



## **SPECIAL MEETING OF THE RENT BOARD OF THE CITY OF RICHMOND**

CITY COUNCIL CHAMBERS, COMMUNITY SERVICES BUILDING  
440 Civic Center Plaza, Richmond, CA 94804

**Wednesday, January 24, 2018**

---

### **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.

## **SPECIAL MEETING OF THE RICHMOND RENT BOARD**

### **AGENDA**

**6:00 PM**

**A. PLEDGE TO THE FLAG**

**B. ROLL CALL**

**C. STATEMENT OF CONFLICT OF INTEREST**

**D. AGENDA REVIEW**

**E. PUBLIC FORUM**

**F. RENT BOARD CONSENT CALENDAR**

**F-1.** APPROVE the minutes of the January 17, 2018, Regular Meeting of the Richmond Rent Board.

*Cynthia Shaw*

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

*Cynthia Shaw*

**G. REGULATIONS**

**G-1** ADOPT Regulations for Subchapter A (Petition Process) and Subchapter B (Hearing Procedure).

*Michael Roush*

**H. STUDY AND ACTION SESSION**

**H-1.** RECEIVE proposed Substantive Rent Adjustment Regulations (Subchapter C: Standards for Individual Rent Ceiling Adjustments), Vacancy Rent Increase Regulations (Chapter 7) and Rent Registration Regulations (Chapter 4).

*Nicolas Traylor  
Michael Roush*

**I. REPORTS OF OFFICERS**

**J. ADJOURNMENT**

---

***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).***

***This page intentionally left blank***

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 24, 2018

Final Decision Date Deadline: January 24, 2018

**STATEMENT OF THE ISSUE:** The minutes of the January 17, 2018 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

- |   |  |  |
|---|--|--|
| <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 January 17, 2018 Regular Meeting – Rent Program (Cynthia Shaw 620-5552).

AGENDA ITEM NO:

**F-1.**

***This page intentionally left blank***

**RICHMOND, CALIFORNIA, January 17, 2018**

The Regular Meeting of the Richmond Rent Board was called to order at 5:02 PM.

**PLEDGE TO THE FLAG**

**ROLL CALL**

**Present:** Boardmembers Combs, Maddock, Vice Chair Gerould, and Chair Gray

**Absent:** Boardmember Finlay

**STATEMENT OF CONFLICT OF INTEREST**

None.

**AGENDA REVIEW**

None.

**PUBLIC FORUM**

Cordell Hindler distributed fliers to inform the Rent Board of the adult programs the city offers throughout the year and the upcoming used book sale the Richmond Public Library is hosting. He also invited the Rent Board to attend a Black History Celebration in the month of February. He also asked if the Rent Program can give a presentation on Rent Control at the Richmond Neighborhood Coordinating Council meeting (date unknown at this time). He also thanked the Rent Board for changing the time of the meetings.

Iona Clark spoke regarding the owner move-in Relocation Payments for no fault evictions and asked questions about Temporary Tenancies in regards to single family homes.

Lori Wickliff spoke on the behalf of landlords and owners who feel that the Rent Board is taking away their rights. She also spoke about enforcing leases and the terms of a lease as well as eviction protections for tenants.

**RENT BOARD CONSENT CALENDAR**

On motion of Boardmember Combs, seconded by Vice Chair Gerould, the item(s) marked with an (\*) were approved with Boardmember Finlay absent.

\*F-1. Approve the minutes of December 20, 2017, Regular Meeting of the Richmond Rent Board.

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

**STUDY AND ACTION SESSION**

G-1. The matter to receive proposed subchapter A (Petition Process) and subchapter B (Hearing Procedure) Rent Board Regulations and provide direction to staff was presented by Nicolas Traylor, Executive Director. The presentation included the purpose of the proposed regulations, information on how the proposed procedural/hearings regulations apply to both Fair Return Regulations and other Rent Adjustment Regulations, a table summarizing each regulation for the Petition Process and Hearings Procedure, and the definitions of the proposed regulations. Discussion ensued. A motion made by Chair Gray, seconded by Vice Chair Gerould, to extend the public comment time to four minutes. The following individuals gave comments: Ilona Clark and Marilyn Langlois. A motion by Chair Gray, seconded by Vice Chair Gerould to direct staff to provide a time line of the process and to revise section 842, to allow more time for petitioners who require language translation services. A motion passed by the following vote: **Ayes:** Boardmembers Combs, Maddock, Vice Chair Gerould and Chair Gray. **Noes:** None. **Abstentions:** None. **Absent:** Boardmember Finley.

**REPORTS OF OFFICERS**

Nicolas Traylor, Executive Director gave a general report on the Community Workshop held on January 13<sup>th</sup> and commended staff on their great work. Chair Gray reminded everyone about the Special Rent Board meeting on Wednesday, January 24, 2018.

**ADJOURNMENT**

There being no further business, the meeting adjourned at  
6:47 PM.

Cynthia Shaw, Ramona Howell  
Staff Clerks

(SEAL)

Approved:

\_\_\_\_\_  
David Gray, Chair

***This page intentionally left blank***

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 24, 2018

Final Decision Date Deadline: January 24, 2018

**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

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

**F-2.**

***This page intentionally left blank***

**From:** David Sharples [<mailto:dsharples@calorganize.org>]  
**Sent:** Wednesday, January 17, 2018 3:26 PM  
**To:** Marilyn Langlois; Sara S. Linck-Frenz; Nicolas Traylor  
**Cc:** Parker; mgliksohn; Nancy Combs; Emma Gerould; Willis, Melvin; Harper, Dan  
**Subject:** Fair and Affordable Richmond: comments about petitioning for rent increases beyond the maximum allowable rents

Dear Nicolas,

Thank you for meeting with us yesterday and sharing updates about completing the staffing for the Richmond Rent Program. We look forward to having the new staff attorney and hearing officer on board soon.

Per your request, we are sending you in writing our comments about petitioning for rent increases beyond the maximum allowable rents. Our concern is to avoid situations where regulations allow landlords a pathway to raising rents and pushing tenants out beyond what is allowed for by the letter and spirit of Richmond's Rent Control ordinance.

The ordinance in 11.100.070(g)(8) makes very clear its intent to allow for rent increases more than the Annual General Adjustment "only when the Landlord demonstrates that such adjustments are necessary to provide the Landlord with a fair return on investment."

Hence the only grounds for a landlord to petition for a rent increase with no change in services or occupancy would be under Fair Return regulations. Landlords should carry the burden of proof that they are not making Fair Return without the requested rent increase. Fair Return should be calculated on the entire rental parcel or contiguous rental parcels (including streets) and not on individual units or even buildings. It should be the landlord's obligation to document Fair Return covering the previous 5 years and properly amortizing capital expenses.

As is the case in other cities, debt service should not be part of the Fair Return calculation. Optional capital improvements that are not needed to comply with health and safety codes should not be grounds for a rent increase. Major repairs resulting from external factors that are no fault of the landlord (force majeure) should be covered by the landlord's insurance. Major repairs resulting from deferred maintenance or otherwise neglecting to keep the property habitable should not be grounds for a rent increase, nor should periodic, foreseeable regular repairs and maintenance. Larger periodic repairs like roof replacement should be amortized and considered to be a regular maintenance cost that doesn't justify a rent increase. In case there is any situation that falls in between, the only way it could be considered for a rent increase would be in order to ensure Fair Return.

There should be a separate section for cases involving change in space or services, the landlord could only petition for a rent increase with the express agreement by the tenant

to opt to pay a higher rent for increased space or services. In this case, it should be required that a 3rd party (someone from the Rent Program) explain to the tenant that they have the right to choose and they can say no without repercussions, and the tenant would need to confirm verbally and in writing whether or not they agree.

And there should be another section for cases where the tenant wishes to increase the occupancy of the unit (besides legally allowed additional family members) beyond the terms of the tenancy, the tenant would need to be informed of how that would affect the rent and then decide if they want to increase the occupancy or not, and if they do, understanding it would mean an increase in rent which they agree to in writing, then the landlord could petition to the Rent Board for such an increase.

We also very much appreciate your intentions of disallowing vacancy decontrol rent increases in cases of involuntary vacancies, and we would suggest adding to the list cases where an unlawful detainer was wrongfully filed (i.e. without a just cause) and the tenant then moved out rather than deal with the eviction process.

We appreciate all that you and your staff have been doing to implement the mandate of the Richmond voters with our Rent Control and Just Cause for Eviction ordinance, and we look forward to periodic meetings with you.

Sincerely,

David Sharples, ACCE  
for the Fair and Affordable Richmond Coalition

December 30, 2017

Nicolas Traylor  
Executive Director  
City of Richmond Rent Program  
C/O City of Richmond  
440 Civic Center Plaza  
Richmond, CA 94804-1630

Dear Mr. Traylor:

This letter is in protest of the City of Richmond Rent Program (RRIP) for the property at 1045 24<sup>th</sup> Street, APN/Situs 528-010-016-4.

Upon receiving your January 3, 2017 letter I spoke with Melanie and returned the Property Owner Information form and, per her request, attached a copy of the PG&E bill for the property occupied by my daughter, Julie Myers.

On receipt of your September 18, 2017 letter regarding the RRIP I communicated with Paige Roosa via email. Again, per her request, I completed the required form and sent it along with the PG&E bill in my daughter's name.

Since I received no response following either of my communications I assumed that I had satisfied the City requirements for an exempt property.

In December I received a bill for \$145.00 for this property. Once again I communicated with Paige Roosa who, after consulting with her superior, determined that because the utilities are in my daughter's name, the property is considered rental property.

To equate the payment of utilities with a true rental amount stretches credibility. A quick review of Richmond rental properties suggests that a reasonable rental amount for similar properties would be in the neighborhood of \$2,000.00 per month. Utilities paid by the renter would be in addition to that amount. Upon checking with my daughter I found that her utility payments total approximately \$120 per month.

The property in question was built and occupied by my parents Charles and Marjorie Paugh in 1941 and became our family home. My Father passed away in 1962 and my Mother remained in the home maintaining it until she suffered a stroke in 2010. At that time my daughter, Julie Myers, occupied the house to prevent it from being vandalized or occupied by the homeless. As you are aware, this is not one of Richmond's best neighborhoods and I will cite two examples:

1. Prostitutes from 23<sup>rd</sup> Street relocate to 24<sup>th</sup> Street following police sweeps on 23<sup>rd</sup> Street.
2. The SWAT team plus many Richmond police officers converged on the house because a known felon was hiding in the bushes at the house. A police dog was sent into the bushes so the police could secure the felon.

My daughter Julie pays no rent but does have the utilities in her name. Her responsibility, in lieu of rent, is to maintain the property inside and outside.

I feel this RRIP is an unreasonable and punitive charge on this property as I am choosing to responsibly maintain the property rather than allow it to become another eyesore in Richmond.

I have paid the fee under protest and I hope that after further review the property will be exempt from the RRIP fee.

Sincerely,



Charleen Belshaw  
2047 Evergreen Drive  
Carson City, NV 89703  
(510) 673-5123  
[cbelshaw@charter.net](mailto:cbelshaw@charter.net)

Winter address – December – March – 4100 N. Romero Rd #35, Tucson, AZ 85705

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 24, 2018

Final Decision Date Deadline: January 24, 2018

**STATEMENT OF THE ISSUE:** Section 11.100.070(c) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") provides Tenants and Landlords with an opportunity to submit a petition to the Rent Board for an upward or downward adjustment of the Maximum Allowable Rent. The following Section 11.100.070(d) specifies the Board shall enact rules and regulations governing hearings and appeals of individual rent adjustments. To that end, in partnership with Dr. Stephen Barton, Rent Program staff members have prepared draft procedural regulations for the Rent 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

- Presentation/Proclamation/Commendation (3-Minute Time Limit)
- |   |  |                                 |
|---|--|---------------------------------|
| <input type="checkbox"/> Public Hearing               | <input type="checkbox"/> Regulation  | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement           | <input checked="" 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 Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

**G-1.**

***This page intentionally left blank***



# AGENDA REPORT

**DATE:** January 24, 2018

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

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

**SUBJECT:** ADOPTION OF PETITION PROCESS AND HEARING PROCEDURE REGULATIONS

## **STATEMENT OF THE ISSUE:**

Section 11.100.070(c) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (“Rent Ordinance”) provides Tenants and Landlords with an opportunity to submit a petition to the Rent Board for an upward or downward adjustment of the Maximum Allowable Rent. The following Section 11.100.070(d) specifies the Board shall enact rules and regulations governing hearings and appeals of individual rent adjustments. To that end, in partnership with Dr. Stephen Barton, Rent Program staff members have prepared draft procedural regulations for the Rent Board’s consideration. At the January 17, 2018 Regular Board meeting, the Board and community members discuss concerns/questions and asked the Executive Director to address these concern/questions. This agenda report addresses those questions and concerns.

## **RECOMMENDED ACTION:**

ADOPT Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) Rent Board regulations and PROVIDE DIRECTION to staff – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

## **FISCAL IMPACT:**

The cost to administer the Rent Adjustment Petition process is accounted for in the Fiscal Year 2017-18 Rent Program Budget. The proposed draft regulations do not provide for a filing fee at this time, but allows the Rent Board to establish such a fee in the future if deemed appropriate. At the January 17, 2018 Regular Board meeting, Board members raised no objection to a policy whereby there would be no fee for filing a petition, but directed the Executive Director and staff to come up with a fee for filing an

# ITEM G-1

appeal that is comparable to other rent control agencies charge. Staff is recommending a filing fee of no more than \$75.

## DISCUSSION:

### Background

For most multifamily rental properties in the City of Richmond, rent increases are limited to the annual change in the Consumer Price Index (a measure of inflation).

