



REGULAR MEETING OF THE RENT BOARD OF THE CITY OF RICHMOND

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

Wednesday, February 21, 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

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.

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REGULAR MEETING OF THE RICHMOND RENT BOARD

AGENDA

5:00 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 24, 2018 Special 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*
- F-3** APPROVE a sole source contract amendment with Kenneth Baar in the amount of \$5,001 for the preparation of rent adjustment regulations for consideration by the Rent Board, for a total contract amount not to exceed \$15,000. *Nicolas Traylor*

G. REGULATIONS

- G-1.** ADOPT 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
Paige Roosa
Michael Roush*

H. STUDY AND ACTION SESSION

- H-1.** RECEIVE Proposed Draft Maintenance of Net Operating Income (MNOI) Fair Return Regulation (Chapter 9). *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.

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: February 21, 2018

Final Decision Date Deadline: February 21, 2018

STATEMENT OF THE ISSUE: The minutes of the January 24, 2018, Special 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 24, 2018 Special Meeting – Rent Program (Cynthia Shaw 620-5552).

AGENDA ITEM NO:

F-1.

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RICHMOND, CALIFORNIA, January 24, 2018

The Special Meeting of the Richmond Rent Board was called to order at 6:01 P.M.

PLEDGE TO THE FLAG

ROLL CALL

Present: Boardmembers Combs, Finlay, Maddock, and Chair Gray

Absent: Vice Chair Gerould (*present as of 6:27 PM*)

STATEMENT OF CONFLICT OF INTEREST

None.

AGENDA REVIEW

None.

PUBLIC FORUM

None.

RENT BOARD CONSENT CALENDAR

On motion of Chair Gray, seconded by Boardmember Combs, the item(s) marked with an (*) were approved with Vice Chair Gerould absent and Boardmember Finlay abstaining from the vote for Item F-1.

*F-1. Approve the minutes of the January 17, 2018, 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.

REGULATIONS

G-1. The matter to adopt Regulations for Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) was presented by Executive Director, Nicolas Traylor. The presentation included a brief presentation and a flow chart on the Proposed Petition and Hearing Process. The flow chart included the process

of when a petition is filed, accepted or unacceptable, incorrect then corrected, Hearing Examiner review, the objection notice mailed or no objection notice received, objection notice received, scheduling of hearing, continuance, settlement conference and /or hearing conducted, decision issued, and the appeal process. Discussion ensued. There were no public comments. A motion by Boardmember Maddock, seconded by Boardmember Combs to adopt Regulations for Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) with the following amendments to Regulations 805, 823, 842 and 843, passed by the following vote: **Ayes:** Boardmembers Combs, Finlay, Maddock, and Chair Gray. **Noes:** None. **Abstentions:** None. **Absent:** Vice Chair Gerould.

STUDY AND ACTION SESSION

H-1. The matter to 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) was presented by Deputy Director, Paige Roosa. The presentation included the scope of the proposed Regulations, proposed Rent Registration Regulations, Chapter 4 (400-404), proposed Vacancy Rent Increase Regulations, Chapter 7 (701-708), proposed Standards for Individual Rent Ceiling Adjustments due to Changes in Occupants, Space or Service, Chapter 8, Subchapter C, (871-882), and the recommended action. Discussion ensued. The following individuals gave comments (the Board unanimously agreed to extend the public comment time to four minutes): Marilyn Langlois and Ilona Clark. No action was taken. The Board received the proposed Substantive Rent Adjustment Regulations (Subchapter C: Standards for Individual Rent Ceiling Adjustments), Vacancy Rent Increase Regulations (Chapter 7) and Rent Registrations Regulations (Chapter 4), with direction to staff to include the suggested feedback received from Boardmembers and Community Members in the final version.

REPORTS OF OFFICERS

Deputy Director, Paige Roosa, gave a general report on the published 2018 Community Workshops calendar and the staff directory. She also reminded Boardmembers about the Affordable Housing Seminar held on January 27th, presented by Dr. Stephen Barton. Nicolas Traylor, Executive Director, commended staff for their great work and dedication to the program.

ADJOURNMENT

There being no further business, the meeting adjourned at
8:16 P.M.

Cynthia Shaw and Andrea Zuniga
Staff Clerks

(SEAL)

Approved:

David Gray, Chair

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AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: February 21, 2018

Final Decision Date Deadline: February 21, 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.

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

Sent: Thursday, February 15, 2018 1:44 PM

To: Ben Choi; Bill Lindsay; Eduardo Martinez; Gayle McLaughlin; Jael Myrick; Jovanka Beckles; Melvin Willis; Tom Butt - external; Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay

Subject: Monitoring compliance with Annual General Adjustments and providing for Individual Rent Adjustments

To the Richmond Rent Board and Staff,

Please consider our suggestions and edits to the following regulations. We have sent most if this content in individual sections - this is the whole piece so that you can see how the pieces work together and includes any suggestions that may have been missed in the divided form. The same content is included in the attachment below.

Edits compiled by

the Association of United Richmond Housing Providers

Revision key – changes in italics, questions and thoughts in purple

City of Richmond Rent Program DRAFT Rent Adjustment Regulations Page 2 of 14 As of: January 22, 2018 **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. *This is part of the original ordinance, why put it here too? If it can be changed it should be*

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.~~ *Any termination that occurred prior to the start date of the ordinance, 1/1/2017, does not warrant an explanation since the roll back applies only to rent amounts, not to Just Cause for Evictions.*

(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.~~ *Vague and too broad, I'm not filing changes in rules about smoking, or a new schedule for taking cans to the curb or general communication with renters that make it into the "house rules" or tenancy updates. This should be narrowed to terms pertaining to rental amount and housing services*

(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 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. *Why the time limit?, if adult child moves into a rental and owner learns of this exemption after the fact and remains in compliance in the meantime, does that nullify the exemption on the 61st day?*

(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.~~ *Temporary decreases in rent shall not reset the base rent or the maximum allowable rent.*

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:

The following 2 sections are already codified in Costa Hawkins. It is redundant to put them here unless the idea is to preserve these aspects of C-H when and if it is defeated in the fall election. I would strongly suggest that the rent board deal with that when and if it happens rather than trying to deal with its idiosyncrasies piecemeal and in advance. Vacancy decontrol may be the goal of some but dividing different parts of the market using carve-out may have deleterious unintended consequences.

~~(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) (l) (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. City of Richmond Rent Program DRAFT Rent Adjustment Regulations Page 5 of 14 As of: January 22, 2018~~

~~(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~~ This Harassment section is defined in C below

(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: City of Richmond Rent Program DRAFT Rent Adjustment Regulations Page 6 of 14 As of: January 22, 2018

(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.

Claims of harassment must be filed no later than 30 days after tenant vacates property and a police report shall be on file supporting the claim."

(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** As defined by what? 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~~ *Original Occupants*

(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. *Words in bold are not in ordinance. Replace with and listed as an existing tenant for said unit in the Richmond Rent Program website. These laws were copied from ordinances written before the age of the computer or mega-data, let's use our technological capabilities, we pay so much for them!*

(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. *This directly contradicts the ordinance:*

“11.100.040 Homeowner Protections.

(1) **Temporary Rentals Allowed.** A homeowner who is the Primary Resident of a single-family home may create a temporary tenancy. The temporary Tenant must be provided, in writing at the inception of the tenancy, the length of the tenancy and a statement that the tenancy maybe terminated at the end of the temporary tenancy (pursuant to Section 11.100.050 (8) below) and relocation shall not be required.”

This creates exception for owners who choose to vacate temporarily (eg to live abroad and work for a medical mission or study) where owner has previously signed a contract with renter specifying the date of owner return. These instances should apply any owners returning to their primary residence whether that is a SFH or an owner-occupied multi-plexes and single family homes and should NOT be subject to relocation fees

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 that the last original occupant has vacated the premises 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. *If the housing provider has received written notice that the last original occupant has vacated the premises from the tenant that is a party to the agreement and thereafter accepted rent without agreeing in writing with existing tenant to establish the initial rent within 6 months of the vacancy then the right to establish initial rent is waived.*

(D) A landlord may not unilaterally impose or require an ~~existing~~ *original* 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.

(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 *of the start of tenancy*, with permission of the landlord, ~~express or implied~~, shall be considered to be original occupants *and shall be added to the Richmond Rent Board Website as an original occupant.*

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, 2015, 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 *two thirds of the percentage of increased occupancy (%change in occupancy rate multiplied by 2/3) or at least ten percent (10%) of the allowable rent, whichever is more*, 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 children, parents or grandparents. 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. *Italicized – language of original ordinance for the definition of family in Owner-move-in, bolded is language being applied to increase in #of tenants for the purposes of this section*

(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. *Rent decrease as a result of a drop in occupancy shall not fall below that set in original lease, even if the occupancy rate drops below the original level spelled out in said lease*

(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 *as defined by original lease*, then the rent ceiling for that unit shall be decreased by an amount equal to the percentage by which the number of allowable tenants has been reduced. *Rent decrease as a result of a drop in occupancy shall not fall below that set in original lease, even if the occupancy rate drops below the original level spelled out in said lease.* As used in this regulation, "policy" or "policies" means any rule, course of conduct, act or actions by a landlord.

1 and 3 as written in the proposed regulations, set up a powerful economic disincentive to ever allow additional roommates

(D) Petitions for Rent Increases

Grounds for Tenant Objection. Tenants subject to petitions under subsection (B) (I) 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~~ [see below](#)

874. *Regulation allowing rent ceiling to increase or decrease based on an increase or decrease in space or services provided* 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. *Such adjustments will be calculated by multiplying the percentage of increase to the usable space or the housing services for the tenant's use of and benefit*

and adding to the rent ceiling in effect at the time of the increase in usable space or the housing services. The hearing examiner may consider the cost of the space or service in question. Taken from B 1 below

(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.

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~~ *number of days* 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 *or code compliance dictates a reduction to effect said changes. Such as Earthquake retrofit requirements* "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. *Substantial deterioration does not include any decline of housing services resulting from damage caused by the tenant, associated residents, guests or pets. 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.** *How does this apply. If the owner is banking or if allowable raises have not been implemented? What is the goal – to lower rents? To ensure maintenance of buildings and services?.*

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. *This does not apply to conditions caused by the tenant, associated residents, guests or pets.*

(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. *The landlord shall not be liable for a violation of under this Section 4 (a) or (b) unless he or she fails to correct the violation within a reasonable time after he or she either has actual notice of a deficiency or receives notice of a deficiency.*

(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. *except in cases where the damage causing the violation was caused by the tenant, associated residents, guests or pets.*

(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, nor does *damage caused by the tenant, associated residents, guests or pets.*

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 *only if landlord has not corrected the violation within a reasonable time after having been given notice,* and shall terminate on the date of the ~~first rent payment due after~~ *correction of said violation. Adequate proof has been will be submitted to the Board that the condition for which the reduction was granted no longer exists. The rent decrease shall be retroactively applied to the actual date of the correction as appropriate.*

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~~ *must* 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 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 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~~ *retroactively*. 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~~ *retroactively* 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. *Don't decide whether or not AGA's may be banked, lost or added to other types of rent adjustments until those regulations are written*

(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** *consisting of what?* showing that all affected tenants have been provided with a complete copy of the documents filed. *This only applies to 882 A, above, it would be better placed at the end of that paragraph*

ITEM F-2 ATTACHMENT 1

~~Chapter 8 Subsections A and B of these regulations sba1 govern all additional petition procedures for AGA petitions.~~ *These have not yet been written, until everyone can see what they entail. There should not be stipulations put on them*

--

Richmond Can Do Better!

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

Sent: Wednesday, February 14, 2018 6:03 PM

To: Ben Choi; Bill Lindsay; Eduardo Martinez; Gayle McLaughlin; Jael Myrick; Jovanka Beckles; Melvin Willis; Tom Butt - external; Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay

Subject: Section 882 Mandates Banking

To the Richmond Rent Board and Staff,

Please consider our suggestions regarding the Banking AGA's which has already been capped.

These suggestions have been compiled by the AURHP.

Section 882 Mandates Banking in cases of temporary non-compliance. Banking has been capped when it voluntary. A different practice should be considered if the Board chooses to mandate banking.

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~~ *retroactively*. 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~~ *retroactively* 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. *Don't decide whether or not AGA's may be banked, lost or added to other types of rent adjustments until those regulations are written*

(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** *consisting of what?* showing that all affected tenants have been provided with a complete copy of the documents filed. *This only applies to 882 A, above, it would be better placed at the end of that paragraph*

~~Chapter 8 Subsections A and B of these regulations sba11 govern all additional petition procedures for AGA petitions.~~ *These have not yet been written, until everyone can see what they entail. There should not be stipulations put on them*

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

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

Sent: Wednesday, February 14, 2018 5:24 PM

To: Ben Choi; Bill Lindsay; Eduardo Martinez; Gayle McLaughlin; Jael Myrick; Jovanka Beckles; Melvin Willis; Tom Butt - external; Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay

Subject: Chapter 4, the 400 's presumes jurisdiction where there is none

402 presumes jurisdiction where there is none. There is no need to collect explanations about the end of tenancies before January 1, 2017. The rollback to July 2015 applied to rent rates, not to Just Cause.

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. *I think this is part of the original ordinance, why put it here too? If it can be changed it should be*

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.~~ *Any termination that occurred prior to the start date of the ordinance, 1/1/2017, does not warrant an explanation since the roll back applies only to rent amounts, not to Just Cause for Evictions.*

(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.~~ *Vague and too broad, I'm not filing changes in rules about smoking, or a new schedule for taking cans to the curb or general communication with renters that make it into the "house rules" or tenancy updates. This should be narrowed to terms pertaining to rental amount and housing services*

(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 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.

Why the time limit?, if adult child moves into a rental and owner learns of this exemption after the fact and remains in compliance in the meantime, does that nullify the exemption on the 61st day?

(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.

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

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

Sent: Wednesday, February 14, 2018 7:30 AM

To: Ben Choi; Bill Lindsay; Eduardo Martinez; Gayle McLaughlin; Jael Myrick; Jovanka Beckles; Melvin Willis; Tom Butt - external; Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay

Subject: Section 873 dis-incentivizes allowing additional tenants, making housing shortage WORSE

To the Richmond Rent Board and Staff,

Please consider our suggestions mitigating regulations which, as proposed, are disincentives to add tenants to a rental agreement. No housing provider will allow an additional tenant under these conditions

These suggestions have been compiled by the AURHP.

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, 2015, 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. *The rent ceiling for that unit shall be increased by an amount equal to the percentage by which the number of allowable tenants has been increased. (See C, below)* 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.

Also may consider increases of up to two thirds of the percentage of increased occupancy (%change in occupancy rate multiplied by 2/3) or at least ten percent (10%) of the allowable rent, whichever is more.

(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 children, parents or grandparents. 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. *Italicized – language of original ordinance for the definition of family in Owner-move-in, bolded is language being applied to increase in #of tenants for the purposes of this section*

(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.

Rent decrease as a result of a drop in occupancy shall not fall below that set in original lease, even if the occupancy rate drops below the original level spelled out in said lease

(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 *as defined by original lease*, then the rent ceiling for that unit shall be decreased by an amount equal to the percentage by which the number of allowable tenants has been reduced. *Rent decrease as a result of a drop in occupancy shall not fall below that set in original lease, even if the occupancy rate drops below the original level spelled out in said lease.* As used in this regulation, "policy" or "policies" means any rule, course of conduct, act or actions by a landlord.

1 and 3 as written in the proposed regulations, set up a powerful economic disincentive to ever allow additional roommates

(D) Petitions for Rent Increases

Grounds for Tenant Objection. Tenants subject to petitions under subsection (B) (I) 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).

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

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

Sent: Tuesday, February 13, 2018 3:10 PM

To: Ben Choi; Bill Lindsay; Eduardo Martinez; Gayle McLaughlin; Jael Myrick; Jovanka Beckles; Melvin Willis; Tom Butt - external; Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay

Subject: Section 707 Allows ANYONE to move in to any unit without permission

Section 707 conflates Original Occupant with Tenant without defining the former. It Allows ANYONE to move in to any unit without permission - bad for both Renters and Housing Providers. It will serve a back-door way to vacancy control if Costa Hawkins is defeated

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 that the last original occupant has vacated the premises 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. *If the housing provider has received written notice that the last original occupant has vacated the premises from the tenant that is a party to the agreement and thereafter accepted rent without agreeing in writing with existing tenant to establish the initial rent within 6 months of the vacancy then the right to establish initial rent is waived.*

(D) A landlord may not unilaterally impose or require an ~~existing~~ *original* 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.

(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

ITEM F-2
ATTACHMENT 1

occupy the unit within one month *of the start of tenancy*, with permission of the landlord, ~~express or implied~~, shall be considered to be original occupants *and shall be added to the Richmond Rent Board Website as an original occupant.*

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

Sent: Monday, February 12, 2018 4:36 PM

To: Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay; Ben Choi; Bill Lindsay; Eduardo Martinez; Gayle McLaughlin; Jael Myrick; Jovanka Beckles; Melvin Willis; Tom Butt - external

Subject: Section 703 - no limits on when harassment charges can be brought

To the Richmond Rent Board and Staff,

Please consider our suggestions regarding Harrassment - a blank check?

These suggestions have been compiled by the AURHP.

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 (*such as turning off utilities or changing locks*)

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

~~(4) Harassment~~ *This Harassment section is defined in C below*

(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: City of Richmond Rent Program DRAFT Rent Adjustment Regulations Page 6 of 14 As of: January 22, 2018

(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.

Claims of harassment must be filed no later than 30 days after tenant vacates property and a police report shall be on file supporting the claim."

(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** As defined by what? 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.

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

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

Sent: Monday, February 12, 2018 4:31 PM

To: Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay; Ben Choi; Bill Lindsay; Eduardo Martinez; Gayle McLaughlin; Jael Myrick; Jovanka Beckles; Melvin Willis; Tom Butt - external

Subject: Section 701 decreases the maximum allowable rent forever

To the Richmond Rent Board and Staff,

Please consider our suggestions regarding punishing housing providers for offering deals that attract renters and benefit them already.

These suggestions have been compiled by the AURHP.

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.~~ *Temporary decreases in rent shall not reset the base rent or the maximum allowable rent.*

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

From: Sherry Zalabak [mailto:sherz@comcast.net]
Sent: Sunday, February 11, 2018 8:53 PM
To: Nicolas Traylor; ncombs@richmondrent.org; dgray@richmondrent.org; egerould@richmondrent.org; lmaddock@richmondrent.org; vfinlay@richmondrent.org; Cynthia Shaw
Cc: Sherry Zalabak; John Zalabak; rentprogram20@gmail.com; Paige Roosa
Subject: ATTN: Board Members

To: Mr. Nicolas Traylor, Executive Director
To: Members of the Richmond Rent Board
CC: Paige Roosa, Management Analyst
RE: Comments on Chapter 8: Sub-chapter C. Standards for Individual Rent Ceiling Adjustment due to Changes in Number of Tenants

My name is Sherry Zalabak. I own a triplex in Richmond. I am also a member of AURHP. I have been reviewing the City of Richmond Draft Rent Adjustment Regulations. I respectfully submit my observations for your consideration.

873. Changes in Number of Tenants

After carefully reading the terms drafted to allow additional tenants I am convinced that no rational housing provider will allow an additional tenant. The conditions as proposed are disincentives to add tenants to a rental agreement.

(1) The rent ceiling increase of 10% is inadequate to compensate the Provider for the increase in level of service costs: electricity, gas, water use, sewage fees and garbage. Additionally, there are maintenance costs: A greater number of tenants increase the wear and tear on appliances, plumbing systems, floors, interior paint, laundry facilities, which are typically costly and should be included in the calculation for compensation. Finally, bear in mind labor costs for maintenance and repairs increase annually. I currently pay \$50 to \$95 an hour for skilled labor. Labor costs do not track with the consumer price index. According to my calculations, the minimum compensation for adding a tenant should be no less than 25%.

Most of Richmond's housing stock dates back to 30' and 40's, almost an entire century! Maintenance, repair and replacement costs increase as the housing stock continues to age and deteriorate. Thus the Housing Provider gets further and further behind each year. Given the onerous rules and regulations of Rent Control suddenly imposed upon Housing Providers like me (small time folks), it is very unlikely that we will offer to sacrifice even more by taking on more tenants. The result will be that tenants requesting an increase in occupancy will be DENIED. This will INCREASE the number of those desperately seeking housing. Long gone will be the days of doubling up with roommates to pay for college tuition or to get by on substandard wages. Will this inevitable outcome serve the purpose of rent control? Without just compensation there is NO INCENTIVE to allow additional tenants: there is only detriment to both: More tenants seeking housing and less housing offered.

