

Regular Meeting of the Richmond Rent Board

July 18, 2018 | City Council Chambers

**Regulations to be considered by the
Richmond Rent Board Members for
Adoption.**

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Legal Principles to keep in mind

- The Richmond Rent Board is empowered to enact rules and regulations to fill up the details of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (“Rent Ordinance”).
- When Adopting proposed Regulations the Rent Board should always consider whether the Regulation is reasonably necessary to effectuate the purpose of Richmond’s Rent Ordinance.

Item H-1: Rooming & Boarding House Background

The Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (“Rent Ordinance”) fully exempts from its provisions “Rental Units in hotels, motels, inns, tourist homes and **rooming and boarding houses** which are rented primarily to transient guests for a period of fewer than fourteen (14) days.” *Richmond Municipal Code § 11.100.030*. Rent Board Regulation 201 mirrors R.M.C § 11.100.030 exemption of rooming and Boarding House.

Item H-1: The Issue

Currently neither the Regulation nor the Rent Ordinance explains what constitutes a rooming and boarding house. This lack of clarity complicates determining whether or not a property is fully exempt, since the full exemption is predicated upon whether the property is a rooming and boarding house.

Item H-1: Staff's proposal regarding Rooming & Boarding House

Staff members are proposing a Regulation that does the following:

- Define rooming and boarding houses that follows the City of Richmond's Zoning Code definition
- Establish a list of factors staff must consider when making a determination as to what constitutes a rooming and boarding house.

Item H-1: City of Richmond's Zoning Code Definition of Rooming and Boarding

Richmond Municipal Code Section 15.04.020(122) defines Rooming and Boarding houses as:

Rooming and Boarding house means any building or portion thereof other than a hotel where lodging is available for permanent occupancy and is provided with or without meals for 5 or more persons for compensation. Definition includes clubs, fraternities, and sororities, etc.

Item H-1: Proposed Regulation 201.5

Proposed Regulation 201.5 Rooming and Boarding Houses.

- A. For purposes of Regulation 201, Rooming and Boarding house(s) shall mean any building or portion thereof other than a hotel containing at least five (5) rooms individually offered for rent or rented to at least five tenants under separate Rental Housing Agreements.
- B. Where any building, structure, or part thereof is considered a Rooming and Boarding house, each room shall be treated as an individual Rental Unit and must be individually registered with the Rent Program, in a manner consistent with Chapter 4 of these Regulations.

Item H-1: Proposed Regulation 201.5, Cont'd

C. Use of a single Rental Housing Agreement shall not be dispositive in determining whether a building, structure, or part thereof is a Rooming and Boarding house. Rather, the following factors shall be considered by the Rent Program when determining whether a building, structure, or part thereof is a Rooming and Boarding house:

- a) Whether the Landlord or Tenant maintains control over Tenant Replacement;
- b) Whether there is a single or multiple Rental Housing Agreement(s);
- c) The relationship between the Tenants of the Rooming and Boarding house;
- d) How Rent is distributed, collected, and/or paid to the Landlord;
- e) Access to common areas and/or housing services; and
- f) The period of occupancy set forth in each single or multiple Rental Housing Agreement.

This is not an exhaustive list and the Rent Program may consider other evidence that has a tendency to prove or disprove that a particular building, structure, or part thereof is a Rooming and Boarding house.

Item H-1: Recommended Action

ADOPT Regulation 201.5, defining the meaning of rooming and boarding houses and creating standards that must be followed when determining whether a property is considered a rooming and boarding house – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

Item H-2: Security Deposit Background

The Rent Ordinance purpose is to promote “neighborhood and community stability, healthy housing, and affordability for renters in the City of Richmond by controlling excessive rent[s]...to the greatest extent allowable under California law...” *Richmond Municipal Code Section 11.100.010.*

To achieve this purpose, the Rent Ordinance broadly defines rents and includes security deposits within its definitions. *Richmond Municipal Code Section 11.100.040(j)*

Finally, the Rent Ordinance obligates the Rent Board to promulgate Rules and Regulations that will further the purpose of the Ordinance.