The Richmond Rent Board is tasked with establishing standards for allowing individual rent increases and decreases due to a rental unit's conditions, historic rental rates, operating costs, and other reasons.

Before the Rent Board considers and then eventually adopts the substantive fair return and other standards for determining changes in the Maximum Allowable Rent, staff members recommend the Board consider and adopt regulations governing the petition process and hearing procedures. Prior to adopting these procedural petition process regulations, staff is addressing the following questions brought up by the Board and community members at the January 17, 2018 Board meeting.

### Overview of Procedural Regulations

The table below contains concerns/questions posed by Board members and the public regarding the proposed draft procedural regulations, along with a brief explanation or answer(s) to the concern or question:

NOTE: BOXES IN GRAY INDICATE NO CONCERNS OR QUESTIONS ASKED/DISCUSSED

<b>Subchapter A – Petition Process (DRAFT)</b>		<b>Concern/Question</b>	<b>Answer to Concern or Question</b>
<b>Section (DRAFT)</b>	<b>Topic (DRAFT)</b>		
801	Acknowledges petition process		
802	Addresses situations where a petition has been filed for the same Rental Unit within the previous 12 months		
803	Establishes that there is no fee for filing a petition, but that the Board may institute such a fee at a later date		



## ITEM G-1

	within which a party wishing to object to the petition may do so within 21 days of the mailing of the notice required in Section 808	has caused the damage that they are filing a rent reduction petition for?	caused the damage, the landlord may have Just Cause to damage caused by tenant(s), can be used as a defense/objection against a tenant petition for rent reduction.
811	Provides that all Landlord petitions pertaining to Tenants in the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate	Can tenants file a “collective” petition for an issue which impacts all tenants in a building?	There is nothing prohibiting a consolidated petition to be filed in a collective manner, but a hearing examiner may decide that it is more appropriate to have the case filed and heard in a non-collective manner, if there is showing of good cause that a collective petition is not administratively practical (e.g. issues brought forth is to varied).
812	Confidentiality standards for documents filed in connection with an individual rent adjustment		
813	Addresses instances meriting an expedited hearing		
<b>Subchapter B – Hearing Procedure (DRAFT)</b>			
<b>Section (DRAFT)</b>	<b>Topic (DRAFT)</b>		
821	General principles for hearings		
822	Powers of the Hearing Examiner		
823	Evidence and Standard of		

**ITEM G-1**

	Proof		
824	Establishes that the Board may hold a hearing on any individual rent adjustment petition without the petition being first heard by a Hearing Examiner		
825	Requires that a notice of the time, date, and place of the hearing shall be mailed to all parties no later than ten days before the scheduled date of the hearing		
826	Provides for a continuance of the hearing under specific circumstances		
827	Situations or interests that would disqualify a Hearing Examiner or Board Member from taking part in a hearing or appeal		
828	Establishes that a Hearing Examiner may by order or subpoena require any necessary documentation from any party		
829	Standards for stipulations		
831	Requires that there be no communications regarding any pending case outside of the hearing between the hearing examiner and any party, representative, or witness in any case pending before the examiner before the examiner has completed the written decision in that case		
832	Permits the parties to make a prehearing agreement. Any agreement must be made on the record and tape recorded.		
833	All hearings shall be open to the public		
834	Rights of parties to provide		

**ITEM G-1**

	evidence and receive assistance from professionals		
835	Describes what is included in the hearing record		
836	Provides that the record shall be available for inspection or copying by any person		
837	Provides the Board shall send a notice of the hearing examiner's decision to all parties to the hearing.		
838	The hearing examiner's decision shall be the final decision of the Board in event no appeal is made		
841	Right of any party to appear		
842	Describes the timeline and process for submitting an appeal	<p>Is there a standard in peer jurisdictions for time limits for appellant to present their case before the Board?</p> <p>Can the Board revise this regulation to allow more time for petitioners who require language translation?</p>	<p>Regulations in peer cities have a similar time limit for presenting appeals to the Board.</p> <p>Yes, the Board can allow for more time for appellants who need translation/interpreter services. Staff has revised that the time be double for appellants who require translation/interpreter services.</p>
843	Establishes that there is no fee for filing an appeal, but that the Board may institute such a fee at a later date	Should there be a filing fee for petitions? Should there be a filing fee for appeals?	803 states that there is no filing fee for petitions. Staff recommends a filing fee of \$75 for appeals in light of the significant staff resources expended through the appeal

## ITEM G-1

			process. The \$75 fee is comparable to appeal fees charged by peer jurisdictions.
844	Establishes that the Board shall take final action on any rent adjustment petition within 120 days following the date of proper filing		
845	Specifies the conditions for obtaining an individual rent adjustment		
846	Provides requirements for the rent increase notices following the granting of individual rent increases		
847	Clarifies the effective date for rent decreases		
848	Allows for the hearing examiner to notice and conduct a hearing if there is a dispute among any of the parties about compliance with a decision	What if a landlord doesn't comply with a hearing examiner's decision?	This regulation directly addresses this question. Additionally, non-compliance with a hearing examiners decision can lead to denial of AGA increases and can be used as a defense to an eviction lawsuit under the Ordinance.
849	Allows the Rent Board or Executive Director to initiate a hearing after an investigation has resulted in a determination that there may be substantial violations of the Ordinance	What are some examples of Board initiated hearings?	Landlord continues to refuse to pay the Rental Housing Fee, refund tenants rent overcharges/security deposit, or in some other way is substantially violating the Ordinance. As a result the Board could initiate a hearing to further compel the landlord to comply.
851	The Rent Program does not	What is the cost	The cost is very

## ITEM G-1

	have an escrow process, but one may be established	associated with establishing an escrow account?	minimal for opening a new account for escrow purposes. Additional staff costs are also minimal: only cost associated would be for staff to process payment and make deposit.
852	Establishes standards to be applied to escrow determinations		
853	Requires the deposit of disputed rents into an escrow account pending the hearing		
854	Requires the establishment of escrow accounts pending appeal		
855	Specifies that a Tenant's acceptance of a full refund of rent overcharges is deemed to have waived the right to appeal the amount of the refund and notwithstanding a Tenant's appeal of the hearing examiner's decision, the landlord's tender of the full amount of rent overcharges shall constitute compliance with the refund order		
856	Addresses disbursement of funds held in an escrow account		
857	Provides that a Tenant's deposit of rent into an escrow account shall be a defense to an action brought by the Landlord for nonpayment of rent.		

### Proposed Timeline and Next Steps

Proposed Date	Event
January 17, 2018 – Rent Board Meeting	Rent Board considers procedural regulations

## ITEM G-1

#1	
Mid-January 2018	Public review period begins; staff hold review sessions with community members
January 24, 2018 – Rent Board Meeting #2 ( <i>Special Meeting</i> )	Rent Board considers substantive regulations; possible adoption of procedural regulations
Late February 2018	Public review period ends; feedback incorporated; Hearing Examiner onboarded
February 21, 2018 – Rent Board Meeting #3	Rent Board considers additional substantive regulations
February 28, 2018 – Rent Board Meeting #4 ( <i>Special Meeting</i> )	Rent Board adopts regulations; first hearings are scheduled

### DOCUMENTS ATTACHED:

Attachment 1 – Revised Draft Proposed Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) Rent Board Regulations

Attachment 2: Petition Process Flowchart

***This page intentionally left blank***

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

**Subchapter A. Petition Process**

801. Petitions

(A) Any landlord or tenant seeking an individual adjustment of the maximum allowable rent under Section 11.100.070 of the Ordinance must file a petition in accordance with the procedures set forth in this Chapter.

(B) The petitioner must attach to the petition documentation that is adequate to establish eligibility for the rent adjustment that is requested. The necessary documentation will vary according to the petition and is specified in the appropriate regulation and in the petition form. If the necessary documentation is unavailable, the petitioner's verification of the petition or declaration under penalty of perjury may substitute for the unavailable documentation. It is the policy of the Rent Board that each party submit all supporting evidence as early as possible prior to the hearing. The hearing examiner may refuse to accept documentary evidence at the hearing unless there is good cause for petitioner's failure to submit it prior to the hearing.

802. Previous Recent Hearing

Notwithstanding any other provision of this Chapter, the Board or the Executive Director or their designee may refuse to hold a hearing and/or grant an individual rent ceiling adjustment for a rental unit if an individual hearing has been held and decision made with regard to the recent ceiling for such unit within the previous twelve months.

803. No Petition Filing Fee

There shall be no fee for filing a petition for individual adjustment of the maximum allowable rent. The Board may institute such a fee at a future date, with any waivers and reductions that it deems appropriate.

804. Proper Filing of the Petition

(A) Proper filing of the petition is the responsibility of the petitioner. Provided that the requirements of Regulations 804 (Proper Filing of the Petition) and 805 (Acceptance of Petitions) are satisfied, a petition is deemed properly filed on the date it is received by the Board if it is acceptable.

Board staff will make a preliminary review of each petition after it has been submitted. Petitions that are not signed by the petitioner, illegible, incomprehensible, erroneously completed, incomplete, lack a proof of service on the opposing party or for which the required fees have not been paid will not be considered acceptable.

(B) No landlord petition for an individual rent adjustment will be accepted for filing unless the unit for which the adjustment is requested has been properly registered and all rental increase and change of terms of tenancy notices filed with the Rent Board for at least 30 days. A unit is

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

considered properly registered only if the completed registration statement has been filed with the Board, and the registration fee (plus any late fee) has been paid in full.

(C) A petition by a former tenant pursuant to these Regulations shall be commenced within three years from the date the tenant vacated the unit in question.

(D) No individual rent adjustment proceedings will take place for petitions that are not properly filed. The procedures for determining proper filing and allowing an unacceptable petition to be corrected are set out in Regulation 805 (B) (4) and (C) (4).

805. Petition and Noticing Procedures

(A) For rent increase petitions, the following procedure applies:

(1) Rent increase petitions may be filed under the following regulations: 8XX (Fair Return), 8XX (Capital Improvements), 8XX (Change in Space or Services/Code Violations), 8XX (Occupancy Level), 8XX (Debt Service), 8XX (Restoration of Annual General Adjustment), and 8XX (Historically Low Rent).

(2) A copy of the rent increase petition and, except as provided in Regulation 8XX (Capital Improvements), supporting documentation must be served on the tenants of all units affected by the petition.

(3) The landlord shall file with the Board the original petition, two copies of the documentation required by Regulation 801 and by the Regulation pursuant to which the Petition is filed, and a proof of service by first-class mail or in person of the petition and documentation on each affected tenant. The landlord may also file an Agreement of Parties and/or Waiver of Right to Hearing.

(4) Board staff shall review the petition and supporting documentation to determine whether they conform with Board regulations and within five (5) working days shall either mail notice to the landlord that the petition is not acceptable in its current form, with an explanation of its defects (pursuant to Regulation 806 Acceptance of Petitions) or mail a Notice to Opposing Parties to the tenants and landlord, as provided in Regulation 809 (Notice to Opposing Parties and Board). For petitions filed pursuant to Regulations 8XX (Fair Return), the review period shall be fifteen (15) working days. If a petition is found unacceptable, the landlord may refile at any time.

Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor. A landlord may, at any time prior to submission of the matter for an administrative decision, request that a hearing be held.

(5) The notice to the tenant shall include a notice that the tenant has a right to object to the petition, and that if the tenant does not object within twenty-one (21) days of the mailing of the notice, or if the tenant's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be increased by the applicable amount, based on the information in

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

the landlord's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition.

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 821 (Hearing), unless no tenant files an objection within the time allowed, the landlord has not requested a hearing and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

(B) For tenant petitions, the following procedure applies:

(1) Tenant petitions may be filed pursuant to 8XX (Change in Space or Services/Code Violations), 8XX (Occupancy Level), 8XX (Overcharges) and Rent Withholding Petitions pursuant to Chapter YY.

(2) A copy of the tenant petition and supporting documentation must be served on the petitioner's landlord.

(3) The tenant shall file with the Board the original petition, two copies of the documentation required by Regulation 801 and by the Regulation pursuant to which the petition is filed, and proof of service by first-class mail or in person of the petition and documentation.

(4) Board staff shall review the petition and supporting documentation to determine whether they conform to Board regulations and within five working days shall either mail notice that the petition is not acceptable in its current form, with an explanation of its defects (pursuant to Regulation 805 Petition and Noticing Procedure) or mail a Notice to Opposing Parties to the landlord and tenants, as provided in Regulation 808 (Notice to Opposing Parties and Board). If a petition is unacceptable, the tenant may refile at any time. Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor.

(5) The notice to the landlord shall include a notice that the landlord has a right to object to the petition, and that if the landlord does not object within twenty-one (21) days of the mailing of the notice, or the landlord's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be decreased by the applicable amount, based on the information in the tenant's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 821 (Hearing), unless neither the landlord nor the tenant requests a hearing within the time allowed and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

(C) The time limits set forth in this section will prevail over any other time limits set out elsewhere in these regulations.

806. Supplemental Information

(A) The petitioner shall notify the Board and each opposing party of any material change in the information set forth in the petition, especially a change in the identity of any opposing party, as soon as possible prior to the hearing. When there is a change in the opposing party, the petitioner shall serve the new party in accordance with Sections 805 (Petition and Noticing Procedures). Notice and proof of service shall be in accordance with Section 809 (Notices to Opposing Parties and Board). The new party shall thereafter be provided by the Rent Board with notice of the right to object to the petition.

(B) Changes in or additions to the information set forth on the petition may be grounds for a continuance, and may constitute good cause for delaying final Board action under Section 8XX (Time for Decision) of these regulations.

(C) The party responding to the petition shall notify the Board and each opposing party of any material change in the information set forth in the response to the petition, including any additional objections, as soon as possible prior to the hearing.

