



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, August 15, 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 July 18, 2018, *Cynthia Shaw*
Regular Meeting of the Richmond Rent Board.

F-2. RECEIVE the July 2018 Rent Program *Paige Roosa*
Monthly Report.

G. REGULATIONS

G-1. AMEND Chapter 7 of the Rent Board *Nicolas Traylor*
Regulations to: (1) add Regulation 703.5 to *Charles Oshinuga*
create a petition process whereby a Landlord
may challenge whether the Rental Unit is the
original occupant’s Primary Residence; (2) add
Regulation 706.5 to create a petition process
allowing both Landlords and Tenants to
challenge the resetting of the initial rental rate
based on vacancy decontrol; (3) provide a
reference to the Rent Ordinance’s definition of
Primary Residence; (4) replace references to
“signed lease” with the Rent Ordinance’s
definition of Rental Housing Agreement; and
(5) replace the phrase “written notice” with
notice, consistent with existing case law.

- G-2.** AMEND Regulation 905(a)(6)(b)(viii) to reflect the definition of “Capital Improvement” provided in Section 11.100.070 of the Fair rent, Just cause for Eviction, and Homeowner Protection Ordinance.

*Nicolas Traylor
Charles Oshinuga*

H. RENT BOARD AS A WHOLE

- H-1.** RECEIVE a memorandum from Dr. Kenneth Baar concerning a Capital Improvement Regulation and DIRECT staff to collaborate with the Planning and Building Services Department to monitor the frequency with which property owners are investing in seismic safety improvements and devise Rent Board policy and/or program options for encouraging such improvements and educating community members about how to prepare for earthquakes.

Nicolas Traylor

- H-2.** DIRECT staff members to study the issue of the Short-Term Rental housing market as it relates to withdrawn accommodations and propose policy solutions that the Board could recommend to the City Council for consideration to mitigate possible adverse effects of Short-Term Rentals on the City’s rental housing supply.

*Nicolas Traylor
Charles Oshinuga*

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: August 15, 2018

Final Decision Date Deadline: August 15, 2018

STATEMENT OF THE ISSUE: The minutes of the July 18, 2018, Regular Meeting of the Richmond Rent Board require approval.

INDICATE APPROPRIATE BODY

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

ITEM

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

RECOMMENDED ACTION: APPROVE the minutes of the July 18, 2018 Regular Meeting of the Richmond Rent Board – Rent Program (Cynthia Shaw 620-5552).

AGENDA ITEM NO:

F-1.

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RICHMOND, CALIFORNIA, July 18, 2018

The Regular Meeting of the Richmond Rent Board was called to order at 5:00 P.M.

PLEDGE TO THE FLAG

ROLL CALL

Present: Boardmembers Combs, Maddock and Chair Gray.

Absent: Boardmember Finlay and Vice Chair Gerould.

STATEMENT OF CONFLICT OF INTEREST

None.

AGENDA REVIEW

None.

INTRODUCTIONS FROM RENT PROGRAM STAFF MEMBERS

PUBLIC FORUM

Cordell Hindler invited the Rent Board to attend several community events in the month of July. He also mentioned that Executive Director, Nicolas Traylor gave a presentation on Rent Control at the Richmond Neighborhood Coordinating Council at their July 9th meeting and indicated he would allow Nicolas to provide an update to the Board on the outcome.

RENT BOARD CONSENT CALENDAR

On motion of Chair Gray, seconded by Boardmember Maddock, the item(s) marked with an (*) were approved.

*G-1. Approve the minutes of the June 20, 2018, Regular Meeting of the Richmond Rent Board.

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

*G-3. Receive the June 2018 Rent Program Monthly Report.

*G-4. Approve the re-chaptering of existing Rent Board Regulations for the purpose of centralizing and consolidating all Regulations into a chapter format.

REGULATIONS

H-1. The matter to 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 was presented by Staff Attorney, Charles Oshinuga. The presentation included rooming & boarding house background, a statement of the issue, a review of the proposed regulation regarding rooming & boarding house, the City of Richmond's Zoning Code definition of rooming and boarding house, contents of the proposed Regulation 201.5, and the recommended action. Discussion ensued. A motion by Boardmember Maddock, seconded by Chair Gray, to 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 and direct staff to investigate the possibilities within the purview of the Rent Board to regulate Air B & B type rentals, passed by the following vote: **Ayes:** Boardmembers Combs, Maddock, and Chair Gray. **Noes:** None. **Abstentions:** None. **Absent:** Boardmember Finlay and Vice Chair Gerould.

H-2. The matter to (1) remove Chapter 11 of the Regulations entitled "Remedies" and approve a new Chapter 11 of the Regulation entitled "Security Deposit", (2) 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 was presented by Staff Attorney, Charles Oshinuga. The presentation included security deposit background, a description of the issue, proposed policies regarding security deposits, a review of Civil Code 1950.5, and the contents of proposed Regulation 1101 and proposed Regulation 1102, and the recommended action. Discussion ensued. A motion by Chair Gray, seconded by Boardmember Combs, to (1) remove Chapter 11 of the Regulations entitled "Remedies" and approve a new Chapter 11 of the Regulation entitled "Security Deposit," (2) 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, passed by the following vote: **Ayes:** Boardmembers Combs, Maddock, and Chair Gray. **Noes:** None. **Abstentions:** None. **Absent:** Boardmember Finlay and Vice Chair Gerould.

REPORTS OF OFFICERS

Deputy Director, Paige Roosa gave a brief report on the success of the Realtor and Property Manager-focused workshop held on July 14th, 2018. She also gave an update on the upcoming presentation of the Rent Program Annual Report at the July 24, 2018, Regular Meeting of the Richmond City Council.

ADJOURNMENT

There being no further business, the meeting adjourned at 5:54 P.M.

Cynthia Shaw and Ramona Howell
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: August 15, 2018

Final Decision Date Deadline: August 15, 2018

STATEMENT OF THE ISSUE: The Monthly Activity Report is designed to provide members of the Rent Board and Richmond community with a summary of the Rent Program's activities for the month. With a now fully-staffed department, staff members find it timely to begin producing such reports on a monthly basis.

INDICATE APPROPRIATE BODY

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

ITEM

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

RECOMMENDED ACTION: RECEIVE the July 2018 Rent Program Monthly Report - Rent Program (Paige Roosa 620-6537).

AGENDA ITEM NO:

F-2.

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M E M O R A N D U M

TO: Chair Gray and Members of the Rent Board

FROM: Paige Roosa, Deputy Director

DATE: August 15, 2018

SUBJECT: JULY 2018 MONTHLY ACTIVITY REPORT

Introduction

The Monthly Activity Report is designed to provide members of the Rent Board and Richmond community with a summary of the Rent Program's activities for the month. With a now fully-staffed department, staff members find it timely to begin producing such reports on a monthly basis. It is anticipated the format, content, and detail of this report will evolve over time. Feedback concerning this report may be submitted via email to rent@ci.richmond.ca.us or by calling (510) 234-RENT (7368).

Summary of Activities

I. Counseling and Community Engagement

<i>Monthly Activity</i>	<i>Occurrences</i>	<i>Prior Month Occurrences</i>	<i>% Change from Prior Month</i>
Phone Call Consultations	808	821	-1.6%
Walk-In Consultations (includes appointments)	375	268	39.9%
Email Responses	327	334	-2.1%
Total Consultations	1,510	1,423¹	6.1%
Courtesy Compliance Letters Mailed	11	9	22.2%
Warning Letters Mailed	2	2	0%
Direct Referrals to Legal Service Providers	9	27	-66.7%
Declarations of Exemption Processed	542	230	135.7%
Request for Mediations Filed	11	N/A	N/A
Informal Mediations Held	9	N/A	N/A
Formal Mediations Held	2	3	-33.3%
Community Workshop Attendees (07/14/18 Realtor and Property Manager Focused Workshop)	57	19	200%

¹ The June 2018 Monthly Report, presented to the Board at their Regular Meeting on July 18, 2018, erroneously reported a total of 1,542 consultations. The corrected total is 1,423 consultations for the month of June 2018.

II. FY 2016-17 & FY 2017-18 Fee Collection

<i>Monthly Activity</i>	<i>Total</i>	<i>Prior Month Total</i>	<i>% Change from Prior Month</i>
Revenue Collected July 1, 2018 - June 31, 2018	\$61,153.75	\$88,979.25	-31.3%
Total Revenue Collected through July 31, 2018	\$1,939,428.61 (69.3% of total)	\$1,878,419.86 (67.0% of total)	3.2%
Invoices Generated	532	2,277	-76.6%

III. Filing of Notices

<i>Type of Form</i>	<i>Monthly Submissions/ Notices Filed</i>	<i>Prior Month Total</i>	<i>% Change from Prior Month</i>
Enrollment	79	51	54.9%
Excess Rent Complaint	2	2	0%
Proof of Excess Rent Refund	21	7	200%
Change in Terms of Tenancy Notices Filed	13	19	-31.6%
Rent Increase Notices Filed	767	82	835.3%
Termination Notices Filed	386	495	-22.0%
<i>Applicable Just Cause for Eviction - Nonpayment of Rent</i>	378	485	-22.0%
<i>Applicable Just Cause for Eviction - Breach of Lease</i>	4	6	-33.3%
<i>Applicable Just Cause for Eviction - Nuisance</i>	0	3	-100%
<i>Applicable Just Cause for Eviction - Withdrawal from the Rental Market</i>	1	0	N/A
<i>Applicable Just Cause for Eviction - Owner Move-In</i>	3	1	200%
Agent Authorization	16	9	77.8%
Petition for Maximum Allowable Rent Increase or Decrease	14	7	100%
Proof of Permanent Relocation Payment Form	0	1	-100%
Proof of Temporary Relocation Payment Form	0	0	0%
Unpaid Permanent Relocation Complaint	0	2	-100%
Unpaid Temporary Relocation Complaint	0	0	0%
Total Form Submissions/Notices Filed	1,298	675	92.3%

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: August 15, 2018

Final Decision Date Deadline: August 15, 2018

STATEMENT OF THE ISSUE: On February 21, 2018, the Rent Board adopted Chapter 7 of the Regulations, titled "Vacancy Rent Increases." This Chapter explains the circumstances whereby a Landlord may reset Rent to whatever the market will bear, a process known as "vacancy decontrol". One of these circumstances is where all of the Original Occupants have vacated the Rental Unit or no longer occupy the Rental Unit as their Primary Residence. Where such a circumstance exists, a Landlord may reset the Rent to market rate. Despite describing circumstances where a Landlord may reset the Rent to market rate, existing Rent Board Regulations do not authorize the filing of petitions where there is a dispute as to whether a qualifying circumstance has been met justifying the resetting of Rents. To remedy the situation, staff members are proposing regulations that would authorize Landlords and Tenants to challenge whether a qualifying circumstance has been met justifying the resetting of Rent to market rate. Specifically, the proposed Regulation 703.5 creates a petition process that would permit a Landlord to challenge whether or not a Rental Unit may be considered the original occupant's Primary Residence. Furthermore, proposed Regulation 706.5 would create a petition process allowing both Landlords and Tenants to challenge the resetting of the initial rental rate based on whether an event of vacancy decontrol has occurred.