It is noteworthy to point out that based upon Section 503 (b) of the Federal Uniform Housing Code, there are clear-cut rules regulating occupancy: a one bedroom unit may have two persons per bedroom (plus one in the living space) for a total of 3, a two bedroom unit may have 2 persons per bedroom (plus 1) for a total of 5, a three bedroom unit may have 2 persons per bedroom (plus 1) for a total of 7 and so on. This is the two plus one rule.

(2) Housing Providers are already legally required to provide housing to family members listed as a “protected class” (spouses, children, grandchildren, parents, grandparents, legal guardian of a child, registered domestic partner, or parent of a tenant). Why is there no compensation to Housing Providers who are required to comply with this requirement? Is this fair? It is beginning to seem as though Housing Providers are now employees of the government, yet without reasonable compensation.

(3) The current Draft states that, should an “additional” tenant vacate, the rental increase will be reduced by an amount equal to the amount of increase. So far so good; however, I see no consideration for any permanent wear and tear done as a result of additional tenant(s). Perhaps the additional tenant had her own room and destroyed the drywall, nailed posters from floor to ceiling, and wore cleated shoes on the hardwood floor. How is compensation determined, who is responsible and when? Why would a Housing Provider agree to additional tenants when adding more people would not only increase the likelihood of such occurrences but create more management and bureaucratic issues. There is clearly NO INCENTIVE for the Housing Provider to allow an increase in number of tenants.

(IN SUMMARY) The drafters have proposed a 10% rent increase to owners who accept additional tenants, an increase that is out of touch with economic reality of housing costs. If the proposed compensation were to become final, it would be a disincentive for Housing Providers to allow additional tenants. That would INCREASE the number of tenants looking for housing. Indeed, we have just this result in other cities. On the other hand, if reasonable compensation to Housing Providers were offered, it would provide an DECREASE in the number of tenants seeking housing, as housing providers would tend to adopt the attitude of “There’s always room for one more!” This would be especially effective in Richmond, where small-time Housing Providers often have personal relationships with their tenants.

Sherry Zalabak, Member of AURHP

Small-time Housing Provider

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

Sent: Sunday, February 11, 2018 7:55 AM

To: Cynthia Shaw; Paige Roosa; Bill Lindsay; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay

Subject: Section 704 - directly contradicts the ordinance

To the Richmond Rent Board and Staff,

Please consider our suggestions regarding the definition of a tenant and a section in the proposed regulations that directly contradicts the ordinance as it is already written.

These suggestions have been compiled by the AURHP.

704. No Vacancy Rent Increase for ~~Existing Tenants~~ *Original Occupants*

(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. *Words in bold are not in ordinance.*

Replace with and listed as an existing tenant for said unit in the Richmond Rent Program website.

Thoughts: These laws were copied from ordinances written before the age of the computer or mega-data, let's use our technological capabilities, we pay so much for them!

(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. *This directly contradicts the ordinance:*

"11.100.040 **Homeowner Protections.**

(1) **Temporary Rentals Allowed.** A homeowner who is the Primary Resident of a single-family home may create a temporary tenancy. The temporary Tenant must be provided, in writing at the inception of the tenancy, the length of the tenancy and a statement that the tenancy maybe terminated at the end of the temporary tenancy (pursuant to Section 11.100.050 (8) below) and relocation shall not be required."

This creates an exception for owners who choose to vacate temporarily (eg to live abroad and work for a medical mission or study) where owner has previously signed a contract with renter specifying the date of owner return. These instances should apply any owners returning to their primary residence whether that is a SFH or an owner-occupied multi-plexes and single family homes and should NOT be subject to relocation fees

-- Richmond can do better!

From: Sherry Zalabak [<mailto:sherZ@comcast.net>]
Sent: Friday, February 02, 2018 10:25 AM
To: Rent Control
Cc: NicolusTraylor@ci.richmond.ca.us; Paige Roosa
Subject: Attention Rent Board Members

February 1, 2018

To: Members of the Richmond Rent Board,
To: Mr. Nicholas Traylor, Executive Director
Cc: Paige Roosa Management Analyst

I am writing to address the stipulation in the Rent Control Draft that only Health and Safety Code expenses will qualify as grounds for a rent increase.

If this is adopted I will no longer spend a dime making my triplex an attractive place to live, upgrading appliances, replacing carpet, linoleum, installing dual pain windows to save on energy, maintaining trees and landscaping, paying for water to operate an irrigation system..... to name a few. If these expenses are NOT to be considered in calculating the Fair Rate of Return but rather deemed Optional Expenses absorbed solely by owners then I will comply only with Health and Safety issues.

The obvious outcome of this ill-conceived regulation will be to turn rent controlled housing into a stock-pile of deteriorating slums. It is also likely to create tension in the relationship I share with my tenants. The joy and pride I get from visiting my tenants homes and sharing in the pleasure they get from their environment will cease with this short -sighted proposal.

Small property owners like myself will search for other means of supplemental income; (i.e. stocks, bonds, commercial investments, etc.) in order to escape the one-sided restrictions and burdens of rental property ownership. LLC's have already approached me to sell. Over time the result can only be that rental housing will likely be owned and managed by business conglomerates, corporations, LLC's and REIT's. These collective "For Profit" companies have legal staff and (as practice and history shows) typically prevail against unfair restrictions that compromise their bottom line.

The current draft states that ONLY Health and Safety issues qualify for Fair Rate Return. This stipulation will be the first to be under attack by the larger housing providers, and with good cause.

The time and money I invest in my triplex to make it a lovely place to live will be the result of my donation only. I recently spent \$1,600 to install a gas line to replace an electric stove with a gas stove as my tenant preferred gas. Where else is spending money to improve a product or service a penalty or sacrifice to the provider?

ITEM F-2
ATTACHMENT 1

Like my grandmother (Rosie the Riveter) and my mother (one of the first women bus drivers, 1952, in Richmond) I am a third generation housing provider to the Richmond community. I do it because it is needed and I do it as a service to the community in which I was raised. I also do it because thus far I have been able to get a return on my investment that exceeds a bank C.D. And, I do it because I have enjoyed a mutually rewarding relationship with my tenants. If I am required to donate my labor, time and money to make repairs and/or improvements outside of H&S codes, the joy and satisfaction that I derive from providing housing to folks will end.

Sincerely,
Sherry Zalabak

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

Sent: Monday, January 29, 2018 10:03 PM

To: Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay; Mike Vasilas; Lori Wickliff

Subject: Vacancy Decontrol and Costa Hawkins

From the Association of United Richmond Housing Providers,

Thank you Nicolas and Paige for meeting with us last week. We are so glad for the chance to talk with you and clarify some aspects of the latest set of draft regulations. As discussed, these sections are codified in Costa Hawkins. See comments in bold below:

702. Vacancy Rent Levels

(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) (l) (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. City of Richmond Rent Program DRAFT Rent Adjustment Regulations Page 5 of 14 As of: January 22, 2018

Many expect Costa Hawkins to be repealed in the near future. If vacancy decontrol is a goal of the Richmond Rent Program as it is for some groups, then the replacement of vacancy decontrol must be undertaken thoughtfully and with an understanding of why, and how much, housing providers depend on it under rent control.

One of the problems with C-H + rent control is the artificial divisions they have created by applying rules to only certain situations or types of housing, but not to others. Using carve-outs will have deleterious unintended consequences that are hard to predict. And carve-outs created under C-H may not work well in Richmond. Unless the idea is to preserve only these aspects of C-H when and if it is defeated in the fall election, We strongly suggest that the rent board deal with vacancy decontrol as a whole when the time comes, not piecemeal and not in advance.

**Sincerely,
the AURHP**

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

Sent: Tuesday, January 30, 2018 9:59 PM

To: Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Nicolas Traylor; Rent Program; Virginia Finlay

Subject: Banking AGA's, voluntary or mandatory?

To the Richmond Rent Board and Staff,

As discussed in the most recent rent board meeting, Section 882 (below) mandates banking in cases when housing providers are out of compliance with the law. Getting back into compliance, while not as ideal as simply staying in compliance, is necessary and often expensive. It might seem that mandating Housing Providers to bank AGA's during times like these is reasonable.

However, it is important to remember that banking has already been limited to 5% plus the given AGA of the year. This is what was passed in the context of voluntary banking. Section 882 is not talking about voluntary banking:

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.

The final sentence in this section seems to imply that banking may be mandated in the context of other types of raises:

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

Please consider raising the cap on banking in specific situations (Capital Improvements, Fair return, etc), or not mandating banking at all and raising the total rent raise including the given AGA

On a related subject, Section 701 mandates a reset of the base rent when rents are reduced for temporarily reduced housing services:

701. New Maximum Allowable Rent

(B) 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.

If a housing provider needs to do an earthquake retrofit and renters use the ground floor for parking or storage. They may be entitled to a rent reduction for the duration of the project. That is fair. To then give them a permanent rent reduction in addition is punitive and a real dis-incentive to doing improvement projects of any sort.

Thank you for your continued vigilance and care in scrutinizing these different parts and how they work together. Your care in molding Richmond's rent control regulations as balanced and fair to everyone are much appreciated.

From the Association of Richmond Housing Providers

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

Sent: Thursday, January 25, 2018 8:20 PM

To: Cynthia Shaw; Paige Roosa; Bill Lindsay; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Rent Program; Virginia Finlay; Nicolas Traylor

Subject: Special Meeting of the Richmond Rent Board 1/24/18

To the Rent Board and Staff,

Thank you for all the incredible work you are doing on behalf of Richmond.

As a member of the Association of United Richmond Housing Providers, I was thankful for the opportunity to say a few things about the proposed draft regulations.

Section 875: As rent raises above CPI are considered, it is important to remember the CPI is a national index of the costs goods and services including food, clothing, furniture, fuel, etc. Housing is also included but it is a small portion of the calculation. What CPI does not reflect is costs of the Bay Area or housing costs of the Bay Area - both higher than the national average by far and only set to rise higher as the price of contractors and construction materials will rise disproportionately in the wake of the recent and devastating fires in our area. CPI counts some sales taxes but does not consider property taxes at all, nor does it consider the costs of rent boards.

So, after 30 years of rent control in Oakland, many small housing providers are in dire financial straights. Even with legal raises above CPI to pay for the costs associated with housing, the inadequacy of CPI creates an imbalance that is only mitigated by vacancy de-control. This is why housing providers defend Costa Hawkins so vehemently, as Nancy Coombs and I both witnessed in Sacramento recently.

Section 873. B. 1) reads that increases in rent due to increases in occupancy should not exceed 10% per additional person. However this 10% is not based on anything but other rent control ordinances and does not reflect the reality of the increased costs to the Housing provider or the increase benefit to the original occupant(s). I suggested that this rise should reflect the percentage of rise in occupancy so that if 3 housemates decide to include a fourth, this 33% rise in occupancy should be reflected in a proportional rise in the rent or at least be the starting point for such a calculation so that

a 33% increase in Occupancy = $33\% \times 1/2$ or $2/3$ to make an allowable increase of 16% or 21%, respectively

The 10% figure, if you wish to keep it, could stand in as the minimum amount that could be charged for each additional person in any given living situation.

Section 874 B. 1) increases in rent should be calculated according to a long and complex looking equation but increases 874. A. housing providers need written agreement with renter. I suggested that these provisions are opposite sides of the same coin. As such, they should be treated similarly - apply detailed calculations to both, or don't.

Section 882 A. stipulates that Owners who lose AGA's during times of Non-compliance with the ordinance, etc may then utilize banking to make up for the lost AGA. However, banking has been capped and compounding has been dropped. If these limits on banking apply to all raises above CPI, as is stipulated in the last sentence under 882. B. it will really damage the

effectiveness of this program to balance keeping rents low and allowing housing providers to cover actual costs of housing.

I caution you all to really think about mandating any banking under **any** circumstance when banking is already limited. We still have several important rent raise regulations to get through and it is just this kind of thing that can really undo housing providers in the not-so-long term.

Thank you all for listening.

Ilona Clark and the Association of United Richmond Housing Providers

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

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

Sent: Tuesday, January 23, 2018 9:58 PM

To: Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Rent Program; Virginia Finlay; Nicolas Traylor

Subject: Capital improvement raises above CPI

On behalf of the Association of United Richmond Housing Providers, I would like to present a balanced and practical proposal for handling rent raises for capital improvements

Capital Improvement above CPI increases use the cost of the improvement as the basis for the rent raise.

Capping annual adjustments for Capital Improvements at 10% of most recent base rent is the case in San Francisco:

<http://sfrb.org/section-377-certification-rental-increases-capital-improvements-rehabilitation-and-energy>

Amortization schedules:

If you find SF's schedule of 7 or 10 years too blunt of an instrument, you might consider Oakland's schedule instead (see attachments 1,2 and 3)

The banking cap in Richmond is set very low at 5%. So CPI should be included in the 10% so that housing providers are not forced to bank every time there is a capital improvement.

Capital Improvement raises and roll-backs should not apply to renters who were not in residence in affected units after the improvement increase is completed.

If the Board decides capital Improvement raises to amortize out greater than 10 years for any project, the raises should be permanent and added to the units base rent for future calculations.

Any capital improvement project completed in the last 5 years from the time of filing the petition (fiscal or calendar?) should be applicable.

Important points to remember:

- That housing providers are also financing the costs for renters and must save beforehand or borrow. Borrowing incurs added costs which should be added to the cost of the project or low cost/interest free loans should be set up by the board for improvement projects. The capital improvement raises can then be paid into the boards account for this as the renters pay off the amount. such a system could become self sustaining.
- In the project below, both units benefit equally (new roof). Other projects may not (new windows in one unit), and the costs should be divided according to benefit for each unit as appropriate.

- If the cost, comes out to more than 10% of the base rent, and the rent board wishes to cap raises at 10% then up to 10% should be added to subsequent years until the cost will be met over the time span set by the schedule – always including CPI, of course.
- Using "expected life of the improvement" as the sole basis for amortization is problematic. For example, if I replace the floors in both units and one renter has small children and parks her bike inside her apartment, while the other renter is a neat-nick who removes her shoes religiously when entering and lives alone - who's floor is likely to last longer? Windows are another issue. New windows must be double-paned to be up to code in many jurisdictions. However, they all will accumulate moisture eventually. Wood framed windows last longer but cost 3 to 4 times as much as vinyl. And moisture accumulates faster in any windows that face the sun where the heat differential over 24 hours is greater. Hard to take these factors into account in a one-size-fits-all schedule.

According to these rules, here is an example from my own situation in Richmond.

Rent for each unit in a duplex is \$1645/mo. A roof replacement in 2017 cost \$14,000

\$14,000 divided by 120 months (ten years) = \$116.67

\$116.67 divided by 2 units = \$59.34. This represents a 3.5% increase plus CPI of 3.3% = 6.8% or \$111.86 per unit. If the raise is not to be considered permanent, \$59.34 would be rolled back after 10 years as long as the occupants there at the time of the roof-rent-raise remain in the unit.

Sincerely,

Ilona Clark and the AURHP

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

Exhibit 1
Amortization Schedule

<u>Improvement</u>	<u>Years</u>	<u>Improvement</u>	<u>Years</u>
<u>Air Conditioners</u>	10	<u>Heating</u>	
<u>Appliances</u>		Central	10
Refrigerator	5	Gas	10
Stove	5	Electric	10
Garbage Disposal	5	Solar	10
Water Heater	5	<u>Insulation</u>	10
Dishwasher	5	<u>Landscaping</u>	
Microwave Oven	5	Planting	10
Washer/Dryer	5	Sprinklers	10
Fans	5	Tree Replacement	10
<u>Cabinets</u>	10	<u>Lighting</u>	
<u>Carpentry</u>	10	Interior	10
<u>Counters</u>	10	Exterior	10
<u>Doors</u>	10	<u>Locks</u>	5
Knobs	5	<u>Mailboxes</u>	10
Screen Doors	5	<u>Meters</u>	10
<u>Earthquake Expenses</u>		<u>Plumbing</u>	
Architectural and Engineering Fees	5	Fixtures	10
Emergency Services		Pipe Replacement	10
Clean Up	5	Re-Pipe Entire Building	20
Fencing and Security	5	Shower Doors	5
Management	5	<u>Painting</u>	

Tenant Assistance	5	Interior	5
<u>Structural Repair and Retrofitting</u>		Exterior	5
Foundation Repair	10	<u>Paving</u>	
Foundation Replacement	20	Asphalt	10
Foundation Bolting	20	Cement	10
Iron or Steel Work	20	Decking	10
Masonry-Chimney Repair	20	<u>Plastering</u>	10
Shear Wall Installation	10	<u>Pumps</u>	
<u>Electrical Wiring</u>	10	Sump	10
<u>Elevator</u>	20	<u>Railing</u>	10
<u>Fencing and Security</u>		<u>Roofing</u>	
Chain	10	Shingle/Asphalt	10
Block	10	Built-Up, Tar and Gravel	10
Wood	10	Tile and Linoleum	10
<u>Fire Alarm System</u>	10	Gutters/Downspots	10
<u>Fire Sprinkler System</u>	20	<u>Security</u>	
<u>Fire Escape</u>	10	Entry Telephone Intercom	10
<u>Flooring/Floor Covering</u>		Gates/Doors	10
Hardwood	10	Fencing	10
Tile and Linoleum	5	Alarms	10
Carpet	5	<u>Sidewalks/Walkways</u>	10
Carpet Pad	5	<u>Stairs</u>	10
Subfloor	10	<u>Stucco</u>	10
<u>Fumigation</u>		<u>Tilework</u>	10
Tenting	5	<u>Wallpaper</u>	5
<u>Furniture</u>	5	<u>Window Coverings</u>	5

<u>Automatic Garage Door Openers</u>	10
<u>Gates</u>	
Chain Link	10
Wrought Iron	10
Wood	10
<u>Glass</u>	
Windows	5
Doors	5
Mirrors	5

Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

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

Sent: Saturday, January 20, 2018 4:43 PM

To: Cynthia Shaw; Paige Roosa; Bill Lindsay; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Virginia Finlay; Magaly Chavez; Nicolas Traylor

Subject: Square Pegs in a Round Hole

To the Richmond Rent Board on behalf of the Association of United Housing Providers in Richmond,

The presentations of the rent board staff include a lot of examples of how other jurisdictions manage rent control to balance the need to maintain housing and balance the costs and benefits of housing. Santa Monica does it this way, Berkeley does it that way, etc. Richmond is not the same as Santa Monica or Berkeley. Our population (renters and housing providers alike) are not particularly affluent and we do not have a large, relatively transient population of UC students.

The regulations of other cities should not be interpreted as cookie-cutters, to be copied wholesale.. While I understand that re-inventing the wheel is not practical, I hope you can think in terms of how the building blocks fit together.

These details include amortization rates and schedules; caps on raises, CPI and banking, capital improvement reimbursement rates, allowable pass-throughs, the number of years NOI should span etc.

They are like small building blocks that fit together and have a profound impact on sustainability in the long term - especially for small housing providers.

a few examples:

- Oakland allows 100% of CPI but has removed the cost of housing as a variable, so their CPI is lower than others. It allows banking of up to any 3 years worth in the last 10, Capital improvement calculations are based on only 70% of the cost, no financing. Half of the rent board fee may be passed through
- San Francisco allows only 60% of CPI, a large part of their fee may be passed through, they allow banking up to 7%, and there is a loan program for capital improvements.
- Berkeley allows unlimited banking, almost no pass-through of fees

Already Richmond's relocation fees are among the highest, Richmond does not yet allow any pass through of Rent Board fees though they are also on the high side, and the cap on banking CPI is so low that there is no upside to banking, ever.

As you consider other possible raises above CPI in the next few weeks, keep in mind that whatever you decide will have to co-exist with restrictions and fees already put in place.

The stated purpose of rent control is stabilization of local communities. Housing providers take units off the market (as I have in Oakland), or go out of business, as your letters from housing providers already spell out. When laws are too constricting, systems are too cumbersome or the

costs simply outweigh the expenses, the intent behind them is lost. In the case of rent control regulations that backfire, the housing shortage gets worse and community disruption is exacerbated, not mitigated.

Richmond can do better.

Sincerely

Ilona Clark and The Association of United Housing Providers in Richmond

--

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

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

Sent: Saturday, January 20, 2018 11:33 AM

To: Cynthia Shaw; Paige Roosa; David Gray; Emma Gerould; Lauren Maddock; Nancy coombs; Virginia Finlay; Nicolas Traylor; Magaly Chavez

Subject: Building Blocks of Long-term Sustainability

To the Richmond rent board and staff.

I am writing to you on behalf of the Association of United Richmond Housing Providers. After the meeting this week, We have been discussing the various details of rent control regulations and how they fit together. CPI, banking, amortization schedules, capital improvement reimbursement rates, allowable pass-throughs, etc.