807. Parties

Parties are the landlord of the affected property, the tenants in each affected rental unit (with all the tenants in one unit constituting one party), and any representatives designated pursuant to Section 834 (Rights of Parties). The person listed as the landlord in a tenant petition for rent adjustment shall be the landlord party, unless the Board is notified to the contrary.

808. Notices to Opposing Parties and Board

(A) Manner of Notice. Notice(s) to opposing parties shall be served by first-class or certified mail, or by personal service on the party or the party's representative of record. Personal service shall be performed according to state law. Notices to the Board shall include a proof of service that proper notice was given to the opposing parties, by means of a written declaration by the server under penalty of perjury, stating the names and addresses of parties served and the date and manner of such service.

(B) Notice after Petition Filed. The Board shall notify the opposing parties of the filing of a petition and send each opposing party a response form that includes notice that the party has a right to object to the petition, a statement of possible objections, notice that the party's failure to object within the time specified may constitute a waiver of the right to have a hearing on objections to the petition, and a brief description of the hearing process.

(C) Other Notices. The Board shall send a copy of all notices, and parties shall send a copy of all documents or communications filed with the Board after the filing of the initial petition, except

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

for documents or communications which are filed during the bearing or are confidential, to each party.

809. Response to Petition

(A) A party wishing to object to the petition may do so on the form provided within twenty-one (21) days of the mailing of the notice required under Section 808 (B) (Notice after Petition Filed). Failure to respond may constitute a waiver of the respondent's right to object to the petition. Notwithstanding a party's failure to respond, no petition for an individual rent adjustment shall be granted unless the adjustment is authorized by these regulations and supported by a preponderance of the evidence.

(B) Response to Petitions Filed for Violations of Rent Ceiling. In response to a petition filed solely on the basis of violations of rent ceilings, the landlord may defend as to the issue of violations of rent ceilings, but may not counterclaim for an increase of the lawful rent ceiling. To make such counter-claims, the landlord must file a separate petition in accordance with Chapter 8, and Section 802 shall not prevent such a petition from being accepted.

810. RESERVED

811. Consolidation

(A) All landlord petitions pertaining to tenants in the same building and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

(B) In their discretion, the Board or the Hearing Examiner may consolidate petitions pertaining to different buildings on the same property or different properties of the same landlord.

812. Confidentiality

(A) Documents filed in connection with an individual rent adjustment proceeding shall be public records unless a party receives a determination by the hearing examiner that a particular document shall be confidential. For any such determination of confidentiality to be made it must be demonstrated that the document in question is exempt under the California Public Records Act (Government Code Section 6250 et seq) or that the public interest served by not making the document public clearly outweighs the public interest served by disclosure of the document. Unless otherwise specified by the hearing examiner, documents determined to be confidential will be available for inspection by the opposing party but not by the general public.

(B) A party seeking a determination that: a particular document shall be treated as confidential shall make such a request in writing. The request shall be made at the time that the document in question is offered as evidence or is otherwise required to be produced. The examiner may determine that only a portion of the document is to be treated as confidential, and may make such rulings regarding disclosure to both the opposing party and the general public as are consistent with this Section. The request and the ruling thereon shall be included in the record.

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

813. Expedited Hearings

(A) The Rent Board recognizes that consistency in rulings by the Rent Board and the courts is desirable. Therefore, in order to provide consistency of decisions in cases where both a Rent Board petition and an unlawful detainer action have been filed, the purpose of this Regulation is to ensure that the Rent Board rules on issues which are involved in petitions before it and in unlawful detainer cases prior to the Court ruling on the same issue.

B. Priority in the scheduling of hearings and in the issuance of decisions shall be given to pending petitions and appeals involving rental units on which eviction proceedings have commenced. An eviction is deemed to commence when either a 3 or 30 day notice to quit is served. A party may request that a petition or an appeal be given priority by filing a request to expedite, accompanied by a copy of either the notice to quit or the unlawful detainer complaint with the Rent Board and serving a copy of the same on the opposing party.

814 – 820. RESERVED

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

**Subchapter B. Hearing Procedure**

821. Hearing

It is the policy of the Rent Board that all petitions and objections be decided on their merits, consistent with due process of law and orderly administrative procedures. The regulations of this Chapter are intended to insure that each party is given notice of the grounds for a petition and all objections thereto in advance of the hearing so that all parties will be prepared to present their case at the hearing. Accordingly, the hearing shall be limited to the issues raised by the petition and the objections filed thereto, unless the hearing examiner determines that, in the interest of fairness, additional issues or objections should be considered and thereafter takes all necessary steps to insure that all parties have a full and fair opportunity to respond to new issues, objections or evidence.

822. Hearing Examiner

(A) A hearing examiner shall conduct a hearing to determine whether the individual adjustment petition should be granted. The hearing examiners shall have the following powers with respect to cases assigned to them:

- (1) To administer oaths and affirmations;
- (2) To grant requests for subpoenas and to order the production of evidence;
- (3) To rule upon offers of proof and receive evidence;
- (4) To regulate the course of the hearing and rule upon requests for continuances;
- (5) To call, examine, and cross-examine witnesses, and to introduce evidence into the record;
- (6) To decide the petition administratively without a hearing if no hearing is requested by the petitioner, the responding party fails to timely file objections, and the record is sufficient to render a decision on the petition without hearing live testimony;
- (7) To make and file decisions on petitions in accordance with this Chapter;
- (8) To take any other action that is authorized by this Chapter.

823. Evidence and Standard of Proof

(A) The hearing examiner may require either party to a rent adjustment hearing to provide any books, records and papers deemed pertinent. All required documents shall be made available to the parties involved, at least ten (10) days prior to the hearing or its continuation, at the offices of the Board.

(B) If the hearing examiner finds good cause to believe that the Board's current information does not reflect the current condition of the rental unit, the examiner shall conduct or request the City

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

to conduct an appropriate building inspection. Any party may also request the examiner to order such an inspection prior to the hearing.

(C) The hearing examiner need not conduct the hearing according to technical courtroom rules of evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of business regardless of any common law or statutory rule which might exclude such evidence in court proceedings. The hearing examiner may exclude unduly repetitious or irrelevant evidence.

(E) No adjustment in Maximum Allowable Rent shall be granted unless supported by the preponderance of the evidence submitted at the hearing.

824. Board Action

The Board, on its own motion or on the request of any party, may hold a hearing on any individual adjustment petition without the petition first being heard by a hearing examiner. For purposes of these regulations, the Board shall be considered a hearing examiner when holding a hearing under this Section. In the event that the Board elects to hold a hearing, the decision of the Board shall be the final decision of the Board, except in cases where the Board decision is to send the issue to a Hearing Examiner for further review.

825. Notice of Hearing

Notice of the time, date and place of hearing shall be mailed to all parties no later than ten (10) days before the scheduled date of the hearing.

826. Continuances

(A) The date and time of the hearing may be continued, either before the hearing or at the hearing, if the Hearing Examiner finds good cause to do so. Such good cause shall be stated in the record and may include, but is not limited to, the failure of a party to receive notice, the illness of a party or witness or other emergency which makes it impossible for them to appear on the scheduled date, or the failure of a party to provide the hearing examiner with required pertinent information in a timely manner. Mere inconvenience or difficulty in appearing shall not constitute good cause. Continuances may also be granted upon consent of all parties.

(B) Requests for continuances shall be made as soon as possible. A written request for a continuance and the reasons for it must be received by the Board and all other parties at least 48 hours prior to the scheduled hearing, unless good cause is shown for a later request. The written request shall contain acceptable alternative dates and an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance. The request shall be served on both the Board and all opposing parties in accordance with the requirements of Section 808 (Notices to Opposing Parties and Board).

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

(C) The hearing examiner or Senior Hearing [Examiner, may deny a request for a continuance if it has not been made in compliance with subsection (B) or where a continuance has previously been granted to the requesting party in the same case.

(D) The Board shall notify the parties if a continuance is granted, and the date and place of the rescheduled hearing.

827. Disqualification of Hearing Officer or Board Member

(A) No hearing examiners or Board members shall take part in any hearing or appeal on a petition for an individual rent adjustment in which they have a personal financial interest in the outcome (such as being the landlord of, or a tenant residing in the property that is involved in the petition), or a personal bias for or against any party. The hearing examiners' or Board members' general status as landlords or tenants, or political or philosophical beliefs shall not constitute personal bias.

(B) Hearing examiners or Board members shall disclose to all parties any prior communication with a party concerning the subject of the petition, as well as any possible or apparent personal financial interest or personal bias.

(C) Hearing examiners or Board members may disqualify themselves at any time. In addition, any party may file a written request for disqualification, stating the grounds, with the Director (for hearing examiners) or the Board Chairperson (for Board members) at least 72 hours prior to the hearing. However, if the identity of the hearing examiner or Board member was not known soon enough to allow this, the written request shall be filed as soon as possible but in no event later than the taking of any evidence at the hearing. Any such request shall be ruled upon prior to the taking of any evidence at the hearing.

828. Subpoenas

The hearing examiner may by order or subpoena require that either party or any other person provide her/him with any books, records, papers, or other evidence deemed pertinent to the petition or that any witness appear and testify. All documents required under this provision shall be made available to the parties at least ten (10) days prior to the hearing, at the office of the Board. Parties to the hearing shall have the right to request the examiner to issue subpoenas on their behalf, but the responsibility for service of such subpoenas remains with the requesting party. The subpoena shall disclose on its face at whose request it has been issued and that it is issued in the name of the Board.

829. Stipulations

The parties, by written stipulation filed with the hearing examiner, may agree upon some or all of the facts or evidence involved in the hearing. Stipulations may also be made orally at the hearing. Any fact or evidence which is the subject of a stipulation shall be treated as having been established by a preponderance of the evidence.

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

830 RESERVED

831. Ex Parte Communications

There shall be no communications regarding any pending case outside of the hearing between the hearing examiner assigned to the case and any party, representative or witness in any case pending before the examiner until the examiner has completed the written decision in that case, except for discussions about requests for continuances, building inspections or determinations of confidentiality, prehearing discussions pursuant to Regulation 832 (Agreement Prior to Hearing), where both parties or their representatives have an opportunity to be present, or orders by the examiner to produce evidence pursuant to Regulation 826 (Subpoenas). There may be communications on any matters with other Board staff.

832. Agreement Prior to Hearing

(A) The parties may make a prehearing agreement. The Board staff may contact the parties in an effort to clarify the issues and/or to reach agreement on the individual adjustment prior to the hearing. Any agreement between the parties prior to a hearing must be approved by the Hearing Examiner in accordance with the provisions of this chapter.

(B) Any agreement made by the parties at the prehearing or hearing shall be made on the record and tape recorded. The terms of the agreement shall be read to the parties, and the parties shall state that they understand the terms of the agreement, that they do not want a hearing on the petition, and that they voluntarily agree to the terms of the agreement.

(C) Parties shall submit any proposed joint agreement in writing to the Board. The Hearing Examiner shall approve or reject the agreement as soon as possible. Written notice of the determination shall be mailed to the parties. The notice shall contain the reasons for any rejection. The agreement and its approval or rejection shall be entered into the record.

(D) Parties who prior to a hearing reach an agreement on an individual adjustment which is approved by the Hearing Examiner shall be deemed to have waived their rights to a hearing or appeal on the petition. Such an approved agreement shall also be deemed a hearing for the purposes of Section 802 (Previous Recent Hearing) of these regulations.

However, upon demonstration of fraud, misrepresentation, or similarly compelling reasons, either party may request that the Hearings Unit withdraw the settlement and set the matter for hearing. If such a request is denied, the party may appeal such denial to the Board.

833. Open Hearings

All individual rent ceiling adjustment hearings shall be open to the public.

834. Rights of Parties

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

(A) All parties to a hearing shall have the right to appear at the hearing and present evidence and argument in person, and/or have assistance from attorneys, legal workers, recognized tenant organization representatives or any other designated persons. Before a representative is allowed to advocate for, or in any way represent, a party, the party must present to the Board a signed, written statement designating their representative. Representatives shall file written statements with the Board that they are assisting the named party, with the name, address and phone number of the representative. All parties shall also have the right to call, examine, and cross-examine witnesses, to request the examiner to issue orders or subpoenas for witnesses or evidence, and to exercise any other rights conferred by the Ordinance or this chapter.

(B) Unless otherwise specified by regulation or by order of the Rent Board or hearing examiner, any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of a document shall be extended by five days if the document was served by mail.

(C) Except for the failure to timely file an appeal in accordance with Regulation 842 (Appeal Process) the Rent Board or hearing examiner may relieve a party of the consequences of a failure to perform an act on or before a date certain and allow additional time to perform the act where the party demonstrates that there was a good cause for the failure. Application for this relief shall be made within a reasonable time, in no case exceeding thirty days, after the date certain and shall be accompanied by a sworn declaration attesting to the facts alleged to constitute the good cause.

835. Hearing Record

The official record of the hearing shall include the following: an audio recording of the hearing; all exhibits, papers, and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted; a statement of all material officially noticed; all recommended and final decisions, orders, and/or rulings; and the reasons for each final decision, order and/or ruling. This official record shall constitute the exclusive record for the decision on the issues raised at the hearing.

836. Availability of Record

The Board shall make the official record available for inspection and copying by any person and provide a copy of all or part of the official record at a reasonable copying cost.

837. Notice of Decision

The Board shall send a notice of the hearing examiner's decision to all parties to the hearing. Such notice shall include a copy of the findings of fact and law supporting the decision, as well as a statement of their right to and the time limit for any appeal to the Board and/or judicial review of the decision.

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

838. Finality of Decision

The hearing examiner's decision shall be the final decision of the Board in the event no appeal is made to the Board.