INDICATE APPROPRIATE BODY

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

ITEM

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

RECOMMENDED ACTION: AMEND Chapter 7 of the Rent Board Regulations to: (1) add Regulation 703.5 to create a petition process whereby a Landlord may challenge whether the Rental Unit is the original occupant's Primary Residence; (2) add Regulation 706.5 to create a petition process allowing both Landlords and Tenants to challenge the resetting of the initial rental rate based on vacancy decontrol; (3) provide a reference to the Rent Ordinance's definition of Primary Residence; (4) replace references to "signed lease" with the Rent Ordinance's definition of Rental Housing Agreement; and (5) replace the phrase "written notice" with notice, consistent with existing case law— Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

AGENDA ITEM NO:

G-1.

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AGENDA REPORT

DATE: August 15, 2018

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Charles Oshinuga, Staff Attorney

SUBJECT: PROPOSED AMENDMENTS TO CHAPTER 7 OF THE RICHMOND RENT BOARD REGULATIONS CONCERNING PETITION PROCESSES AND DETERMINATION OF THE INITIAL RENTAL RATE FOLLOWING A VACANCY

STATEMENT OF THE ISSUE:

On February 21, 2018, the Rent Board adopted Chapter 7 of the Regulations, titled "Vacancy Rent Increases." This Chapter explains the circumstances whereby a Landlord may reset Rent to whatever the market will bear, a process known as "vacancy decontrol". One of these circumstances is where all of the Original Occupants have vacated the Rental Unit or no longer occupy the Rental Unit as their Primary Residence. Where such a circumstance exists, a Landlord may reset the Rent to market rate.

Despite describing circumstances where a Landlord may reset the Rent to market rate, existing Rent Board Regulations do not authorize the filing of petitions where there is a dispute as to whether a qualifying circumstance has been met justifying the resetting of Rents. To remedy the situation, staff members are proposing regulations that would authorize Landlords and Tenants to challenge whether a qualifying circumstance has been met justifying the resetting of Rent to market rate. Specifically, the proposed Regulation 703.5 creates a petition process that would permit a Landlord to challenge whether or not a Rental Unit may be considered the original occupant's Primary Residence. Furthermore, proposed Regulation 706.5 would create a petition process allowing both Landlords and Tenants to challenge the resetting of the initial rental rate based on whether an event of vacancy decontrol has occurred.

Finally, after careful review of Chapter 7, staff members have identified minor conflicts between the definitions included in the Regulations and the definitions included in the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance ("Rent Ordinance.") To resolve the conflict, staff members are proposing replacing

definitions contained within the Regulations with definitions provided in the Rent Ordinance.

RECOMMENDED ACTION:

AMEND Chapter 7 of the Rent Board Regulations to: (1) add Regulation 703.5 to create a petition process whereby a Landlord may challenge whether the Rental Unit is the original occupant's Primary Residence; (2) add Regulation 706.5 to create a petition process allowing both Landlords and Tenants to challenge the resetting of the initial rental rate based on vacancy decontrol; (3) provide a reference to the Rent Ordinance's definition of Primary Residence; (4) replace references to "signed lease" with the Rent Ordinance's definition of Rental Housing Agreement; and (5) replace the phrase "written notice" with notice, consistent with existing case law— Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Background

On February 21, 2018, the Rent Board adopted Chapter 7 of the Regulations, titled "Vacancy Rent Increases." This Chapter explains the circumstances whereby a Landlord may reset the initial rental rate to whatever the market can bear, a process known as "vacancy decontrol" pursuant to the Costa-Hawkins Rental Housing Act, a State law (Civil Code 1954.50 et. seq). Vacancy decontrol typically occurs when either 1) the Rental Unit has been entirely vacated and the vacancies were voluntary; or 2) where all the Original Occupants¹ of the Rental Unit have voluntarily vacated, leaving the Rental Unit occupied by only subtenants. Where there is an entire turnover of Original Occupants, a Landlord may reset the Rent to any amount they choose.

Chapter 7 of the Regulations proscribes requirements that Original Occupants must adhere to in order to maintain their "Original Occupant" status. For instance, where an Original Occupant has not maintained the Rental Unit as their Principal Residence, the Original Occupant shall no longer be considered an Original Occupant, and assuming no other Original Occupants dwell in the Rental Unit, the Landlord may reset the initial rental rate.

In describing the circumstances whereby a Landlord may reset initial rental rate, Chapter 7 of the Regulations utilizes definitions that may conflict with the Rent Ordinance. Furthermore, existing Rent Board Regulations do not authorize the filing of

¹ For the purposes of Regulation 703, the term "original occupant" includes any Tenant in the Rental Unit, with the Landlord's knowledge, who was residing in the unit on or before July 21, 2015, or when the Landlord last established an initial rent for the unit.

petitions where there is a dispute as to whether a qualifying circumstance has been met justifying the resetting of Rents. To remedy the situation, staff members are proposing amendments to Chapter 7 of the Rent Board's Regulations that would authorize Landlords and Tenants to challenge whether a qualifying circumstance has been met justifying the resetting of Rents.

Proposed Amendments to Ensure Consistent Definitions Between the Rent Ordinance and Rent Board Regulations

Chapter 7 of the Regulations utilizes the term "principal residence" where explaining that an Original Occupant must maintain a principal residence at the Rental Unit. The term "principal residence" is neither defined in the Rent Ordinance nor in the Rent Board Regulation. However, the Rent Ordinance does include the term and definition of "Primary Residence". Staff members acknowledge that the two terms are often used interchangeably, as they carry the same meaning; however, to maintain consistency between the Rent Ordinance and Rent Board Regulations, and for the sake of clarity, staff members recommend the term "principal residence" be replaced with "Primary Residence" and reference the Rent Ordinance's definition of Primary Residence within Chapter 7 of the Regulations.

Additionally, Chapter 7 of the Regulations utilizes the terms "agreement" and "lease" in describing requirements that a subtenant must meet to be considered an Original Occupant. The current usage of these terms conflicts with the Rent Ordinance's definition that covers agreements. Specifically, the Rent Ordinance defines a Rental Housing Agreement to be "an agreement, oral, written, or implied, between a Landlord and Tenant for use or occupancy of a Rental Unit and for Housing Services." *Richmond Municipal Code Section 11.100.030(k)*. Not only does this definition in the Rent Ordinance provide greater protection to Tenants than terms such as "agreement" or "written lease" otherwise would not provide, it fully covers the field of lease agreement, subsuming the terms "agreement" and "lease", and disallowing for the usage of terms that would narrow its scope or impede its impact. As such, where the Regulations use the terms "agreement" or "lease," they conflict with the Rent Ordinance's definition of Rental Housing Agreement because a Rental Housing Agreement includes oral and implied agreements, whereas a signed lease agreement precludes both oral and implied agreements. To ensure that protections provided by the Rent Ordinance are being effectuated through Rent Board Regulations, staff members propose amending potentially ambiguous terms that refer to a lease agreement to the term "Rental Housing Agreement," as used in the Rent Ordinance.

Proposed Amendments to Regulation 706(C) to Address Obtuse Outcomes based on Technicalities.

Regulation 706(C) provides the circumstances whereby a prior subtenant may be considered an Original Occupant. Specifically, Regulation 706(C) explains, in pertinent part, that:

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...*(Emphasis added)*

Staff members find that the requirement of written notice does not achieve the purported goal of Chapter 7 of the Regulations or the Rent Ordinance and has the potential to lead to obtuse results. Placing aside the unfounded assumption of literacy, there could exist instances where a Landlord who has either oral or constructive notice of an Original Occupants departure is still able to reset the initial rental rate because of the Original Occupant's failure to provide written notice. Such a technicality undermines the legitimacy of the Regulations and runs counter to the purpose of the Rent Ordinance. If the concern of the Regulation is notice, then the form of notice is only relevant when notice is contested. The current rule would swallow all other forms of legitimate notice and lead to odd results. To resolve this issue, Staff is proposing amending the phrase "written notice" to simply "notice."

Proposed Regulations 703.5 and 706.5 would permit both Landlords and Tenants to challenge the resetting of initial rental rate based on change of occupancy status

As mentioned, Chapter 7 of the Rent Board Regulations explains the circumstances whereby a Landlord may reset the initial rental rate to whatever the market can bear. These circumstances rely on whether there has been a complete turnover of Original Occupants and are encapsulated in two occurrences: 1) where the Original Occupants no longer maintain the Rental Unit as a Primary Residence or 2) where all the Original Occupants voluntarily vacate the Rental Unit.

Challenging whether the Original Occupant maintains the Rental Unit as a Primary Residence

Regulation 703 implies that where the Original Occupants no longer maintain the Rental Unit as their Primary Residence, the occupants lose their "rent control protection" and upon proper notice the Landlord may reset the initial rental rate to whatever the market can bear. Despite describing the circumstances where a Landlord may or may not reset the Rents, Regulation 703 does not address situations where there is an agreement as to whether the Rental Unit has been maintained as a Primary Residence. In instances where such a disagreement arises or where the occupancy status of an original occupant is unclear, a Landlord should be apply to file a petition for a determination. Because no such process currently exists, Staff is proposing Regulation 703.5.

