policy options presented?

3.) Please share any additional comments in the space below:

*Have A work shop  
specifically for  
historically low rents*

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: 

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one):    Tenant        Landlord        Realtor        Attorney        Other

Phone Number: 

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

We been getting low rents all the time when rent control was set we end up with low rents. I think we should set an average rent for 2015, the city should use the sec. 8 rent for 2015 and allowed owner to increase to used that as base rent.

2.) What did you like or dislike about any of the standards or policy options presented?

I like that the city is protecting our ~~zetta~~ people. But ~~rent~~ the increasing should start on 2015 ~~at~~ at the maximum amount of rent increase allowed.

3.) Please share any additional comments in the space below:

If we go back to 2015 the city should allow us to at leas keep the rents that we got until now, and not return them. Fairnes for us who charged lower rents is very important.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 4: Historically Low Rents**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one):    Tenant        Landlord        Realtor        Attorney        Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

*What is the standard      Take 3 years to adjust rent  
to current standard*

2.) What did you like or dislike about any of the standards or policy options presented?

3.) Please share any additional comments in the space below:

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

~~the most important factors~~ Determine what's the average rent in your area for the last 2 years. allow landlord to increase at a % per year to get up to fair market rent within 3 years

2.) What did you like or dislike about any of the standards or policy options presented?

This workshop should have been broke up into the workshop that you're interested in. I wasn't concerned about the other workshops

3.) Please share any additional comments in the space below:

If your rent is low and the tenant moves out. Can you ~~you~~ set the new rent at the market value?

City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops

FEEDBACK WORKSHEET  
Group 4: Historically Low Rents

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

Flexibility in how long a landlord is able to take to get rent readjusted upwards. Landlords should not be punished for being nice to their tenants. The rent control ordinance that was passed feels like it is specifically punishing nice landlords.

2.) What did you like or dislike about any of the standards or policy options presented?

who are not taking advantage of their tenants. If rent was significantly below market in 2015 there should be procedures in place to get rents up to a fair level.

3.) Please share any additional comments in the space below:

The relocation fees should be tied to how much rent is currently being charged. One price for relocation does not fit all. It's unfair for landlords who have historically charged low rents to pay these high relocation fees which can be 5-10x the amount of the monthly rent.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [redacted] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

*whether your rent in 2015 was at fair market value at that time.*

2.) What did you like or dislike about any of the standards or policy options presented?

*option 1 - are the landlords corresponding evidence weighed in the same amount as rent staff.*

3.) Please share any additional comments in the space below:

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

Identity (check one): Tenant

Landlord

Realtor

Attorney

Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

I would like the flexibility to reset to market rates over months or years. For example, rent is 50% of market, instead of raising 50% at once, raising 10% per year over 5 years, or 1% per month over 5 years. Without petitioning separately each year.

2.) What did you like or dislike about any of the standards or policy options presented?

3.) Please share any additional comments in the space below:

Relocation fees should be a percentage of rent, or number of months of rent. (for example, 3 months worth of rent currently charged). A flat fee does not take into consideration of differences in rent charged. The relocation fee for one property might be 2 months of rent, and equal 10 months of another. This incentivizes landlords to charge the most rent they can get away with, and penalizes landlords who charge below market.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

f  
Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

- level of rent at base year vs market rate rent

- history of rent increases over duration of tenancy

- ensuring that market rates are established per neighborhood or zip code

2.) What did you like or dislike about any of the standards or policy options presented?

Option 1 seems fair

Option 2 ~~seems~~ makes landlords spend money on an appraisal when the City is already doing an analysis - seems like a duplicate effort. It should be that the City should do the analysis & ~~the~~ the landlord has

3.) Please share any additional comments in the space below: →

it's critical that the rent appraisals, both historic & current, are done by neighborhood, not city-wide since rents are vastly different in different areas in Richmond (ie Point Richmond vs Iron Triangle)

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

25% a year increase with Section 8

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

new buildy / units purchase and equate rent units to a proper market value

2.) What did you like or dislike about any of the standards or policy options presented?