839 – 840 RESERVED

841. Right of Appeal

Any party may appeal a hearing examiner's decision to the Board. On appeal, the Board may affirm, reverse, remand or modify the decision of the hearing examiner. The Board may conduct a new hearing or may act solely on the basis of the official record before the hearing examiner. The decision on appeal shall be the final decision of the Board, and the Board shall send a notice of the decision to all parties to the appeal, which shall include a statement of their right to judicial review. Decisions remanded to the hearing examiner shall be limited to instances where additional findings of fact are required.

842. Appeal Process

(A) Any appeal shall be filed on a form provided by the Board no later than thirty (30) days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) days after it is mailed. The appeal must contain a statement of the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state any facts or arguments in support of the grounds alleged in the appeal. Except as provided in subdivision (E), no other documents in support of the appeal will be accepted after the appeal deadline unless specifically requested by the Board. The appeal shall be sent to the Board and opposing parties and their representative. Additionally, appellants shall send a copy of the appeal to the hearing examiner whose decision is being appealed. The Board or staff may order that appeals relating to the same building or property, or different properties of the same landlord, be consolidated. The opposing party shall file any response to the appeal within fifteen (15) days from the date the appeal is filed.

(B) The hearing examiner's decision shall be stayed pending appeal. In its decision, the Board shall order the appropriate party to make retroactive payments over a reasonably appropriate period to restore the parties to the positions they would have occupied had the examiner's decision been the same as that of the Board or had not been stayed.

(C) At least fourteen (14) days prior to the date set for Board action on the appeal, a staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the examiner for further hearing. Staff may supplement the record by including matters of which the Board may take official notice, provided that the parties are notified of such matters at least fourteen (14) days prior to the date set for Board action. Any objection to a staff request for official notice of such matters shall be filed no later than seven (7) days prior to the date set for Board action.

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

(D) At least fourteen (14) days prior to the date set for Board action, all parties shall be notified by mail of the date, time and place set for Board action on the appeal. Copies of the staff recommendation shall be mailed to all parties and their representatives at least 14 days prior to the Board action. Copies of the official record and the staff recommendation shall be available for public review at the Public Information Unit of the Board at least 14 days prior to the date set for Board action. Parties may submit written comments to the Board up to seven (7) days prior to the Board action.

(E) At the Board meeting at which action on the appeals is scheduled, each party or their representative will be allowed seven minutes to address the Board at the beginning of the hearing in the following order: appellant for five minutes, respondent for seven minutes, appellant for two minutes. **Appellants or respondents who require translation or interpretation services shall be allowed double the amount of time to address the Board in the following order: appellant for ten minutes, respondent for fourteen minutes, appellant four minutes.**

(F) Unless the Board determines that a de novo hearing is required, the Board's decision will be based exclusively on the record before the hearing examiner. Parties shall be instructed not to discuss or comment upon factual matters or evidence that were not presented to the hearing examiner or officially noticed. Parties may discuss or comment upon the legal matters in question and any other pertinent issues raised by the appeal. The Board shall disregard any discussion or comment regarding factual matters that were not in the record before the hearing examiner or officially noticed. The vote of three (3) Board members is required to affirm, modify, remand or reverse the decision of the hearing examiner. If the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied.

(G) The Board's decision to affirm, modify, remand or reverse the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. When the Board votes to adopt the staff recommendation unchanged, the parties to the appeal will be notified only of the Board's decision. When the Board does not adopt the staff recommendation as written, a written decision of the Board shall be mailed to the parties or their representative of record.

(H) Continuances. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Director only for good cause shown. A written request and the reasons for it must be received by the Rent Board at least two (2) business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.

(I) Reconsideration.

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

(1) At the discretion of the executive director or his or her designee, an appeal may be treated as a request for reconsideration and referred back to the hearing examiner for such reconsideration only if it is claimed by the appellant that:

- (a) there was good cause for a failure to respond to a petition; or
- (b) there was good cause for a failure to appear at a settlement conference or hearing; or
- (c) they wish to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.

(2) In the event that reconsideration under subsection (K) (1) is ordered, the parties will be so notified within 15 days of the filing of the appeal and, thereafter, all correspondence shall be directed to the hearing examiner. The threshold issue on reconsideration shall be whether a preponderance of the evidence supports the assertion that good cause existed for the failure to respond to a petition or to appear at a settlement conference or hearing or that the newly offered evidence could not, with reasonable diligence, have been discovered and produced at the hearing. Only if good cause for the failure is found, may the hearing examiner reconsider the merits of the petition. .

843. No Appeal Filing Fee

There shall be no fee for filing an appeal to the Board regarding a hearing examiner decision on a petition for individual adjustment of the maximum allowable rent. The Board may institute such a fee at a future date, with any waivers and reductions that it deems appropriate.

844. Time for Decision

The Board shall take final action on any individual adjustment petition within 120 days following the date of proper filing, unless the conduct of the petitioner or other good cause is responsible for the delay. Good cause may include, but is not limited to, continuances granted, the submission of additional information by the petitioner, the filing of a motion for reconsideration, or a request by petitioner to disqualify the hearing examiner or Board member(s).

845. Conditions for Obtaining Individual Rent Adjustments

An individual upward adjustment of a rent ceiling for a rental unit may be awarded but shall not become effective so long as the landlord:

- (A) has failed to register any rental unit on the property with the Board;
- (B) has demanded, accepted, received or retained rent in excess of the lawful rent ceiling for the affected unit;
- (C) has failed to comply with any order of the Board concerning the affected unit or a former tenant of the affected unit; or

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

(D) has failed to bring the affected rental unit into compliance with the implied warranty of habitability.

846. Notice for Rent Increases

Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the landlord, following the decision of the hearing examiner or Board, gives the tenant at least a thirty (30) day written notice of such rent increase and the notice period expires.

847. Effective Date for Rent Decrease

(A) If the hearing examiner or Board makes a downward individual adjustment of the rent ceiling, the rent decrease pursuant to such adjustment shall take effect on the date of the next regularly scheduled rent payment, but no later than thirty (30) days after the date of the decision by the hearing examiner or Board.

(B) Where a rent decrease is reversible after correction of a defect in the unit or violation of the provisions of the ordinance or its implementing regulations, the landlord shall be entitled to reinstatement of the prior rent level, retroactive to the date that the landlord corrected the situation that warranted the decrease. The landlord shall notify the tenant and the Hearing Examiner of the correction and provide evidence of compliance.

(C) The compliance notice to the tenant shall include a notice that the tenant has a right to object, and that if the tenant does not object within twenty-one (21) days of the mailing of the notice, or if the tenant's objection does not specify in what way the landlord is not in compliance, the rent for the tenant's unit may be increased by the applicable amount, based on the information in the landlord's notice and the Board's files. Failure to file an objection may constitute a waiver of the right to a compliance hearing.

848. Compliance Hearings

(A) If there is a dispute among any of the parties (or any successor in interest) as to whether there has been compliance with a previously issued decision, the hearing examiner may notice and conduct a hearing to determine whether compliance has in fact occurred, and may issue an appropriate decision which sets forth the extent of compliance, the date of such compliance, and any adjustments to the original decision which are necessary in light of such compliance or non-compliance.

(B) The party or parties (and any successor in interest) who were originally ordered to make repairs, pay back rent, properly register the parcel, or otherwise comply with an order of the Board, shall be required to demonstrate compliance by a preponderance of the evidence submitted at the compliance hearing.

(C) Any party to the original proceeding, and any successor in interest, may request that a compliance hearing be noticed and held. Such request shall set forth the area of disagreement,

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

and a copy of the request must be served upon all adverse parties (and any successor in interest of any adverse party) by the party requesting the hearing.

(D) The procedures set forth in Subchapter B (beginning with Regulation 821) shall apply to compliance hearings.

849. Board Initiated Hearings

(A) The Rent Board or the Executive Director, who may designate such function to appropriate staff, may initiate a hearing after an investigation by the Rent Board or the Executive Director has resulted in a determination that there are substantial grounds to believe that major violations of the Rent Ordinance or Regulations promulgated thereunder have occurred, and that 120 days have passed from the date of the first occurrence of the violations.

(B) The investigation of possible violations of the Ordinance or Regulations may be conducted as a result of the review of the records of the Rent Program or the records of courts and governmental agencies. Investigations of possible violations may also be conducted on the basis of complaints and allegations received orally or in writing by the Executive Director.

(C) If an investigation by the Rent Board or its designee has found substantial grounds to believe that major violations of the Ordinance or Regulations have occurred, a notice of a prehearing shall be prepared and served on the landlord and tenants of the affected units. The notice of prehearing shall state clearly the sections(s) of the Ordinance or Regulations which has (have) allegedly been violated, along with a brief statement of the evidence found during the investigation which supports the determination that an alleged violation has occurred. The notice shall also set forth a proposed order which may be rendered against the alleged violator.

(D) The procedures set forth in Subchapter B. (beginning with Regulation 821) shall apply to Board initiated hearings.

(E) At a Board initiated hearing, the designee of the Executive Director shall present the Board's case. The issues in the hearing shall be disposed of in a final decision and order of a Hearing Examiner, which may be appealed to the Rent Board.

(F) Intervention by any current landlord, current tenant, former tenant and former landlord shall be permitted. Intervention by any other person or entity may be allowed upon a showing that some right, interest, liability or obligation of the person or entity seeking to intervene may be materially affected as a result of the hearing. Requests to intervene shall be made in writing, and should be filed and served upon all parties at least five (5) days before the hearing. However, upon a showing of a substantial interest in the outcome requests to intervene may be made and acted upon at any time prior to the conclusion of the hearing.

850 RESERVED

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

851. Deposit of Disputed Rents into Escrow

The Rent Program does not currently have an escrow process. Once the Executive Director establishes an escrow process, regulations 852 – 857 shall apply.

852. Standards to Be Applied to Escrow Determinations

In deciding whether or not to require the payment disputed amounts in escrow, the Hearing Examiner or the Appeals Panel of the Board shall consider:

- {A) The likelihood that the party requesting the escrow account will prevail on the merits;
- {B) The likely sum or sums involved;
- {C) The likely length of the escrow;
- (D) The likelihood that either party may be prejudiced by the creation of denial of an escrow account;
- (E) The desires of the parties;
- (F) The tenant rent payment history, including any reasons for late or nonpayment of rent;
- (G) The parties' history of compliance or noncompliance with the Ordinance, Regulations and Orders of the Board; and
- (H) All other relevant facts which may affect the right of the tenant not to be required to pay rent in excess of that which is lawful.

853. Requiring Deposit of Disputed Rents into Escrow Pending Hearing

(A) Whenever a petition for individual rent adjustment is filed and it is alleged, or reasonably appears from the circumstances, that the rent charged or demanded by the landlord is in excess of that permitted by the Ordinance and Regulations, any party to the proceedings may make a written request for an order requiring the deposit of rent into an escrow account. Said request shall be made on a form approved by the Board.

(B) Upon receipt of such written request, the Hearing Examiner shall, at the prehearing conference, consider whether an escrow account should be established and may order that reasonably disputed amounts be paid into escrow pending the hearing and the hearing examiner's decision on the petition. The hearing examiner may also condition any continuance or later scheduling of a hearing upon an agreement that rent shall be either paid to the landlord and/or into escrow as may be appropriate.

(C) Pending the Hearing examiner's decision on the petition, an order by the hearing examiner creating, modifying or terminating an escrow account may be appealed to the Board.

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

(D) Any party requesting creation of an escrow account shall serve a copy of the request on all other parties to the case.

854. Establishment of Escrow Accounts Pending Appeal

(A) Within twenty (20) days of the date of mailing of the final decision of the Hearing Examiner to the parties, any party may make written application to the Hearings Unit for an order concerning the disposition of any funds held in escrow or creation of an escrow account pending appeal. Any such request shall be made on a form approved by the Board. During the period within which such an application can be made and pending action on said application, no disbursement of funds held in escrow shall be made.

(B) Upon receipt of such written application, the Executive Director or designee may:

- (1) Continue, terminate, or modify any escrow created by the Hearing Examiner; or
- (2) Order that reasonably disputed amounts be paid into escrow pending the decision on any appeal.

(C) In the event that the party applying for the escrow order does not file an appeal within thirty-five (35) days of the date of mailing of the Hearing Examiner's final decision to the parties, any order requiring the maintenance or creation of an escrow account shall automatically be dissolved unless otherwise ordered by the Hearing Examiner. Upon such dissolution, the funds held in escrow shall be disbursed in accordance with the final decision of the Hearing Examiner.

(D) Within twenty-one (21) days of the date of mailing of the appeal, any non-appealing or cross-appealing party may make written application to the Hearing Unit for an order concerning the disposition of any funds held in escrow or creation of an escrow account pending appeal. Any such request shall be made on a form approved by the Board. During the period within which such an application can be made and pending action on said application, no disbursement of funds held in escrow shall be made.

(E) Upon receipt of such written application, the Hearings Unit may:

- (1) Continue, terminate, or modify any escrow created by the Hearing Examiner; or
- (2) Order that reasonably disputed amounts be paid into escrow pending the decision on the appeal;

(F) Any party requesting creation of an escrow account shall serve a copy of the request on all other parties to the case.

(G) In the Decision on Appeal, the Appeals Panel shall order disbursement of any funds held in escrow to the appropriate party.

City of Richmond Rent Program  
DRAFT Rent Adjustment Regulations

855. Landlord's Compliance with Rent Overcharge Refund Order Subject to Appeal

(A) A tenant who accepts a full refund of rent overcharges, pursuant to Regulation 8XX, after receiving written notification that acceptance of the refund will extinguish the tenant's right to appeal the amount of rent overcharges, is deemed to have waived the right to appeal the amount of the refund order. The written notification shall be in language approved by the Board.