Regulation 703.5, would create a petition process permitting Landlord's to challenge whether the Rental Unit is the original occupants Primary Residence.

Challenging whether all the Original Occupants have voluntarily vacated the Rental Unit

Chapter 7 of the Rent Board Regulations proscribes limits to a Landlords ability to reset the initial rental rate. Generally, Chapter 7 explains that vacancies must be voluntary in order for "vacancy decontrol" to attach. Where the vacancy is involuntary, the Rental Unit has no experienced a complete turnover of all Original Occupants and the subsequent Occupants Rents must not exceed the amount the prior Occupants were paying. Additionally, there may exist circumstances where subtenants of Original Occupants may themselves be considered Original Occupants, thereby protecting them from an occurrence of "vacancy decontrol". Despite the fact that Chapter 7, explain various rights and obligations of Landlords and Tenants, it does not provide a means whereby a Landlord or Tenant may assert their rights. Landlords may want to be cautious and receive a determination from the Rent that their has been a complete turnover of Original Occupants, prior to resetting Rents. On the other hand, Tenants may want to challenge a Landlord's resetting of the Rents on the grounds that they themselves are Original Occupants or the prior vacancy was not voluntary. Whatever the basis, Landlords and Tenants need to be able to assert their rights described in Chapter 7. To achieve that end, Staff is recommending the Rent Board adopt proposed Regulation 706.5. Regulation 706.5 would create a petition process allowing both Landlords and Tenants to establish the propriety of the resetting of the initial rental rate based on whether an event of vacancy decontrol has occurred.

Conclusion

Staff members recommend the Rent Board adopt the aforementioned amendments to Chapter 7 of the Rent Board Regulations to ensure consistency of terms between the Rent Ordinance and adopted Rent Board Regulations, and to authorize Landlords and Tenants to challenge whether a qualifying circumstance has been met justifying the resetting of initial rental rates.

DOCUMENTS ATTACHED:

Attachment 1 – Chapter 7 of the Rent Board Regulations (Redline Version)

Attachment 2 – Chapter 7 of the Rent Board Regulations (Clean Version)

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ITEM G-1 ATTACHMENT 1

Chapter 7: Vacancy Rent Increases

700. New Maximum Allowable Rent

Pursuant to Civil Code Section 1954.50, et seq. ~~as amended, of the Civil Code~~, the Landlord may establish the lawful Maximum Allowable Rent for any Controlled Rental Unit consistent with this ~~R~~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.

A. In these Regulations the terms "new Maximum Allowable Rent" and "initial rental rate" shall have a meaning consistent with Richmond Municipal Code Section 11.100.070 et seq, as amended, and shall 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.

[Adopted February 21, 2018]

701. 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. ~~as amended,~~ 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).

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- (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.
- (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.

[Adopted February 21, 2018]

702. Voluntary and Non-Voluntary Vacancies

- A. For the purposes of this Chapter, 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;

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- (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:
- (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; or
 - (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.

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- (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.

[Adopted February 21, 2018]

703. 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~~ **Primary Residence** ~~as defined in Richmond Municipal Code Section 11.100.030(h)~~. 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.

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 ~~Richmond Municipal Code Section 11.100.0450(8a)(1) of the Ordinance~~.

[Adopted February 21, 2018]

703.5. Challenging a Tenant's Occupancy Status

- A. A Landlord may file a petition contesting whether an original occupant maintains a Primary Residency within the Rental Unit. All petitions and hearings must be filed and conducted in accordance with Chapter 8 of these Regulations.**
- B. Where a Landlord files a petition pursuant to Regulation 703.5(A), the Landlord shall bear the burden of proof of establishing by a prima facie showing that the Tenant does not occupy the Rental Unit as a Primary Residence. Primary Residence shall have the meaning defined in Richmond Municipal Code Section 11.100.030(h). Where the Landlord has met the prima facie threshold of evidence demonstrating that the Tenant does not occupy the Rental Unit as a Primary Residence, the burden of proof shall shift to the Tenant, and the Tenant must demonstrate by a preponderance of the evidence that the Rental Unit has been used as a Primary Residence. The Hearing Examiner shall weigh the relevant evidence submitted by both the petitioner and the respondent in making a determination as to whether the Tenant has not maintained the Rental Unit as a Primary Residence. For purposes of this provision, prima facie shall mean sufficient evidence to establish a fact or raise a presumption unless disproved.**
- B.C. If the Hearing Examiner determines that the Tenant did not maintain the Rental Unit as a Primary Residence, then any rent increase properly noticed by the Landlord shall become**

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effective on the specified date contained within a proper notice of rent increase or on the date rent is next due following the Hearing Examiner's decision, whichever is later.

704. Increase and Decrease Petitions

Nothing in this Chapter prohibits Tenants or Landlords from filing rent adjustment petitions pursuant the Board's regulations.

[Adopted February 21, 2018]

705. Fraud or Intentional Misrepresentation

Any increase in the Maximum Allowable Rent authorized pursuant to this ~~R~~Regulation that is obtained by fraud or misrepresentation by the Landlord or the Landlord's agent or employee shall be void.

[Adopted February 21, 2018]

706. Subletting

A. An owner may increase the rent by any amount allowed by Civil Code section 1954.50 et seq., as amended, and Section 706(B) of this ~~Chapter~~Regulation, 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 resides 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 402(A)(1) shall be filed with the Board.

B. Where one or more of the occupants of the Rental Unit pursuant to the ~~agreement~~Rental Housing Agreement with the owner, remain an occupant in lawful possession of the Rental Unit, this Chapter shall not apply to partial changes in occupancy of the Rental Unit made with the consent of the owner. Nothing contained in this Chapter 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 have a R~~rental Housing aAgreement 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 r~~signed a lease or Rrental Housing aAgreement 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

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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.

- 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.

[Adopted February 21, 2018]

706.5. Challenging a new initial rent based on Tenant status.

A. A Landlord or Tenant may file a petition for a determination as to whether the provisions of Regulation 706, et seq., or other applicable Regulations of this Chapter have been met warranting the setting of a new initial rent. Where a Landlord or Tenant files a petition pursuant to this Regulation, the petition must conform to the procedural requirements set forth in Chapter 8 of these Regulations. In addition, the Petition shall contain a statement of the issue, the relief being sought, and shall include supporting evidence.

B. The Petitioner shall bear the burden of proof of establishing by a preponderance of the evidence that which is asserted by the Petition. The Hearing Examiner may only address issues raised in both the petition and objections, and where appropriate, the Hearing Examiner may consider issues of Rent overcharges and make orders of relief premised on Rent overcharges.

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707. 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

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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.

[Adopted February 21, 2018]

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Chapter 7: Vacancy Rent Increases

700. New Maximum Allowable Rent

Pursuant to Civil Code Section 1954.50, et seq. as amended,, 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.

- A. In these Regulations the terms "new Maximum Allowable Rent" and "initial rental rate" shall have a meaning consistent with Richmond Municipal Code Section 11.100.070 et seq, as amended, and shall 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.

[Adopted February 21, 2018]

701. 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. as amended, and any Board regulations enacted consistent therewith, except where any of the following applies:
- (1)
- a. The previous tenancy has been terminated by the Landlord pursuant to Civil Code Section 1946, or;
 - b. The previous tenancy has been 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).

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- (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.
- (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.

[Adopted February 21, 2018]

702. Voluntary and Non-Voluntary Vacancies

- A. For the purposes of this Chapter, 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;

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- (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:
- (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; or
 - (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.

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- (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.

[Adopted February 21, 2018]

703. 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 Primary Residence as defined in Richmond Municipal Code Section 11.100.030(h). 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.

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 Richmond Municipal Code Section 11.100.050(8).

[Adopted February 21, 2018]

703.5. Challenging a Tenant's Occupancy Status

- A. A Landlord may file a petition contesting whether an original occupant maintains a Primary Residency within the Rental Unit. All petitions and hearings must be filed and conducted in accordance with Chapter 8 of these Regulations.
- B. Where a Landlord files a petition pursuant to Regulation 703.5(A), the Landlord shall bear the burden of proof of establishing by a prima facie showing that the Tenant does not occupy the Rental Unit as a Primary Residence. Primary Residence shall have the meaning defined in Richmond Municipal Code Section 11.100.030(h). Where the Landlord has met the prima facie threshold of evidence demonstrating that the Tenant does not occupy the Rental Unit as a Primary Residence, the burden of proof shall shift to the Tenant, and the Tenant must demonstrate by a preponderance of the evidence that the Rental Unit has been used as a Primary Residence. The Hearing Examiner shall weigh the relevant evidence submitted by both the petitioner and the respondent in making a determination as to whether the Tenant has not maintained the Rental Unit as a Primary Residence. For purposes of this provision, prima facie shall mean sufficient evidence to establish a fact or raise a presumption unless disproved.
- C. If the Hearing Examiner determines that the Tenant did not maintain the Rental Unit as a Primary Residence, then any rent increase properly noticed by the Landlord shall become effective on the specified date contained within a proper notice of rent increase or on the date rent is next due following the Hearing Examiner's decision, whichever is later.

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704. Increase and Decrease Petitions

Nothing in this Chapter prohibits Tenants or Landlords from filing rent adjustment petitions pursuant the Board's regulations.

[Adopted February 21, 2018]

705. 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.

[Adopted February 21, 2018]

706. Subletting

A. An owner may increase the rent by any amount allowed by Civil Code section 1954.50 et seq., as amended, and Section 706(B) of this Regulation, 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 resides 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 402(A)(1) shall be filed with the Board.

B. Where one or more of the occupants of the Rental Unit pursuant to the Rental Housing Agreement with the owner, remain an occupant in lawful possession of the Rental Unit, this Chapter shall not apply to partial changes in occupancy of the Rental Unit made with the consent of the owner. Nothing contained in this Chapter 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 have a Rental Housing 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 Rental Housing Agreement with the landlord; and (3) the Landlord has not accepted rent after receiving 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

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six months after receiving written notice of the last original occupant's departure, by agreeing in writing with the remaining tenants to do so.

- 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.