3.) Please share any additional comments in the space below:

Ⓢ would like all consultations

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [redacted] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

*Prevailing Market Rates*

2.) What did you like or dislike about any of the standards or policy options presented?

*lack of clarity in the process plus the caps on adjustments.*

3.) Please share any additional comments in the space below:

*There should be flexibility and expediency in making adjustments based on market rate adjustments. The city should publish market rates on a zip code by zip code basis.*

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

*Landlords who have been fair all along  
Landlord are being penalized and unable  
to operate due to the reversing to 2015 rates.*

2.) What did you like or dislike about any of the standards or policy options presented?

*I like option 1. - Landlords would like to  
be made whole*

3.) Please share any additional comments in the space below:

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

f Name [redacted] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

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2.) What did you like or dislike about any of the standards or policy options presented?

Need to start w/ information about newly assigned rental properties & how how landlords can determine what the baseline should be or where to go to get this information.

3.) Please share any additional comments in the space below:

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**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

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2.) What did you like or dislike about any of the standards or policy options presented?

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3.) Please share any additional comments in the space below:

For my 2 properties, I haven't really considered raising rents. Both tenants are exceptional, problem free, and actually help me maintain the dwellings. Since because of my current good standing & cooperation with tenants, I don't want to take part in this rent program. If either tenant should decide to move, I plan to take the property off the rental market & sell or offer the space to friend or family. Neither of my properties are good investments to make an income. Property #1 annual net = \$14,000  
Property #2 annual net = minus \$14,000

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

*the increases in taxes*  
*utilities*  
*costs of maintenance & repairs*  
*etc.*

2.) What did you like or dislike about any of the standards or policy options presented?

[Empty lined space for response]

3.) Please share any additional comments in the space below:

*I feel for new owners of rent controlled bldgs. They have paid way too much and need to meet their high expenses in 2nd yr. at the latest.*

[Empty lined space for response]

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 4: Historically Low Rents**

Name: [Redacted]

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

Identity (check one): Tenant

Landlord

Realtor

Attorney

Other

Phone Number [Redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

*To obtain fair return for landlord*

2.) What did you like or dislike about any of the standards or policy options presented?

*It doesn't work*

3.) Please share any additional comments in the space below:

*Need more landlord meetings.*

City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops

FEEDBACK WORKSHEET  
Group 4: Historically Low Rents

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

Should use market rent ~~or~~ from other public source like zillows and single family home rent where control is not being impacted to reflect a true natural rent baseline.

2.) What did you like or dislike about any of the standards or policy options presented?

Current rate cap or base rent standard penalize landlords being kind to tenant.

and penalized for not having professional staffing to keep up the ~~day~~ year to year rent update.

3.) Please share any additional comments in the space below:

I want ~~rent~~ adjustment to allow lost in utilities fee (such as water, garbage fee) that was allowed in original contract, but not allowed now.

eg. I charge water \$45 flat on contract least so my ~~but I now~~ rent can be lower. but I ~~na~~ ~~not~~ can not charging ~~ing~~ that now because no separate water meter.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

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2.) What did you like or dislike about any of the standards presented?

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3.) Please share any additional comments in the space below:

*If a tenant and a landlord have a good working relationship and both agree that they do not want to be part of or participate in the rent control system they should be able to opt out. At the same time if the tenant wishes to join in later for a set minimum period of time that should be allowed as well.*

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup>    Dec. 9<sup>th</sup>

Identity (check one):    Tenant    Landlord    Realtor    Attorney    Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

*to make improvement for rent increases*

2.) What did you like or dislike about any of the standards presented?

[Blank lines for response]

3.) Please share any additional comments in the space below:

[Blank lines for response]

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [redacted] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

THE CAPITAL IMPROVEMENTS MEAN AN INCREASE  
THE PROPERTY VALUE. DOES THE TENANT HAVE TO  
PAY FOR THE LANDLORD'S INCREASE OF PROPERTY VALUE?

2.) What did you like or dislike about any of the standards presented?