(B) Notwithstanding a tenant's appeal of the hearing examiner's decision, the landlord's tender of the full amount of rent overcharges as ordered by the hearing examiner shall constitute compliance with the refund order provided that the amount tendered, if not accepted by the tenant, is deposited into an escrow account established and maintained by the Rent Board. If, on appeal, the Rent Board modifies the hearing examiner's decision and orders additional amounts refunded, a landlord who has tendered the full amount of the original refund order remains in compliance with the refund order so long as the landlord tenders to the tenant the additional amount of rent overcharges within 30 days of the date of the Rent Board's decision on appeal.

856. Disbursement of Funds Held in Escrow

Upon issuance of an order of the Hearing Examiner or an Appeals Panel of the Board, the Executive Director, or their designee, shall cause the funds held in escrow to be disbursed in accordance with the order. Any interest which has accrued on the funds shall be disbursed and distributed in the same proportion as the principal.

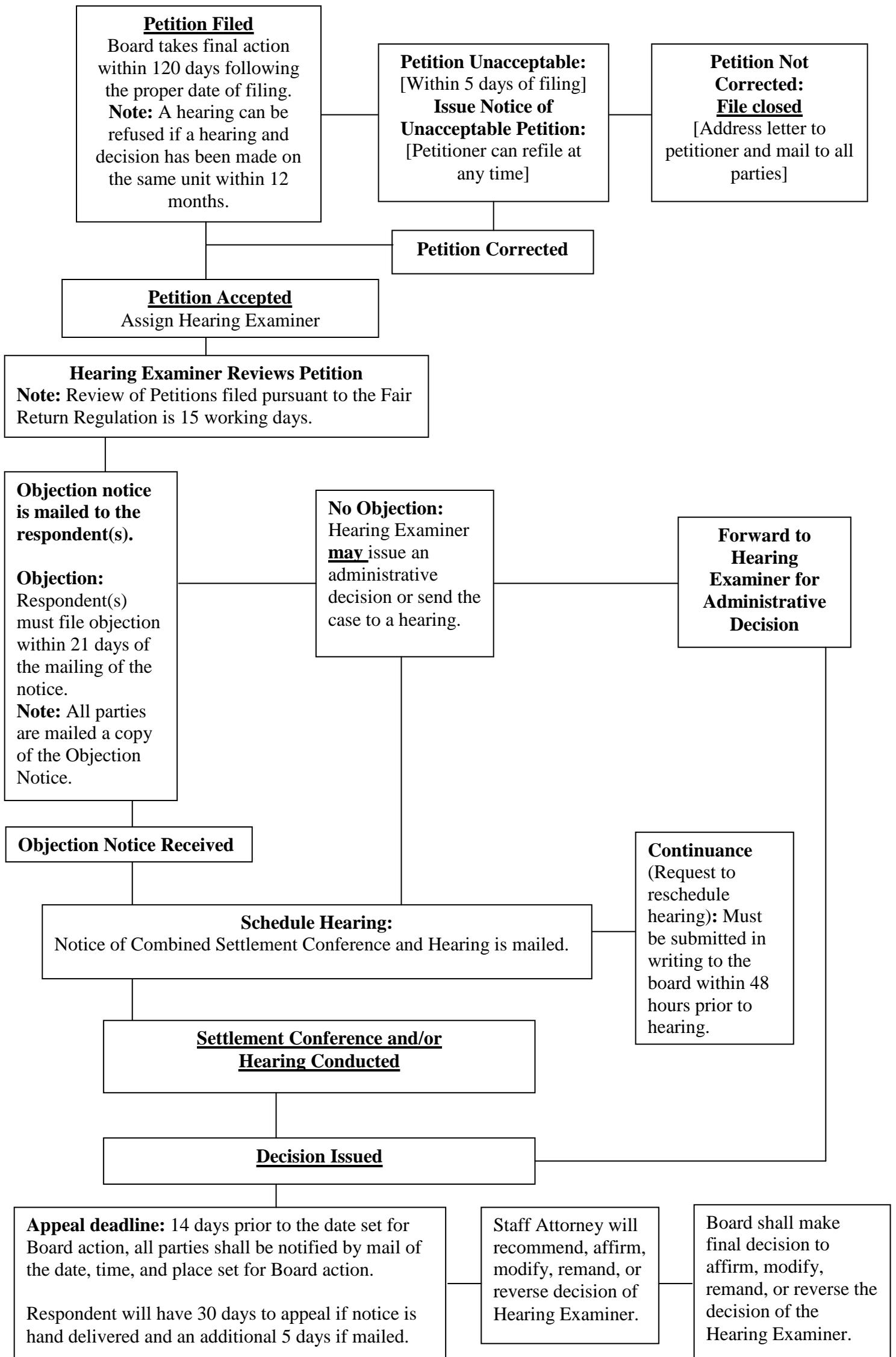
857. Effects of Escrow Accounts on Eviction Actions

A tenant's deposit of rent into an escrow account pursuant to an order of the Hearing Examiner or the Board shall be a defense to any action brought by the landlord for nonpayment of that rent.

858 – 860 RESERVED

***This page intentionally left blank***

# Richmond Rent Board Petition and Hearing Process



***This page intentionally left blank***

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 24, 2018

Final Decision Date Deadline: January 24, 2018

**STATEMENT OF THE ISSUE:** Section 11.100.070(e) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") provides for individual upward or downward adjustments of the Maximum Allowable Rent level. Section 11.100.070 (e) allows the Board to adopt regulations that consider "decreases in living space, furniture, furnishings, equipment, or services; substantial deterioration of the Controlled Rental Unit other than as a result of normal wear and tear; or failure on the part of the Landlord to provide adequate Housing Services or to comply substantially with applicable housing, health and safety codes." To that end, in partnership with Dr. Stephen Barton, Rent Program staff members have prepared the substantive Rent Adjustment regulations, as well as Vacancy Rent Increases and Rent Registration regulations for the Rent Board's consideration. Vacancy Rent Increase and Rent Registration regulations are key regulations for determining accurate rent ceilings, which is vital data necessary to properly adjudicate individual rent adjustment cases heard by the Hearing Examiner and Board.

## 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 Draft Rent Adjustment Regulations (Subchapter C: Standards for Individual Rent Ceiling Adjustments), Vacancy Rent Increase Regulations (Chapter 7) and Rent Registration Regulations (Chapter 4) – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

**H-1.**

***This page intentionally left blank***



# AGENDA REPORT

**DATE:** January 24, 2018

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

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

**SUBJECT:** RECEIVE DRAFT RENT ADJUSTMENT REGULATIONS (SUBCHAPTER C: STANDARDS FOR INDIVIDUAL RENT CEILING ADJUSTMENTS), VACANCY RENT INCREASE REGULATIONS (CHAPTER 7) AND RENT REGISTRATION REGULATIONS (CHAPTER 4).

## **STATEMENT OF THE ISSUE:**

Section 11.100.070(e) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (“Rent Ordinance”) provides for individual upward or downward adjustments of the Maximum Allowable Rent level. Section 11.100.070 (e) allows the Board to adopt regulations that consider “decreases in living space, furniture, furnishings, equipment, or services; substantial deterioration of the Controlled Rental Unit other than as a result of normal wear and tear; or failure on the part of the Landlord to provide adequate Housing Services or to comply substantially with applicable housing, health and safety codes.” To that end, in partnership with Dr. Stephen Barton, Rent Program staff members have prepared the substantive Rent Adjustment regulations, including Vacancy Rent Increase regulations and Rent Registration regulations for the Rent Board’s consideration. Vacancy Rent Increase and Rent Registration regulations are key regulations for determining accurate rent ceilings, which is necessary data to adjudicate individual rent adjustment cases heard by the Hearing Examiner and Board.

## **RECOMMENDED ACTION:**

Receive Draft Rent Adjustment Regulations (Subchapter C: Standards for Individual Rent Ceiling Adjustments), Vacancy Rent Increase Regulations (Chapter 7) and Rent Registration Regulations (Chapter 4) – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

**FISCAL IMPACT:**

The cost to administer the Rent Adjustment Petition process is accounted for in the Fiscal Year 2017-18 Rent Program Budget. The proposed draft regulations do not provide for a filing fee at this time, but allows the Rent Board to establish such a fee in the future if deemed appropriate.

**DISCUSSION:**Background

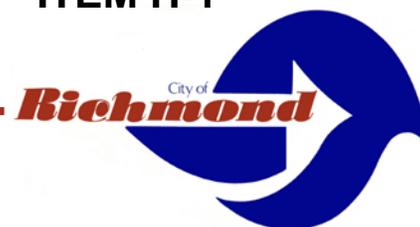
For most multifamily rental properties in the City of Richmond, rent increases are limited to the annual change in the Consumer Price Index (a measure of inflation).

In the coming months, the Rent Board will establish standards for allowing individual rent increases and decreases due to a rental unit's conditions, historically low rent, operating costs, and other reasons.

Before the Rent Board is able to hold individual rent adjustment hearings, the substantive individual rent adjustment regulations and standards for determining changes in the Maximum Allowable Rent, must be considered and adopted by the Board. To ensure that a Hearing Examiner, Staff and the Board have more accurate data on rent ceilings (correct rent ceiling data is required to insure accurate decisions), Staff have included Vacancy Rent Increase regulations and Rent Registration regulations for the Board's consideration.

Overview of Individual Rent Adjustment, Vacancy Rent Increase and Rent Registration Regulations

The table on the following page is a brief summary of the proposed substantive regulations (Attachment 1).



Chapter 4: Registration of Base Rent and Rent Increases		
Regulation Number	Title	Purpose
400	Purpose	Board finds that registration is necessary to carry out its duties under the Ordinance
401	Establishment of Base Rent	Defines Base Rent
402	Required Rent Registration	Describes the actions that must be taken and the information that must be provided in order to be properly registered
403	Changes in Exempt Status	Requirements for reporting changes in exempt status of units
404	Notification of Changes of Name or Address of Landlord and/or Property Manager	Required information for registration and hearings notification

Chapter 7: Vacancy Rent Increases		
Regulation Number	Title	Purpose
701	New Maximum Allowable Rent	Explains how a new rent is defined for new tenancies
702	Vacancy Rent Levels	Describes the limited circumstances under which the Maximum Allowable Rent remains the same as in the previous tenancy
703	Voluntary and Non-Voluntary Vacancies	Defines the circumstances under which termination of tenancy will be considered non-voluntary
704	No Vacancy Rent Increase for Existing Tenants	Defines an "existing tenant" who may not be given a vacancy rent increase
705	Increase and Decrease Petitions	Establishes the vacancy increases are separate from and do not pre-empt individual rent adjustments



706	Fraud or Intentional Misrepresentation	Increases gained thereby are not valid
707	Subletting	Defines “original occupant” and protects the landlord’s right to a vacancy increase when the original occupants no longer reside in the unit

Chapter 8C: Standards for Individual Rent Ceiling or Maximum Allowable Rent Adjustments		
871	Purpose of Subchapter	Protects tenants while allowing landlords a fair return on their investment
872	Procedure	Petitions will follow the process in 8A and 8B
873	Changes in Number of Tenants	Explains when changes in the number of tenants may result in an increase or decrease in the Maximum Allowable Rent
874	Changes in Space or Services	Explains when changes in space or services may result in an increase or decrease in rent and how decreases are determined
875-880 Reserved	Reserved for Fair Return Regulations	Reserved for regulations pertaining to Maintenance of Net Operating Income (MNOI), Capital Improvements and Historically Low Rent
881	Overcharges and Other Violations	Establishes a process for repayment of overcharges
882	Petition to Obtain Previously Lost Annual General Adjustments	Provides for restoration of lost AGAs after deficiencies are corrected



### Community Engagement

Regulations governing rent adjustment standards, vacancy rent increases and rent registration 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:

- Increases or decreases in space, services, or habitability

Note: Vacancy rent increases (when a landlord can or cannot reset the rent to market) and rent registration (administrative mechanism for accurately recording and tracking the Maximum Allowable Rent, which is key data for a Hearing Examiner or Board in adjudicating rent adjustment petitions) were not covered in the community workshops on rent adjustment standards, but are key regulations related to rent adjustments petitions for determining the Maximum Allowable Rent.

A summary of community feedback gathered for individual rent adjustments are contained in Attachment 2.

A copy of the draft substantive rent adjustment regulations for the Board's consideration will be posted on the Rent Program website and a listserv message will be sent with instructions for submitting comments prior to February 21, 2018 Board meeting.

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>
January 17, 2018 – Rent Board Meeting #1	Rent Board considers procedural regulations
Mid-January 2018	Public review period begins; staff hold review sessions with community members
January 24, 2018 – Rent Board Meeting #2 ( <i>Special Meeting</i> )	Rent Board considers substantive regulations; possible adoption of procedural regulations



Late February 2018	Public review period ends; feedback incorporated; Hearing Examiner on boarded
February 21, 2018 – Rent Board Meeting #3	Rent Board considers additional substantive regulations
February 28, 2018 – Rent Board Meeting #4 ( <i>Special Meeting</i> )	Rent Board adopts regulations; first hearings are scheduled

**DOCUMENTS ATTACHED:**

Attachment 1 – DRAFT Rent Adjustment Regulations (Subchapter C: Standards for Individual Rent Ceiling Adjustments), Vacancy Rent Increase Regulations (Chapter 7) and Rent Registration Regulations (Chapter 4)

Attachment 2 – Summary of Community Feedback from Community Workshops held on December 4, 2017, and December 9, 2017, and Comments from Community Members received from January 5<sup>th</sup> through January 16, 2018 regarding Draft Rent Adjustment Regulations.