[Adopted February 21, 2018]

706.5. Challenging a new initial rent based on Tenant status.

- A. A Landlord or Tenant may file a petition for a determination as to whether the provisions of Regulation 706, et seq., or other applicable Regulations of this Chapter have been met warranting the setting of a new initial rent. Where a Landlord or Tenant files a petition pursuant to this Regulation, the petition must conform to the procedural requirements set forth in Chapter 8 of these Regulations. In addition, the Petition shall contain a statement of the issue, the relief being sought, and shall include supporting evidence.
- B. The Petitioner shall bear the burden of proof of establishing by a preponderance of the evidence that which is asserted by the Petition. The Hearing Examiner may only address issues raised in both the petition and objections, and where appropriate, the Hearing Examiner may consider issues of Rent overcharges and make orders of relief premised on Rent overcharges.

707. 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.

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- 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.

[Adopted February 21, 2018]

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AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: August 15, 2018

Final Decision Date Deadline: August 15, 2018

STATEMENT OF THE ISSUE: On March 21, 2018, the Rent Board adopted Regulation 905 titled "Maintenance of Net Operating Income (MNOI) Fair Return Standard." Regulation 905(A)(6)(b)(viii) defines Capital Improvements and proscribes applicable limitations therein. However, the definition and limitations provided by Regulation 905(A)(6)(b)(viii) does not include the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance ("Rent Ordinance") proscribed limitation/parameters on Capital Improvements. Namely, the Regulation fails to limit Capital Improvement to those which are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and distinguish these Capital Improvements from ordinary repair, replacement and maintenance. To reconcile this disconnect, Staff is recommending the Rent Board amend Regulation 905(A)(6)(b)(viii), to include the Rent Ordinance's parameters placed on Capital Improvements.

INDICATE APPROPRIATE BODY

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

ITEM

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

RECOMMENDED ACTION: AMEND Regulation 905(a)(6)(b)(viii) to reflect the definition of "Capital Improvement" provided in Section 11.100.070 of the Fair rent, Just cause for Eviction, and Homeowner Protection Ordinance – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

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G-2.

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AGENDA REPORT

DATE: August 15, 2018

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Charles Oshinuga, Staff Attorney

SUBJECT: AMENDMENT TO REGULATION 905(A)(6)(b)(viii) TO REFLECT THE DEFINITION OF "CAPITAL IMPROVEMENT" PROVIDED IN THE RENT ORDINANCE

STATEMENT OF THE ISSUE:

On March 21, 2018, the Rent Board adopted Regulation 905 titled "Maintenance of Net Operating Income (MNOI) Fair Return Standard." Regulation 905(A)(6)(b)(viii) defines Capital Improvements and proscribes applicable limitations therein. However, the definition and limitations provided by Regulation 905(A)(6)(b)(viii) does not include the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance ("Rent Ordinance") proscribed limitation/parameters on Capital Improvements. Namely, the Regulation fails to limit Capital Improvement to those which are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and distinguish these Capital Improvements from ordinary repair, replacement and maintenance. To reconcile this disconnect, Staff is recommending the Rent Board amend Regulation 905(A)(6)(b)(viii), to include the Rent Ordinance's parameters placed on Capital Improvements.

RECOMMENDED ACTION:

AMEND Regulation 905(a)(6)(b)(viii) to reflect the definition of "Capital Improvement" provided in Section 11.100.070 of the Fair rent, Just cause for Eviction, and Homeowner Protection Ordinance – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Summary of the Issue

The Rent Ordinance places limits on what constitutes a permissible “Capital Improvement” to include:

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... *Richmond Municipal Code Section 11.100.070(g)*.

On March 21, 2018, the Rent Board adopted Regulation 905 titled “Maintenance of Net Operating Income (MNOI) Fair Return Standard.” The definition of “Capital Improvement” in Rent Board Regulation’s 905(A)(6)(b)(viii) does not reflect the definition of “Capital Improvement” in Section 11.100.070 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance.

Regulation 905(A)(6)(b)(viii) defines Capital Improvements and proscribes applicable limitations as:

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:

The costs are amortized over the period set forth in Section (A)(6)(b)(viii) of this regulation and in no event over a period of less than thirty-six (36) 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.

Missing from the Regulation 905 definition of capital improvements are the Rent Ordinance's mandatory restrictions/parameters placed on acceptable Capital Improvements. Namely, the Regulation fails to limit the definition of "Capital Improvement" to those which are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and distinguish these Capital Improvements from ordinary repair, replacement and maintenance.

Proposed Amendments to Regulation 905

In so far as Regulation 905(A)(6)(b)(viii) is inconsistent with the Rent Ordinance, the Regulation must give way to the Rent Ordinance. Here, the Rent Ordinance limits acceptable Capital Improvements to those improvements which are not ordinary repair, replacement and maintenance improvements, and which are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety. As written, Regulation 905(A)(6)(b)(viii) permits Capital Improvements that may be ordinary repair, replacement or maintenance items, or improvements that are not necessary to maintain compliance with local codes affecting health and safety. Because such improvements would not qualify as Capital Improvements under the Rent Ordinance, there exists a conflict.

To reconcile this inconsistency, staff members are recommending the Rent Board amend Regulation 905(A)(6)(b)(viii) to reflect the definition of Capital Improvements provided in the Rent Ordinance.

DOCUMENTS ATTACHED:

Attachment 1 – Regulation 905(A)(6)(b)(viii) (Redline Version)

Attachment 2 – Regulation 905(A)(6)(b)(viii) (Clean Version)

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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 100% 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 2015 is the Base Year. The Base Year CPI shall be 2015, 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 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.

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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 may be 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:

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 is a difference in the number of rental units between the Base Year and the current year, in making calculations of net operating income in the Base Year and the current year, the rental income and expenses for the same number of units shall be used in calculating the net operating income for both periods.

The purpose of this provision is to ensure that a petitioner is not requesting that the current fair net operating income reach a level which was provided

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in the Base Year by a larger number of units or is limited to a net operating income which was formerly provided by a smaller number of units.

If there are units that are vacant or owner-occupied at the time a petition is filed which were rented in the Base Year, for the purposes of the MNOI analysis a rental income for the unit shall be calculated on the basis of average rents for comparable units in the building which have been permitted vacancy decontrol increases within the past two years. If there are no comparable units in the property rental income for the vacant or owner occupied units, the rent shall be calculated on the basis of recently established initial rents for comparable units in the City. If there are units that were rented in the current year, which were vacant or owner-occupied in the Base Year, for the purposes of the MNOI analysis a rental income for the unit for the Base Year shall be calculated on the basis of average rents for comparable units in the building in the Base Year. If there are no comparable units in the property, rental income for the vacant or owner occupied units in the Base Year shall be calculated on the basis of Base Year rents for comparable units in the City. In the alternative, the Hearing Examiner may use another reasonable methodology to insure compliance with the purposes of this subsection.

- 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

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- 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 provision of the utility is not considered because it is recouped from the Tenants on a cost pass-through basis..
- iv. Real property taxes and insurance, 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 UPON ESTABLISHMENT OF CAPITAL IMPROVEMENT REGULATION).
- 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 11.100.070 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 Improvements. Operating expenses include the amortized costs of capital improvements 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.

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Allowances for capital improvements shall be subject to the following conditions:

The costs are amortized over the period set forth in Section (A)(6)(b)(viii) of this regulation and in no event over a period of less than thirty-six (36) 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 improvement is not an ordinary repair, replacement, and/or maintenance, and is necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety in accordance with Richmond Municipal Code Section 11.100.070(g).

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.

Amortization of Capital Improvements and Expenses	
In amortizing capital improvements, the following schedule shall be used to determine the amortization period of the capital improvements	Years
<i>Appliances</i>	
Air Conditioners	10
Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5
Cabinets	10

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Carpentry	10
Counters	10
Doors	10
Knobs	5
Screen Doors	5
Fencing and Security	5
Management	5
Tenant Assistance	5
<i>Structural Repair and Retrofitting</i>	
Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
Electrical Wiring	10
Elevator	20
<i>Fencing</i>	
Chain	10
Block	10
Wood	10
<i>Fire Systems</i>	
Fire Alarm System	10
Fire Sprinkler System	20
Fire Escape	10
<i>Flooring/Floor Covering</i>	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
Fumigation Tenting	5
Furniture	5
Automatic Garage Door Openers	10
<i>Gates</i>	

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Chain Link	10
Wrought Iron	10
Wood	10
<i>Glass</i>	
Windows	5
Doors	5
Mirrors	5
<i>Heating</i>	
Central	10
Gas	10
Electric	10
Solar	10
Insulation	10
<i>Landscaping</i>	
Planting	10
Sprinklers	10
Tree Replacement	10
<i>Lighting</i>	
Interior	10
Exterior	5
Locks	10
Mailboxes	10
Meters	10
<i>Plumbing</i>	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
<i>Painting</i>	
Interior	5
Exterior	5
<i>Paving</i>	
Asphalt	10

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Cement	10
Decking	10
Plastering	10
Sump Pumps	10
Railings	10
<i>Roofing</i>	
Shingle/Asphalt	10
Built-up, Tar and Gravel	10
Tile	10
Gutters/Downspouts	10
<i>Security</i>	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
Sidewalks/Walkways	10
Stairs	10
Stucco	10
Tilework	10
Wallpaper	5
<i>Window Coverings</i>	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

- 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.

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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.
- 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

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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 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.

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- 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 twenty four (24) 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. Extensions may be granted due to reasonable delays in the completion of capital improvements as determined by the Hearing Examiner.
- (9) Any unit which received a vacancy rent increase pursuant to Civil Code section 1954.53 within one year 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

- 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 to fifteen percent (15%) of the Maximum Allowable Rent on the date the petition is filed.

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.

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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 (A)(6)(b)(ix) of this regulation. One twelfth (1/12) 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.

[Adopted March 21, 2018]

ITEM G-2
ATTACHMENT 2

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 100% 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 2015 is the Base Year. The Base Year CPI shall be 2015, 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 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.

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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 may be 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:

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 is a difference in the number of rental units between the Base Year and the current year, in making calculations of net operating income in the Base Year and the current year, the rental income and expenses for the same number of units shall be used in calculating the net operating income for both periods.

The purpose of this provision is to ensure that a petitioner is not requesting that the current fair net operating income reach a level which was provided

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in the Base Year by a larger number of units or is limited to a net operating income which was formerly provided by a smaller number of units.