Item H-2: The Issue

- Staff members have received complaints relating to security deposits. Specifically, there have been numerous attempts to increase security deposit amounts after a tenancy has commenced.
- Because security deposits are considered rent, the Rent Board currently permits a tenant to petition for a rent overcharge where the security deposit has been increased.
- However, the authorizing Regulation, Regulation 911, does not specify the circumstances where a retention or acceptance of a security deposit is impermissible, or what amount of security is proper to charge during a tenancy if any.
- Because it does not address those issues, the Regulations do not provide enough clarity for Landlords and Tenants to ascertain their rights and obligations.

Item H-2: Staff's proposal regarding Security Deposit

Staff is proposing Regulations that would explain the circumstances where it is permissible to increase security deposits, and/or file a petition based on a Rent overcharge.

Item H-2: Civil Code 1950.5

California Civil Code Section 1950.5 defines and regulates the use of “security for a rental agreement for residential property.”

Among other things, California Civil Code Section 1950.5 governs

- How the security deposit may be used by the Landlord
- When the deposit must be refunded to the Tenant
- Limits the amount of security deposit the Landlord may demand to an amount not to exceed two times the monthly rent for unfurnished Rental Units, and three times the monthly rent for furnished Rental Units.

California Civil Code Section 1950.5 does not:

- Govern what the amount of “rent” must be in determining the security deposit limit
- Govern the frequency that the security deposit can be increased.

**Item H-2:
Proposed
Regulation
1101**

1101. Security Deposit Cannot be Increased During the Tenancy

- A. At the inception of a tenancy, a Landlord may set the security deposit in accordance with California Civil Code Section 1950.5 et seq, as amended.

However, where a Landlord demands, accepts, or retains any payment as a security deposit within the meaning of California Civil Code Section 1950.5 et seq, as amended, the security deposit shall not be increased during the tenancy.

The tenancy shall be measured by the existence of at least one original occupant occupying the Rental Unit as described in Regulation 703 and Regulation 706 .

Where all of the original occupants have voluntarily vacated the Rental Unit, the Landlord may reset the security deposit amount in accordance with California Civil Code Section 1950.5 et seq, as amended, and other applicable State law.

Item H-2: Proposed Regulation 1101, Cont'd

B. Notwithstanding Regulation 1101(A), where a pet is not a service animal or assistance animal, which includes emotional support animals, and where pets were prohibited or limited under the Rental Housing Agreement, a landlord may file a petition for an upward adjustment of the security deposit if the tenant provides written consent to the security deposit increase in exchange for being allowed to have a pet or pets. If an increase in the security deposit is granted, in no event shall the total security deposit exceed the limitations provided in California Civil Code Section 1950.5, et seq, as amended. Nothing in this section shall abrogate any rights afforded by Local, State or Federal law, including but not limited to, the Fair Housing Act and California Fair Employment and Housing Act.

Item H-2: Proposed Regulation 1102

1102. Security Deposit as Rent Overcharges

- A. Richmond Municipal Code Section 11.100.030(j) defines security deposit as Rent. Where a security deposit, or increase in a security deposit, is demanded, accepted, or retained in violation of Regulation 1101(A), there exists a Rent increase. A Tenant may file a Petition for Rent Overcharges pursuant to Regulation 911 with the Richmond Rent Program to challenge the Rent increase.
- B. California Civil Code Section 1950.5 et seq., as amended, establishes a Landlords' obligation to return a security deposit. Where a Landlord retains a security deposit in violation of California Civil Code 1950.5 et seq, as amended, such an act shall constitute a Rent overcharge and a Tenant may bring a petition for Rent Overcharges pursuant to Regulation 911 with the Richmond Rent Program.

Item H-2: Recommended Action

REMOVE Chapter 11 of the Regulations entitled “Remedies” and APPROVE a new Chapter 11 of the Regulation entitled “Security Deposit”

ADOPT Regulation 1101 describing the permissibility of security deposit increases, and ADOPT Regulation 1102 explaining the circumstances where a Tenant may file a petition based on an unlawful retention or increase in the security deposit– Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).