REGULATIONS OF THE RICHMOND RENT BOARD

TABLE OF CONTENTS

CHAPTER 1.	PURPOSE & DEFINITIONS
CHAPTER 2.	APPLICABILITY
CHAPTER 3.	RENT BOARD
CHAPTER 4.	REGISTRATION OF BASE RENT & CHANGES IN RENT
CHAPTER 5.	Reserved
CHAPTER 6.	ANNUAL GENERAL ADJUSTMENTS OF RENT CEILINGS
CHAPTER 7.	VACANCY RENT INCREASES
CHAPTER 8.	INDIVIDUAL ADJUSTMENTS OF RENT CEILINGS
CHAPTER 9.	Reserved
CHAPTER 10.	GOOD CAUSE REQUIRED FOR EVICTION
CHAPTER 11.	REMEDIES
CHAPTER 12.	JUDICIAL REVIEW

***This page intentionally left blank***

**Chapter 4: REGISTRATION OF BASE RENT AND RENT INCREASES**

400. Purpose

The Rent Board finds that in order to monitor compliance with Annual General Adjustments and provide for Individual Rent Adjustments as required under the Rent Ordinance it is essential that registration of rental units include information on base rents and notification of increases.

401. Establishment of Base Rent

A. The rent in effect on July 21, 2015 is the Base Rent. If there was no rent in effect on that date, the Base Rent is the rent charged on the first date that rent was charged after that date.

B. For subsequent tenancies the Base Rent is the initial rental rate in effect on the date the tenancy begins. "Initial rental rate" means the amount of rent actually paid by the tenant for the initial term of occupancy as defined under Regulation Section 701.B.

402. Required Rent Registration

(A) A rental unit is properly registered in accordance with this Chapter if the landlord or landlord's representative has:

(1) Filed with the Board completed registration statements on the form(s) provided by the Board for the unit and all the units in the same property that include

(a) The addresses of all units on the same property,

(b) The name and address of the landlord and/or property manager,

(c) The date the current tenancy began and, for all tenancies that began after July 21, 2015, an explanation of the circumstances of the termination of the previous tenancy sufficiently detailed to demonstrate whether the unit qualifies for a vacancy increase or not, as described in Chapter 7 Vacancy Rent Increases.

(d) The base rent currently in effect for each individual unit and the services included in the rent or the reason it is exempt from rent control and has no current base rent;

(2) Paid to the City of Richmond all required registration fees and penalties due for the unit and all the units in the same property; and

(3) Filed with the Board, for the unit and all the units in the same property, notification of all subsequent changes in tenancy, rent or lease terms.

(B) In designating a rental unit as properly registered, the Board's intent is to facilitate the rent registration and individual adjustment of rent ceiling processes and the dissemination of information regarding the registration of rental units. Such designation shall not be construed as the Board's certification of the lawful base rent, current lawful rent ceiling or any other information provided on the rent registration statement. Nothing in this Regulation shall preclude

## ITEM H-1 ATTACHMENT 1

the Board nor any person from challenging the accuracy of any information provided in any registration statement or declaration in the context of any proceeding or action.

(C) A landlord shall be found in substantial compliance with registration requirements when:

(1) The landlord has made a good faith effort to comply with the Ordinance and regulation concerning registration sufficient to reasonably carry out the intent and purpose of the Ordinance and Regulations; and

(2) The landlord has cured any defect in compliance in a timely manner after receiving notice of a deficiency from the Board.

### 403. Changes in Exempt Status

(A) Within sixty (60) days of the date a rental unit formerly exempt from rent stabilization comes under coverage of the Ordinance, the landlord shall file an initial registration statement, or an amended registration statement of an initial registration statement has been previously filed, for the rental unit.

(B) Within sixty (60) days of the date a covered rental unit becomes exempt from rent stabilization under the Ordinance, the landlord shall notify the Board in writing of the exempt status of the rental unit and the basis for the exemption.

(C) Within thirty (30) days after the filing of a new rent registration statement, the Board shall provide a true and correct copy of said statement to the occupant of the respective unit.

### 404. Notification of Changes of Name or Address of Landlord and/or Property Manager

(A) Within sixty (60) days of any change in the owner and/or property manager of a rental unit, the landlord shall notify the Board in writing of the change.

(B) Within sixty (60) days of any change in the address of the owner and/or property manager of a rental unit, the landlord shall notify the Board in writing of the change. The Board shall send all notices to the landlord at the most current address provided by the landlord. Failure to receive a notice as a result of noncompliance with this section shall not be a good cause for purposes of waiving penalties owed to the Board.

**Chapter 7. Vacancy Rent Increases**

**701. New Maximum Allowable Rent**

(A) Pursuant to Section 1954.50, et seq. of the Civil Code, the landlord may establish the lawful maximum allowable rent for any controlled rental unit consistent with this regulation. The new rent level shall thereafter become the maximum lawful rent ceiling for the unit for all purposes including, but not limited to, the computation of all future rent adjustments. The unit shall otherwise remain controlled by all other regulations of the Rent Board.

(B) In these Regulations the terms "new rent level," "new rent ceiling" and "initial rental rate" refer to the rent established by the landlord for a tenant whose tenancy becomes effective after July 21, 2015. For tenancies commencing on or after July 21, 2015, the "initial rent" for a rental unit shall be the monthly market rent established by the parties at the commencement of the most recent tenancy. Where the rental agreement includes periods for which the tenant pays reduced, discounted or "free" rent, the monthly market rent is calculated as the average of the monthly payments made during the initial term of the agreement or, in the case of a month-to-month tenancy, during the first twelve months of the tenancy.

**702. Vacancy Rent Levels**

(A) Commencing July 21, 2015 a landlord may establish the initial rent rate for all new tenancies consistent with Civil Code Section 1954.50, et seq., and any Board regulations enacted consistent therewith, except where any of the following applies:

(1) (a) The previous tenancy has been lawfully terminated by the landlord pursuant to Civil Code Section 1946, or

(b) The previous tenancy has been lawfully terminated upon a change in terms of tenancy noticed pursuant to Civil Code Section 827, except a change permitted by law in the amount of rent or fees or resulting from the owner's termination of or failure to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified tenant of the unit. A tenancy shall be presumed to have terminated upon a change in terms of tenancy if the tenant(s) vacate(s) the rental unit within twelve months of the landlord's unilateral change in the terms of the rental agreement. Absent a showing by the landlord that the tenant(s) vacated for reasons other than the change in the terms of the rental agreement, the initial rental rate for the new tenancy shall be no greater than the most recent rent ceiling (prior to the new tenancy).

(2) A new tenancy begun within three years of the date that the owner terminated or failed to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified tenant of the unit unless the new tenancy is exempted from this limitation pursuant to Civil Code Section 1954.53 (a) (1) (B). During the three year period, the rental rate for any new tenancy established in that vacated unit shall be at the same rate as under the terminated or non-renewed contract or recorded agreement, increased by any subsequently authorized Annual General Adjustments.

## ITEM H-1 ATTACHMENT 1

(3) The landlord has otherwise agreed by contract with a public entity to limit or otherwise restrict rent levels in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of title 7 of the Government Code.

(4) The dwelling or unit has been cited in an inspection report by the appropriate government agency as containing serious health, safety, fire or building code violations as defined by Health & Safety Code Section 17920.3 excluding those caused by disasters, for which a citation was issued at least 60 days prior to the date of the vacancy, and the cited violation had not been abated when the prior tenant vacated and had remained unabated for at least 60 days, unless the time for correction was extended by the agency that issued the citation.

(5) The prior tenant was the spouse, child, parent or grandparent of a landlord who recovered possession of the unit pursuant to RMC 11.100.050 (a) (6).

(6) The prior tenant vacated the property as a proximate result of the conduct by the landlord such that the vacancy is non-voluntary, except for evictions for just cause as provided under RMC 11.100.050.

### 703. Voluntary and Non-Voluntary Vacancies

(A) For the purposes of this Regulation, a "voluntary" vacancy shall mean a vacancy that results from the independent choice of the tenant, without intimidation, pressure, or harassment.

(1) For purposes of this section "abandonment" is defined as the tenant's independent choice, without intimidation, pressure, or harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the landlord terminates the tenancy pursuant to Civil Code Section 1951.3. Such abandonment is considered voluntary.

(B) Non-Voluntary Vacancy means a vacancy resulting from conduct by the landlord which constitutes:

(1) Acts prohibited by law,

(2) Constructive eviction

(3) A breach of the covenant of quiet enjoyment of the property.

(4) Harassment

(5) Threats to withdraw the property from the rental market pursuant to the Government Code Section 7060-7060.7 (Ellis Act),

(6) Or notices of any kind that negligently or intentionally misrepresent to a tenant that they are required to vacate the controlled unit.

(C) "Harassment" shall be defined as a knowing and willful act or course of conduct directed at a specific tenant or tenants which:

## ITEM H-1 ATTACHMENT 1

- (1) Would cause a reasonable person to fear the loss of use and occupancy of a residential unit or part thereof, or of any service, privilege or facility connected with such use and occupancy, without legitimate reason or legal justification;
- (2) Materially interferes with a tenant's peaceful enjoyment of the use and/or occupancy of a residential rental unit
- (3) A single act may constitute harassment for purposes of determining whether a vacancy was voluntary. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.
- (4) Acts constituting harassment include, but are not limited to the following:
  - (a) Eviction on the grounds of owner or relative occupancy pursuant to Rent Ordinance section 11.100.050 (a) (6) which is not in good faith.
  - (b) The threat or repeated threat to evict a tenant in bad faith, under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit.
  - (c) Reduction in housing services under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;
  - (d) Reduction in maintenance or failure to perform necessary repairs or maintenance under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;
  - (e) Abuse of the landlord's right of access into a residential unit within the meaning of California Civil Code §1954;
  - (f) Verbal or physical abuse or intimidation;
- (4) A vacancy occurring as result of the filing of a Notice of Intent to Withdraw under Government Code Section 7060-7060.7 (the Ellis Act) shall not be considered voluntary.
- (5) A tenancy and subsequent vacancy created as a sham shall not be considered voluntary. A sham tenancy may be presumed where the occupant did not have a bona fide landlord-tenant relationship with the landlord, or occupied the property for less than four (4) months and principally for the purpose of vacating the property to establish eligibility for vacancy-related increase.

### 704. No Vacancy Rent Increase for Existing Tenants

(A) The maximum lawful rent ceiling for any controlled rental unit that is occupied by an existing tenant shall not be increased under the provisions of this Regulation, while the existing tenant occupies their unit. For purposes of this Regulation, "existing tenant" refers to all persons who are defined as "tenants" pursuant to Rent Ordinance section 11.100.030(r), i.e. any renter, tenant, subtenant, lessee, or sub-lessee of a rental unit, or any other person entitled under the terms of a Rental Housing Agreement, written, oral or implied, to the use or occupancy of such rental unit.

## ITEM H-1 ATTACHMENT 1

(B) No existing tenant shall be required to vacate a controlled rental unit as a result of a covenant or condition in a rental agreement requiring the tenant to surrender possession.

### 705. Increase and Decrease Petitions

Nothing in this Regulation prohibits tenants or landlords from filing rent decrease or increase petitions pursuant the Board's regulations.

### 706. Fraud or Intentional Misrepresentation

Any increase in the maximum allowable rent authorized pursuant to this regulation that is obtained by fraud or misrepresentation by the landlord or his or her agent, servant, or employee shall be void.

### 707. Subletting

(A) An owner may increase the rent by any amount allowed by Civil Code section 1954.50 et seq., and subsection (B) of this Regulation, to a sub-lessee or assignee where the original occupant or occupants who took possession pursuant to the rental agreement with the owner, no longer permanently reside there. The term "original occupant" as used herein includes any tenant or subtenant who, with the landlord's knowledge, was residing in the unit on or before July 21, 2015 or when the landlord last established an initial rent for the unit.

Within fifteen (15) days of any rent increase pursuant to this Subsection, Tenancy Registration form(s) described in Subsection (K) shall be filed with the Board.

(B) Where one or more of the occupants of the premises pursuant to the agreement with the owner provided for above, remains an occupant in lawful possession of the dwelling or unit, this subdivision shall not apply to partial changes in occupancy of a dwelling or unit made with the consent of the owner. Nothing contained in this subsection shall establish or create any obligation of an owner to permit or consent to a sublease or assignment.

(C) Acceptance of rent by the landlord shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment, or as a waiver of an owner's rights to establish the initial rental rate, unless the landlord has received written notice from the tenant that is a party to the agreement and thereafter accepted rent. The landlord's right to establish the initial rent shall not be waived if, after receiving written notice that the last original occupant has vacated the premises, the landlord agrees in writing with any tenants still occupying the unit that the landlord's right to establish the initial rental rate, consistent with Civil Code section 827, shall be extended for up to six months following receipt of the notice.

(D) A landlord may not unilaterally impose or require an existing tenant to agree to new material terms of tenancy or a new rental agreement, unless the provisions are substantially identical to the prior rental agreement.

## ITEM H-1 ATTACHMENT 1

(E) Where the landlord initially rents a rental unit to a tenant and authorizes more than one tenant to occupy the unit, but fails to place the name of more than one tenant on the lease, all tenants who occupy the unit within one month, with permission of the landlord, express or implied, shall be considered to be original occupants.

### 708. Rent Level following an Owner Move-In Notice or Eviction

(A) A written or oral request from a landlord to vacate a unit so the landlord or a qualifying relative of the landlord may occupy the unit as his principle residence shall be treated as a Notice to Terminate Tenancy pursuant to Civil Code section 1946 for the purpose of determining the rent level when the unit is subsequently rented.

(B) A landlord who serves a 30 or 60-Day Notice of Termination of Tenancy pursuant to Richmond Municipal Code section 11.100.050(A)(6) for the purpose of recovering possession of the unit for their own use and occupancy as a principle residence or the principle residence of a qualifying relative may rescind the notice or stop eviction proceedings but, if the tenant vacates within one year of the date of service of the notice, the tenancy is presumed to have been terminated by the owner as a result of the notice. The rental rate for the next tenancy established in the vacated unit shall be no more than the maximum allowed under the Rent Ordinance for the tenant who vacated, plus any subsequent increases authorized by the Rent Board.