If there are units that are vacant or owner-occupied at the time a petition is filed which were rented in the Base Year, for the purposes of the MNOI analysis a rental income for the unit shall be calculated on the basis of average rents for comparable units in the building which have been permitted vacancy decontrol increases within the past two years. If there are no comparable units in the property rental income for the vacant or owner occupied units, the rent shall be calculated on the basis of recently established initial rents for comparable units in the City. If there are units that were rented in the current year, which were vacant or owner-occupied in the Base Year, for the purposes of the MNOI analysis a rental income for the unit for the Base Year shall be calculated on the basis of average rents for comparable units in the building in the Base Year. If there are no comparable units in the property, rental income for the vacant or owner occupied units in the Base Year shall be calculated on the basis of Base Year rents for comparable units in the City. In the alternative, the Hearing Examiner may use another reasonable methodology to insure compliance with the purposes of this subsection.

- 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

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- 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 provision of the utility is not considered because it is recouped from the Tenants on a cost pass-through basis..
- iv. Real property taxes and insurance, 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 UPON ESTABLISHMENT OF CAPITAL IMPROVEMENT REGULATION).
- 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 11.100.070 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 Improvements. Operating expenses include the amortized costs of capital improvements 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.

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Allowances for capital improvements shall be subject to the following conditions:

The costs are amortized over the period set forth in Section (A)(6)(b)(viii) of this regulation and in no event over a period of less than thirty-six (36) 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 improvement is not an ordinary repair, replacement, and/or maintenance, and is necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety in accordance with Richmond Municipal Code Section 11.100.070(g).

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.

Amortization of Capital Improvements and Expenses	
In amortizing capital improvements, the following schedule shall be used to determine the amortization period of the capital improvements	Years
<i>Appliances</i>	
Air Conditioners	10
Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5
Cabinets	10

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Carpentry	10
Counters	10
Doors	10
Knobs	5
Screen Doors	5
Fencing and Security	5
Management	5
Tenant Assistance	5
<i>Structural Repair and Retrofitting</i>	
Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
Electrical Wiring	10
Elevator	20
<i>Fencing</i>	
Chain	10
Block	10
Wood	10
<i>Fire Systems</i>	
Fire Alarm System	10
Fire Sprinkler System	20
Fire Escape	10
<i>Flooring/Floor Covering</i>	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
Fumigation Tenting	5
Furniture	5
Automatic Garage Door Openers	10
<i>Gates</i>	

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Chain Link	10
Wrought Iron	10
Wood	10
<i>Glass</i>	
Windows	5
Doors	5
Mirrors	5
<i>Heating</i>	
Central	10
Gas	10
Electric	10
Solar	10
Insulation	10
<i>Landscaping</i>	
Planting	10
Sprinklers	10
Tree Replacement	10
<i>Lighting</i>	
Interior	10
Exterior	5
Locks	10
Mailboxes	10
Meters	10
<i>Plumbing</i>	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
<i>Painting</i>	
Interior	5
Exterior	5
<i>Paving</i>	
Asphalt	10

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Cement	10
Decking	10
Plastering	10
Sump Pumps	10
Railings	10
<i>Roofing</i>	
Shingle/Asphalt	10
Built-up, Tar and Gravel	10
Tile	10
Gutters/Downspouts	10
<i>Security</i>	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
Sidewalks/Walkways	10
Stairs	10
Stucco	10
Tilework	10
Wallpaper	5
<i>Window Coverings</i>	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

- 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.

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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.
- 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

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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 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.

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- 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 twenty four (24) 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. Extensions may be granted due to reasonable delays in the completion of capital improvements as determined by the Hearing Examiner.
- (9) Any unit which received a vacancy rent increase pursuant to Civil Code section 1954.53 within one year 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

- 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 to fifteen percent (15%) of the Maximum Allowable Rent on the date the petition is filed.

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.

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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 (A)(6)(b)(ix) of this regulation. One twelfth (1/12) 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.

[Adopted March 21, 2018]

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: August 15, 2018

Final Decision Date Deadline: August 15, 2018

STATEMENT OF THE ISSUE: According to the Association of Bay Area Governments (ABAG), in a major earthquake on the Hayward or San Andreas faults, it is estimated that five percent of the Bay Area's housing stock—approximately 150,000 units—will be immediately and permanently damaged, causing approximately \$85-90 billion in direct residential building-related economic losses. This loss of housing could have dramatic negative effects on Tenants and Landlords in the City of Richmond. The Rent Board has an opportunity to potentially mitigate such negative effects by establishing policy and programs to encourage seismic safety improvements in residential structures.

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 type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement | <input checked="" type="checkbox"/> Rent Board As Whole | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) | |

RECOMMENDED ACTION: RECEIVE a memorandum from Dr. Kenneth Baar concerning a Capital Improvement Regulation and DIRECT staff to collaborate with the Planning and Building Services Department to monitor the frequency with which property owners are investing in seismic safety improvements and devise Rent Board policy and/or program options for encouraging such improvements and educating community members about how to prepare for earthquakes – Rent Program (Nicolas Traylor 620-6564).

AGENDA ITEM NO:

H-1.

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AGENDA REPORT

DATE: August 15, 2018
TO: Chair Gray and Members of the Rent Board
FROM: Nicolas Traylor, Executive Director
SUBJECT: SEISMIC SAFETY AND THE RENT ORDINANCE

STATEMENT OF THE ISSUE:

According to the Association of Bay Area Governments (ABAG), in a major earthquake on the Hayward or San Andreas faults, it is estimated that five percent of the Bay Area's housing stock—approximately 150,000 units—will be immediately and permanently damaged, causing approximately \$85-90 billion in direct residential building-related economic losses.¹ This loss of housing could have dramatic negative effects on Tenants and Landlords in the City of Richmond. The Rent Board has an opportunity to potentially mitigate such negative effects by establishing policy and programs to encourage seismic safety improvements in residential structures.

RECOMMENDED ACTION:

RECEIVE a memorandum from Dr. Kenneth Baar concerning a Capital Improvement Regulation and DIRECT staff to collaborate with the Planning and Building Services Department to monitor the frequency with which property owners are investing in seismic safety improvements and devise Rent Board policy and/or program options for encouraging such improvements and educating community members about how to prepare for earthquakes – Rent Program (Nicolas Traylor 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item at this time. Staff members anticipate utilizing staff resources budgeted for Fiscal Year 2018-19 for the completion of this study.

¹Association of Bay Area Governments Resilience Program. "Housing." 2018. Accessed 08/08/18. <http://resilience.abag.ca.gov/housing/>

DISCUSSION:

Probability of Hayward Fault Earthquake and Anticipated Damage to Residential Structures

According to the Association of Bay Area Governments (ABAG), the Hayward fault has the greatest likelihood of rupturing in the next 30 years compared to all other faults in the Bay Area, with a 31 percent chance of an earthquake magnitude of 6.7 or higher.² Should the Hayward fault rupture, an estimated 7,200 residential buildings in Contra Costa County would be uninhabitable (Attachment 1). This figure represents approximately two percent of total residential buildings in the County. Building losses will differentiate depending on the type of structure, with multifamily and manufactured homes sustaining more significant damage compared to single family homes.³

The potential for residential destruction due to an earthquake in the City of Richmond may be particularly pronounced given the City's relatively old housing stock. The City's 2015-2023 Housing Element reports that after 30 years, most housing units show signs of deterioration and need reinvestment to maintain its condition. Without proper maintenance, housing that is over 50 years old requires major reinvestment to maintain its quality and appearance. Homeowners with older units may require assistance to upgrade conditions or such units will become substandard for use by homeowners or renters and many eventually become unsuitable for occupancy. It is estimated that as of 2013, 70.4 percent of Richmond's housing units were over 30 years old and that 47.6 percent were over 50 years old, which indicates an older housing stock.

Nexus with the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance and Services Provided by the Richmond Rent Program

The stated purpose of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance is to promote neighborhood and community stability, healthy housing, and affordability for renters in the City of Richmond by controlling excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring Landlords a fair and reasonable return on their investment and protecting homeowners (Section 11.100.010, Richmond Municipal Code.)

The high probability of a major earthquake in the Bay Area within the next 30 years and the projected damage associated with such an event poses a significant threat to homeowners and affordability for renters in the City of Richmond. Therefore, the Rent Board may find it prudent to examine the frequency with which property owners are investing in seismic improvements and devise Rent Board policy and/or program options for both encouraging such improvements and educating community members about how to prepare for earthquakes. Staff members anticipate collaboration with the

² Association of Bay Area Governments Resilience Program. "Contra Costa County Earthquake Program." 2018. Accessed 08/08/18. <http://resilience.abag.ca.gov/earthquakes/contracosta/>

³ Association of Bay Area Governments Resilience Program. "Expected Housing Losses in an Earthquake." 2018. Accessed 08/08/18. <http://resilience.abag.ca.gov/housing/losses/>

Planning and Building Services Department would be necessary to ensure effective implementation of any such policy or program.

Community education is a core component of the services provided by the Richmond Rent Program and presents one opportunity for the City to disseminate information about preparing for an earthquake to renters and homeowners. Indeed, in their list of identified actions cities can take to mitigate the negative effects of an earthquake, ABAG identifies the importance of community education in addition to creating an inventory of vulnerable buildings and making a plan for retrofitting homes that are likely to be damaged. The language of this recommendation is reproduced below, and contained within Attachment 2, page 7, of this report.

Educate homeowners, building owners, and tenants about their risks.

Everyone in the region – renter, homeowner, high income, or low income – can benefit from enhanced knowledge about risks to make smarter decisions to prepare for earthquakes. While there are many factors that influence how people choose to respond to risk, including what their neighbors are doing, knowledge of risks, and what can be done to help mitigate those risks, is fundamental. Making information easily accessible is important, such as through a city website, and conducting varied outreach to all communities can help with information sharing. Cities and counties can educate residents on options such as structural retrofit, bracing hot water heaters, mitigating brick chimneys, securing furniture, cupboards, and other interior falling hazards, preparing to shelter in place by making an earthquake kit with food, water, and other necessary supplies, and purchasing earthquake insurance (for both homeowners and renters).