3.) Please share any additional comments in the space below:

When I moved into the property  
gum fire was prevalent in the neighborhood  
because of stable rent like me moved in  
the neighborhood became more desirable,  
my rents go up, without regard for the  
fact that I helped improve property  
VALUE!!

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: \_\_\_\_\_

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

Allowing for reasonable time period for the cost of repair to be amortized. For example a maximum of 5 years and 75% pass through. Not allowing this creates an increasingly dilapidated housing market.

2.) What did you like or dislike about any of the standards presented?

Staff seems very considerate. I would like a bit more direction on what is really being considered.

3.) Please share any additional comments in the space below:

I've always advocated balance. This program does not as it is written provide that balance. Hopefully the rent board corrects some of this and restores some balance. It would help maintain a positive relationship between both parties.

Also some clarity on breach. For example after how many late payments is a tenant considered in breach.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [Redacted]

Date (circle one): Dec. 4<sup>th</sup>    Dec. 9<sup>th</sup>

Identity (check one):     Tenant     Landlord     Realtor     Attorney     Other

Phone Number: [Redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

*capped percentage of pass-through cost  
Rent increase NOT to exceed 10%*

2.) What did you like or dislike about any of the standards presented?

*It really does not apply to my living conditions.*

3.) Please share any additional comments in the space below:

[Empty lined space for additional comments]

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [redacted]

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

Identity (check one):  Tenant

Landlord

Realtor

Attorney

Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

with Trump's new tax law, we may not be able to deduct these costs from our income

capital improvements should increase should = 100% of cost of project

increase should be in addition to CPI - total increases may be capped at 10% or 15% with proper notice.

2.) What did you like or dislike about any of the standards presented?

if cap is lower than 10%, the capital improvement increase should be permanent and add to the base rent of the unit

costs should include the costs of financing

3.) Please share any additional comments in the space below:

consider low interest loans for capital improvement projects - it is hard to save for projects under rent control

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [redacted] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

Owners need to be able to recoup capital impr.  
Tenant & LL should be able to negotiate  
Non capital improvements... Guidelines could help.  
The past RB should advocate cooperation.

2.) What did you like or dislike about any of the standards presented?

3.) Please share any additional comments in the space below:

I own property in Oakland & Berkeley ~~also~~ also.  
Please feel free to reach out ~~to~~ for additional comments  
~~I am a~~ I am very experienced in this area.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name [redacted] te (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord Realtor Attorney Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

*Should consider all items/improvements made on an individual basis. - including roof, heating, electrical, windows, new kitchens + baths.*

2.) What did you like or dislike about any of the standards presented?

*need to make sure the standard is not narrow. need to review most/all capital improvements to be passed on, if not, landlords will not provide the improvement. Then buildings become eyesores.*

3.) Please share any additional comments in the space below:

*We are long term landlords, and have always been fair + want to continue to be. But if capital improvements ~~at~~ a wide variety of them cannot be passed on, then most capital improvements will not be completed.*

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

type of improvements, benefits to tenant,

2.) What did you like or dislike about any of the standards presented?

I like the change in historic rents, and questions and concerns around capital improvements

3.) Please share any additional comments in the space below:

City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops

**FEEDBACK WORKSHEET**  
**Group 3: Capital/Building Improvements**

Name: [redacted]

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

Identity (check one):

Tenant

Landlord

Realtor

Attorney

Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

That capital improvements ~~should~~ are permanent improvements and the rent increases should be permanent based on capital improvements if

2.) What did you like or dislike about any of the standards presented?

Pass through costs ~~should~~ (the percentage you can pass on) should take into account how long the tenant has been there. I disagree on capping the percentage of pass through costs because if the tenant is never going to leave then they are getting

3.) Please share any additional comments in the space below:

all the benefit. "Capital improvements" should include aesthetic improvements

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

X Name: \_\_\_\_\_

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

Identity (check one): Tenant

Landlord

Realtor

Attorney

Other

Phone Number: \_\_\_\_\_

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

2.) What did you like or dislike about any of the standards presented?