(C) This presumption applies even though the tenant vacates the unit after the notice has been rescinded. A written statement from the tenant that they are leaving of their own volition signed as part of a settlement whereby the tenant is required to vacate the unit is insufficient to rebut this presumption.

(D) A landlord may rebut the presumption at a hearing based on a preponderance of the evidence. Such a hearing shall follow the process established for an Individual Rent Adjustment.

**Chapter 8: Subchapter C. Standards for Individual Rent Ceiling Adjustments**

871. Purpose of Subchapter

The purpose of this subchapter is to protect tenants from unwarranted rent increases, while at the same time allowing rent levels which provide landlords with a fair return on their investment. It is the intent of these regulations that individual upward adjustments in the rent ceilings be made only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment under the Rent Ordinance (RMC Sections 11.100.070 (e - k) and as required by the California or United States Constitution.

872. Procedure

Unless otherwise specified, petitions for rent increases and decreases under this Subchapter shall follow the procedures in Chapter 8 Subchapters A and B.

Regulation allowing rent ceiling (MAR) to decrease or increase based on a decrease or increase of allowable occupants

873. Changes in Number of Tenants

(A) Base Occupancy Level. The base occupancy level for a unit shall be the number of Tenants allowed by the lease or rental agreement for the unit effective July 21, 2017 or at the beginning of any subsequent tenancy established after a vacancy..

(B) Increase in Tenants

(1) Agreement to increase the number of tenants allowed by the lease or rental agreement above the base occupancy level for that unit shall be grounds for an increase in the Maximum Allowable Rent of up to ten percent (10%) for each additional tenant above the base occupancy level, in addition to any rent ceiling adjustment to which the landlord is otherwise entitled. A petition seeking rent adjustments solely for increased tenants will be processed under subsection (D) of this regulation.

(2) No rent ceiling increase for additional tenants, as provided for in subsection (B) (1), shall be granted for any additional tenant who is a spouse, registered domestic partner, child, grandchild, grandparent, legal guardian of a child or parent of any of the tenants, unless the tenants agree in writing to the specific rent ceiling increase.

(3) If the number of tenants actually occupying a rental unit as a principal residence decreases subsequent to any rent ceiling increase for additional tenants granted pursuant to subsection (B) (1), then the rent ceiling for that unit shall automatically decrease, by the amount of the rent ceiling increase that is no longer justified, as a result of the decrease in the number of tenants.

(C) Decrease in Number of Tenants Allowed.

If any policy or policies imposed by the landlord unreasonably prevent the tenants from maintaining the base occupancy level for that unit, then the rent ceiling for that unit shall be

# ITEM H-1 ATTACHMENT 1

decreased by an amount equal to the percentage by which the number of allowable tenants has been reduced. As used in this regulation, "policy" or "policies" means any rule, course of conduct, act or actions by a landlord.

## (D) Petitions for Rent Increases

Grounds for Tenant Objection. Tenants subject to petitions under subsection (B) (1) may file objections with the Board only on the following grounds:

- (1) The tenant did not agree or chooses to retract the agreement to add additional tenants and pay an additional amount as allowed under (B) (1).
- (2) The additional tenant claimed by the landlord as justifying a rent increase is a spouse, registered domestic partner, child, grandchild, grandparent, legal guardian of a child or parent of any of the tenants, and the tenant(s) were not informed that they did not need to agree to an increase for such person(s).

Regulation allowing rent ceiling to increase or decrease based on an increase or decrease in space or services provided

## 874. Changes in Space or Services

### (A) Increase in Space

Rent ceilings may be adjusted upward when, with the written agreement of the tenant(s), there is an increase to the usable space or the housing services beyond that which was provided to a unit on July 21, 2015 or when the base rent was first established.

- (1) Additional or reconfigured space. Where a landlord adds habitable living space to a unit or reconfigures it, the lawful rent ceiling for such unit shall be permanently increased as provided under Section 8XX Capital Improvements.
- (2) Additional services. Where a landlord adds non-habitable space or increases the services provided to a unit, the lawful rent ceiling for such unit shall be increased by an amount representing the market value of the additional space or increased services.

Increases may be denied if a tenant objects and the added or reconfigured space or the services do not clearly benefit a majority of the affected tenants. If the additional or reconfigured space or the services are subsequently reduced or eliminated, the rent increase authorized herein shall be reduced or terminated. Any increase for an additional bedroom shall result in an increase to the base occupancy level for an additional occupant.

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

## ITEM H-1 ATTACHMENT 1

1. **Decreases in Space or Services.** Rent ceilings shall be adjusted downward where a landlord causes a tenant to suffer a decrease in housing services or living space, from the services and space that were provided at the unit on July 21, 2015 or from any services or space provided at the beginning of the tenancy. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the reduction in living space or housing services) by the rent ceiling in effect at the time of the impairment, and for past decreases, multiplied by the period of time the impairment existed. In determining the amount of the downward rent adjustment by the percentage of impairment of use/benefit method, the hearing examiner may consider the reasonable replacement cost of the space or service in question.

2. **Denial of Petitions for Unilateral Removal.**

The Board will not accept petitions from landlords who seek a rent ceiling decrease for the unilateral removal or reduction of space or services from a tenant's base level space or services. Landlord petitions shall be accepted only when a tenant has expressly agreed in writing to the removal of such space or services. "Base level space or services" are the housing services or living space that were provided at the unit on July 21, 2015 or at the beginning of the tenancy.

3. **Inadequate Services, Substantial Deterioration**

Rent ceilings shall be adjusted downward for any substantial deterioration in a rental unit and/or for any failure to provide adequate housing services occurring during the petitioner's tenancy. For purposes of this subsection, a substantial deterioration means a noticeable decline in the physical quality of the rental unit resulting from a failure to perform reasonable or timely maintenance and adequate housing services means all services necessary to operate and maintain a rental property in compliance with all applicable state and local laws and with the terms of the rental agreement. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide adequate service, violation, breach or failure to comply) by the rent ceiling in effect at the time of the impairment.

4. **Code Violations, Breach of the Warranty of Habitability.**

(A) Where a condition at the rental unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the rent ceiling decrease shall be in an amount that reflects the reduction in value of the premises due to the unsafe or unhealthy condition.

(B) A substantial lack of any of the affirmative standard characteristics for habitability set forth in Civil Code section 1941.1 shall be deemed a violation of the warranty of habitability and the rent ceiling shall be decreased by no less than 10% or, for a violation of subsections (b), (c) or (d) of Civil Code section 1941, no less than 20%, until the condition is corrected, notwithstanding seasonal variations in or an absence of impairment to a tenant's use of or benefit from the unit.

## ITEM H-1 ATTACHMENT 1

(C) The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of tenants

(e.g., dangerous window bars, missing smoke detector) shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Board within 35 days of mailing of the hearing examiner's decision unless the landlord establishes that the violation cannot be corrected within that time due to circumstances beyond the landlord's control.

(D) No rent shall be charged for a period in which the landlord is found to be in violation of California Civil Code Section 1942.4. (E) For purposes of this subsection, a breach of the warranty of habitability occurs when the rental premises are not in substantial compliance with applicable building and housing code standards, which materially affect health and safety. Minor housing code violations which do not interfere with normal living requirements do not constitute a breach of the warranty of habitability.

5. Rent ceiling reductions pursuant to this Section shall be effective from the date the landlord first had notice of the space or service reduction, deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the condition for which the reduction was granted no longer exists.

6. A tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the landlord first received notice of the decreased service, deterioration, code violation or habitability violation. Notice may be actual or constructive. A landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been disclosed by a reasonable inspection of the premises. A copy of a housing code inspection report from the City of Richmond should be submitted with the petition.

875 – 880 for MNOI, Capital Improvements, Historically Low Rent, etc.

Regulation establishing process for repayment of rent overcharges.

881. Overcharges and Other Violations

(A) Overcharges. If on or after July 21, 2015, the landlord has received rent in violation of the Ordinance, the landlord shall be ordered to refund the overcharge. Any overcharge refund shall be paid to the person or persons overcharged, except as provided in Subsection (B) below. For purposes of this Regulation, any receipt or retention of rent, including security deposits and interest earned on security deposits, in violation of any order, rule or regulation of the Board or any other applicable law shall be deemed to be an overcharge.

(B) Overcharges paid by former Tenants. If any of the rent overcharge was received from former tenant(s), the landlord shall make reasonable efforts to find the former tenant(s) and refund the

## ITEM H-1 ATTACHMENT 1

overcharge. The landlord shall notify the Board in writing of the nature, extent, and result of those efforts within 60 days of the overcharge refund order.

If the landlord does not refund any past overcharge(s) to any former tenant(s) within 60 days, or has made reasonable but unsuccessful efforts to locate the former tenant(s), the landlord shall

pay the overcharge(s) to the Rent Stabilization Board to be held in trust for the former tenants for one year. Each year, no later than the second meeting in March, staff shall provide the Rent Board with an accounting of any unclaimed funds, following which, the Board, by resolution, shall designate a program of the City of Richmond that benefits low- and/or moderate-income tenants to which the unclaimed funds shall be transferred.

(C) Other Violations. If the landlord has failed to comply with the Ordinance or any rule or regulation of the Board or in any way charges unlawful rent, the hearing examiner may make an appropriate order for compliance or other appropriate relief.

(E) Limitation on Liability for the Refund of Overcharges.

(1) Except as provided in subsection (2), no order for the refund of rent overcharges shall require the repayment of overcharges that were actually received by the landlord more than three years prior to the date upon which the Individual Rent Adjustment petition is filed.

(2) The three year limitation period shall not apply and the landlord shall be ordered to refund to the tenant(s) of the affected unit(s) that portion of the rent payments made by such tenant(s) that have been illegally retained by the landlord from the date which the tenant(s) first paid excess rent, upon proof of any of the following:

(a) the landlord willfully failed to register the affected property, or

(b) the landlord willfully provided false or inaccurate information to the Board and the tenant(s) were thereby induced to pay excess rent in reliance upon said information, or

(c) the landlord, through threats of eviction, physical violence, coercive actions, or intentional misrepresentation on which the tenant reasonably relied, prevented a more timely filing of the petition.

(3) If landlord has willfully failed to register the affected property, the three year limitations period shall commence to run on the date upon which the landlord completes all required registration forms for the affected property.

(F) Supporting documentation.

For tenant petitions under this Regulation, the documentary evidence attached to the petition shall include any copies of canceled checks, rent receipts or other documentary evidence of the claimed overcharge. If no such documentary evidence is in the possession of the tenant, the tenant shall state on the petition that they do not have documentary evidence of the overcharge and set forth the factual basis for the claim of overcharge. Where the basis of any overcharge is

## ITEM H-1 ATTACHMENT 1

ineligibility for Annual General Adjustments due to violation of housing codes, the tenant shall attach documentation indicating that the unit was in violation of the warranty of habitability on September 1st of the applicable year. Such documentation may include a copy of an inspection report issued by the City of Richmond.

Regulation establishing process for restoration of Annual General Adjustments after a landlord comes into compliance with the Ordinance.

### 882. Petition to Obtain Previously Lost Annual General Adjustments (AGAs)

(A) General. When an owner who has previously been out of compliance comes into compliance with the ordinance, regulations, or applicable housing, health and safety codes, all AGAs lost during the period of noncompliance may be granted prospectively. For any residential unit which has been registered and for which a base rent has been listed or for any residential unit which an owner can show, by a preponderance of the evidence, a good faith attempt to comply with the registration requirements, all annual rent adjustments which may have been denied during the period of the owner's non-compliance shall be restored prospectively once the owner is in compliance with the ordinance or regulation.

In addition, to be eligible, the owner must state under penalty of perjury that the unit is in substantial compliance with the ordinance, regulations and applicable codes. Specifically, the owner shall certify to payment of all fees and penalties owed to the Richmond Rent Program (RRP) which have not otherwise been barred by the statute of limitations, substantial compliance with applicable local and state housing code provisions, and satisfaction of all claims for refunds of rental overcharges brought by tenants or by the RSP on behalf of tenants of the affected unit.

The owner is not entitled to recover any AGA's which have been previously regained through a net operating income analysis or, for new tenancies that were established after the loss of the AGA.

(B) Petition. Upon the petition of the landlord, the owner's eligibility for previously lost AGA's shall be determined. At the time of filing the petition, the owner shall submit a proof of service showing that all affected tenants have been provided with a complete copy of the documents filed.

Chapter 8 Subsections A and B of these regulations shall govern all additional petition procedures for AGA petitions.

***This page intentionally left blank***

Summary of Community Feedback from Community Workshops  
12/4/2017 and 12/9/2017

**Increases in Operating Expenses, Fair Return Standards**

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

- One factor includes the high costs that Landlords must pay to improve their rental units and keep them up to code.
- Units damaged by previous tenants are another financial burden a landlord has to face.
- Insurance costs to landlords are increasing due to the ability to not add addendum to the current lease (Tenant insurance).
- Considering mortgage payments is an important factor.
- Due to some of their rental units having large families, many Landlords have seen an increase in their utility bills.
- Property taxes have also seen a hike for many Landlords in the previous years.
- Consider the fees that Landlords must pay to conduct business in the City of Richmond (Business License, Fire Prevention, Rental Inspection, and Rental Housing fee).
- Depending on the number of units that a building has, there is a scheduled time as to when they must refinance the building.
- Consider the costs for legal services for issues with tenants.
- Landlords feel that the Annual NOI should stay above the AGI.