All rent controlled jurisdictions have small differences which, when taken together, have a profound impact on both housing providers and renters.

So far, Richmond has chosen less flexible, more punitive measures than other jurisdictions, For example, there is no pass-through of the Rent Board Fee, relocation fees are among the highest and do not remotely reflect the costs of actual relocation and banking is limited to 5% with no compounding - making any banking for any reason impractical to the point of being pointless.

Still, we have a long way to go and many opportunities to make rent control as practical as possible for all involved in Richmond.

As rent raises above CPI are considered over the next few weeks, it will be very important that banking not be mandated in the context of other rent raises and the 5% cap should not apply to other raises..

To be very clear, banking should not be part of the equation when regulating other types of rent raises. Rather we should be allowed to add CPI to these raises, not to bank.

Thank you

Ilona Clark and The Association of United Richmond Housing Providers

--

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

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AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: February 21, 2018

Final Decision Date Deadline: February 21, 2018

STATEMENT OF THE ISSUE: The Rent Board must adopt regulations governing the petition process for upward and downward rent adjustments. The Rent Program is requesting approval of a sole source contract with Kenneth Baar to prepare particularly complex rent adjustment regulations concerning the definition of a fair rate of return and rent adjustment standards to address petitions submitted on the grounds of historically low rents. In accordance with the City's procurement policies, Board approval is required of a sole source contract in an amount greater than \$9,999.

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 a sole source contract amendment with Kenneth Baar in the amount of \$5,001 for the preparation of rent adjustment regulations for consideration by the Rent Board, for a total contact amount not to exceed \$15,000 – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

F-3.

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AGENDA REPORT

DATE: February 21, 2018

TO: Chair Gray and Members of the Rent Board

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

SUBJECT: PROPOSED CONTRACT AMENDMENT WITH KENNETH BAAR FOR PREPARATION OF PROPOSED RENT BOARD REGULATIONS

STATEMENT OF THE ISSUE:

The Rent Board must adopt regulations governing the petition process for upward and downward rent adjustments. The Rent Program is requesting approval of a sole source contract with Kenneth Baar to prepare particularly complex rent adjustment regulations concerning the definition of a fair rate of return and rent adjustment standards to address petitions submitted on the grounds of historically low rents. In accordance with the City's procurement policies, Board approval is required of a sole source contract in an amount greater than \$9,999.

RECOMMENDED ACTION:

APPROVE a sole source contract amendment with Kenneth Baar in the amount of \$5,001 for the preparation of rent adjustment regulations for consideration by the Rent Board, for a total contract amount not to exceed \$15,000.

FISCAL IMPACT:

Contracts with subject matter experts for the preparation of proposed rent adjustment regulations for consideration by the Rent Board are included in the amended 2017-18 Rent Program Budget and will be funded by Rental Housing Fee revenue. Since the Rent Program is still in the process of billing and collection of the Rental Housing Fee, presumably the funds needed for this contract will be borrowed from the City's General Fund and paid back in accordance with the Reimbursement Agreement between the Rent Board and City of Richmond adopted by the Rent Board on December 20, 2017.

DISCUSSION:

The Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (“Ordinance”), codified in Chapter 11.100 of the Municipal Code, establishes limits on the amount of rent that may be charged for most multifamily residential rental units in the City of Richmond. While Landlords in compliance with the Ordinance and all regulations adopted by the Rent Board are guaranteed the Annual General Adjustment rent increase each year, the Ordinance permits Landlords to petition for an individual rent adjustment in the Maximum Allowable Rent.

Landlords have a constitutional right to a fair rate of return (“Fair Return”) on rental property investments; however, the courts have not required that one particular “fair return” standard be employed by jurisdictions with rent control policies. As such, the Rent Board must adopt regulations to define the Fair Return standards used to adjudicate rent adjustment petitions.

Kenneth Baar is a national expert on Fair Return standards. He has prepared Fair Return reports for 18 California jurisdictions in fair return cases and his testimony on fair return issues has been frequently cited in published California appellate court opinions. Rent Program staff members are confident that Dr. Baar is the only individual qualified to prepare these regulations, and that contracting with another individual or attempting to draft regulations without the assistance of subject matter experts may incur unnecessary legal challenge.

In December, the Rent Program held two well-attended community workshops regarding setting standards for changes in the maximum rent. Feedback and questions gathered from participants has been transmitted to Kenneth Baar to inform the preparation of proposed Rent Board regulations. Additional information is accessible at <http://www.ci.richmond.ca.us/3521/Rent-Adjustment-Regulations>.

DOCUMENTS ATTACHED:

Attachment 1 – Contract Amendment

Attachment 2 – Original Contract

Attachment 3 – Sole Source Justification

**ITEM F-3
ATTACHMENT 1**

**CITY OF RICHMOND RENT BOARD
CONTRACT AMENDMENT**

Department: Rent Program	Project Manager: Nicolas Traylor
Project Manager E-mail: Nicolas_traylor@ci.richmond.ca.us	Project Manager Phone No: (510) 620-6576
Vendor No: 12940 PR No:	P.O./Contract No: 4003
Description of Services: Provide consultation services to Rent Program Department.	
Amendment No. 1 modifies the payment limit.	

The parties to this contract amendment do mutually agree and promise as follows:

1. Parties. The parties to this Contract are the City Of Richmond Rent Board (herein referred to as the "City") and the following named Contractor:

Company Name: Kenneth Baar

Street Address: 17 Katrine Street

City, State, Zip Code: West End, Queensland, 4101 Australia

Contact Person: Kenneth Baar

Telephone: 510-717-2025

Email: kenbaar@aol.com

Business License No: 40055945

Expiration Date: 11/14/18

A California corporation, limited liability corporation general partnership, limited partnership, individual, non-profit corporation,
 individual dba as [specify:] _____,
 other [specify:] _____

2. Purpose. This Contract Amendment is being entered into to amend the Contract between City and Contractor which was approved by the Rent Board of the City of Richmond or executed by the Executive Director on November 20, 2017, which original term commenced on November 20, 2017, and terminates June 30, 2018, with an original contract payment limit of \$9,999.00. Said contact shall hereinafter be referred to as the "Original Contact" and is incorporated herein by this reference.
3. Original Contract Provisions. The parties hereto agree to continue to abide by those terms and conditions of the Original Contract, and any amendments thereto, which are unaffected by this Contract Amendment.
4. Amendment Provisions. This Contract Amendment is subject to the Amendment Provisions attached hereto, which are incorporated by reference, and which control over any conflicting

**ITEM F-3
ATTACHMENT 1**

provisions of the Original Contract, or any amendment thereto.

- 5. City of Richmond Business License Active Status Maintained. Pursuant to Municipal Code Section 7.04.030, the Contractor must maintain its City of Richmond business license for this Contract Amendment to be deemed in effect.
- 6. Insurance Coverage Updated and Maintained. Pursuant to the Original Contract, the Contractor shall provide the City with updated insurance certificates, and the Contractor shall maintain insurance coverage, for this Contract Amendment to be deemed in effect.
- 7. Signatures. These signatures attest the parties' agreement hereto:

RENT BOARD:

CONTRACTOR:

By: _____

(* The Corporation Chairperson of the Board, President or Vice President should sign below)

Title: Executive Director

By: _____

I hereby certify that this Contract has been approved by the Rent Board or the Executive Director.

Title: Principal

Date Signed: _____

By: _____

Board Clerk

(* The Corporation Chief Financial Officer, Secretary or Assistant Secretary should sign below)

Approved as to form:

By: _____

By: _____

Title: _____

Board Legal Counsel

Date Signed: _____

(NOTE: Pursuant to California Corporations Code Section 313, if Contractor is a corporation or nonprofit organization, this Contract (1) must be signed by (a) the Chairperson of the Board, President or Vice-President and (b) the Secretary any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.

LIST OF ATTACHMENTS:

Amendment Provisions Exhibit A

Standard Contract/EJ/TE 9-26-07

**EXHIBIT A
AMENDMENT PROVISIONS**

ITEM F-3
ATTACHMENT 1

1. Paragraph 3 (Payment Limit) is hereby amended to increase the payment limit by \$5,001. Paragraph 3 of the Original Contract is hereby amended to read as follows:

“3. Payment Limit. City’s total payments to Contractor under this Contract shall not exceed \$15,000. City shall not pay for services that exceed the Contract Payment Limit unless a contract amendment has been approved by the City Council, Rent Board, or Executive Director.”

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CITY OF RICHMOND RENT BOARD
STANDARD CONTRACT

Department: Rent Program	Project Manager: Nicolas Traylor
Project Manager E-mail: Nicolas_traylor@ci.richmond.ca.us	Project Manager Phone No: (510) 620-6576
Vendor No: 12940 PR No:	P.O./Contract No: 4003
Description of Services: Provide consultation services to Rent Program Department.	

The parties to this STANDARD CONTRACT do mutually agree and promise as follows:

1. **Parties.** The parties to this Contract are the City Of Richmond Rent Board (herein referred to as the "City") and the following named Contractor:

Company Name: Kenneth Baar

Street Address: 17 Katrine Street

City, State, Zip Code: West End, Queensland, 4101 Australia

Contact Person: Kenneth Baar

Telephone: 510-717-2025

Email: kenbaar@aol.com

Business License No: 40055945

Expiration Date: 11/14/18

A California corporation, limited liability corporation general partnership, limited partnership, individual, non-profit corporation,
 individual dba as [specify:] _____,
 other [specify:] _____

2. **Term.** The effective date of this Contract is November 20, 2017, and it terminates June 30, 2018, unless terminated as provided herein.
3. **Payment Limit.** City's total payments to Contractor under this Contract shall not exceed \$9,999. City shall not pay for services that exceed the Contract Payment Limit unless a contract amendment has been approved by the Rent Board or Executive Director.
4. **Contractor's Obligations.** Contractor shall provide those services and carry out that work described in the Service Plan (Exhibit A) which is attached hereto and is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.
5. **City Obligations.** City shall make to the Contractor those payments described in the Payment Provisions (Exhibit B) which are attached hereto and are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

For the Contract between the City of
Richmond Rent Board and

KENNETH BAAR

- 6. Authorized Representatives and Notices. This Contract is subject to the Authorized Representatives and Notices Provisions (Exhibit C) which are attached hereto and are incorporated herein by reference.
- 7. General Conditions. This Contract is subject to the General Conditions (Exhibit D) which are attached hereto and are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.
- 8. Special Conditions. This Contract is subject to the Special Conditions (Exhibit E) (if any) which are attached hereto and are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.
- 9. Insurance Provisions. This Contract is subject to the Insurance Provisions (Exhibit F) which are attached hereto and are incorporated herein by reference.
- 10. Signatures. These signatures attest the parties' Contract hereto:

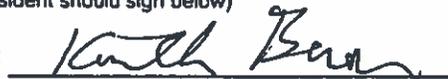
RENT BOARD:

CONTRACTOR:

By: 

(* The Corporation Chairperson of the Board, President or Vice President should sign below)

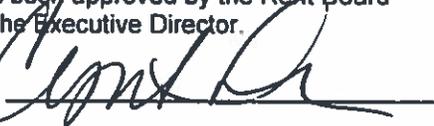
Title: Executive Director

By: 

Title: Principal

I hereby certify that this Contract has been approved by the Rent Board or the Executive Director.

Date Signed: Nov 30, 2017

By: 

Board Clerk

(* The Corporation Chief Financial Officer, Secretary or Assistant Secretary should sign below)

Approved as to form:

By: _____

By: 

Board Legal Counsel

Title: _____

Date Signed: _____

(NOTE: Pursuant to California Corporations Code Section 313, if Contractor is a corporation or nonprofit organization, this Contract (1) must be signed by (a) the Chairperson of the Board, President or Vice-President and (b) the Secretary any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.

**ITEM F-3
ATTACHMENT 2**

For the Contract between the City of
Richmond Rent Board and

KENNETH BAAR

LIST OF ATTACHMENTS:

Service Plan	Exhibit A
Payment Provisions	Exhibit B
Authorized Representatives and Notices	Exhibit C
General Conditions	Exhibit D
Special Conditions	Exhibit E
Insurance Provisions	Exhibit F

Standard Contract/EJ/TE 9-26-07

**EXHIBIT A
SERVICE PLAN**

Contractor shall, to the satisfaction of the Rent Board or Executive Director, perform the following services and be compensated as outlined below:

SCOPE OF SERVICES

1. Prepare a memo and agenda report for consideration by the Rent Board on "fair return standards" as referenced in Richmond Municipal Code Section 11.100.070, including discussion of policy and legal issues.
2. Draft Rent Board regulations setting forth substantive standards applicable to fair return applications.
3. Attend a public hearing on fair return issues subject to the condition that the hearing is held between December 20, 2017, and January 12, 2018, either on December 20th or a date agreed upon by Contractor and the City.
4. Provide comments and analysis on other policy and legal matters as agreed to by contractor and Executive Director.

RATE

Contractor will be compensated at a rate of \$290 per hour, in an amount not to exceed \$9,999, with the approval of the Executive Director.

Contractor shall not bill for travel time.

EXHIBIT B
PAYMENT PROVISIONS

{PLEASE NOTE THAT THE RENT PROGRAM SHALL NOT PAY FOR SERVICES THAT EXCEED THE CONTRACT PAYMENT LIMIT UNLESS A CONTRACT AMENDMENT HAS BEEN APPROVED BY THE RENT BOARD OR EXECUTIVE DIRECTOR}

1. Provided Contractor is not in default under this Contract, Contractor shall be compensated as provided below.
2. Any and all payments made pursuant to this Contract shall be subject to the Contract Payment Limit. The Payment Limit includes expenses (phones, photo copying, meals and travel, etc.) Invoices, shall be adequately detailed, based on accurate records, and be in a form reasonably satisfactory to the City. Contractor may be required to provide back-up material upon request.
3. Contractor shall submit timely invoices to the following address:

Attention: City of Richmond Finance Department - Accounts Payable

Project Manager: Nicolas Traylor

P.O. Box 4046

Richmond, CA 94804

4. All invoices that are submitted by Contractor shall be subject to the approval of the City Project Manager, Nicolas Traylor before payments shall be authorized.
5. The City will pay invoice(s) within 45 days after completion of services to the City satisfaction. The City shall not pay late fees or interest.
6. A Richmond business license shall be obtained before any payment under this Contract shall be authorized and the business license must be kept current during the term of this Contract for payments to continue to be authorized.
7. All insurance coverage required by this Contract shall be provided by

the Contractor before this Contract shall be executed by the City.
The insurance coverage must be kept current during the term of this
Contract for payments to continue to be authorized.

**EXHIBIT C
AUTHORIZED REPRESENTATIVES AND NOTICES**

1. **Notices.** All notices, demands, statements, or communications provided for by this Contract shall be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to the City shall be addressed to the Department Head and (as delineated below in section 1.1) to the project manager responsible for the administration of or the supervision of the scope of work under this Contract. Notices to the Contractor shall be emailed to Kenbaar@aol.com and if Contractor does not confirm receipt within two days, shall be sent by overnight mail to 449 15th street, suite 301, Oakland, Ca. 94612, and addressed to the party designated by Contractor (as delineated below in section 1.2). Notice to City shall be deemed delivered (a) as of the fifth business day after mailing by United States certified mail, postage prepaid, addressed to the proper party; or (b) as of 12:00 p.m. on the second business day immediately after the day it is deposited with and accepted by Federal Express, or a similar overnight courier service, addressed to the proper party and marked for next business day delivery. For the purposes of this Contract, a "business day" means any day Monday through Friday that is not a holiday recognized by the federal government or the State of California.

- 1.1 City hereby designates as its Authorized Representative the Project Manager whose name and address are as follows:

Nicolas Traylor

City Of Richmond Rent Program

440 Civic Center Plaza, Suite 200

Richmond, CA 94804

- 1.2 CONTRACTOR hereby designates as its Authorized Representative the Project Manager whose name and address are as follows:

Kenneth Baar

kenbaar@aol.com

EXHIBIT D
GENERAL CONDITIONS

1. **Independent Contractor.** Contractor acknowledges, represents and warrants that Contractor is not a regular or temporary employee, joint venturer or partner of the City, but rather an independent Contractor. This Contract shall not be construed to create an agency, servant, employee, partnership, or joint venture relationship. As an independent Contractor, Contractor shall have no authority to bind City to any obligation or to act as City's agent except as expressly provided herein. Due to the independent Contractor relationship created by this Contract, City shall not withhold state or federal income taxes, the reporting of which shall be Contractor's sole responsibility.
2. **Brokers.** Contractor acknowledges, represents and warrants that Contractor has not hired, retained or agreed to pay any entity or person any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
3. **City Property.** The rights to applicable plans, drawings, reports, calculations, data, specifications, videos, graphics or other materials prepared for or obtained pursuant to this Contract, which, upon request, are to be delivered to City within a reasonable time, shall be deemed assigned to City. If applicable, Contractor shall prepare check prints upon request. Notwithstanding the foregoing, Contractor shall not be obligated to provide to City proprietary software or data which Contractor has developed or had developed for Contractor's own use; provided, however, that Contractor shall, pursuant to Section 15 below, indemnify, defend and hold harmless City from and against any discovery or Public Records Act request seeking the disclosure of such proprietary software or data.
4. **Patents, Trademarks, Copyrights and Rights in Data.** Contractor shall not publish or transfer any materials, discoveries, developments, concepts, designs, ideas, know how, improvements, inventions and/or original works of authorship resulting from activities supported by this Contract without the express prior written consent of the City Manager. If anything resulting from activities supported by this Contract is patentable, trademarkable, copyrightable or otherwise legally protectable, City reserves the exclusive right to seek such intellectual property rights. Notwithstanding the foregoing, Contractor may, after receiving City's prior written consent, seek patent, trademark, copyright or other intellectual property rights on anything resulting from activities supported by this Contract. However, City reserves, and Contractor irrevocably grants, a nonexclusive, fully paid-up, royalty-free, assumable, perpetual, worldwide license, with the right to transfer, sublicense, practice and exploit said license and the right to make, have made, copy, modify, make derivative works of, use, sell, import, and otherwise distribute under all applicable intellectual properties

without restriction of any kind said license.

Contractor further agrees to assist City, at City's expense, in every proper way to secure the City's rights in any patents, trademarks, copyrights or other intellectual property rights relating thereto, including the disclosure to City of all pertinent information and data with respect thereto. Contractor shall also assist City in the execution of all applications, specifications, oaths, assignments, recordations, and all other instruments which City shall deem necessary in order to apply for, obtain, maintain and transfer such rights, or if not transferable, to waive such rights. Contractor shall further assist City in the execution of all applications, specifications, oaths, assignments, recordations and all other instruments which City shall deem necessary in order to assign and convey to City, and any assigns and nominees the sole and exclusive right, title and interest in and to any patents, trademarks, copyrights or other intellectual property rights relating thereto. Contractor further agrees that its obligation to execute or cause to be executed, when it is in Contractor's power to do so, any such instruments or papers shall continue during and at all times after the end of Contractor's services and until the expiration of the last such intellectual property right. Contractor hereby irrevocably designates and appoints City, and its duly authorized officers, agents and servants, as its agent and attorney-in-fact, to act for and in its behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters of patents, copyright and other registrations. This power of attorney is coupled with an interest and shall not be affected by Contractor's subsequent incapacity.

5. Inspection. Contractor's performance, place of business and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the CITY, the State of California, and the United States Government.

If the project or services set forth in Exhibit A shall be performed on City or other public property, City shall have the right to inspect such work without notice. If such project or services shall not be performed on City or other public property, City shall have the right to inspect such work upon reasonable notice.

6. Services. The project or services set forth in Exhibit A shall be performed to the full satisfaction and approval of City. In the event that the project or services set forth in Exhibit A are also itemized by price, City, in its sole discretion, may, upon notice to Contractor, delete certain items or services set forth in Exhibit A, in which case there shall be a corresponding reduction in the amount of compensation paid to Contractor.

Contractor shall, at its own cost and expense, furnish all facilities and equipment necessary for Contractor to complete the project or perform the services required herein, unless otherwise provided in Exhibit A.

7. **Records.** Contractor shall keep and make available for inspection and copying by authorized representatives of the City, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the City.

Contractor shall retain all documents pertaining to this Contract for a period of five (5) years after this Contract's termination (or for any further period that is required by law) and until all Federal or State audits are complete and exceptions resolved for this contract's funding period. Upon request, CONTRACTOR shall make these records available to authorized representatives of the CITY, the State of California, and the United States Government.