Existing Policy Framework

2015-2023 Housing Element

State law requires every jurisdiction in California to adopt a comprehensive, long-term General Plan to guide its physical development; the Housing Element is one of the seven mandated elements of the General Plan. Housing Element law mandates that local governments adequately plan to meet the existing and projected housing needs of all economic segments of the community.

On May 19, 2015, the Richmond City Council adopted the 2015-2023 Housing Element. The Housing Element identifies the following actions with respect to seismic safety:

2015-2013 HOUSING ELEMENT		
Action	Description	Status
Program H-2.5.6: Soft-Story Building Inventory	Continue to maintain the City’s inventory of multi-story buildings with potential earthquake hazards and consider making it readily available to property owners and residents to raise awareness and encourage voluntary health and safety retrofits.	<p>Planning Staff completed a preliminary Soft Story Inventory for multi-family properties in the City. The Planning and Building Division held a community workshop on Earthquake Hazard Reduction and Soft Story Buildings on August 31, 2011. The workshop included presentations by representatives from Association of Bay Area Governments (ABAG), Enginious Engineering and participation by local structural engineers and the California Apartment Association. The workshop provided information on the potential risks and hazards of Soft Story Buildings, provided information about financial and professional resources for interested property owners and discussed best practices and existing Soft Story Ordinances in neighboring cities. The Building Division has a webpage dedicated to providing additional information and resources for interested property owners. The Planning and Building Division will continue to gather information and engage the public regarding Earthquake Hazard Reduction and Soft Story Buildings.</p> <p>UPDATE: Planning staff completed a preliminary Soft Story Inventory for multi-family properties in the City and identified at least 280 potential soft story structures.</p>
Program H-2.5.7: Soft-Story Building Ordinance	Study soft-story building ordinances in California to learn about effective practices being used to incentivize the seismic retrofitting of hazardous multi-story buildings. Consider adopting a soft-story ordinance based on the study’s findings and input from the community and landlords.	<p>The City developed a webpage regarding earthquake safety and hazards http://www.ci.richmond.ca.us/index.aspx?nid=2378.</p> <p>The City has initiated the Zoning Ordinance Update and will consider a soft-story building ordinance as part of that effort.</p> <p>UPDATE: On November 15, 2016, the Zoning and Subdivision of the Richmond Municipal Code (Ordinance 16-16) was adopted by the City Council. A Soft Story Building Ordinance is not included.</p>

Standard Plan Set A

The Planning and Building Services Department developed Standard Plan Set A to provide a low-cost method to help improve an older home's chances of withstanding an earthquake. When approved by the local building official, the plan set may be used to strengthen older single family homes and duplexes without the need for an engineer to develop costly site-specific plans and design calculations.

Standard Plan Set A applies only to one or two family residential structures consisting of two stories or less, with wood frame construction, a continuous perimeter foundation, cripple walls of less than four feet in height, less than four vertical feet of brick or stone veneer along the exterior walls, and roofing consisting of material other than clay tile. Standard Plan Set A includes bolting the cripple wall mudsill to the foundation, installing plywood brace panels to the cripple walls, and connecting the cripple wall to the floor above.

More information on Standard Plan Set A is accessible at <http://www.ci.richmond.ca.us/2378/Earthquake-Hazard-Reduction>.

Rent Board Regulations

Capital improvement policies within the context of rent control laws in California cities are varied in scope and approach. A memorandum to the Board from Dr. Kenneth Baar discusses the landscape of such policies and related considerations (Attachment 2).

With respect to capital improvement policies to incentivize certain types of investments, Dr. Baar reports:

New municipal requirements for seismic upgrading have become widespread in recent decades, requiring apartment owners to meet standards that were not in effect when the building was constructed or purchased by the current owner. Commonly, capital improvement standards allow for more favorable allowances of rent increases to cover the costs of seismic upgrades and improvements that increase energy efficiency and/or are for seismic work. Most commonly, the regulations applicable to incentivized improvements allow for 100% cost recovery, as opposed to lower percentages for capital replacements. Alternatively, incentivized improvements do not have to be justified with a fair return analysis in jurisdictions that require such consideration for capital replacements. San Jose limits rent increases for incentivized improvements to 3%.

Existing Rent Board Regulations allow for Individual Adjustments of the Maximum Allowable Rent for seismic retrofitting. Section 11.100.070(e) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance provides, "in making individual adjustments of the Annual Adjustable Rent Increase, the Board shall consider

the purposes of this Chapter and the requirements of law.” Section 11.100.070(g)(8) further clarifies, “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.” Therefore, any proposed capital improvement policy adopted, whether tied directly to MNOI or through an alternative stand-alone Fair Return analysis, must consider Fair Return in any adjustment of the Maximum Allowable Rent.

In March 2018, the Rent Board adopted standards for individual adjustments of the Maximum Allowable Rent utilizing a Maintenance of Net Operating (MNOI) fair return standard, which considers the costs of capital improvements, including structural and foundational retrofitting, in its determination of individual rent adjustments.

Regulation 905, adopted by the Board on March 21, 2018, permits the costs of retrofitting to be included in the calculation of Net Operating Income (Attachment 3). Such costs are amortized over a period of ten to 20 years, depending on the specific improvement.

Next Steps

Should the Rent Board direct staff to collaborate with the Planning and Building Services Department to monitor the frequency with which property owners are investing in seismic safety improvements and devise Rent Board policy and/or program options for encouraging such improvements and educating community members about how to prepare for earthquakes, staff members propose the following next steps, to be undertaken over the course of the next 12 months:

- Develop a strategy with the Planning and Building Services Department to monitor and document the frequency with which property owners are investing in seismic safety improvements
- Conduct case study research to understand the landscape of policies and programs in other cities in the Bay Area, such as Berkeley and Oakland, with respect to seismic safety and improvements, and the extent of Rent Board and Rent Program involvement in the implementation of such policies and programs
- Identify and evaluate the feasibility of potential policies and programs to incentivize investment and educate community members about seismic safety
- Consider including a workshop pertaining to seismic safety in the 2019 Richmond Rent Program Community Workshop Calendar

DOCUMENTS ATTACHED:

Attachment 1 - Bay Area Earthquake Residential Building Damage & Displacement
White Paper

Attachment 2 – Memorandum from Dr. Kenneth Baar Concerning a Capital
Improvement Regulation

Attachment 3 – Rent Board Regulations Chapter 9

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Bay Area Earthquake Residential Building Damage & Displacement White Paper

Dana Brechwald, Resilience Planner, MTC

dbrechwald@bayareametro.gov

Data by Hope Seligson, Seligson Consulting

haseligson@gmail.com

January, 2018

An earthquake on any of the 16 major faults in the Bay Area has the potential to significantly damage residential housing, displacing residents and causing significant financial impacts to homeowners, building owners, and tenants. ABAG has identified housing as a major cornerstone of the region's resilience – retaining existing housing is crucial to expediting and ensuring an effective disaster recovery. Limiting catastrophic housing damage keeps residents in their homes and not only helps people who may lack the resources to effectively recover from a disaster, but keeps communities intact.¹

Though many people are familiar with the San Andreas and Hayward faults, and indeed these are the faults capable of producing the largest earthquakes in the Bay Area, earthquake hazards vary throughout the region due to the existence of numerous smaller faults. While impacts from an earthquake on these faults will not be as widespread, they could still produce significant localized impacts. A fault map and a deaggregation map, showing which fault is likely to be the largest contributor to shaking hazard at any given point in the Bay Area, are included in Appendix A.

What will be the impacts of a major earthquake on the region's housing?

The impacts of an earthquake on the residential housing stock, and therefore residents, can be measured in a few ways. In this study, we estimated the number of uninhabitable buildings, the building damage dollar amount (calculated using 2014 building values), and number of displaced households (determined similar to uninhabitable buildings, but using assumptions about occupancy rate to convert units to households). The number of uninhabitable buildings was calculated using the assumption that 100% of single family or multifamily homes with complete damage will be uninhabitable; 65% of multifamily homes and 40% of

¹ More analysis of the region's fragile housing types, as well as where these fragile housing types house vulnerable community members, can be found in ABAG's 2015 report *Stronger Housing, Safer Communities: Strategies for Seismic and Flood Risks*. http://resilience.abag.ca.gov/projects/stronger_housing_safer_communities_2015/

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single family homes with extensive damage will be uninhabitable; and 40% of multifamily homes and 20% of single family homes with moderate damage will be uninhabitable.

San Andreas Scenario

In the earthquake scenario with the greatest impact to the region, a magnitude 7.8 on the San Andreas Fault (similar to the 1906 earthquake), approximately 198,700 households will be displaced from 68,900 uninhabitable buildings, with \$28.4 billion in direct residential damages. Approximately 35% of the displaced households (69,600) will be in San Francisco; San Mateo and Santa Clara Counties will also have large numbers of displaced households (42,200 and 47,200 respectively). In San Francisco, this number represents just over 20% of total households; in San Mateo County this is approximately 16% of households, but in more populated Santa Clara County these 47,200 households represent 7.8% of all households. Effects are much less severe for counties farther from the fault: in Solano, Contra Costa, and Napa Counties 1% or fewer households are anticipated to be displaced (0.5%, 1%, and 0.6%, respectively).