3.) Please share any additional comments in the space below:

*I have concerns about the Temporary Relocation Payments:*

- Is there a cap on the payments?*
- What if the tenant caused damage that requires relocation? (!)*
- What about relocation due to "natural" disasters like earthquakes, wildfires, floods...*

*(My current tenants have 3 dogs and 1 cat... My future tenants might not be allowed to have any pets!)*

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

X Identity (check one): Tenant

Landlord

Realtor

Attorney

Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for "capital improvements"?

Determining whether the proposed work is required or necessary to ~~maintain~~ <sup>comply with</sup> health & safety codes or an optional upgrade. If it's an optional upgrade, ordinance doesn't allow for rent increases.

Even if work is necessary for code compliance, landlord is responsible for doing regular maintenance & this should be

2.) What did you like or dislike about any of the standards presented? covered by base rent.

Painting, re-roofing, etc. are large expenses that are necessary from time to time + not optional capital improvements. Landlords could potentially use MNOI to ensure "fair return" based on these expenses amortized over time.

3.) Please share any additional comments in the space below:

giving tenants the option to pre-approve optional capital upgrades along with a rent increase could be considered, but there is a danger that it could be misused, if tenants are unfairly pressured into agreeing to such upgrades.

\* Billing question - haven't rec'd invoice \* see bottom, too  
for my triplets (2 units are rentals)

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [redacted] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

*definition of capital improvements with primary examples*  
*how to get some fair return*  
*how handle this with new leases*

2.) What did you like or dislike about any of the standards presented?

3.) Please share any additional comments in the space below:

*retroactive*  
*more meetings! even on ordinance*

*Another issue: Hotels, motels, inns, tourist rentals, etc. are a separate business model & should NOT be subject to rent control or just cause for eviction if they stay more than 13 days. Reason: reservations are made in advance.*

MAY NEED TO GO TO VOTERS.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

*Wants to schedule appt*

*-page emailed*

**FEEDBACK WORKSHEET**

**Group 3: Capital/Building Improvements**

X

Name: [Redacted]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [Redacted]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

*should depend on if its necessary or not necessary*

2.) What did you like or dislike about any of the standards presented?

*very confusing needs to be explained clearly*

3.) Please share any additional comments in the space below:

*I would like to schedule appointment to resolve my bill but also have other questions*

*More meetings*

City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops

FEEDBACK WORKSHEET

Group 3: Capital/Building Improvements

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

Identity (check one):

Tenant

Landlord

Realtor

Attorney

Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

It should be retroactive to year 2015 when I made capital improvements! (New bathroom, Appliances, Carpet, paint) and tenant moved in 1 mo later in May 15 2015 and rent was frozen & should be allowed to raise the rent to reflect these improvements.

2.) What did you like or dislike about any of the standards presented?

I thought the ~~presenter~~ presenter MB TRAYLOR was excellent. There are ~~no~~ little facts as yet so we are somewhat confused. Lets have more dialogue!!!  
+ workshops

3.) Please share any additional comments in the space below:

HISTORICALLY RENTS should be #1 PRIORITY! Why should benevolent landlords be punished?

Why are tenants incomes <sup>all</sup> not factored into to rent CONTROL formulas. My tenant teaches tennis 2 dgs a week. He doesn't need to work more because his rent is frozen.

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET  
Group 3: Capital/Building Improvements**

Name: [REDACTED]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number [REDACTED]

1.) What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

Capital Improvement cost from past 5 Years  
Should be included to the rent rate adjustment

upgrade to the unit or the property Should be Consider to  
Adjust on rent.

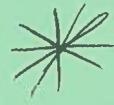
2.) What did you like or dislike about any of the standards presented?

did not get to attend this group.

3.) Please share any additional comments in the space below:

I have very big Improvement cost.  
I want it to be allowed on use it on  
operating expense calculation

Call Back



# City of Richmond Rent Program Setting Standards for Changes in the Maximum Rent December 2017 Community Workshops

## FEEDBACK WORKSHEET

### Group 2: Increases or Decreases in Space, Services or Habitability

Name: [Redacted]

Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [Redacted]

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

? We pay <sup>AW</sup> utilities PGE, water, garbage  
if they are overusing  
overusing garbage - extra bills  
from Republic Services?