Contractor shall keep full and detailed accounts, maintain records, and exercise such controls as may be necessary for proper financial management under this Contract. The Contractor's accounting and control systems shall be satisfactory to City. Contractor's accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Contract, including properly executed payrolls, time records, utility bills, invoices and vouchers. The City shall be afforded prompt access to Contractor's records, books, and Contractor shall preserve such project records for a period of at least five (5) years after the termination of this Contract, or for such longer period as may be required by law.

Contractor shall permit City and its authorized representatives and accountants to inspect, examine and copy Contractor's books, records, accounts, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the project or services set forth in Exhibit A, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Contractor pursuant to this Contract and shall provide such assistance as may be reasonably required in the course of such inspection. Contractor shall also allow City access to the record keeping and accounting personnel of Contractor. City further reserves the right to examine and re-examine said books, records, accounts, and data during the five (5) year period following the termination of this Contract; and Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for five (5) years after the termination of this Contract.

Pursuant to California Government Code § 10527, the parties to this Contract shall be subject to the examination and audit of representatives of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract. The examination and audit shall be confined to those matters connected with the performance of this Contract including, but not limited to, the cost of administering this Contract.

8. **Changes and Extra Work.** All changes and/or extra work under this Contract shall be performed and paid for in accordance with the following:

Only the City Council or the City Manager may authorize extra and/or changed work. Contractor expressly recognizes that other City personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Contractor to secure the authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and Contractor thereafter shall be entitled to no compensation whatsoever for performance of such extra and/or changed work.

If Contractor is of the opinion that any work which Contractor has been directed to perform is beyond the scope of this Contract and constitutes extra work, Contractor shall promptly notify City of the fact. The City shall make a determination as to whether or not such work is, in fact, beyond the scope of this Contract and constitutes extra work. In the event that City determines that such work does constitute extra work, City shall provide extra compensation to Contractor on a fair and equitable basis. A change order or Contract Amendment providing for such compensation for extra work shall be negotiated between City and Contractor and executed by Contractor and the appropriate City official.

In the event City determines that such work does not constitute extra work, Contractor shall not be paid extra compensation above that provided herein and if such determination is made by City staff, said determination may be appealed to the City Council; provided, however, a written appeal must be submitted to the City Manager within five (5) days after the staff's determination is sent to Contractor. Said written appeal shall include a description of each and every ground upon which Contractor challenges the staff's determination.

9. **Additional Assistance.** If this Contract requires Contractor to prepare plans and specifications, Contractor shall provide assistance as necessary to resolve any questions regarding such plans and specifications that may arise during the period of advertising for bids, and Contractor shall issue

any necessary addenda to the plans and specifications as requested. In the event Contractor is of the opinion that City's requests for addenda and assistance is outside the scope of normal services, the parties shall proceed in accordance with the changes and extra work provisions of Section 8 of these General Conditions.

10. Professional Ability. Contractor acknowledges, represents and warrants that Contractor and its employees are skilled and able to competently provide the services hereunder, and possess all professional licenses, certifications, and approvals necessary to engage in their occupations. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Contract. Contractor shall perform in accordance with generally accepted professional practices and standards of Contractor's profession. In the event that City, in its sole discretion, desires the removal of any person employed or retained by Contractor to perform services hereunder, such person shall be removed immediately upon receiving notice from City.
11. Business License. Contractor shall obtain a Richmond Business License before performing any services required under this Contract. The failure to so obtain such license shall be a material breach of this Contract and grounds for immediate termination by City; provided, however, that City may waive the business license requirement in writing under unusual or extraordinary circumstances without necessitating any modification of this Contract to reflect such waiver.
12. Termination Without Default. Notwithstanding any provision herein to the contrary, City may, in its sole and absolute discretion and without cause, terminate this Contract at any time prior to completion by Contractor of the project or services hereunder, immediately upon written notice to Contractor. Contractor may terminate this Contract at any time in its sole and absolute discretion and without cause upon 30 days' written notice to City. In the event of termination by either party, Contractor shall be compensated for: (1) all authorized work satisfactorily performed prior to the effective date of termination; (2) necessary materials or services of others ordered by Contractor for this Contract, prior to receipt of notice of termination, irrespective of whether such materials or services of others have actually been delivered, provided that Contractor is not able to cancel such orders. Compensation for Contractor in such event shall be determined by City in accordance with the percentage of the project or services completed by Contractor; and all of Contractor's finished or unfinished work product through the time of the City's last payment shall be transferred and assigned to City. Additionally, in the event of such termination, the City may proceed with the work in any reasonable manner it chooses.

For the Contract between the City of
Richmond Rent Board and

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13. Termination in the Event of Default. Should Contractor fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Contract, City may immediately terminate this Contract by giving written notice of such termination, stating the reasons for such termination. Contractor shall be compensated as provided in Section 12 of these General Conditions; provided, however, there shall be deducted from such amount the amount of damage, including attorney's fees, expert witness fees and costs, if any, sustained by City by virtue of Contractor's breach of this Contract. Additionally, in the event of such termination, the City may proceed with the work in any reasonable manner it chooses.
14. Conflict of Interest. Contractor acknowledges, represents and warrants that Contractor shall avoid all conflicts of interest (as defined under any federal, state or local statute, rule or regulation, or at common law) with respect to this Contract. Contractor further acknowledges, represents and warrants that no City official or employee has any economic interest, as defined in Title 2, California Code of Regulations §§ 18703.1 through 18703.5, with Contractor that would invalidate this Contract. Contractor acknowledges that in the event that Contractor shall be found by any judicial or administrative body to have any conflict of interest (as defined above) with respect to this Contract, all consideration received under this Contract shall be forfeited and returned to City forthwith. This provision shall survive the termination of this Contract for one (1) year.
15. Indemnification.
- (a) If this Contract is a contract for design professional services subject to California Civil Code Section 2782.8(a) and Contractor is a design professional, as defined in California Civil Code Section 2782.8(b)(2), Contractor shall hold harmless, defend and indemnify the City, its officers, agents, employees, and volunteers from and against any and all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Contractor, except where caused by the active negligence, sole negligence, or willful misconduct of the City. To the fullest extent permitted by law, Contractor shall immediately defend and indemnify the City and its officers, agents, employees, and volunteers from and against any and all liabilities, regardless of nature or type, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, or its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, any and all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Contractor's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party.
- (b) If this Contract is not a contract for design professional services subject to California Civil Code Section 2782.8(a) or Contractor is not a design professional as defined in California Civil Code Section 2782.8(b)(2), Contractor shall indemnify, defend, and hold harmless the City, its officers, agents, employees and volunteers from any and all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any

For the Contract between the City of
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person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by Contractor or any person directly or indirectly employed by, or acting as, the agent for Contractor in the performance of this Contract, including the concurrent or successive passive negligence of the City, its officers, agents, employees or volunteers.

- (c) It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its officers, agents, employees, and volunteers, immediately upon tender to Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend under this Section 15. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent counsel if Contractor asserts that liability is caused in whole, or in part, by the negligence or willful misconduct of an indemnified party.
- (d) The review, acceptance or approval of the Contractor's work or work product by any indemnified party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This Section 15 survives completion of the services or the termination of this Contract. The provisions of this Section 15 are not limited by, and do not affect, the provisions of this Contract relating to insurance.
- (e) Acceptance of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this Section 15. This Section 15 shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.
16. Safety. Contractor acknowledges that the City is committed to the highest standards of workplace safety. Contractor shall perform all work hereunder in full compliance with applicable local, state and federal safety requirements including but not limited to Occupational Safety and Health Administration requirements, and shall assume sole and complete responsibility for the safety of Contractor's employees and any subcontractor's employees. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Contractor shall immediately notify the City by telephone.
17. Insurance. Insurance requirements are set forth in Exhibit F to this Contract. Contractor shall abide by the insurance requirements set forth in said Exhibit F.
18. Non-Liability of Officials and Employees of the City. No official or employee of the City shall be personally liable for any default or liability under this Contract.

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19. Compliance with Laws. Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, with respect to this Contract, including without limitation environmental laws, employment discrimination laws and prevailing wage laws. Compliance under this provision includes compliance with all provisions of the Richmond Municipal Code ("Municipal Code"), including Chapters 2.50, 2.52, 2.56, and 2.60, if applicable.

Contractor acknowledges that under § 2.60.070 of the Municipal Code ("Living Wage Ordinance"), Contractor shall promptly provide to City documents and information verifying its compliance with the Living Wage Ordinance. Also as prescribed in § 2.60.070, Contractor shall notify each of its affected employees with regards to the wages that are required to be paid pursuant to the Living Wage Ordinance.

Contractor shall comply with § 2.28.030 of the Municipal Code, obligating every Contractor or subcontractor under a contract or subcontract with the City for public work or for goods or for services to refrain from discriminatory employment or subcontracting practices on the basis of race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee, any applicant for employment or any potential subcontractor.

Contractor acknowledges that the City's Drug Free Workplace Policy, Violence in the Workplace Policy and the Policy Against Workplace Harassment, are available on the City's website at <http://www.ci.richmond.ca.us/workplacepolicies> . Contractor agrees to abide by the terms and conditions of said policies.

20. Limitations upon Subcontracting and Assignment. This Contract binds the heirs, successors, assigns and representatives of Contractor. The Contractor shall not enter into subcontracts for any work contemplated under this Contract and shall not assign this Contract, nor any portion hereof or monies due or to become due, without the prior written consent of the City Council or its designee.

Contractor acknowledges that the services which Contractor shall provide under this Contract are unique, personal services which, except as otherwise provided herein, Contractor shall not assign or sublet to any other party without the prior written approval of City, which approval may be withheld in City's sole and absolute discretion. In the event that City, in writing, approves any assignment or subletting of this Contract or the retention of subcontractors by Contractor, Contractor shall provide to City upon request copies of each and every subcontract contract prior to the execution thereof by Contractor and subcontractor. Any assignment by Contractor of any or all of its rights under this Contract without first obtaining City's prior written consent shall be a default under this Contract.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor (if applicable), or of the interest of any general partner or joint venturer or syndicate member if Contractor is a partnership or joint-venture or syndicate, which shall result in a change of control of Contractor, shall be deemed an assignment. For this purpose, control shall mean fifty percent or more of the voting power or twenty-five percent or more of the assets of the corporation, partnership or joint-venture.

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21. **Integration.** This Contract constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any previous oral or written agreement; provided, however, that correspondence or documents exchanged between Contractor and City may be used to assist in the interpretation of the Exhibits to this Contract.
22. **Modifications and Amendments.** This Contract may be modified or amended only by a change order or Contract Amendment executed by both parties and approved as to form by the City Attorney.
23. **Conflicting Provisions.** In the event of a conflict between these General Conditions and those of any Exhibit or attachment hereto, these General Conditions shall prevail; provided, however, that any Special Conditions as set forth in Exhibit E shall prevail over these General Conditions. In the event of a conflict between the terms and conditions of any two or more Exhibits or attachments hereto, those prepared by City shall prevail over those prepared by the Contractor, and the terms and conditions preferred by the City shall prevail over those preferred by the Contractor.
24. **Non-exclusivity.** Notwithstanding any provision herein to the contrary, the services provided by Contractor hereunder shall be non-exclusive, and City reserves the right to employ other Contractors in connection with the project.
25. **Exhibits.** All Exhibits hereto are made a part hereof and incorporated herein by reference; provided, however, that any language in Exhibit A which does not pertain to the project description, proposal, scope of services, or method of compensation (as applicable), or any corresponding responsibilities of City, shall be deemed extraneous to, and not a part of, this Contract.
26. **Force Majeure.** Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such an obligation is prevented or delayed by reason of acts of God, strikes, boycotts, lock-outs, inability to procure materials not related to the price thereof, failure of power, restrictive governmental laws and regulations enacted after the date of this Contract, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency or other reasons of a like nature not within the reasonable control of such party.
27. **Time of the Essence.** Time is of the essence of this Contract. Contractor and City agree that any time period set forth in Exhibit A represents their best estimates with respect to completion dates and both Contractor and City acknowledge that departures from the schedule may occur. Therefore, both Contractor and City will use reasonable efforts to notify one another of changes to the schedule. Contractor shall not be responsible for performance delays caused by others, or delays beyond Contractor's control, and such delays shall extend the times for performance of Contractor's work.
28. **Confidentiality.** Contractor agrees to comply with, and to require its employees, agents and partners to comply with, all applicable State or Federal statutes or regulations respecting confidentially, including but not limited to, the identity of persons served under this Contract,

For the Contract between the City of
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their records, or services provided them, and assures that:

All applications and records concerning any individual made or kept by Contractor or any public officer or agency in connection with the administration of or relating to services provided under this Contract will be confidential, and will not be open to examination for any purposes not directly connected with the administration of such service.

No person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service.

29. Third Parties. Nothing herein shall be interpreted as creating any rights or benefits in any third parties. For purposes hereof, transferees or assignees as permitted under this Contract shall not be considered "third parties."
30. Governing Law. This Contract shall be construed in accordance with the law of the State of California without regard to principles of conflicts of law. This Contract is made in Contra Costa County, California, and any action relating to this Contract shall be instituted and prosecuted in the courts of Contra Costa County, California.
31. Nonrenewal. Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased or renewed by the City under a new contract following expiration or termination of this Contract, and waives all rights or claims to notice or hearing respecting any failure by City to continue the purchase of all or any failure to continue purchase of all or any such services from Contractor.
32. Claims. Any claim by Contractor against City hereunder shall be subject to Government Code §§ 800 et seq. The claims presentation provisions of said Act are hereby modified such that the presentation of all claims hereunder to the City shall be waived if not made within six months after accrual of the cause of action.
33. Interpretation. This Contract shall be interpreted as if drafted by both parties.
34. Warranty. In the event that any product shall be provided to the City as part of this Contract, Contractor warrants as follows: Contractor possesses good title to the product and the right to transfer the product to City; the product shall be delivered to the City free from any security interest or other lien; the product meets any specifications contained herein; the product shall be free from material defects in materials and workmanship under normal use for a period of one (1) year from the date of delivery; and the product shall be fit for its intended purpose(s). Notwithstanding the foregoing, consumable and maintenance items (such as light bulbs and batteries) shall be warranted for a period of one hundred and eighty (180) days from the date of delivery. All repairs during the warranty period shall be promptly performed by Contractor, at Contractor's expense, including shipping.

For the Contract between the City of
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35. **Severability.** In the event that any of the provisions or portions or applications thereof of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, City and Contractor shall negotiate an equitable adjustment in the provisions of the Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof, shall not be affected thereby.
36. **Authority.** City warrants and represents that the signatory hereto (the Mayor of the City of Richmond or the City Manager) is duly authorized to enter into and execute this Contract on behalf of City. The party signing on behalf of Contractor warrants and represents that he or she is duly authorized to enter into and execute this Contract on behalf of Contractor, and shall be personally liable to City if he or she is not duly authorized to enter into and execute this Contract on behalf of Contractor.
37. **Waiver.** The waiver by City of any breach of any term or provision of this Contract shall not be construed as a waiver of any subsequent breach. Inspections or approvals, or statements by any officer, agent or employee of the City relating to the Contractor's performance, or payments therefore, or any combination of these acts, shall not relieve the Contractor's obligation to fulfill this Contract as prescribed; nor shall the City be thereby stopped from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.
38. **Possessory Interest.** If this Contract results in the Contractor having possession of, claim to or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue and Taxation Code 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest.
39. **Performance and Final Acceptance.**

Contractor represents that it is experienced, qualified, registered, licensed, equipped, organized and financed to perform the services under this Contract.

Contractor shall perform the services under this Contract with that degree of skill and judgment normally exercised by professional firms performing services of a similar nature in the State of California, and shall be responsible for the professional quality, technical accuracy and coordination of the services it performs under this Contract. In addition to the other rights and remedies which City may have, Contractor shall, at its own expense, correct any services which fail to meet the above standard.

City shall provide Contractor an opportunity to cure errors and omission which may be disclosed during the review of submittals, with no increase in the authorized Contract Payment Limit. Should Contractor fail to make necessary corrections in a timely manner, such corrections shall be made by the City and the cost thereof shall be charged to Contractor.

**ITEM F-3
ATTACHMENT 2**

For the Contract between the City of
Richmond Rent Board and

KENNETH BAAR

If warranted, City shall determine, and Contractor may request such determination, that Contractor has satisfactorily completed performance of this Contract. Upon such determination, City shall issue to Contractor a written Notice of Final Acceptance, after which Contractor shall not incur further costs under this Contract. Contractor shall respond to such Notice of Final Acceptance by executing and submitting to City a Release and Certificate of Final Payment.

40. Survival. The rights and obligations of the parties which by their nature survive termination or completion of the services covered by this Contract shall remain in full force and effect after termination or completion.

For the Contract between the City of
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EXHIBIT E
SPECIAL CONDITIONS

The General Conditions are hereby amended to include the following modifications and/or provisions (if applicable):

Insurance requirements modified per Risk Manager on 10/10/17.

City has reviewed Contractor's insurance documents and has deemed that they meet contract conditions.

For the Contract between the City of
Richmond Rent Board and

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**EXHIBIT F
INSURANCE PROVISIONS**

During the entire term of this Contract and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the insurance requirements specified in the insurance provisions which are attached hereto and incorporated herein by this reference.

**SEE MODIFIED INSURANCE REQUIREMENTS APPROVED BY RISK MANAGER
10/10/17.**

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City of Richmond
Sole Source Justification

THIS FORM MUST BE COMPLETED AND APPROVED PRIOR TO ANY PURCHASE

Contact the Purchasing Division and discuss your rationale before completing this form. If Purchasing can help you make this a competitive purchase, then this form will not be required.

Attach this completed/approved form to requisitions when competitive quotes/bids/proposals are not solicited. (Required for requisitions > \$3,000)

Requested Sole Source Supplier:

Company Name: Ken Baar Contact Name: Ken Baar

Address: 17 Katrine Street

City: West End State: Queensland Zip Code: 4101 Australia

Phone Number (510) 717-2025 E-Mail kenbaar@aol.com

Duration of Contract: August 28, 2017- June 30, 2018

Estimated Cost: \$ 15,000 Funding Source (Account String) 11850065 400201

Is the product/service IT related? Yes No If Yes, please attach the approved IT Authorization Form

For Product: Is the recommended company the manufacturer of the product? Yes No

For Product: Does the manufacturer sell the item(s) through distributors? Yes No

Description of Product or Service:

Describe the full scope of work or service contemplated including installation if required; items should include brand, model and part number if applicable; (if additional space is needed, include them in a separate page)

Prepare a proposed regulation, memorandum, and agenda report on Fair Return standards as described in the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance. Prepare a memo and agenda report on policy and legal alternatives in regard to units with historically low rents. Prepare a memo and agenda report on rent adjustment policies and legal issues in regard to capital improvements. Draft Rent Regulations related to previous mentioned items. Provide Comments on Other Policy and Legal Issues as Agreed to By Consultant and Executive Director or assigned staff.

Sole Source Rationale: PLEASE ANSWER ALL THE FOLLOWING QUESTIONS: Explain why the recommended company is the only company that can meet the requirement. Address the following: Are there any other companies who can do this job? What condition (e.g. technological superiority, or performance risks, etc.) exists so that the recommended company has a significant advantage over any other company who can do this job? It is important to sufficiently address the key reason for awarding an order/contract without soliciting competitive bids. The rationale must be clear and convincing, avoiding generalities and unsupported conclusions.

Ken Baar is the subject matter expert on Fair Return standards, not just in California, but nationally and internationally. Mr. Baar has written rent regulations for many rent control jurisdictions in California and is an expert at drafting Fair Return regulations. Ken Baar is the only contractor who will be able to prepare such regulations in a legally defensible manner. Because there is currently a backlog of over 40 landlord Fair Return petitions and there are no Fair Return regulations yet in place, those petitions cannot yet be adjudicated, placing the City at substantial legal risk. Please see attached email to Belinda Warner, Finance Director, dated September 7, 2017, for additional detail.

(if additional space is needed, include them in a separate page)

Complete the following checklist

A specific contractor is the only source of the required item because (check all that apply):

- The required items are **proprietary to the Contractor**, and contractor solely transacts (sells) direct to the customer. (There are no dealers or distributors for contractor).
- The required items are **proprietary to the Contractor**, and **contractor does not sell direct to the customer**. Contractor solely distributes the item or service through only one dealer or distributor in the United States. (There are no dealers or distributors for contractor).

Note: If item or service is available from more than one source, the item or service may be treated as proprietary, but must be competitively solicited from multiple (two or more) sources.