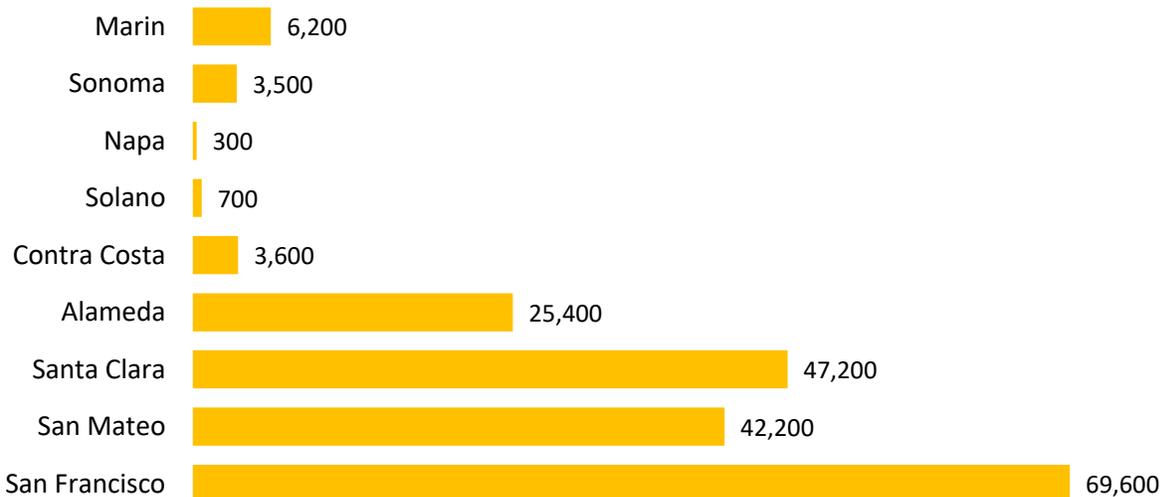


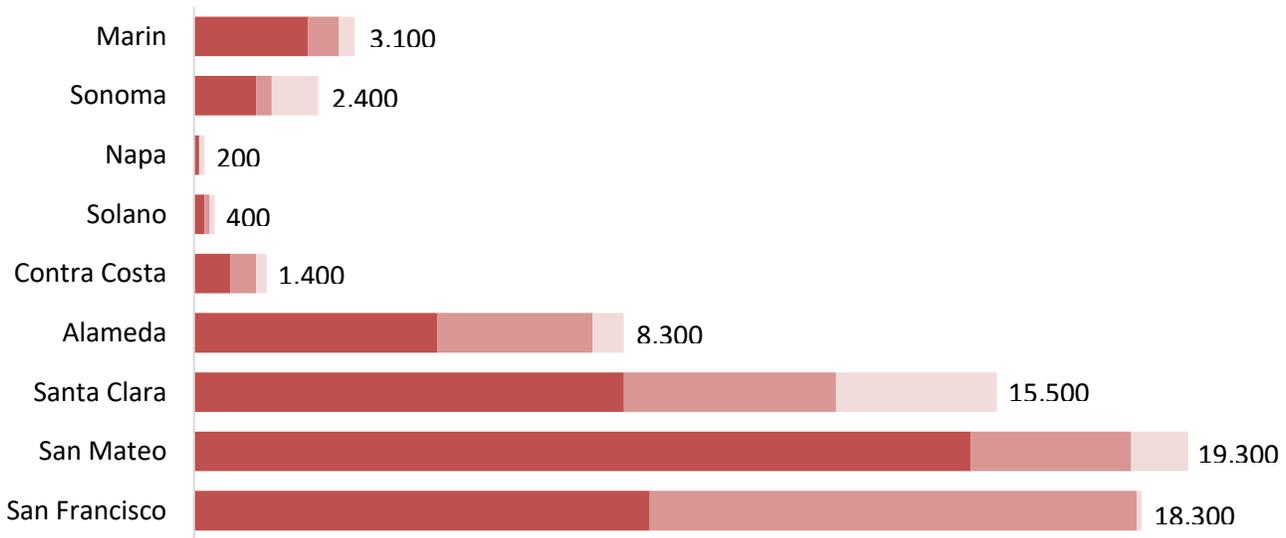
Figure 1: Displaced households (all residential types) from a M7.8 earthquake scenario on all Northern segments of the San Andreas Fault

While the absolute number of *households displaced* is highest in San Francisco, San Mateo County will have the largest number of uninhabitable residential *buildings* (19,300, approximately 10% of total residential buildings in San Mateo), followed by San Francisco (18,300, approximately 11% of total residential buildings in San Francisco) and Santa Clara (15,500, approximately 3.5% of total residential buildings in Santa Clara). On average, San Francisco has a higher number of households per building due to more multifamily buildings (an average ratio of 3.8 displaced households for every uninhabitable building) while San Mateo County has a lower number of households per building due to more single family buildings (an average ratio of 2.2 displaced households for every uninhabitable dwelling), so even though fewer total residential

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buildings are damaged in San Francisco, more households per building means more displaced households.² Napa County, on the other hand, will have only 200 uninhabitable residential buildings (0.4% of total number of residential buildings in Napa), Solano County 400 (0.3% of total number of residential buildings in Solano County), and Contra Costa County 1,400 (0.4% of total number of residential buildings in Contra Costa County).

Additionally, while the total residential uninhabitable building count in San Francisco is slightly lower than San Mateo County, the total dollar amount in residential building damage is slightly higher, at \$8.0 billion versus \$7.9 billion in San Mateo County. Santa Clara County will sustain \$6.3 billion in residential building damages, and Alameda County \$3.2 billion. Napa is expected to sustain \$60 million.



	Marin	Sonoma	Napa	Solano	Contra Costa	Alameda ^a	Santa Clara	San Mateo	San Francisc ^c	Total
Uninhabitable buildings – Single Family	2,200	1,200	100	200	700	4,700	8,300	15,000	8,800	36,800
Uninhabitable buildings – Multi-Family	600	300	0	100	500	3,000	4,100	3,100	9,400	19,600
Uninhabitable buildings – Manufactured Homes	300	900	100	100	200	600	3,100	1,100	100	4,900
Total	3,100	2,400	200	400	1,400	8,300	15,500	19,300	18,300	61,400

² In San Francisco, the percent of residential buildings that are single household is 76%, vs 24% for multifamily households. In San Mateo, these percentages are 95% and 5%.

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Figure 2: Uninhabitable buildings by residential building type from a M7.8 earthquake scenario on all Northern segments of the San Andreas Fault

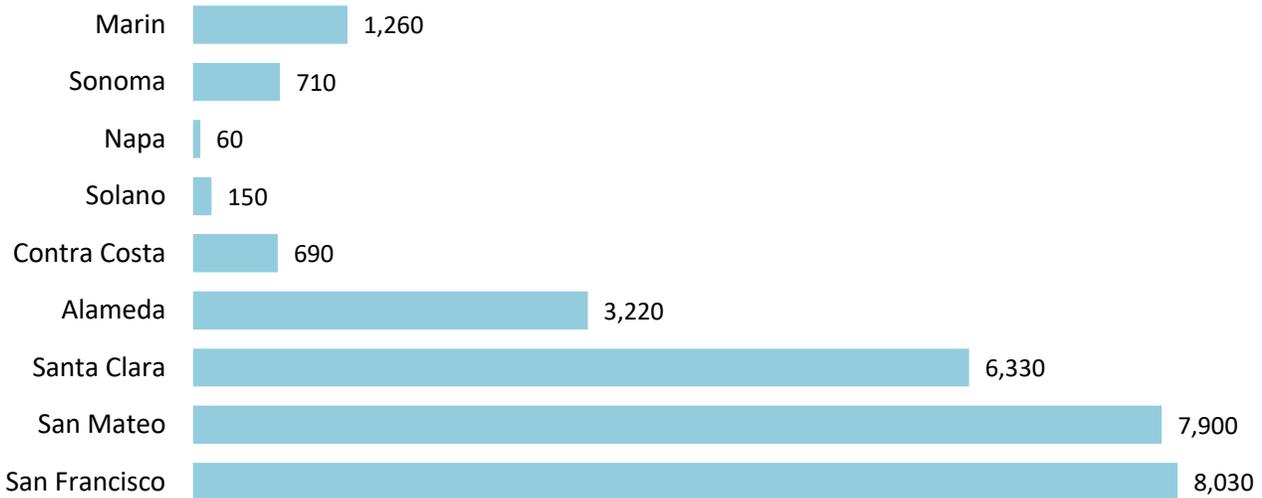


Figure 3: Building damage value (in \$millions) for all residential building types from a M7.8 earthquake scenario on all Northern segments of the San Andreas Fault

Hayward Scenario

In an East Bay fault earthquake, a magnitude 7.0 on the North and South segments of the Hayward Fault, the overall region-wide numbers will be slightly lower than those for the M7.8 San Andreas event, but distributed differently across the region. In total, approximately 145,000 households will be displaced from 55,100 uninhabitable residential buildings, with \$20.9 billion in damages to those residential buildings. Alameda will have the most displaced households, 75,500 (52% of total displaced households in the region, representing approximately 14% of total households in Alameda County). Santa Clara and San Francisco Counties will each have approximately 15% of the region's total displaced households each (22,600 households, 3.8% of the county's total households, and 22,200 households, 6.4% of the county's total households, respectively). Napa County will have approximately 500 displaced households, or about 1% of the county's total households, and Sonoma County will have approximately 0.5% of the county's total households displaced, or about 1,000 households.

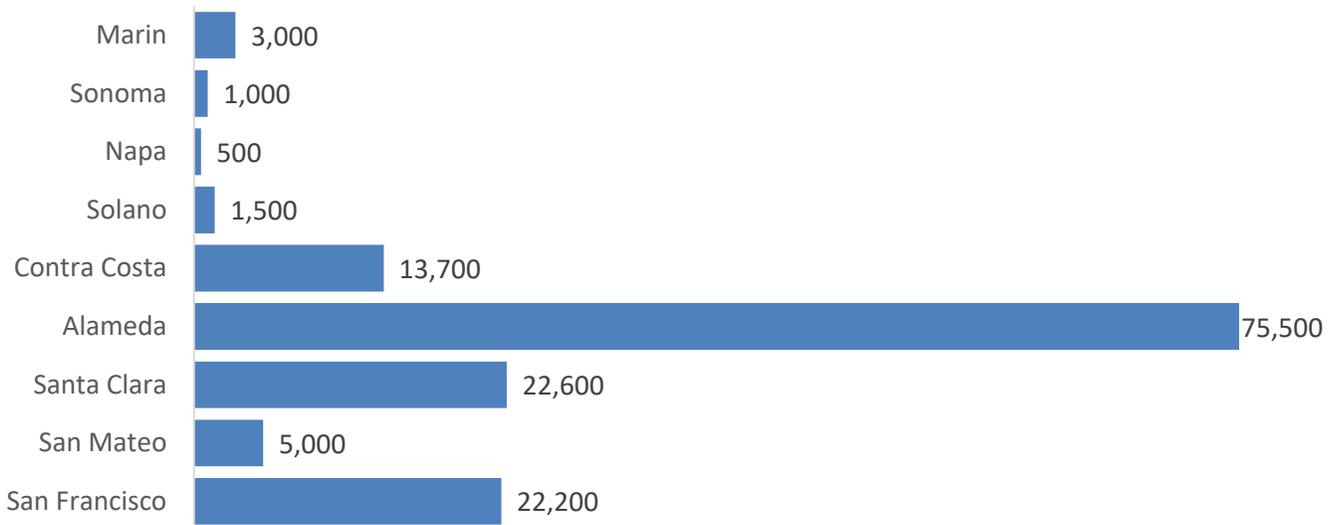


Figure 4: Displaced households (all residential types) from a M7.0 earthquake scenario on North and South segments of the Hayward Fault