2.) What did you like or dislike about any of the standards presented?

Confusion - too many references to  
other cities.

3.) Please share any additional comments in the space below:

Confused about occupancy -  
i.e. if there are 4 people and one  
moves out - decrease by 25% \*  
but if another person moves in  
it only increases by 10%

\* Can we do a background check on  
the <sup>4<sup>th</sup></sup> person

**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 2: Increases or Decreases in Space, Services or Habitability**

Name: \_\_\_\_\_

Date (circle one): **Dec. 4<sup>th</sup>**

Dec. 9<sup>th</sup>

Identity (check one):    **Tenant**        **Landlord**        **Realtor**        **Attorney**        **Other**

Phone Number: \_\_\_\_\_

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

~~DE~~ ASSUMING THAT LANDLORD DOESN'T CHANGE NUMBER OF OCCUPANCY, DOES LANDLORD HAS ANY CHOICES IN ~~WHAT~~ KIND OF PERSON CREDIT OF REPLACEMENT TENANT.

2.) What did you like or dislike about any of the standards presented?

ED FOR 85 YEARS, FROM 1926 TO 2011, THE AVERAGE RETURN OF S P 500 IS 11.69%. NOW THE GOVERNMENT IS GOING TO TELL ME THAT MY FAIR RETURN IS ONLY KEEPING NECK TO NECK WITH

3.) Please share any additional comments in the space below:

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**City of Richmond Rent Program  
Setting Standards for Changes in the Maximum Rent  
December 2017 Community Workshops**

**FEEDBACK WORKSHEET**

**Group 2: Increases or Decreases in Space, Services or Habitability**

Name: [redacted] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number [redacted]

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

*if the problem means renter has to move temporarily (w/d abatement) they would get a relocation payment so rent decrease should not apply*

2.) What did you like or dislike about any of the standards presented?

*I don't think landlords should be held liable for pests - (bed bugs) brought in by renters - nor should they have to pay relocation fees for time of abatement  
if my duplex laundry breaks (shared between both units) is the reduction of 5% per each unit or for total rental income?*

3.) Please share any additional comments in the space below:

*This is a complicated issue should be case by case  
Model #3 discretionary*

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Name: [redacted] Date (circle one): Dec. 4<sup>th</sup> **Dec. 9<sup>th</sup>**

Identity (check one): Tenant **Landlord** Realtor **Attorney** Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

If a decrease in service is based on the landlord bringing the property into compliance ~~with~~ with the code then this should not be seen as a "decrease in service" & not be eligible for a rent decrease.

2.) What did you like or dislike about any of the standards presented?

I like the standards that take into account the market value of the service / space that is being decreased or increased. Using a dollar range seems arbitrary.

3.) Please share any additional comments in the space below:

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Identity (check one):    Tenant     Landlord    Realtor    Attorney    Other

Phone Number: \_\_\_\_\_

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

Notations Entered Clearly Into Database for Responsibilities regarding claims of services or habitability → Tenant responsibility or Landlord responsibility.

2.) What did you like or dislike about any of the standards presented?

3.) Please share any additional comments in the space below:

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f  
Name: [Redacted]

Date (circle one): Dec. 4<sup>th</sup>

Dec. 9<sup>th</sup>

Identity (check one):

Tenant

Landlord

Realtor

Attorney

Other

Phone Number: [Redacted]

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

@ for habitability, the level of inconvenience, lack of safety, whether or not a code violation is involved.

2.) What did you like or dislike about any of the standards presented?

3.) Please share any additional comments in the space below:

Require landlords to respond to tenant notices in a reasonable amount of time - 5 bus. days, e.g. This should include a monetary penalty for non-compliance

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Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one):  Tenant  Landlord  Realtor  Attorney  Other

X Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

I would see the housing do an inspection on an annual basis. Also to have the tenant and landlord to cover the costs

2.) What did you like or dislike about any of the standards presented?