- A specific item is needed:
 - To be compatible or interchangeable with existing hardware
 - As spare or replacement hardware For the repair or modification of existing hardware
- Federal or state grant names vendor as condition of funding. (Attach copy of grant that names vendor)
- There is a **substantial risk** in contracting with any other contractor, (e.g., only one contractor has been successful to date in implementing a difficult manufacturing process or the **services sought**). ***In a brief explanation, provide supporting evidence of why other contractors are considered to be unable to overcome the substantial risk.***

The Richmond Rent Program must create rent regulations related to upward or downward rent adjustments in order to hear rent increase and rent decrease petitions. In particular, the Fair Return regulations must be created to allow landlords to have a process by which they can petition for a rent increase resulting from not receiving a Fair Return. Ken Baar is an internationally respected expert in rent control laws, and in particular, in Fair Return regulations and policies. Ken Baar is the only contractor with the necessary level of expertise in the subject area. If the Rent Program contracts with someone who is less knowledgeable than Ken Baar, it runs the risk of drafting inferior regulations that may cost the Program and the City unnecessary expense in the future, trying to correct the deficiencies in those regulations. See attached email to Belinda Warner, Finance Director, dated September 7, 2017, for additional detail.

- Continuation of prior Work** – Additional item, service or work required, but not known to have been needed when the original order was placed with vendor, and it is not feasible or practicable to contract separately for the additional need. ***Provide brief explanation and supporting evidence.***

(if additional space is needed, include them in a separate page)

**ITEM F-3
ATTACHMENT 3**

I acknowledge the City's requirements for soliciting competitive quotes/bids for purchases over \$3,000.00 and the criteria for justification for Sole Source purchases. I have gathered the required information, have made a concerted effort to review comparable/equal equipment/services (e.g., market research), and further affirm that there is no conflict of interest involved in the selection made.

Department: Rent Program

Requester Name and Title: Nicolas Traylor

Date: 02-05-2018

Note: Requester must be able to defend this justification.

Phone: (510) 620-6564

Department Director (Print) Nicolas Traylor (Sign) _____ Date: _____

Submit completed form to the Purchasing Division (Prior to submission to Executive Director)

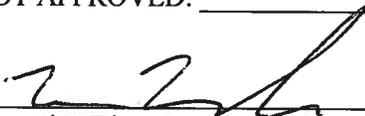
Finance Director:

APPROVED: _____

DATE: ___/___/___

NOT APPROVED: _____

COMMENTS:



Executive Director

(Under \$10,000.00)

Board Clerk Attesting to Rent Board Approval
(Over \$10,000.00) (Copy of Minutes may be substituted)

PROCEDURE

Sole Source purchase/service are exceptions to the normal bidding process and require a detailed justification. In processing Sole Source requests for supplies, services and/or equipment, the Purchasing Division adheres to and is governed by the principles set forth in City of Richmond Municipal Code Section 2.52.326 Sole Source Procurement.

If you are requesting a particular vendor, brand or product, you must make this fact clear on your Sole Source form. Your request will then be restrictive and non-competitive, and will fall into a sole source category. If the sole source justification is approved, the requisition can be expedited without the normal bidding requirements.

Such a request should not be made unless you are confident that your request is reasonable and appropriately justified to meet the City's requirements and withstand any possible audit. The City's requirements and the format for submitting such requests are contained herein. Sole Source form must be signed by authorized department representative(s). The certification will remain on file for audit purposes.

The following factors **DO NOT** apply to sole source requests and should not be included in your sole source justification. They will not be considered and only tend to confuse the evaluation process.

1. Personal preference for product or vendor.
2. Cost, vendor performance, and local service (these are generally considered award factors in competitive bidding).
3. Features which exceed the minimum department requirements.

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AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: February 21, 2018

Final Decision Date Deadline: February 21, 2018

STATEMENT OF THE ISSUE: At its Special Meeting on January 24, 2018, the Rent Board reviewed and provided comments on draft proposed rent registration, vacancy rent increase, and rent adjustment (specifically with respect to changes in space, services, and habitability), regulations. Staff members have incorporated the changes requested from members of the Board and are recommending adoption of the proposed regulations. It is important to note that these proposed regulations do not address fair return (Maintenance of Net Operating Income), capital improvement, or historically low rent petitions for rent adjustments. These concepts will be considered by the Board as separate items.

INDICATE APPROPRIATE BODY

- | | | | | |
|---|---|--|--|---|
| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

ITEM

- | | | |
|---|--|---------------------------------|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) | | |
| <input type="checkbox"/> Public Hearing | <input checked="" type="checkbox"/> Regulation | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement | <input type="checkbox"/> Rent Board As Whole | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) | |

RECOMMENDED ACTION: ADOPT proposed Purpose and Definitions (Chapter 1), Rent Registration (Chapter 4), Vacancy Rent Increase (Chapter 7) and Individual Rent Adjustment for Changes in Space, Services, or Habitability (Chapter 9) regulations– Rent Program (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

G-1.

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AGENDA REPORT

DATE: February 21, 2018

TO: Chair Gray and Members of the Rent Board

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

SUBJECT: ADOPTION OF PURPOSE, RENT REGISTRATION, VACANCY RENT INCREASE, AND RENT ADJUSTMENT REGULATIONS

STATEMENT OF THE ISSUE:

At its Special Meeting on January 24, 2018, the Rent Board reviewed and provided comments on draft proposed rent registration, vacancy rent increase, and rent adjustment (specifically with respect to changes in space, services, and habitability), regulations. Staff members have incorporated the changes requested from members of the Board and are recommending adoption of the proposed regulations. It is important to note that these proposed regulations do not address fair return (Maintenance of Net Operating Income), capital improvement, or historically low rent petitions for rent adjustments. These concepts will be considered by the Board as separate items.

RECOMMENDED ACTION:

ADOPT proposed Purpose and Definitions (Chapter 1), Rent Registration (Chapter 4), Vacancy Rent Increase (Chapter 7) and Individual Rent Adjustment for Changes in Space, Services, or Habitability (Chapter 9) regulations– Rent Program (Nicolas Traylor/Michael Roush 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item at this time. The cost to administer the Rent Adjustment Petition process is accounted for in the Fiscal Year 2017-18 Rent Program Budget.

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.

At its last Special Meeting, the Board adopted regulations to inform the *procedures* whereby Tenants and Landlords can request individual adjustments in the Maximum Allowable Rent. In contrast, the proposed regulations address the *substantive* standards for rent adjustments due to changes in space, services, or habitability, as well as rent registration and vacancy rent increase regulations to assist in determining the Maximum Allowable Rent. The tracking of rent levels and vacancy rent increases is necessary to properly adjudicate individual rent adjustment cases. At its last meeting, the Rent Board did not receive regulations concerning the purpose of Rent Board regulations (Chapter 1); however, given the simplicity of this chapter, such regulations have been prepared for the Rent Board's consideration and potential adoption.

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 in Operating Expenses/Fair Return Standards
- Increases or Decreases in Space, Services, or Habitability
- Capital/Building Improvements
- Historically Low Rents

A summary of community feedback gathered for individual rent adjustments are contained in Attachment 3.

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

In mid-February, staff members met with representatives of the Fair and Affordable Richmond coalition and Association of United Richmond Housing Providers to discuss their comments on the draft regulations (Attachment 1).

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.

Overview of Proposed Amendments to the Rent Registration, Vacancy Rent Increase, and Rent Adjustment Regulations

Attachment 1 contains a matrix with a description, response, and recommendation to address concerns and questions posed by members of the Rent Board, Fair and Affordable Richmond coalition, and the Association of United Richmond Housing Providers.

In addition to the revisions summarized in the following table, in response to a concern raised by Boardmember Finlay concerning the acknowledgment that there are many provisions that are not addressed in the regulations but are explained in the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, the following disclaimer has been added to the table of contents page:

Note to the reader: These Regulations are intended to help clarify the meaning of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Richmond Municipal Code Chapter 11.100) and to explain how it will be implemented. However, a full understanding of the meaning of any individual regulation or set of regulations may require knowledge of both the Regulations and the Rent Ordinance and may also require knowledge of relevant aspects of State and Federal law. Rent Board staff will assist the public in understanding how to use and follow the regulations. Such assertion does not substitute for legal advice from a competent attorney.

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Additional Amendments Recommended by Staff

The table below summarizes additional modifications to the proposed Rent Registration, Vacancy Rent Increase, and Rent Adjustment regulations recommended by staff members. These amendments have been incorporated into the proposed regulations for the Board’s consideration for adoption.

Regulation	Recommended Modification
Throughout	The first letter of the terms “Tenant,” “Landlord,” “Controlled Rental Unit,” and “Base Rent” shall be capitalized.
Throughout	The term “rent ceiling” shall be replaced with “Maximum Allowable Rent”
Throughout	Time periods of five (5) days or less will be specified as “business” days. Time periods of greater than five (5) days will be specified as “calendar” days.
903 (Changes in Number of Tenants)	The addition of a fourth provision, where a Tenant may waive their right to a hearing for a rent increase due to an increase in the Base Occupancy Level, in which case a Hearing Examiner may issue an administrative determination for an increase in the Maximum Allowable Rent.
903 (Changes in Number of Tenants)	The existing content of Subsection (3) provides if the number of Tenants actually occupying a Rental Unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to this subsection, then the Maximum Allowable Rent for that Rental Unit shall automatically decrease by the amount of the rent increase that is no longer justified as a result in the decrease in the number of Tenants). Staff members added a provision to allow for increases in the Maximum Allowable Rent due to an increase in the Base Occupancy Level to remain permanent upon written agreement of the Tenant and Landlord. As such, if the number of tenants actually occupying a rental unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional tenants granted pursuant to subsection (B) (I), then the Tenants may replace the departing Tenant (subject to the Landlord’s standard screening methods).
912 (Petition to Obtain Previously Lost Annual General Adjustments (AGAs))	The addition of a provision that rent increases permitted under this Section shall be applied in a manner consistent with Regulation 17-09 (“Banking” of Annual General Adjustment rent increases.) This would mean that Landlords would not be able to increase the rent more than the current year’s Annual General Adjustment plus five percent in any 12-month period. The remaining increases would not be forfeited, but would be banked as to not create instability due to a sudden rent level shock.

Proposed Timeline and Next Steps

Proposed Date	Event
February 21, 2018 – Regular Rent Board Meeting	Rent Board considers adoption of Rent Registration, Vacancy Rent Increase, and Rent Adjustment regulations; Rent Board receives Maintenance of Net Operating Income (fair return) regulations
February 28, 2018 – Special Rent Board Meeting	Rent Board considers adoption of Maintenance of Net Operating Income (fair return) regulations; Rent Board receives Capital Improvement and Historically Low Rent adjustment regulations
Early/Mid-March	Rent Board considers adoption of Capital Improvement and Historically Low Rent adjustment regulations at a possible Special Meeting; Hearing Examiner is onboarded
Late March/Early April	First Rent Adjustment Petition hearings are scheduled

DOCUMENTS ATTACHED:

Attachment 1 – Summary of Community and Rent Board Comments

Attachment 2 – Proposed Chapter 1 (Purpose and Definitions), Chapter 4 (Registration of Base Rent and Rent Increases), Chapter 7 (Vacancy Rent Increases) and Chapter 9 (Individual Adjustments of Maximum Allowable Rents) Rent Board Regulations

Attachment 3 – Summary of Comments from December 4 and December 9, 2017, Community Workshops Regarding Setting Standards for Changes in the Maximum Rent

Summary of Community and Rent Board Comments <i>Chapter 4 (Rent Registration), Chapter 7 (Vacancy Rent Increase) and Chapter 9 (Rent Adjustment) Regulations</i>				
Chapter 4: Registration of Base Rents and Rent Increases (PROPOSED)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
400	Establishes the Rent Board finds registration is necessary to carry out its duties under the Ordinance			
401	Defines “new Maximum Allowable Rent” and “initial rental rate”	1.) Section (B) of this Regulation states “where the rental agreement includes periods for which the Tenant pays reduced, discounted, or “free” rent, the Maximum Allowable 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.” It is common practice for Landlords to offer prospective Tenants the first month of rent free, particularly during periods when there is less market demand. But if the calculation is based on an average of the rent charged during the initial term of tenancy, this creates a disincentive to offering free or reduced rent during this initial period of tenancy. Is this intentional? <i>(The Association of United Richmond Housing Providers)</i>	1.) This provision seeks to address a possible loophole where a Landlord and Tenant enter into a lease with a rental contract amount that is higher than the amount <i>actually paid by the Tenant</i> , creating a situation where a Landlord could later circumvent the rent control provisions of the Ordinance by demanding the contract amount of the Rent at a later date.	1.) Staff members do NOT recommend a change to this Regulation.
402	Describes the actions that must be taken and the information that must be provided in order to be properly registered	1.) As written, Landlords are required to provide documentation for Tenancies beginning after July 21, 2015. Shouldn't the date referenced in Regulation 402(A)(1)(c) be the effective date of the Ordinance, rather than the rent rollback date? <i>(The Association of United Richmond Housing Providers)</i> 2.) Regulation 402(A)(3) establishes a requirement for Landlords to notify the Rent Board of all subsequent “changes in the terms of tenancy” in order to be in compliance. To what extent do Landlords need to file notices of a change in the terms of tenancy with the Board? This terminology is vague. <i>(The Association of United Richmond Housing Providers)</i>	1.) Yes. Rent control was not in effect until December 30, 2016. 2.) For the purposes of this Regulation, the Board is concerned with changes in terms of tenancy related to the provision of Housing Services.	1.) Staff members recommend July 21, 2015, be replaced with December 30, 2016. 2.) Staff members recommend “changes in the terms of the tenancy” be replaced with “changes in the provision of Housing Services.”
403	Establishes requirements for reporting changes in exempt status of units			

Chapter 4: Registration of Base Rents and Rent Increases (PROPOSED)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
404	Requires Landlords to notify the Rent Program of changes in name or address of the Landlord and/or Property Manager	1.) What is the purpose of establishing a 60-day deadline for Landlords to file changes in exempt status with the Rent Board? <i>(The Association of United Richmond Housing Providers)</i>	1.) The exempt or non-exempt status of a Rental Unit is a critical piece of information needed by the Rent Program and Board to effectively administer the Ordinance and perform necessary billing and notification functions.	1.) Staff members do NOT recommend a change to this Regulation.
Chapter 7: Vacancy Rent Increases (PROPOSED)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
701	Explains how a new rent is defined for new tenancies			
702	Describes the limited circumstances under which the Maximum Allowable Rent remains the same as in the previous tenancy	1.) This Regulation does not allow a Landlord to establish a new Base Rent when a Rental Unit has: (1) been cited by a government agency as containing serious health, safety, fire, or building code violations (excluding those caused by disasters), (2) the citation was issued at least 60 days prior to the vacancy, and (3) the cited violation had not been abated when the prior Tenant vacated and has remained unabated for at least 60 days. This seems unreasonable in cases where the Tenant or tenant's guest or pets have caused the damages giving rise to the citation. <i>(The Association of United Richmond Housing Providers)</i>	1.) If it is the policy direction of the Board, the Board could choose to include a provision that would allow the Landlord to set a new Base Rent if serious health, safety, fire, or building code violations were caused by the Tenant, guests, or pets.	1.) Staff members recommend adding the phrase "or damages incurred by the Tenant or associated occupants, guests, or pets" to cases where a Landlord would not be prohibited from setting a new Base Rent.
703	Defines the circumstances under which termination of tenancy will be considered non-voluntary			
704	Defines an "original occupant" who may not be given a vacancy rent increase	1.) Regulation 704(B) states "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." But what about Temporary Tenancy agreements? <i>(The Association of United Richmond Housing Providers)</i>	1.) Per the Ordinance, temporary tenancies may only be created in a Single Family Home, which are typically exempt from rent control; however, this provision could be clarified to (a) use the term "Rental Unit" instead of controlled rental unit, since the intent of the Regulation is to apply to all Rental Units covered by the Ordinance and (b) include an exception for Temporary Tenancy agreements.	1.) Staff members recommend modifying this provision to state, "No existing Tenant shall be required to vacate a Rental Unit as a result of a covenant or condition in a rental agreement requiring the Tenant to surrender possession except as permitted under Section 11.100.040(a)(1) of the Ordinance."
705	Establishes that vacancy increases are separate from and do not pre-empt individual rent adjustments			
706	Establishes that increases gained by fraud or intentional misrepresentation are invalid			

Chapter 7: Vacancy Rent Increases (PROPOSED)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
707	Defines “original occupant” and protects the landlord’s right to a vacancy increase when the original occupants no longer reside in the unit	1.) Section (C) of this Regulation is unclear as written. The purpose appears to be to allow a Landlord to establish up to a 6-month buffer period after all original occupants vacate before setting a new Base Rent. The mere acceptance of rent after all original occupants have vacated should not waive their rights to set a new Base Rent. <i>(The Association of United Richmond Housing Providers)</i>	1.) The interpretation of the purpose of this Regulation is correct; staff members agree it could be written in a clearer manner.	1.) Staff members recommend a rephrasing of this regulation to more clearly explain the purpose and intent of the regulation.
708	Provides that a Landlord who serves a 30 or 60-day notice of termination for Owner Move-In may rescind the notice, but if the Tenant moves out within one year, the tenancy is presumed to have been terminated as a result of the notice. Rent for the next tenancy shall be no more than the Maximum Allowable Rent for the tenant who vacated, plus any subsequent increases authorized by the Rent Board			
Chapter 9: Standards for Individual Rent Ceiling Adjustments (PROPOSED) (formerly Chapter 8C)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
901	Defines the purpose of the Chapter - Protects tenants from unreasonable rent increases while allowing landlords a fair return on their investment			
902	Provides Rent Adjustment Petitions will follow the process established in Chapter 8A and 8B of the Rent Board regulations			
903	Explains when changes in the number of tenants may result in an increase or decrease in the Maximum Allowable Rent	1.) What if the number of tenants exceeds the maximum occupancy level? Is the Rent Board responsible for enforcing building, health, and safety codes? <i>(Rent Board)</i> 2.) If a unit is over-occupied and one Tenant is required to move out, are Tenants automatically eligible for a rent decrease? <i>(Rent Board)</i> 3.) The list of individuals for whom a rent increase may not be imposed for an increased number of occupants is quite extensive. Section B (2) appears to give a “carte	1.) A determination of whether the number of occupants violates building, health, or safety codes would ultimately be up to the Building Official to determine. 2.) No. Tenants may only request a downward rent adjustment if the Landlord unreasonably restricts the Tenants’ ability to maintain the Base Occupancy Level. 3.) This provision is important to provide protections for families, which is referenced in Section 11.100.050(a)(2)(ii) (Protections for Families)	1.) Staff members do NOT recommend a change to this Regulation. 2.) Staff members do NOT recommend a change to this Regulation. 3.) Staff members do NOT recommended a change to this Regulation.