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

- Landlords disliked that there was no transparent remedial courses of action regarding tenant and Landlord responsibilities for claims and actions.
- A couple of Landlords did not like the ROI model presented.
- Landlords thought the MNOI model was okay but had questions in regards to excluding the debt service and the rent rollback.

## ITEM H-1 ATTACHMENT 2

- The ROI model was also questioned and some Landlords wanted to know what exactly was the investment and if it included mortgage payments.
- 3. Please share any additional comments or questions in the space below:**
- A question arose that if a Landlord were to create a rule requiring renter's insurance, would that be considered a "rent increase"?
  - Many Landlords voiced their disapproval of the fact that tenants were allowed to add more tenants into their unit and the Landlord could not increase the rent automatically.
  - The ROV model also had a few questions in regard to some of the wording used such as the meaning of "value".

# ITEM H-1 ATTACHMENT 2

## Increases or Decreases in Space, Services or Habitability

### **1. What do you think are the most important factors to consider in establishing rent increase or decrease standards for increase or decreases in services, or habitability issues?**

- If the problem means the renter has to move temporarily (mold abatement) they would get a relocation payment so rent decrease should not apply.
- If a decrease in service is based on the landlord bringing the property into compliance with the code then this should not be seen as a decrease in service & not be eligible for a rent decrease.
- The most important factors in establishing a rent increase or decrease should be habitability, the level of inconvenience, lack of safety, and whether or not a code violation is involved.

### **2. What do you like or dislike about any of the standards presented?**

- I don't think landlords should be held liable for pests brought in by renters nor should they have to pay relocation fees for time of abatement.
- I like the standard that takes 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 or questions in the space below:**

- Changes in rent and habitability are a complicated issue and should be reviewed on a case by case basis.
- Require landlords to respond to tenant notices in a reasonable amount of time. For example 5 business days, there could include a monetary penalty for non-compliance.
- Confusion about occupancy. If one tenant moves out the rent decreases by 25%, but if one is added we can only raise the rent by 10%?
- Notations entered clearly into database for responsibilities regarding claims of service or habitability –tenant responsibility or landlord responsibility?
- How can we apply lease items to decreases in space (like a parking space) - regarding breaches in the lease?

## Capital/Building Improvements

### **1. What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?**

- Make improvements for rent increases.
- Good landlords improve property values.
- Resolution should allow a reasonable time period for the cost of repairs to be gradually written off.
- Set a cap on percentages that can be passed through the cost of rent.
- If the capital improvement cap is lower than 10% of the rent, the capital improvement increase should be permanent and be added to the base rent of the unit.
- Owners need to be able to recoup capital improvements.
- Tenants and landlords should be able to negotiate non-capital improvements.
- The board should consider all improvements made on a case by case basis.
- Determine whether the proposed work is required or an optional upgrade. Even if the work is required for code compliance the landlord is responsible for daily repairs and maintenance and that needs to be covered by the base rent not considered an improvement.
- A 5 year amortization schedule is reasonable.
- The considerations should be type of improvement and benefits to the tenant.
- Capital improvements should be dependent on whether it is necessary or not.
- Capital improvements are permanent improvements and the rent increase should also be permanent.
- Capital improvements should depend on whether it is necessary or not.
- Capital improvements from the past 5 years should be included in the rent rate adjustment.

# ITEM H-1 ATTACHMENT 2

## 2. What do you like or dislike about any of the standards presented?

- Do not want the standard for capital improvements to be too narrow. Review capital improvements to be passed because if you don't allow landlords to pass through capital improvements landlords will not want to invest and properties become eye sores.
- If capital improvements cannot be passed on then most of them will not be completed.
- Capital improvements should be retroactive to year 2015. I made many changes to the apartment and then rents were frozen. I should be allowed to raise the rent based on the improvements.
- Pass through costs and the percentages 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. If the tenant never leaves they are getting all the benefit.
- Giving tenants the option to pre-approve optional capital upgrades along with rent increases could be considered.

## 3. Please share any additional comments or questions in the space below:

- Capital improvements mean an increase in property value. Why does the tenant have to pay for the landlords increase in property value?
- Policy should be balanced.
- Consider low interest loans for capital improvement projects. It is hard to save for projects under rent control.
- Guidance on the definition of capital improvements with primary examples is needed.
- Property owners need to be supported in maintaining the property.
- Capital improvement should include aesthetic improvements.
- Things that should be included as a possible pass through are: roof, exterior paint, heating, electrical, windows, fencing, appliances, railings, screens, and seismic retrofits.
- Remodeling of the bathroom and/ or kitchen should be considered a capital improvement.

## ITEM H-1 ATTACHMENT 2

- There needs to be a fairness ratio. If you bought a property with old systems why should the tenant bear all the costs of the upgrade?
- If you allow less than 100% of total cost you end up with a circular argument where I would file a petition for fair return.
- Giving tenants the option to pre-approve optional capital upgrades along with a rent increase could be considered.
- Capital improvements extend the life of the property.
- There needs to be a provision for the tenant's constructive damage of the rental unit.
- Need clarity on definition of capital improvements.
- Distinction is necessary between required and optional improvements.
- Tenant has the option to receive optional improvement but will see a rent increase.
- Do we want to give tenants an opportunity to request an upgrade and pay the rent increase?
- When can a rent increase take effect?

## Historically Low Rents

**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 Rent Program/Board should research market rents from public sources like Zillow and Single-Family Home rents to reflect a true natural rent baseline.
- The Rent Program/Board should take into consideration the increasing operating expenses that they face and the low amount of fair return that they make with the max 6.56% AGA.
- Rental market rates differ depending on the neighborhood and zip code which is something that Landlords feel should be analyzed by the Program.
- Consider rental market rates for 2015.
- Other factors included the type of unit, the condition of the unit, and how long the tenant has been living in the unit.
- The Program/Board should financially analyze how much it would take for Landlords with historically low rents to reach market value.
- The 2015 HUD Income Limits should be used to establish standards for Landlords with historically low rents.
- Analyzing rental units that are not subject to rent control could better help set the standards for Landlords with historically low rents.

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

- Landlords dislike the fact that no account has been taken of the economic changes in the area including gentrification & high property values that are continuing to rise.
- Landlords disliked the fact that the current rate cap/base rent rollback penalizes landlords that were being nice to their tenants when their tenancy began.
- Landlords also dislike the fact that they are keeping their units in perfect condition and cannot make a fair rate of return.
- One of the main critiques of the policies was that the rental market rate for 2015 was not taken into consideration when coming up with the AGA percentages.

## ITEM H-1 ATTACHMENT 2

### 3. Please share any additional comments or questions in the space below:

- Rent appraisals need to be done via neighborhoods and not the city as a whole due to different neighborhoods having different rental rates.
- Having to give a full relocation payment to tenants also affects their financial stability and a regulation is needed so landlords with historically low rents could pay a reduced fee instead of the set relocation payment fee.
- Landlords should be given special AGA percentages to be able to reach the minimum standard in the City.
- Having to give excess rent refunds for rent increases in the previous years is making it difficult for them to stay in the rental market. o There should be an exemption where Landlords with historically low rents should not have to give back excess rent refunds.
- Having to rollback their rents makes it even more difficult to get anywhere near the market rate.
- The Rent Program is more of an insurance program for a tenant that seeks to punish Landlords financially.
- Landlords with historically low rents should be allowed to raise their rent to a certain percentage of what the market was in 2015.
- The Rent Program/Board should set an average rent for 2015 and allow Landlords to increase it from there.

# ITEM H-1 ATTACHMENT 2

## COMMENTS FROM COMMUNITY MEMBERS RECEIVED FROM 1/5 – 1/16/2018

Please accept my comments for consideration in your upcoming meeting.

For the individual rent adjustment considerations, I would like to weigh-in on the following:

1. **Providing for a fair return standard for landlords:** If landlords are not afforded a fair rate of return on their rental properties, in comparison to other investment areas, then inevitably Richmond will end up with more and more run-down housing stock. When the rent for an apartment is locked-in at a price much lower than the going market rent, landlords will have very little incentive to invest money in maintaining and improving their property. This causes landlords to do the bare-minimum in upkeep and spending money, which is a rational response to not receiving a fair return on investment. I would ask that you please take to heart this upspoken down-side to rent control that often gets ignored.
2. **Tenants adding more occupants than allowed:** The California Department of Fair Employment and Housing (DFEH) recommends two persons per bedroom plus one additional person for the overall rental unit. What happens in many cases is that one person is on the lease, but then there are many more people than the max recommendation staying in the apartment. This causes an increase in wear on the apartment and common areas, adds to parking congestion, and adds to utility costs when the landlord pays for utilities. I think that the Rent Control Board should allow for a fair increase in rent (perhaps as a percentage of current rent) if tenants exceed HUDs recommendation for occupancy.
3. **Capital/Building improvements:**
  - a. it is imperative that owners can recoup the cost of capital improvements within a reasonable length of time. Owners will look at the opportunity cost of deploying their capital on building repairs vs. investing elsewhere. Amortizing the repairs over anything longer than 5 years makes most capital improvements not cost-effective.
  - b. Any improvements completed since the rent control board went into effect, but before an official hearing has been completed should be included when considering a rent adjustment. Many landlords have filed petitions many months ago, but have been unable to wait on completing capital improvements (for example in the case of health and safety issues). At a minimum any improvements made since January 01<sup>st</sup> 2017 should be taken into consideration. I think it would be more fair if capital improvement consideration were retroactive to the date in 2015 when the baseline for rents were set.
  - c. Capital improvements are permanent, and the money spent is money that is not providing the owner a return elsewhere. Therefore, the approved rent increases associated with capital repairs should be permanent and not phase out.
  - d. The standard for capital improvements should not be defined too strictly. It should be a case-by-case basis and the default should be that since landlords own their property they can choose which improvements are deemed reasonably necessary. Of course, the rent board could still deem an improvement ineligible for pass through if it deems that the improvements doesn't improve the quality, safety or use of the building or apartment for the tenants in any way.

# ITEM H-1 ATTACHMENT 2

## 4. Historically Low Rents:

a. The pattern of rent increases with historically low rents should be looked at regardless of the date the owner bought the property. That is to say, if rents have a history of low rents and the owner has bought the building recently, the owner should be able to request a rent adjustment based on the historically low rents. If this isn't the case, and the historically low-rents are only considered since the owner purchased the property, this will have a very negative impact on the housing market. Buildings with low rents will be stuck with those low rents and the value of the building will remain artificially low.

b. The adjustment of historically low rents should not have a cap at some percentage of AGA. Rather, the adjustment should be a function of the low rents vs. a consideration of increasing ALL operating expenses.

Thank you,  
Ori Skloot  
Richmond Building Owner

## ITEM H-1 ATTACHMENT 2

----- Forwarded message -----

From: **Ilona Clark** <[in70clark@gmail.com](mailto:in70clark@gmail.com)>

Date: Mon, Jan 15, 2018 at 11:11 AM

Subject: Draft Petition and Hearing Procedure Regulations

To: Paige Roosa <[paige\\_roosa@ci.richmond.ca.us](mailto:paige_roosa@ci.richmond.ca.us)>

To the Rent Board and Staff,

Thank you for the opportunity to review these latest proposed regulations.

After a first read, I noticed that the regulations allow for an unlimited number of appeals free of charge. This is also the practice in Oakland and is responsible, in part for a backlog of tens of thousands of cases. Many of these cases involve "frequent fliers" who use the appeals to put off resolution in perpetuity.

This results in the system being unable to provide due process, not only in these cases but in the many others waiting in the wings.

In order to mitigate this, I propose that you charge for appeals. a minimal amount for the first appeal - \$5 for example. and for subsequent appeals charge \$25, then \$125, then \$250, then \$600, and so on. Capping the number of appeals in addition to charging for them would also help contain this problem. These rules should apply no matter which "side" is asking for appeals.

Also, the regulation makes it clear the housing providers will not get a hearing unless they are in compliance with the law. There is no such provision for renters, I propose that renters must also pay their share of the rent board fee (TBD) and be in compliance with any relevant laws pertaining to the rent board and the City in order to benefit from rent board services as well.

In section 807 "tenants in each affected rental unit" should specify that these are the tenants **listed on the lease** of the affected unit.

Finally, I ask that you consider continuing this item until next month so that more of my group has the opportunity to read it and make suggestions.

Thanks so much,

Ilona Clark RN

--

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

--

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

## ITEM H-1 ATTACHMENT 2

----- Forwarded message -----

From: "**linda n**" <lmno77p@yahoo.com>

Date: Mon, Jan 15, 2018 at 5:53 PM -0600

Subject: Preliminary Drafts of Proposed Rent Board Regulations

To: "Paige Roosa" <Paige\_Roosa@ci.richmond.ca.us>, "David Gray" <dgray@ci.richmond.ca.us>, "Emma Gerould" <egerould@richmondrent.org>, "Lauren Maddock"

<lmaddock@richmondrent.org>, "Nancy Coombs" <ncoombs@ci.richmond.ca.us>, "Virginia

Finlay" <vfinlay@ci.richmond.ca.us>, "ntraylor@ci.richmond.ca.us" <ntraylor@ci.richmond.ca.us>

Cc: "Ilona Clark" <in70clark@gmail.com>

To the Rent Board and Staff,

I have printed out the 19 pages and have begun reading them after a month of the cold that's been going around and the activities of the holidays. I am sure you have also been affected by them all. Please consider postponing this item until next month so we call all do it justice. I very much want to be able to make thoughtful suggestions during this time of examining how to make the ordinance effective and fair.

From the first Rent Board meeting it has been obvious to me how difficult starting up this Board is, and I've been impressed with how hard everyone is working to make it a success. This is one of those times when the public needs to pitch in and help; now we need the preparation time to be able to do so.

Thank you for your consideration on this matter.

Linda Newton