3.) Please share any additional comments in the space below:

**City of Richmond Rent Program  
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**FEEDBACK WORKSHEET**

**Group 2: Increases or Decreases in Space, Services or Habitability**

Name: [redacted] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

LANDLORDS ~~ARE~~ HOLDING RENT INCREASE (complain) about my place is below MARKET price and needs to ~~bring~~ BRING rent up without doing any repairs, painting (peeling and mold), stove (oven not working), Entrance hall carpet matted and smells bad, light fixture IN LIVING ROOM no work (ceiling light), for years not fixed

2.) What did you like or dislike about any of the standards presented?

2 people held up conversation with their problems trying to get it fixed. Maybe to time for each person (2 minutes - 3, 5).

3.) Please share any additional comments in the space below:

[Empty lined space for additional comments]

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Name: [redacted] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant  Landlord  Realtor  Attorney  Other

Phone Number: [redacted]

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

THIS PROPOSAL WON'T INCREASE OR DECREASE RENT.

- 1<sup>st</sup> Have the tenants Insurance 7-15 \$ month
- 2<sup>nd</sup> Have the Landlord Insurance by law all have it
- 3<sup>rd</sup> Have ~~landlord~~ AN Insurance paid by Landlord and Home warranties or kind Insurance

2.) What did you like or dislike about any of the standards presented?

Tenant for small appliances & small problems Faucet - Heater - stove / lights - switches - garage door. glass eye window - screen - this will avoid problems to the tenants

3.) Please share any additional comments in the space below:

Rent Board - and Landlord.

**City of Richmond Rent Program  
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Name: [REDACTED] Date (circle one): Dec. 4<sup>th</sup> Dec. 9<sup>th</sup>

Identity (check one): Tenant Landlord Realtor Attorney Other

Phone Number: [REDACTED]

1.) What do you think are the most important factors to consider in establishing rent increase or decrease standards for increases or decreases in services, or habitability issues?

*How we can apply lease items to decreases in space (like a parking space) - regarding breaches in lease*

2.) What did you like or dislike about any of the standards presented?

3.) Please share any additional comments in the space below:

*Wish referred to having "mediations" so landlord & tenants can work out problems. See column in S.F. Chronicle, Nov. 26, 2017 Insight of E.T. "Finding fairness for tenants in a way a landlord can love."*

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# 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:** Staff members have prepared a calendar of monthly educational workshops for community members. This item is being presented to the Board as an informational item.

## 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:** RECEIVE the 2018 Rent Program Community Workshop Calendar – Rent Program (Nicolas Traylor 620-6564).

AGENDA ITEM NO:

**I-3.**

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**ITEM I-3  
ATTACHMENT 1**

**Richmond Rent Program  
Workshops 2018**

Location: Council Chambers

Time: 10:00 AM– 12:00 PM

<b>Workshop</b>	<b>Date (Saturday)</b>
Being a Landlord in Richmond 101	January 13 <sup>th</sup>
Being a Tenant in Richmond 101	February 17 <sup>th</sup>
Evictions 101 ( <i>Landlord Oriented</i> )	March 17 <sup>th</sup>
Evictions 101 ( <i>Tenant Oriented</i> )	April 21 <sup>st</sup>
Security Deposits – Rights and Responsibilities	May 12 <sup>th</sup>
Being a Tenant in Richmond 101	June 9 <sup>th</sup>
Realtor and Property Manager Focused Workshop	July 14 <sup>th</sup>
Handling Habitability Issues ( <i>Tenant Oriented</i> )	August 18 <sup>th</sup>
Handling Habitability <i>Issues</i> ( <i>Landlord Oriented</i> )	September 15 <sup>th</sup>
How to Handle Difficult Tenant Situations ( <i>Landlord Oriented</i> )	October 20 <sup>th</sup>
How to Handle Difficult Housemate Situations ( <i>Tenant Oriented</i> )	November 10 <sup>th</sup>
Evictions 101 ( <i>Landlord Oriented</i> )	December 8 <sup>th</sup>

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