		<p><i>blanche</i>” to allow anyone to join the original tenants. Would the Landlord be able to screen the Tenants at least? (<i>Rent Board</i>)</p> <p>4.) It is important to address situations where Tenants must take in a brother or sister who is sick or disabled. (<i>Rent Board</i>)</p> <p>5.) It seems unreasonable that Tenants would have the ability to request a rent decrease due to a decrease in the number of occupants in the Rental Unit due to reasons beyond the Landlord’s control. Why should the Landlord be subject to a rent decrease just because the Tenants didn’t replace someone who moved out? (<i>Rent Board</i>)</p> <p>6.) An increase in the Maximum Allowable Rent of up to 10% for an additional occupant is not enough to make the Landlord allow the Tenant to add an occupant. This could create situations where a Tenant wants and is willing to pay more rent to add their boy/girlfriend, partner, friend, etc., but the Landlord won’t allow it simply because a mere 10% rent increase is not</p>	<p>of the Rent Ordinance. The Landlord maintains the ability to reasonably screen prospective Tenants if they will be financially responsible for payment of rent.</p> <p>4.) If it is the policy direction of the Board, caretaker/attendant may be added to the list of individual who may be added but for which an individual rent adjustment may not be granted.</p> <p>5.) A rent decrease may only be possibly permitted if a <u>Landlord</u> <i>unreasonably prevents</i> the Tenants from maintaining the Base Occupancy Level. In addition, the Landlord would still have the right to reasonably screen prospective Tenants. To further address this concern, staff added language in Section C to clarify the types of actions that would be deemed “unreasonable,” for screening prospective Tenants, such as a Landlord who adopts a more restrictive screening policy to replace previous Tenants than those used to screen the original occupants. Additionally, Section 11.100.050(a)(2)(i)(c) allows Landlords to refuse a Tenant’s written request to sublease on the ground that the total number of occupants in a Rental Unit exceeds the maximum number of occupants as defined in California Health and Safety Code Section 17922.</p> <p>6.) The Board has discretion about how much of an increase should be granted for additional occupants.</p>	<p>4.) Staff members recommend adding caretaker/attendant to the list of individuals who may be added but for which an individual rent adjustment may not be granted and included qualifying language to stipulate that this is true only as required for a reasonable accommodation for a person with a disability.</p> <p>5.) Staff members do NOT recommend a change to this Regulation.</p> <p>6.) Staff members suggest a compromise of allowing up to a 25% increase for the first additional occupant, 12.5% rent increase for the second additional occupant, 6.25% rent increase for the third additional occupant, and so on and so forth. (Note: as written, this policy would not apply to the addition of a Tenant’s spouse, registered domestic</p>
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		<p>enough of an incentive. Why not make this percentage higher, like 25%? By establishing a low maximum rent increase for additional occupants, this policy is, perhaps unintentionally, discouraging density. <i>(The Association of United Richmond Housing Providers)</i></p>	<p>partner, child, grandchild, parent, grandparent, legal guardian, parent, or caretaker/attendant as required for a reasonable accommodation.)</p>
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<p>Chapter 9: Standards for Individual Rent Ceiling Adjustments (PROPOSED) <i>(formerly Chapter 8C)</i></p>				
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Reg.	Topic (PROPOSED)	Concern/Question <i>(Raised By)</i>	Answer to Concern or Question	Staff Recommendation <i>(Incorporated in Attachment 2)</i>
904	<p>Explains when changes in space or services may result in an increase or decrease in rent and how decreases are determined</p>	<p>1.) Section 2 of the Regulation states where a Landlord adds non-habitable space or increases the services provided to a unit, the lawful rent ceiling may be increased by an amount representing the market value of the additional space or increased service. "Market value" is a potentially problematic term given its ambiguity. Is there a term that better suits the intention of this section? <i>(Rent Board)</i></p> <p>2.) Concerns about the possible misuse of Regulation 904 in the event that a Landlord would like to increase the rent due to an increase in space or services but some of the Tenants object to the additional service. <i>(Community member)</i></p> <p>3.) Concerns about the reference to "Capital Improvements" and reconfigured space in this Section. <i>(Fair and Affordable Richmond)</i></p> <p>4.) Regulation 904(B)(1) allows for decreases in the Maximum Allowable Rent when a Tenant is made to suffer a decrease in housing services based on the space and services that were provided on July 21, 2015, or, for tenancies commencing after July 21, 2015, the beginning of the tenancy. Shouldn't this only apply when the</p>	<p>1.) Yes – staff recommend using the term "commercially reasonable value."</p> <p>2.) Rent increases permitted due to an increase in space or services must be approved in writing by the Tenants.</p> <p>3.) It is anticipated the Rent Board will consider Capital Improvement regulations in subsequent Sections and Chapters of regulations.</p> <p>4.) The Regulation could be modified to clarify that the Landlord had to have been notified of the decrease in space or services. Furthermore, the Regulation could be modified to disallow decreases in the Maximum Allowable Rent if the decrease in space or services (e.g. broken appliance) is a direct</p>	<p>1.) Staff members recommend replacing "market value" with "commercially reasonable value."</p> <p>2.) Staff members recommend adding a provision to the regulation to clarify that increases may be denied in any of the following instances:</p> <ul style="list-style-type: none"> • The additional space or service does not clearly benefit a majority of the affected Tenants and a Tenant objects • The additional space or service benefits a majority of the affected Tenants but a majority of the affected Tenants object <p>3.) Staff members do NOT recommend a change to this Regulation.</p> <p>4.) Staff members recommend modifying the first sentence to read, "The Maximum Allowable Rent shall be adjusted downward where a Landlord is aware of and causes a Tenant to suffer a decrease in housing services..." and adding a sentence stating, "Decreases in the</p>

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		Landlord has previously been made aware of the decrease in space or services (e.g. a broken heater)? What if the decrease in space or services has been caused by the Tenant? It seems unreasonable that a Landlord would suffer a rent decrease due to an event outside of their control. <i>(The Association of United Richmond Housing Providers)</i>	result of intentional action on the part of the Tenant.	Maximum Allowable Rent shall not be granted due to a decrease in space or services that is a direct result of intentional action on the part of the Tenant to purposefully cause a decrease in space or services.”
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905 – 910 are reserved for fair rate of return (Maintenance of Net Operating Income), capital improvement, and historically low rent regulations

Chapter 9: Standards for Individual Rent Ceiling Adjustments (PROPOSED)
(formerly Chapter 8C)

Reg.	Topic (PROPOSED)	Concern/Question <i>(Raised By)</i>	Answer to Concern or Question	Staff Recommendation <i>(Incorporated in Attachment 2)</i>
911	Establishes a process for repayment of overcharges	1.) Regulation 911(E) describes situations where the basis of rent overcharges is ineligibility for Annual General Adjustments is due to violation of housing codes. This Regulation requires that when the Tenant files the overcharge complaint, that they also attach documentation to show that the Rental Unit was in violation of the implied warranty of habitability on September 1 st of the applicable year for which the Tenant is arguing the Landlord was not eligible to apply an Annual General Adjustment rent increase. There are two issues with how this is written: (1) the fact that a Rental Unit is in violation of the implied warranty of habitability on September 1 should not merit complete loss of that year’s AGA and (2) the Tenant should also be responsible for notifying the Landlord of the violation. <i>(The Association of United Richmond Housing Providers)</i>	1.) This Regulation could reasonably be modified to clarify that the unit need not only have been in violation on September 1 st , but prior to and as of September 1 st of the applicable year for which the Tenant is arguing the Landlord was not eligible to apply an Annual General Adjustment rent increase. The Regulation could also include the requirement that the Tenant provide documentation to show that the Landlord was aware of the violation.	1.) Staff members recommend the following additions to the relevant sentence: “Where the basis of any overcharge is 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 implied warranty of habitability prior to and as of September 1 st of the applicable year and that the Landlord was aware of such violation of the warranty of habitability.
912	Provides for restoration of lost AGAs after deficiencies are corrected			

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REGULATIONS OF THE RICHMOND RENT BOARD

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Note to the reader: These Regulations are intended to help clarify the meaning of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Richmond Municipal Code Chapter 11.100) and to explain how it will be implemented. However, a full understanding of the meaning of any individual regulation or set of regulations may require knowledge of both the Regulations and the Rent Ordinance and may also require knowledge of relevant aspects of State and Federal law. Rent Board staff will assist the public in understanding how to use and follow the regulations. Such assertion does not substitute for legal advice from a competent attorney.

Chapter 1: PURPOSE & DEFINITIONS

101. Purpose of the Regulations of the Richmond Rent Board

(A) The Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Richmond Municipal Code Chapter 11.100) (“Ordinance”) governs the actions and regulations of the Richmond Rent Board. Section 11.100.060 (f) “Rules and Regulations” directs the Board to “issue and follow such rules and regulations, including those contained in this Chapter, as will further the purposes of the Chapter.”

(B) The Regulations of the Richmond Rent Board are intended to further the purposes of the Ordinance by establishing the standards and procedures the Board will follow in order to implement the Ordinance.

(C) The Regulations are intended to help clarify the meaning of the Ordinance and explain how it will be implemented. However, a full understanding of the meaning of any individual regulation or set of regulations may require knowledge of both the Regulations and the Ordinance and may also require knowledge of relevant aspects of State and Federal law.

(D) Like all local ordinances, the Ordinance operates within the framework established by the laws of the State of California and the Constitution of the United States of America. Under Section 11.100.060 (r) “Conforming Regulations,” should any part of the Ordinance be “declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by state or federal legislation,” then the Board is empowered to “enact replacement regulations consistent with the intent and purpose of the invalidated provision and applicable law.”

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 tenancies that commenced after July 21, 2015, the Base Rent is the initial rental rate in effect on the date the tenancy begins. "Initial rental rate" is 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 December 30, 2016, an explanation of the circumstances of the termination of the previous tenancy sufficiently detailed to demonstrate whether the unit qualifies for a vacancy rent increase or not, as described in Chapter 7 Vacancy Rent Increases.

(d) The Base Rent currently in effect for each individual unit and the housing services included in the rent or the reason the Rental Unit is exempt from rent control and has no current Base Rent;

(2) Paid to the City of Richmond the Rental Housing Fee, Business License Tax, and any 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 termination of tenancies, subsequent changes in the provision of Housing Services, and rent increases if required pursuant to Regulation 17-10.

(B) In designating a Rental Unit as properly registered, the Board's intent is to facilitate the rent registration and individual adjustment of Maximum Allowable Rent processes and the dissemination of information regarding the registration of Rental Units. Such designation shall

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not be construed as the Board's certification of the lawful Base Rent, current Maximum Allowable Rent or any other information provided on the rent registration statement. Nothing in this Regulation shall preclude 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) calendar days of the date a Rental Unit formerly exempt from the rent control provisions of the Ordinance (Section 11.100.030(d) (1)-(6)) becomes a Controlled Rental Unit under the Ordinance, the Landlord shall file an initial registration statement, or an amended registration statement if an initial registration statement has been previously filed, for the Rental Unit.

(B) Within sixty (60) calendar days of the date a Controlled Rental Unit becomes exempt from rent control 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) calendar 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) calendar 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) calendar 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.

(C) 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.

City of Richmond Rent Board
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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 be the new Maximum Allowable Rent 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 the Ordinance and all other regulations of the Rent Board.

(B) In these Regulations the terms "new Maximum Allowable Rent" 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 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 Maximum Allowable 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 Maximum Allowable Rent (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.

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(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 and Safety Code Section 17920.3 excluding those caused by disasters or damages incurred by the Tenant or associated occupants, guests, or pets, the citation was issued at least sixty (60) calendar days prior to the date of the vacancy, and the cited violation had not been abated when the prior Tenant vacated and has remained unabated for at least sixty (60) calendar days, unless the time for correction was extended by the agency that issued the citation.

(5) The prior Tenant was the spouse, registered domestic partner, 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. 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. 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) and Rent Board Regulation 17-07; and,

(6) Notices of any kind that negligently or intentionally misrepresent to a Tenant that the Tenant is required to vacate the Rental Unit.

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

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- (1) Would cause a reasonable person to fear the loss of use or occupancy of a Rental Unit or part thereof, or of any service, privilege or facility connected with such use or occupancy, without legitimate reason or legal justification; or
- (2) Materially interferes with a Tenant's peaceful enjoyment of the use and/or occupancy of a 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 an Owner Move-In pursuant to Ordinance section 11.100.050 (a)
 - (6) which was 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 Rental Unit.
 - (c) Reduction in housing services under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a 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; or
 - (f) Verbal or physical abuse or intimidation.
- (5) 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 and Rent Board Regulation 17-07) shall not be considered voluntary.
- (6) 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 Original Occupants

- (A) The Maximum Allowable Rent for a Controlled Rental Unit occupied by an Original Occupant shall not be increased under the provisions of this Regulation while the existing Tenant occupies the unit as their principal residence. For purposes of this Regulation, the term "original occupant" as used herein includes any Tenant in the Rental Unit, 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.

(B) No existing Tenant shall be required to vacate a Rental Unit as a result of a covenant or condition in a rental agreement requiring the Tenant to surrender possession except as permitted under Section 11.100.040(a)(1) of the Ordinance.

705. Increase and Decrease Petitions

Nothing in this Regulation prohibits Tenants or Landlords from filing rent adjustment 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 the Landlord's agent 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 Regulation 707, to a sub-lessee or assignee when the original occupant or occupants who took possession of the Rental Unit pursuant to a rental agreement with the owner no longer permanently reside in the Rental Unit. The term "original occupant" as used herein includes any Tenant in the Rental Unit, 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) calendar days of any rent increase pursuant to this subsection, a Tenancy Registration form(s) described in Section (A)(1) of Regulation 402 shall be filed with the Board.

(B) Where one or more of the occupants of the Rental Unit pursuant to the agreement with the owner, remain an occupant in lawful possession of the Rental Unit, this Regulation shall not apply to partial changes in occupancy of the Rental Unit made with the consent of the owner. Nothing contained in this Regulation shall establish or create any obligation of an owner to permit or consent to a sublease or assignment.

(C) New roommates are considered subtenants of the original occupants as long as they do not sign a lease or rental agreement with the Landlord, and the Landlord may increase the rent when the unit is occupied only by subtenants who are not Original Occupants. Thus, a Landlord may set a new initial rent by giving proper written notice if: (1) there has been a complete turnover of original occupants; (2) none of the remaining occupants has signed a lease or rental agreement with the landlord; and (3) the Landlord has not accepted rent after receiving written notice from the last original occupant that they have moved out or will be moving out permanently. If the subtenants hide the fact that the last original occupant has moved out permanently, the Landlord's acceptance of rent does not preclude the Landlord from implementing a vacancy increase. The Landlord can defer a vacancy rent increase for up to six months after receiving written notice of the last original occupant's departure, by agreeing in writing with the remaining tenants to do so.

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(D) 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 Rental Housing Agreement, all Tenants who occupy the unit within one month, with permission of the Landlord, express or implied, shall be considered original occupants.

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

(A) A written request from a Landlord for a Tenant to vacate a unit so the Landlord or a qualifying relative of the Landlord may occupy the unit as a 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 or 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 Landlord 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 Allowable Rent under the 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 the Tenant is 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 9: Standards for Individual Maximum Allowable Rent Adjustments

901. Purpose of Chapter

The purpose of this Chapter 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 Maximum Allowable Rent be made only when the Landlord demonstrates that such adjustments are necessary to provide the Landlord with a fair return on investment under the Ordinance (RMC Sections 11.100.070 (e - k) and as required by the California or United States Constitution.

902. Procedure

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

903. Changes in Number of Tenants

(A) Base Occupancy Level. The Base Occupancy Level for a Rental Unit, as used in this Chapter, shall be the number of Tenants allowed by the Rental Housing Agreement as defined in Section 11.100.030(k) of the Ordinance for the unit effective July 21, 2015, or at the beginning of any subsequent tenancy established after a vacancy.

(B) Increase in Tenants

(1) If the number of Tenants allowed by the Rental Housing Agreement actually occupying a unit as the Tenants' principal residence has increased above the Base Occupancy Level for that unit, then the Maximum Allowable Rent for the unit may be increased by up to twenty-five (25%) for the first additional Tenant above the Base Occupancy Level, up to twelve-and-a-half percent (12.5%) for the second additional Tenant, up to six-and-one-quarter percent (6.25%) for the third additional Tenant, and so on and so forth (where the potential percentage increase is halved for each additional Tenant), in addition to any Maximum Allowable Rent adjustment to which the Landlord is otherwise entitled. A petition seeking rent adjustments solely for an increased number of Tenants will be processed under subsections (D) of this regulation.

(2) No increase in the Maximum Allowable Rent 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, parent, grandparent, legal guardian of a child, parent of any of the Tenants, or caretaker/attendant as required for a reasonable accommodation for a person with a disability, unless the Tenants agree in writing to the specific Maximum Allowable Rent increase.

(3) If the number of Tenants actually occupying a Rental Unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (B)(1), then the Maximum Allowable Rent increase for that Rental Unit shall automatically decrease by the amount of the Maximum Allowable Rent increase that is no longer

justified, as a result in the decrease in the number of Tenants, unless the Tenant and Landlord agree in writing to permanently increase the Base Occupancy Level.

(4) Increases in the Maximum Allowable Rent due to an increase in the Base Occupancy Level shall remain permanent. As such, if the number of Tenants actually occupying a Rental Unit as the Tenants' principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (B) (1), then the Tenants may replace the departing Tenant with another Tenant (subject to the Landlord's standard screening methods).

(C) Decrease in Number of Tenants Allowed.

If any policy or policies imposed by the Landlord unreasonably prevent the Tenant from maintaining the Base Occupancy Level for that unit, then the Maximum Allowable Rent for that unit shall be 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.

- (1) A policy shall be deemed unreasonable if it is different from and more restrictive than the policies originally used to screen the current Tenant(s).
- (2) Refusal based on the proposed additional occupant's lack of creditworthiness shall be deemed unreasonable if that person will not be legally obligated to pay some or all of the rent to the Landlord. (RMC Section 11.100.050(a) (1) (i) (c)).
- (3) Refusal shall be deemed reasonable if the increase would bring the total number of occupants above the maximum allowable under Section 503b the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922. (RMC Section 11.100.050(a) (1) (i) (c)).

(D) Petitions for Rent Increases

Grounds for Tenant Objection. Tenants responding to petitions under subsection (B) (1) may file objections with the Board only if 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, parent of any of the Tenants, or caretaker/attendant as required for a reasonable accommodation for a person with a disability, and the Tenant(s) was not informed that the Tenant did not need to agree to an increase for such person(s).

904. Changes in Space or Services

(A) Increase in Space

The Maximum Allowable Rent may be adjusted upward when, with the written agreement of the Tenant(s), there is an increase in the usable space or in 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 Maximum Allowable Rent for such unit shall be permanently increased as provided under Section 8XX Capital Improvements.

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(2) Additional services. Where a Landlord adds non-habitable space or increases the services provided to a unit, the Maximum Allowable Rent for such unit shall be increased by an amount representing the commercially reasonable value of the additional space or increased services. 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.

- (a) Increases may be denied if the added or reconfigured space or services do not clearly benefit a majority of the affected Tenants and a Tenant objects.
- (b) If the added or reconfigured space or services clearly benefit a majority of the affected Tenants, then increases may be denied if a majority of the affected Tenants object.

(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.

1. Decreases in Space or Services. The Maximum Allowable Rent shall be adjusted downward where a Landlord is aware of and causes a Tenant to suffer a decrease in housing services or living space from the services and space that were provided on July 21, 2015, or from any services or space provided at the beginning of the tenancy. The amount of the rent decrease shall be 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 Maximum Allowable Rent 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. Decreases in the Maximum Allowable Rent shall not be granted due to a decrease in space or services that is a direct result of intentional actions on the part of the Tenant to purposefully cause a decrease in space or services.

2. Denial of Petitions for Unilateral Removal.

The Board will not accept petitions from Landlords who seek a Maximum Allowable Rent 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 was provided at the unit on July 21, 2015, or at the beginning of the tenancy.

3. Inadequate Services, Substantial Deterioration

The Maximum Allowable Rent 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 Unit in compliance with all applicable state and local laws and

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with the terms of the Rental Housing Agreement. The amount of the rent decrease shall be 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 Maximum Allowable Rent 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 Maximum Allowable Rent decrease shall be in an amount that reflects the reduction in value of the Rental Unit 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 Maximum Allowable Rent 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.

(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 thirty-five (35) calendar 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 Unit is 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. Maximum Allowable Rent 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 Rental Unit. A copy of a housing code inspection report from the City of Richmond should be submitted with the petition.

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905 – 910 Reserved for MNOI, Capital Improvements, Historically Low Rent, etc.

911. 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 overcharge. The Landlord shall notify the Board in writing of the nature, extent, and result of those efforts within sixty (60) calendar days of the overcharge refund order.

If the Landlord does not refund any past overcharge(s) to any former Tenant(s) within sixty (60) calendar days, or has made reasonable but unsuccessful efforts to locate the former Tenant(s), the Landlord shall pay the overcharge(s) to the Richmond Rent Board to be held in trust for the former Tenants for one year. Staff shall annually 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.

(D) 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 timelier filing of the petition.

(3) If the 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.

(E) 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 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 prior to and as of September 1st of the applicable year and that the Landlord was aware of such violation of the warranty of habitability. Such documentation may include a copy of an inspection report issued by the City of Richmond.

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

(A) General. When a Landlord who has previously been out of compliance comes into compliance with the Ordinance, regulations, or applicable housing, health and safety codes, the Hearing Examiner may grant all Annual General Adjustment rent increases denied during the period of noncompliance prospectively. For any Rental Unit which has been registered and for which a Base Rent has been listed or for any Rental Unit which a Landlord can show, by a preponderance of the evidence, a good faith attempt to comply with the registration requirements, all Annual General Adjustments which may have been denied during the period of the Landlord's non-compliance shall be restored prospectively once the Landlord is in compliance with the Ordinance or regulation.

In addition, to be eligible for an Annual General Adjustment, the Landlord must state under penalty of perjury that the unit is in substantial compliance with the ordinance, regulations and applicable codes. Specifically, the Landlord shall certify to payment of all fees and penalties owed to the Richmond Rent Program 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 Rent Board on behalf of Tenants of the affected unit.

The Landlord is not entitled to recover any Annual General Adjustments which have been previously regained through a net operating income analysis or for new tenancies that were established after the loss of the Annual General Adjustment.

(B) Petition. Upon the petition of the Landlord, the Landlord's eligibility for previously lost Annual General Adjustments 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 Annual General Adjustment petitions.

(C) Rent increases permitted under this Section shall be applied in a manner consistent with Regulation 17-09 (Banking of Annual General Adjustment rent increases.)

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 G-1 ATTACHMENT 3

- 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 G-1 ATTACHMENT 3

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 G-1 ATTACHMENT 3

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 G-1 ATTACHMENT 3

- 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 G-1 ATTACHMENT 3

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 G-1 ATTACHMENT 3

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 01st 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 G-1 ATTACHMENT 3

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 G-1 ATTACHMENT 3

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

From: **Ilona Clark** <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>

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

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

--

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

**ITEM G-1
ATTACHMENT 3**

----- 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 can 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

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: February 21, 2018

Final Decision Date Deadline: February 21, 2018

STATEMENT OF THE ISSUE: Section 11.100.070 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") provides that "landlords have a right to a reasonable return on their investment" or right to a reasonable or fair return. The primary vehicle for achieving a "fair return" is the Annual General Adjustment, which, when applied to the Base Rent creates the Maximum Allow Rent level. When a landlord is not achieving a fair return by way of the Annual General Adjustment, the Ordinance allows landlords to petition the Board to increase the rent above the Maximum Allowable Rent. At their meeting on December 20, 2017, the Board directed staff to prepare regulations utilizing the Maintenance of Net Operating Income (MNOI) standard for the Board's consideration. In partnership with Dr. Kenneth Baar, Rent Program staff members have prepared the Fair Return (Maintenance of Net Operating Income) regulation for the Rent Board's consideration. Part 2 of the Fair Return regulations, which will include the Capital Improvement and Historically Low Rent regulations are to be brought to the Board for their review at the February 28, 2018 Special Board meeting.

INDICATE APPROPRIATE BODY

- | | | | | |
|---|---|--|--|---|
| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

ITEM

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|---|--|--|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) | | |
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Regulation | <input checked="" type="checkbox"/> Other: <u>STUDY AND ACTION SESSION</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 Proposed Draft Maintenance of Net Operating Income (MNOI) Fair Return Regulation (Chapter 9) (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

H-1.

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AGENDA REPORT

DATE: February 21, 2018

TO: Chair Gray and Members of the Rent Board

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

SUBJECT: PROPOSED DRAFT MAINTENANCE OF NET OPERATING INCOME (MNOI) FAIR RETURN REGULATION (Chapter 9)

STATEMENT OF THE ISSUE:

Section 11.100.070 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") provides that "landlords have a right to a reasonable return on their investment" or right to a reasonable or fair return. The primary vehicle for achieving a "fair return" is the Annual General Adjustment, which, when applied to the Base Rent creates the Maximum Allow Rent level. When a landlord is not achieving a fair return by way of the Annual General Adjustment, the Ordinance allows landlords to petition the Board to increase the rent above the Maximum Allowable Rent. At their meeting on December 20, 2017, the Board directed staff to prepare regulations utilizing the Maintenance of Net Operating Income (MNOI) standard for the Board's consideration.

In partnership with Dr. Kenneth Baar, Rent Program staff members have prepared the Fair Return (Maintenance of Net Operating Income) regulation for the Rent Board's consideration. Part 2 of the Fair Return regulations, which will include the Capital Improvement and Historically Low Rent regulations are to be brought to the Board for their review at the February 28, 2018 Special Board meeting.

RECOMMENDED ACTION:

Receive Proposed Draft Maintenance of Net Operating Income (MNOI) Fair Return Regulation (Chapter 9) (Nicolas Traylor/Michael Roush 620-6564).

FISCAL IMPACT:

The cost to administer the Rent Adjustment/Fair Return Petition process is accounted for in the Fiscal Year 2017-18 Rent Program Budget. The proposed draft regulations do

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Telephone: (510) 620-6576 Fax: (510) 307-8149 www.richmondrent.org

ITEM H-1

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 multi-family 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 Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance provides for the right to a reasonable return and tasks the Rent Board with promulgating Fair Return regulations.

The Maintenance of Net Operating Income regulation establishes standards for allowing an increase above the Maximum Allowable Rent level in cases where the landlord is not receiving a fair return. "Fair Return" is defined as the right to obtain a net operating income equal to the base year net operating income adjusted by a set percentage increase in the Consumer Price Index (CPI), since the base year. In future Board meetings, Board members will be tasked with reviewing and adopting two additional Fair Return regulations: a capital improvement regulation and historically low rent regulation.

Overview of Maintenance of Net Operating Income (MNOI) Regulation

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

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Fair Return Standard (Chapter 9)		
Regulation Number	Title	Purpose
905(A) (1)	Presumption of Fair Base Year	Establishes that the Net operating income received by the Landlord in the Base Year provided a Fair Return
905(A) (2)	Fair Return	Establishes that a landlord has the right to obtain a net operating income equal to the base year NOI adjusted by X% of the percentage in the CPI since the Base Year
905 (A) (3) and 905 (A) (4)	Base Year and Current Year	Regulation that establishes the Base and current years for MNOI standard
905 (A) (5)	Adjustment of Base Year Net Operating Income	This regulation allows Landlords to rebut the assumption that the Base Year provided a Fair Return-either due to exceptional expense circumstances in the Base Year
905 (A) (6)	Calculation of Net Operating Income	This regulation provides the formula for calculating net operating income and defines Gross Rental Income and Operating Expenses (maintenance/operational costs, utility costs, real property taxes, licenses and fees, landlord-performed labor, legal expense and the amortized costs of capital improvements)

ITEM H-1

Regulation Number	Title	Purpose
905 (A) (6) (a)	Amortization of Capital Improvements	905 (A) (6) (a) viii defines how costs are amortized using an interest allowance. (A) (6) (b) (x) requires that capital improvement increases be terminated for tenancies which have had their rents reset through vacancy rent increases. 905 (A) (6) (c) describes what types of operating expenses shall not be included in the fair return calculation
905 (A) (6) (b)	Impact of Vacancy Rent Increases on Capital Improvements Increases	
905 (A) (6) (c)	Types of Operating Expenses Not Included in Fair Return Calculation	
905 (A) (6) (d)	Adjustment to Operating Expenses	Base year and/or current year operating expenses may be averaged in cases where there are exceptional costs in either the base or current year. This is done in order to establish cost for expenses that most reasonably serves the objectives of obtaining a reasonable comparison of the base year and current year, while providing a Fair Return
905 (A) (6) (e)	Projections of Base Year Operating Expenses in the Absence of Actual Data	Standard that establishes how to calculate base year expense data in cases where there is an absence of actual base year expense data
905 (A) 7	Allocation of Rent Increases	Defines how authorized Fair Return rent increases would be allocated among rental units/building

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Regulation Number	Title	Purpose
905 (A) (8)	Conditional Rent Adjustments for Proposed Capital Improvements	Allows a Landlord to petition for an upward rent adjustment based on anticipated future expense for capital improvements and provides for conditions for authorization and implementation of those rent increases
905 (A) 9	Impact of Recent Vacancy Rent Increases Eligibility for Capital Improvement Increase	Establishes that any unit that has received a vacancy rent increase within two years prior to the fair return application shall be ineligible for any rent increase based on the cost of the proposed capital improvement
905 (A) (10)	Limits to Annual Rent Adjustments Based on Maintenance of Net Operating Income Standard	The purpose of this regulation is to protect tenants from substantial rent increases, by placing a limit on the amount that can be charged for a Fair Return/MNOI rent increase
905 (A) (11)	Constitutional Right to A Fair Return	Provides that no section of the (proposed) Fair Return regulations shall be applied to prohibit the Board from granting a Fair Return increase

ITEM H-1

A copy of the draft Fair Return regulations for the Board's consideration were posted on the Rent Program website on February 14, 2018 and a listserv message will be sent with instructions for submitting comments prior to the February 28, 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

Proposed Date	Event
February 21, 2018 – Regular Rent Board Meeting #1	Rent Board considers substantive rent adjustment, vacancy rent adjustment and rent registration regulations for adoption and receives MNOI Fair Return regulations
February 28, 2018- Special Rent Board Meeting #2	Rent Board considers MNOI Fair Return regulations for adoption and receives Capital Improvement and Historically Low Rent Fair Return regulations

DOCUMENTS ATTACHED:

Attachment 1 – DRAFT Fair Return (MNOI) Regulations (Chapter 9, Regulation 905)

Attachment 2 – Memo on Fair Return Regulation by Ken Baar

ITEM H-1

City of Richmond Rent Program

DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard*

Chapter 9. Standards for Individual Maximum Allowable Rent Adjustments

Please note: Regulations 901-904 and 911-912 are not contained within this document.

Such regulations are accessible at the following

link: <http://www.ci.richmond.ca.us/DocumentCenter/View/45610>.

905. Maintenance of Net Operating Income (MNOI) Fair Return Standard

A. Fair Return Standard

1. **Presumption of Fair Base Year Net Operating Income.** It shall be presumed that the net operating income received by the Landlord in the base year provided a Fair Return.
2. **Fair Return.** A Landlord has the right to obtain a net operating income equal to the base year net operating income adjusted by __-% of the percentage increase in the Consumer Price Index (CPI), since the base year. It shall be presumed this standard provides a Fair Return.
3. **Base Year.**
 - a. For the purposes of making Fair Return determinations pursuant to this section, the calendar year _____ is the base year. The base year CPI shall be _____, unless subsection (b) is applicable.
 - b. In the event that a determination of the allowable Rent is made pursuant to this section, if a subsequent petition is filed, the base year shall be the year that was considered as the "current year" in the prior petition.

4. Current Year

The "current year" shall be the calendar year preceding the application. The "current year CPI" shall be the annual CPI for the current year.

5. Adjustment of Base Year Net Operating Income.

Landlords or Tenants may present evidence to rebut the presumption that the base year net operating income provided a Fair Return. Grounds for rebuttal of the presumption shall be based on at least one of the following findings:

- a. **Exceptional Expenses in the Base Year.** The Landlord's operating expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in

City of Richmond Rent Program

DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard*

calculating operating expenses in order that the base year operating expenses reflect average expenses for the property over a reasonable period of time. The following factors shall be considered in making such a finding:

- i. Extraordinary amounts were expended for necessary maintenance and repairs.
- ii. Maintenance and repair expenditures were exceptionally low so as to cause inadequate maintenance or significant deterioration in the quality of services provided.
- iii. Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.

b. Exceptional Circumstances in the Base Year. The gross income during the base year was disproportionately low due to exceptional circumstances. In such instances, adjustments maybe made in calculating base year gross rental income consistent with the purposes of this chapter. The following factors shall be considered in making such a finding:

- i. If the gross income during the base year was lower than it might have been because some residents were charged reduced rent.
- ii. If the gross income during the base year was significantly lower than normal because of the destruction of the premises and/or temporary eviction for construction or repairs.
- iii. The pattern of rent increases in the years prior to the base year and whether those increases reflected increases in the CPI.
- iv. Base period rents were disproportionately low in comparison to the base period rents of comparable apartments in the City.
- v. Other exceptional circumstances.

6. Calculation of Net Operating Income. Net operating income shall be calculated by subtracting operating expenses from gross rental income.

a. **Gross Rental Income.**

- i. Gross rental income shall include:

City of Richmond Rent Program

DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard*

Gross rents calculated as gross scheduled rental income at one hundred percent occupancy and all other income or consideration received or receivable in connection with the use or occupancy of the Rental Unit, except as provided in Subparagraph (B) of this section.

If there are vacant units at the time a petition is filed the rent shall be calculated on the basis of average rents for comparable units in the property which have had vacancy increases within the past two years. If there are no comparable units in the property rental income for the vacant units shall be calculated on the basis of rents for recently established initial rents for comparable units in the City.

ii. Gross rental income shall not include:

Utility Charges for sub-metered gas, electricity or water;

Charges for refuse disposal, sewer service, and, or other services which are either provided solely on a cost pass-through basis and/or are regulated by state or local law;

Charges for laundry services; and

Storage charges.

b. **Operating Expenses.** Operating expenses shall include the following:

i. **Reasonable costs of operation and maintenance of the Rental Unit.**

ii. **Management expenses.** It shall be presumed that management expenses have increased between the base year and the current year by the percentage increase in rents or the CPI, whichever is greater, unless the level of management services has either increased or decreased significantly between the base year and the current year. This presumption shall also be applied in the event that management expenses changed from owner managed to managed by a third party or vice versa

iii. **Utility costs** except a utility where the consideration of the income associated with the provision of the utility service is regulated by state law and consideration of the costs associated with the provision of the utility service is preempted by state law or the income associated with the

City of Richmond Rent Program

DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard*

provision of the utility is not considered because it is recouped from the Tenants on a cost pass-through basis..

- iv. **Real property taxes**, subject to the limitation that property taxes attributable to an assessment in a year other than the base year or current year shall not be considered in calculating base year and/or current year operating expenses.
- v. **License, registration and other public fees** required by law to the extent these expenses are not otherwise paid or reimbursed by Tenants.
- vi. **Landlord-performed labor** compensated at reasonable hourly rates. However, no Landlord-performed labor shall be included as an operating expense unless the Landlord submits documentation showing the date, time, and nature of the work performed. There shall be a maximum allowed under this provision of five percent (5%) of gross income unless the Landlord shows greater services were performed for the benefit of the residents. (HOURLY RATE PRESUMPTIONS TO BE INSERTED)
- vii. **Legal expenses.** Reasonable attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, legal expenses necessarily incurred in dealings with respect to the normal operation of the Property, and reasonable costs incurred in obtaining a rent increase pursuant to Sections ___ ___ of the Ordinance.

To the extent allowable legal expenses are not annually reoccurring and are substantial they shall be amortized over a five-year period, unless the Rent Board concludes that a different period is more reasonable. At the end of the amortization period, the allowable monthly rent shall be decreased by any amount it was increased because of the application of this provision.
- viii. **The Amortized Costs of Capital Replacements.** Operating expenses include the amortized costs of capital replacements plus an interest allowance to cover the amortization of those costs. For purposes of this section a capital improvement shall be any improvement to a unit or property which materially adds to the value of the property, appreciably prolongs its useful life or adapts it to new use and has a useful life of more than one year and a direct cost of \$250.00 or more per unit affected. Allowances for capital improvements shall be subject to the following conditions:

City of Richmond Rent Program

DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard*

The costs are amortized over the period set forth in Section __ of this regulation and in no event over a period of less than thirty-six months.

The costs do not include costs incurred to bring the Rental Unit into compliance with a provision of the Richmond Municipal Code or state law where the original installation of the improvement was not in compliance with code requirements.

At the end of the amortization period, the allowable monthly rent shall be decreased by any amount it has increased due to the application of this provision.

The amortization period shall be in conformance with the following schedule adopted by the Rent Board unless it is determined that an alternate period is justified based on the evidence presented in the hearing.

(continued on following page)

City of Richmond Rent Program

DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard***AMORTIZED COST TABLE (EXAMPLE)**Units in
Bldg 10

Cost	Annual Interest Rate	Amortization Period Years	Amortization Period Months	Total Principal & Interest Life of Improvement	Total Interest Life of Improvement	Monthly Amortized Cost	Annual Amortized Cost	Monthly Cost Per Unit
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Varying Amortization Periods - Same Interest Rate

\$50,000.00	7.00%	5	60	\$59,403.60	\$9,403.60	\$990.06	11880.72	\$99.01
\$50,000.00	7.00%	7	84	\$63,389.26	\$13,389.26	\$754.63	9055.61	\$75.46
\$50,000.00	7.00%	10	120	\$69,665.09	\$19,665.09	\$580.54	6966.51	\$58.05
\$50,000.00	7.00%	15	180	\$80,894.54	\$30,894.54	\$449.41	5392.97	\$44.94
\$50,000.00	7.00%	20	240	\$93,035.87	\$43,035.87	\$387.65	4651.79	\$38.76
\$50,000.00	7.00%	25	300	\$106,016.88	\$56,016.88	\$353.39	4240.68	\$35.34
\$50,000.00	7.00%	28	330	\$112,796.57	\$62,796.57	\$341.81	4101.69	\$34.18

Same Amortization Period & Varying Interest Rates

\$50,000.00	5.0%	15	180	\$71,171.43	\$21,171.43	\$395.40	4744.76	\$39.54
\$50,000.00	6.0%	15	180	\$75,947.11	\$25,947.11	\$421.93	5063.14	\$42.19
\$50,000.00	7.0%	15	180	\$80,894.54	\$30,894.54	\$449.41	5392.97	\$44.94
\$50,000.00	8.0%	15	180	\$86,008.69	\$36,008.69	\$477.83	5733.91	\$47.78
\$50,000.00	9.0%	15	180	\$91,283.99	\$41,283.99	\$507.13	6085.60	\$50.71
\$50,000.00	10.0%	15	180	\$96,714.46	\$46,714.46	\$537.30	6447.63	\$53.73

City of Richmond Rent Program

DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard*

- ix. **Interest Allowance for Expenses that Are Amortized.** An interest allowance shall be allowed on the cost of amortized expenses. The allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the Rent Board shall designate by regulation an index which is most comparable to the PMMS index.
- x. **Impact of Vacancy Decontrol on Rent Increases Based on Capital Improvements**
- If a unit becomes vacant during the pendency of a schedule which provides for the expiration of increases for capital improvements and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53, the capital improvements schedule shall terminate.
- c. **Exclusions from Operating Expenses.** Operating expenses shall not include the following:
- i. Mortgage principal or interest payments or other debt service costs and costs of obtaining financing.
 - ii. Any penalties, fees or interest assessed or awarded for violation of any provision of this chapter or of any other provision of law.
 - iii. Land lease expenses.
 - iv. Political contributions and payments to organizations or individuals which are substantially devoted to legislative lobbying purposes.
 - v. Depreciation.
 - vi. Any expenses for which the Landlord has been reimbursed by any utility rebate or discount, Security Deposit, insurance settlement, judgment for damages, settlement or any other method or device.
 - vii. Unreasonable increases in expenses since the base year.
 - viii. Expenses associated with the provision of master-metered gas and electricity services.

City of Richmond Rent Program

DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard*

ix. Expenses which are attributable to unreasonable delays in performing necessary maintenance or repair work or the failure to complete necessary replacements. (For example if a roof replacement is unreasonably delayed, the full cost of the roof replacement would be allowed; however, if interior water damage occurred as a result of the unreasonable delay

d. **Adjustments to Operating Expenses.** Base year and/or current year operating expenses may be averaged with other expense levels for other years or amortized or adjusted by the CPI or to reflect levels that are normal for residential Rental Units or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses and providing a Fair Return. If the claimed operating expense levels are exceptionally high compared to prior expense levels and/or industry standards the Landlord shall have the burden of proof of demonstrating that they are reasonable and/or reflect recurring expense levels. Expenses which are exceptional and reasonable shall be amortized in order to achieve the objectives of this section.

e. **Projections of Base Year Operating Expenses in the Absence of Actual Data**

If the Landlord does not have base year operating expense data, it shall be presumed that operating expenses increased by the percentage increase in the CPI between the base year and the current year. This presumption is subject to the exception that specific operating expenses shall be adjusted by other amounts when alternate percentage adjustments are supported by a preponderance of evidence (such as data on changes in the rates of particular utilities or limitations on increases in property taxes.)

7. Allocation of Rent Increases

Rent increases authorized pursuant to this section shall be allocated as follows:

- a. Rent increases for unit-specific capital improvements shall be allocated to that unit;
- b. Rent increases for building-wide or common area capital improvements shall be allocated equally among all units;
- c. Rent increases resulting from the Net Operating Income analysis shall be allocated equally among all units;
- d. Notwithstanding the subsections above, the hearing examiner or the Board, in the

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DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard*

interests of justice, shall have the discretion to apportion the rent increases in a manner and to the degree necessary to ensure fairness. Such circumstances include, but are not limited to, units that are vacant or owner occupied.

8. Conditional Rent Adjustments for Proposed Capital Improvements

- a. In order to encourage necessary capital improvements, the Board allows a Landlord to petition for an upward rent adjustment based upon anticipated future expenses for capital improvements. The purpose of this procedure is to permit Landlords to seek advanced authorization for future rent adjustments based upon anticipated capital improvements. A petition under this Section should only be made for anticipated expenses that the Landlord intends to incur during the twelve month period following the date of final Board decision. This procedure should not be used for anticipated expenses for ordinary repairs and maintenance.
 - b. If the petition is granted in whole or in part, the rent increase shall be postponed until such time as the capital improvements are made and an Addendum authorizing the increases is issued.
 - c. No addendum shall be issued for such proposed capital improvements unless they are completed within twelve months from the date of final decision granting the conditional rent adjustment, unless the Landlord obtains an additional addenda authorizing an extension of the time period to complete the capital improvement. If supported by just cause such extensions shall be granted.
9. Any unit which received a vacancy rent increase pursuant to Civil Code section 1954.53 within the two years prior to the Fair Return application shall be ineligible for a rent increase for the portion of any rent increased based on the cost of proposed capital improvements.

10. Relationship of Individual Rent Adjustment to Annual General Adjustment

Any Individual Increase Adjustment established pursuant to this Section shall take into account the extent of any Annual General Adjustments the Landlord may be implementing, or otherwise be entitled to, at and during the time for which the Individual Adjustment is sought regarding the petitioning year, and the Individual Adjustment may be limited or conditioned accordingly.

If it is determined that the Landlord is not entitled to an Individual Adjustment, the Landlord may implement the full upcoming General Adjustment.

11. Limits to Annual Rent Adjustments Based on Maintenance of Net Operating Income Standard

City of Richmond Rent Program

DRAFT Rent Adjustment Regulations: *Chapter 9 (Standards for Individual Maximum Allowable Rent Adjustments) Regulation 905 (Maintenance of Net Operating Income (MNOI) Fair Return Standard*

A. Purpose

The purpose of this subsection (A) is to protect Tenants from substantial rent increases which are not affordable, and which may force such Tenants to vacate their homes and result in consequences contrary to the stated purposes of the Ordinance, namely, to maintain the diversity of the Richmond community, to preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped and the aged.

B. Rent Increase Limit

Notwithstanding any other provision of this regulation, the implementation of a Maximum Allowable Rent increase shall be limited each year as follows:

_____ (e.g. 15%) of the Maximum Allowable Rent on the date the petition is filed, or _____ (e.g. \$150 per month), whichever is greater.

On January 1st of each year beginning in February 2018, the \$___and/or ___% limitation shall be adjusted upward by 100% of the percentage increase in the Consumer Price Index, All Urban Consumers, for the San Francisco-Oakland-San Jose metropolitan area, less its shelter component, for the twelve month period ending on the preceding June 30th, rounded to the nearest dollar.

If the amount of any rent increase granted under these regulations exceeds this limit, any portion in excess of the annual limit shall be deferred.

In subsequent years deferred amounts of the allowable rent increase may be implemented.

At the end of each year the deferred amount of the increase shall be calculated and an interest allowance shall be calculated based on the standard set forth in Section ___ of this regulation. One twelfth of the interest allowance shall be added on to full monthly increase authorized under the MNOI standard.

12. Constitutional Right to a Fair Return.

No provision of this regulation shall be applied so as to prohibit the Board from granting an individual rent adjustment that is demonstrated by the Landlord to be necessary to meet the requirements of this ordinance and/or constitutional Fair Return requirements.



MEMORANDUM

TO: Chair Gray and Members of the Rent Board
FROM: Kenneth Baar, Consultant
DATE: February 21, 2018
SUBJECT: FAIR RETURN REGULATIONS

I. Introduction

A central purpose of allowing individual rent adjustments based on fair return standards is to ensure that landlords can obtain a return that meets **constitutional standards** in the event that the combination of annual general adjustments and allowable vacancy rent increases do not permit a fair return.

This memo contains a discussion of the specifics of a maintenance of net operating income (MNOI) fair return standard and a draft MNOI regulation.

Under Richmond’s Fair Rent, Just Cause for Eviction and Homeowner Protection ordinance owners of regulated rental units have a right to a fair return. on investment.

The Richmond Fair Rent and Homeowner Protection Ordinance states that in reviewing individual fair return petitions the Board or hearing examiner shall consider “the purposes of this chapter and shall specifically consider all relevant factors, including (but not limited to)” the following list of enumerated factors. (Section 11.100.070.(g));:

- (1) Increases or decreases in property taxes;*
- (2) Unavoidable increases or any decreases in maintenance and operating expenses;*
- (3) The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;*
- (4) Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings; equipment, or other housing services provided, or occupancy rules;*
- (5) Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;*
- (6) Failure on the part of the Landlord to provide adequate housing services, or to comply substantially*

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with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement;

(7) The pattern of recent rent increases or decreases;

While the ordinance lists the foregoing factors to be considered for evaluating petitions for fair return rent adjustments, it does not set forth a specific methodology (formula) for determining what rents will permit a fair return. Consideration of these factors is subject to the qualification that upward adjustments shall be allowed only when necessary to permit a fair return. The ordinance states:

It is the intent of this chapter that individual upward adjustments in the rent ceilings on units be made only when the Landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment. (Sec. 11.100.070.(g)(8))

The packet for the Rent Board meeting of December 20, 2017 included a lengthy memo on alternate fair return methodologies by this author, with a recommendation to adopt a Maintenance of Net Operating Income (MNOI) standard.

At that meeting, the Board directed staff to prepare a fair return regulation with an MNOI standard.

II. Description of the MNOI Standard

Under an MNOI standard apartment owners are entitled to increases in rents over the base period rent levels which are adequate to cover increases in operating costs since the base year and provide growth in net operating income over the base year level. Mortgage interest is not considered under an MNOI standard.

The following hypothetical illustrates the operation of the MNOI standard. The Maximum Allowable Rent must be adequate to cover the increases in operating expenses of \$30,000 since the base year and provide for growth in net operating income of \$30,000 based on the increase in the CPI since the base year.

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	CPI	Gross Income	Operating Expenses	Net Operating Income	Fair Return Allowable Rent Increase
Base Year	100	\$100,000	\$40,000	\$60,000	
Current Year	150	\$150,000	\$70,000	\$80,000	
Pct. Increase Base Year to Current Year	50%	50%	75%	33%	5%
Fair NOI (Base Year NOI Adjusted by the 50% (100% of the increase in CPI))				\$90,000	
Allowable Fair Return Rent Adjustment (= Fair NOI - Current NOI) (\$90,000 - \$80,000)					\$10,000

III. Experience under MNOI Standards

To place the role of fair return rent adjustments in perspective, it is noted that in cities that have had rent controls in place since California since the early 1980's, very few fair return petitions have been filed under MNOI standards. This outcome is probably due to the fact vacancy increases over an extended period have allowed rent increases and, therefore, increases in net operating income, which have exceeded the rate of increase in the Consumer Price Index (CPI). In the case of newly adopted ordinances with a recent base year, the impact of vacancy increases would be more limited, since the proportion of units that have had vacancies since the base year would be much lower

MNOI standards have been commonly used as a fair return standard under rent controls since the 1980's.

IV. Proposed MNOI Standard – Description and Discussion of Issues

The proposed standard is largely modeled on a composite of standards that have been in effect for decades. It includes:

- 1) A definition of fair return – base year net operating income (NOI) adjusted by a CPI factor,
- 2) A methodology for determining rental income,
- 3) A list of allowable and excluded operating expenses for the purposes of calculating net operating income,
- 4) A standard for including capital improvements and other non-recurring costs as amortized operating expenses,
- 5) An interest allowance for the amortized cost of capital improvements and other non-recurring expenses that are amortized.
- 6) Standards for the adjustment of the base year net operating income for the purposes of the MNOI analysis on the basis of exceptional situations. (A principal ground is disproportionately low rents in the base year.)

The ordinance sets forth a base date of July 21, 2015 for setting rents pursuant to the Annual General Adjustment Standard. (Section 11.100.070 (a).

A. Selection of a Base Year

Under an MNOI standard it is necessary to establish a base year for the purposes of calculating a base year net operating income. The Rent Board has discretion in setting the base year under the fair return standard.

There are alternate rationales for choosing 2014 or 2015 as a base year. 2014 could be considered as the last full year in which rents were set in the absence of regulation or the pending adoption of regulation. The use of 2015 as the base year would incorporate vacancy increases that were implemented prior to the actual effective date of rent control ordinance. If 2015 is set as the base year, rent levels would reflect the fact that some landlords may have known about an impending new rent control law and taken vacancy rent increases between July 21, 2015 and December 30, 2016.

In February 2015, the City Council directed staff to prepare a draft rent control ordinance. An ordinance was adopted in August 2015; however, the Council repealed the ordinance before it went into effect in response to petition compelling the Council to reconsider the enactment. Subsequently, an initiative measure was placed on the ballot. That measure was adopted in November 2016 and went into effect in December 2016.

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In the case of newly purchased properties, landlords may not have base period income and expense data. However, if new purchasers were able to use a base period that was later than the base period for other landlords because they did not have base year information, they would be able to incorporate vacancy increases into their base rent which occurred subsequent to the base year. In contrast pre-base year purchasers would not be able to incorporate these increases into their base rent.

In the case of properties purchased subsequent to the adoption of an MNOI standard, if the base year is later than the purchase, base year NOI could be inflated by minimizing operating expenses in the base year.

Purchasers subsequent to the adoption of an MNOI standard may be considered to be on notice that base year information would be required in order to make a fair return application.

A. Establishing Base Year Operating Expenses in the Absence of Data

MNOI standards usually provide for a method for projecting base year operating expenses in the event that the landlord does not have base year operating expense information. A reasonable presumption is that operating expenses increased by the percentage increase in the CPI since the base year. The proposed regulation includes this presumption and sets forth the principle that projections about increases for particular expenses may be modified based on evidence (e.g. information about increases in property taxes based on Proposition 13, information about utility costs based on rate trends, and/or changes in the level of services.)

B. Inflation Based Adjustment of Base Year Net Operating Income (“Indexing”) in Order to Provide a Fair Return

Fair return standards provide for varying rates of “indexing” net operating income in order to provide a fair return.

Under the Los Angeles, San Jose, and Oakland standards a fair net operating income is equal to the base year net operating income adjusted by 100% of the percentage increase in the CPI since the base year.¹ Santa Monica fair return regulations provide for indexing by 40% of the percentage increase in the CPI; West Hollywood provides for 60% indexing; and Berkeley provides for 65% indexing.²

The courts have held that freezing net operating income is confiscatory, but on three occasions have *specifically rejected* the view that 100% indexing is required and upheld standards which provided for indexing net operating income by 40% or 50% of the percentage increase in the

¹ Los Angeles Rent Stabilization, Just and Reasonable Guidelines, Sec. 242; Oakland, _____, San Jose Muni. Code, Sec. 17.23.810.

² Santa Monica Rent Control Board, Regulations; Sec. 4106; Berkeley Rent Stabilization Board Regulations Sec. 1264, West Hollywood Municipal Code Sec. 17.44.030 (h).

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CPI.³ In 2001, in *Galland v. Clovis*, the State Supreme Court held that the concept of “fair rate of return” is a legal term that refers to a “**constitutional minimum.**”⁴

While a limitation of indexing to less than 100% of the percentage increase in the CPI provides for growth in net operating income at less than the rate of increase in the CPI, under the typical circumstance, of an apartment purchase financed by a mortgage, cash flow will increase at a greater rate than the CPI. On the other hand, 100% indexing will still provide protection against unreasonable rent increases.

In the past three decades the differences between 100% indexing and for example 65% indexing have been in the range of one percent a year or less since the rate of increase in the CPI has usually been 3% or less. Differences in indexing rates have a greater impact over a longer period when the cumulative increases in the CPI between the base year and the current year are more substantial. **MNOI increases based on 100% indexing may be higher over a longer period, but over a longer period fewer landlords may qualify for MNOI increases due to vacancy rent increases.** *The following table demonstrates the differences in potential increases using 100%,75% and 50% indexing of CPI.*

³ See *Berger v. City of Escondido*, 127 Cal. App. 4th 14-15 (2005); *Stardust v. Ventura*, 147 Cal. App.4th 1170, 1181-82 (2007); *Colony Cove Properties v. City of Carson*, 220 Cal. App.4th 840, 876-877 (2013). These cases involved mobilehome park space rent regulations. However, the judicial doctrine regarding a constitutional fair return is the same for regulations of apartments and mobilehome park space rents. Typically an appellate court opinion on fair return issues will cite cases involving both types of regulations.

⁴ 24 Cal.4th 1004, 1026 (2001)

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Illustration of MNOI Standard Alternate "Indexing" Ratios

	CPI	Gross Income	Operating Expenses	Net Operating Income	
Base Year	100	\$100,000	\$40,000	\$60,000	
Current Year	150	\$150,000	\$70,000	\$80,000	
Pct. Increase Base Year to Current Year	50%	50%	75%	33%	
				Fair Net Operating Income	Fair Return Allowable Rent Increase
Base Year NOI Adjusted by 25% (50% of the 50% increase in CPI)				\$75,000	None
(Base Year NOI Adjusted by 37.5% (75% of the 50% increase in CPI)				82,500	\$2,500
(Base Year NOI Adjusted by 50% (100% of the 50% increase in CPI)				\$90,000	\$10,000

C. Allowance for Amortized Cost of Capital Improvements

The proposed MNOI standard for Richmond provides for the inclusion of the amortized costs of capital improvements as an operating expense. Rent Boards have usually adopted their own amortization schedules for capital improvements which have a detailed breakdown of types of capital improvements, with amortization periods ranging from 5 to 20 years. These schedules are in contrast to the IRS depreciation schedule which has a few broad categories and provides for a 27.5 year amortization period for structural improvements.

Attachment A of this memo includes the amortization schedule of the Santa Monica Rent Control Board amortization schedule and the IRS depreciation allowance schedule.

Interest Allowance for Amortized Costs

The proposed interest allowance for amortized costs is uniform for all fair return increase adjustments rather than being based on the actual financing arrangements of the landlord. The rationale is that the all landlords should be provided with the same size rent increases for the same costs and capital improvements regardless of differences in their financing arrangements and/or whether the landlord used cash rather than financing to cover the costs. In three cases, the Court of Appeal has held that differences in allowable rent increases based on an owner's individual financing arrangements has no rational basis.⁵

The amount of the proposed interest allowance is tied to a prime mortgage rate index plus two points at the time the application is filed. This index is recommended because it is most closely tied to the cost of borrowing capital for real estate investments. More commonly, under fair return regulations the allowable interest rate is tied to the prime interest rate for borrowing.

On the following page is a hypothetical amortization with varying capital improvement amortization periods and interest rates, with explanations about how these varying amortization periods and interest rates would actually impact monthly rent increases.

⁵ *Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.*, 30 Cal.App.4th 84, 94 (1994); *Westwinds Mobile Home Park v. Mobilehome Park Rental Review Bd.*, 30 Cal.App.4th 84, 94 (1994); *Colony Cove Properties v. City of Carson*, 220 Cal.App. 840,871 (2013)

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Monthly Amortized Costs

Hypothetical Showing Impacts of Varying Amortization Periods and Interest Rates

The hypothetical below sets forth the monthly payments under alternate amortization standards with varying amortization periods and interest rates for a capital improvement that costs \$5,000 per unit.

To place the hypothetical in perspective, a few observations are noted:

1. Ten years after a fair return increase is permitted, only a small portion of units would be subject to the decision, and therefore, any rent allowances for capital improvements since they would become subject to vacancy decontrol during this period.
2. Improvements with longer amortization periods are more likely to have higher costs per unit.
3. The difference between the monthly allowances for 20 and 27.5 year amortization periods are not substantial.
4. The differences based on one or two percent differences in interest rates are not substantial.

AMORTIZED COST TABLE								
Units in Bldg	10							
Cost	Annual Interest Rate	Amortization Period Years	Amortization Period Months	Total Principal & Interest Life of Improvement	Total Interest Life of Improvement	Monthly Amortized Cost	Annual Amortized Cost	Monthly Cost Per Unit
Varying Amortization Periods - Same Interest Rate								
\$50,000.00	7.00%	5	60	\$59,403.60	\$9,403.60	\$990.06	11880.72	\$99.01
\$50,000.00	7.00%	7	84	\$63,389.26	\$13,389.26	\$754.63	9055.61	\$75.46
\$50,000.00	7.00%	10	120	\$69,665.09	\$19,665.09	\$580.54	6966.51	\$58.05
\$50,000.00	7.00%	15	180	\$80,894.54	\$30,894.54	\$449.41	5392.97	\$44.94
\$50,000.00	7.00%	20	240	\$93,035.87	\$43,035.87	\$387.65	4651.79	\$38.76
\$50,000.00	7.00%	25	300	\$106,016.88	\$56,016.88	\$353.39	4240.68	\$35.34
\$50,000.00	7.00%	28	330	\$112,796.57	\$62,796.57	\$341.81	4101.69	\$34.18
Same Amortization Period & Varying Interest Rates								
\$50,000.00	5.0%	15	180	\$71,171.43	\$21,171.43	\$395.40	4744.76	\$39.54
\$50,000.00	6.0%	15	180	\$75,947.11	\$25,947.11	\$421.93	5063.14	\$42.19
\$50,000.00	7.0%	15	180	\$80,894.54	\$30,894.54	\$449.41	5392.97	\$44.94
\$50,000.00	8.0%	15	180	\$86,008.69	\$36,008.69	\$477.83	5733.91	\$47.78
\$50,000.00	9.0%	15	180	\$91,283.99	\$41,283.99	\$507.13	6085.60	\$50.71
\$50,000.00	10.0%	15	180	\$96,714.46	\$46,714.46	\$537.30	6447.63	\$53.73

D. Adjustments of Exceptional Expense Levels

Commonly fair return petitions include one or more categories of exceptional operating expense levels for the current year.

If exceptional operating expense levels are incorporated into a fair return determination, they justify a rent level that will be higher than the level required to permit a fair return in future years when the level of operating expenses returns to its recurring level.

The proposed regulation authorizes adjustments of exceptional expense levels, based on prior year's expense levels, industry standards, and standards of reasonability.

E. Projections of Operating Expenses in the Absence of Actual Data

Under IRS regulations income property owners are required to maintain income and expense records for at least three years after a return is filed.⁶ The adoption of an MNOI standard provides notice that base year income and operating expenses data is required in order to submit a fair return petition.

MNOI standards commonly include provisions for making projections of base year operating expenses if an owner does not have records of actual expenses. Typically, they provide for presumptions about the percentage increase in operating expenses between the base year and the current year. The proposed regulation includes such provisions.

F. Ceilings on Amount of Rent Increases within a Year

Fair return regulations commonly place a ceiling on the amount of a rent increase that can be imposed in a single year in order to avoid rent shock for tenants. When a landlord is required to phase-in the rent increases required to provide a fair return, the landlord is also entitled to interest on the portion of the fair return increase that is delayed because the increase is phased-in.

Santa Monica places a limit of the greater of 12% or \$50 on the amount of an annual increase for units occupied by low-income tenants.⁷ Berkeley places a cap on the allowable increase equal which is adjusted each year by the percentage increase in the CPI. The ceiling on the cap is equal to the greater of \$94.22 or 15% of the rent up to a ceiling of \$141.33.⁸ It's ceiling on allowable increases within a single year *only applies to rent increases based on historically low rents*.⁹ West Hollywood limits the allowable increase based on fair return to 12% in the first year and 12% in the second year, with an interest allowance of 10% on the deferred

⁶ See IRS Publication 583, "Starting a Business and Keeping Records."

⁷ Santa Monica Reg. 4107.

⁸ Calculation provided by Berkeley Rent Stabilization Board staff.

⁹ Berkeley Regulations Sec. 1274.

portion of the increase.¹⁰

The proposed regulation is modeled after the West Hollywood regulation, except that it provides for an interest allowance tied to mortgage interest rates plus two percent, rather than a fixed rate of 10%, which is high by current standards.

G. Allowances for Legal Expenses and Costs of a Fair Return Petition

Under the proposed regulation, the reasonable costs of obtaining a fair return rent adjustment are considered as an allowable operating expense if they were necessary in order to obtain a fair return. If no increase is permitted the expense would not be considered and if the expense is not reasonable, only a reasonable portion would be allowed.

State law provides that such expenses are an allowable expense if vacancy decontrol is not in effect.¹¹ In *Galland v. Clovis*, the California Supreme Court held that “the reasonable expenses of seeking rent increases” must be allowable.¹²

The proposed regulation also provides for the amortization of legal expenses that are not annually recurring. This type of requirement is standard and is provided for in the state law that would be applicable if vacancy decontrol were not in effect. The standard amortization period is five years.

Policy Alternatives To Be Addressed in Subsequent Memos

V. Passthroughs of Amortized Costs of Capital Improvements without Fair Return Calculation

As indicated, the proposed regulation the amortized costs of capital improvements are included as operating expenses. Such an allowance is required in order to permit a fair return. At the same time, the inclusion of the allowance for capital improvement expenses under an MNOI standard does not exclude the adoption of regulations that permit rent adjustments for capital improvements without any consideration of overall income, operating expenses, and net operating income. The issues associated with a separate allowance for capital improvements and possible incentives for particular types of capital improvements will be discussed in a separate memo.

VI. Adjustments of Historically Low Rents

Some jurisdictions have authorized rent adjustments based on historically low rents without consideration of income, operating expenses, and net operating income. The issues associated with such an allowance will be discussed in a separate memo

¹⁰ West Hollywood Municipal Code Sec. 17.44.030 (h).

¹¹ Cal. Civil Code 1947.15

¹² 24 Cal.4th 1003, 1027-28 (2001)

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