Alameda County will also have the largest number of uninhabitable residential buildings (32,200, approximately 8% of total residential buildings in Alameda County). All other counties will have fewer than 8,000 uninhabitable residential buildings each, many counties under 1,000 (Solano, Sonoma, and Napa Counties at 800, 600, and 300 uninhabitable residential buildings, respectively). Contra Costa County will have 7,200 uninhabitable residential buildings (just over 2% of total residential buildings in the county), Santa Clara 7,100 (1.6% of total residential buildings in the county), and San Francisco 3,700 (just over 2% of total residential buildings in the county). Again, San Francisco will have a disproportionately large number of displaced households relative to number of buildings because of its prevalence of multifamily buildings³ (an average of 6 displaced households for every uninhabitable building in San Francisco as compared to an average of 2.3 displaced households per uninhabitable building in Alameda County or an average of 1.7 displaced households per uninhabitable building in Napa and Sonoma Counties).

Total residential building damage is most costly in Alameda County, reaching \$11.2 billion. This is almost four times more than in the second most costly counties, Contra Costa and Santa Clara Counties (\$2.7 billion and \$2.9 billion, respectively). Solano, Sonoma, and Napa Counties are expected to sustain just \$310 million, \$220 million, and \$100 million in residential building damages, respectively.

Other Scenarios

Other earthquake scenarios show a wide range of damage across the region. A smaller San Andreas Fault earthquake, a magnitude 7.2 on just the peninsula segment of the fault, could produce approximately 120,000 displaced households and 40,000 uninhabitable buildings region-wide, with a smaller Hayward fault earthquake producing similar results. On the other end of the spectrum, a magnitude 7.4 earthquake on

³ In Alameda County, the ratio of single household residential buildings to multifamily household residential buildings is 92%:8%, vs. 76%:24% in San Francisco.

the Maacama fault (located in Northern Sonoma County) would displace approximately 9,000 households and render 3,800 residential buildings uninhabitable. A summary of all modeled earthquake scenarios is shown below in Figure 5.

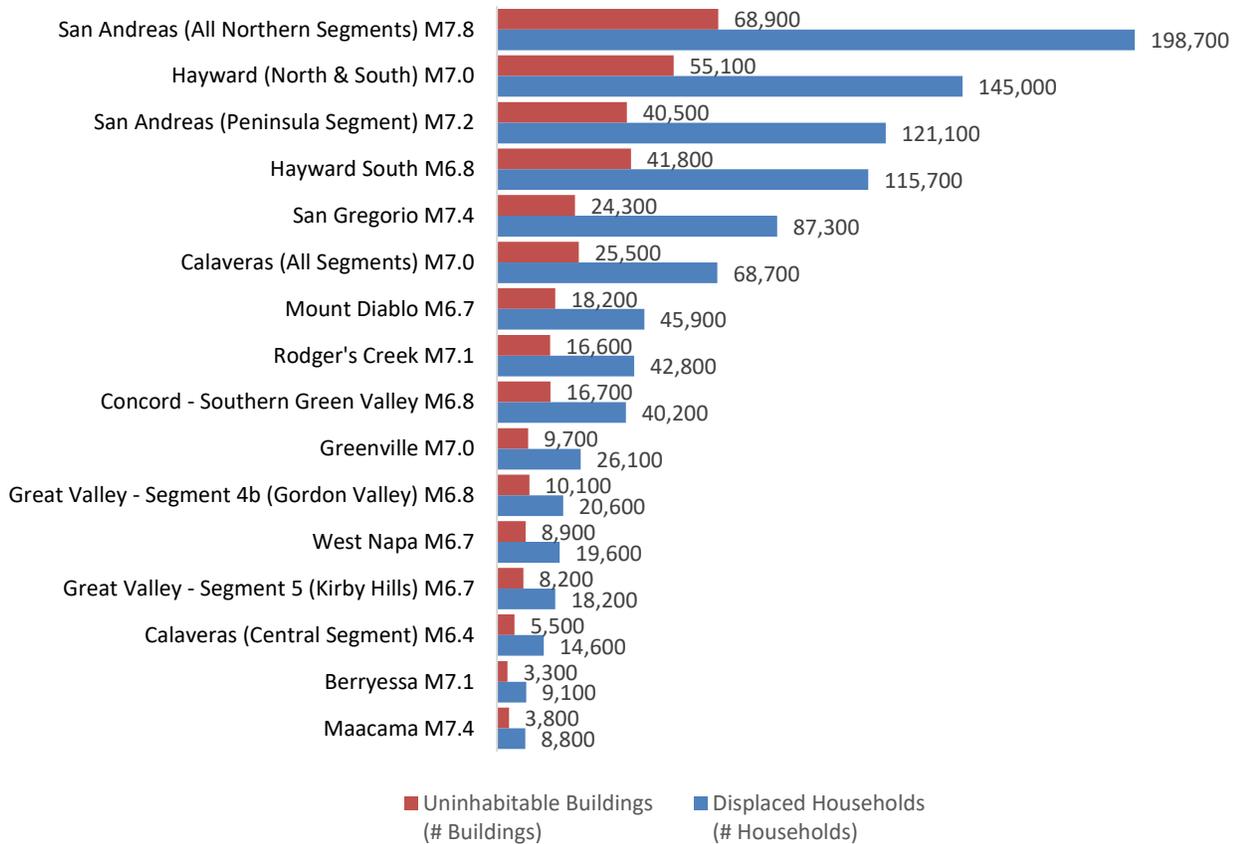


Figure 5: Uninhabitable Buildings and Displaced Households region-wide for 16 Bay Area earthquake scenarios

What can cities do?

- Create an inventory of vulnerable residential buildings, their exposure to hazards, and their demographic characteristics.** While some earthquakes, such as a large magnitude earthquake on the San Andreas or Hayward faults will likely cause widespread, significant damage, many earthquakes will produce variable damage throughout the region or even within a city. Every county has a different combination of multifamily, single family, and mobile homes that will contribute to the overall residential building damage picture. Loss of each of these home types has different impacts on the community. Additionally, residents within buildings may have highly varied needs, particularly if they house young children, the elderly, residents with medical or functional needs, non-English speakers, or households who depend on social services for food or housing. Multifamily buildings house more residents, so damage to multifamily buildings will result in more displacement; multifamily homes may also sustain greater damage than single family homes. Mobile homes typically sustain the most damage, and typically house lower-income residents, so

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while they may be a small percentage of the total housing stock in a county, they may contribute a significant proportion of displaced households (in Napa County, where mobile homes represent 8% of residential buildings, in a San Andreas M 7.8 event 30% of displaced residents will be from mobile homes). Other factors, like soil type, liquefaction or landsliding, age, construction type, number of stories, and number of units can also influence how homes will perform in an earthquake. Some neighborhoods may be devastated while others remain largely intact. While it is impossible to know exactly where and how damage will play out, jurisdictions should be prepared to assume that some areas will require more resources for response and recovery while others may require less. Jurisdictions should develop inventories of potentially fragile homes, and overlay this information with hazards maps and demographic information, to better understand how an earthquake will impact residents.

- **Make a plan for retrofitting homes that are likely to be damaged.** Once a jurisdiction has a sense of what homes are most fragile in the community, passing policies to encourage or require retrofit helps ensure that the residents who live in the homes will be more protected from death, injury, or displacement during an earthquake. It is important to note that many older buildings will not be able to be retrofitted to a shelter-in-place standard, meaning that damage is minimized to the degree that the homes will be habitable after an earthquake, but can still be retrofitted to protect lives. Any reduction in damage improves the lives of residents, reduces recovery time, protects assets, and helps keep communities more intact.
- **Educate homeowners, building owners, and tenants about their risks.** Everyone in the region – renter, homeowner, high income, or low income – can benefit from enhanced knowledge about risks to make smarter decisions to prepare for earthquakes. While there are many factors that influence how people choose to respond to risk, including what their neighbors are doing, knowledge of risks, and what can be done to help mitigate those risks, is fundamental. Making information easily accessible is important, such as through a city website, and conducting varied outreach to all communities can help with information sharing. Cities and counties can educate residents on options such as structural retrofit, bracing hot water heaters, mitigating brick chimneys, securing furniture, cupboards, and other interior falling hazards, preparing to shelter in place by making an earthquake kit with food, water, and other necessary supplies, and purchasing earthquake insurance (for both homeowners and renters).
- **Plan for sheltering residents.** In any earthquake scenario, cities and counties will likely need to shelter residents whose homes are significantly damaged. Cities and counties need to have an accurate estimate of the magnitude of likely shelter needs in probable earthquake scenarios and develop a plan for serving these populations after an earthquake. A separate White Paper, entitled Bay Area Earthquake Shelter Needs White Paper, outlines in more detail estimated short-term shelter needs as well as considerations for jurisdictions in planning shelters. However, the paper focuses primarily on short-term sheltering. In a larger earthquake, residents may need shelter for several months or even years as their homes are repaired or rebuilt, so cities will need to plan for not just short-term shelters, but interim housing for these residents as well.
- **Encourage protection of investments through insurance.** In some cases, retrofit is infeasible or too costly to justify the level of protection it would provide, such as in very high liquefaction areas or

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in instances where a building sits on top of a fault rupture zone. Additionally, renters have little to no control over whether their buildings are retrofitted. In cases where retrofit is either infeasible or out of an individual's control, earthquake insurance may be the best option for protecting a resident's financial well-being after an earthquake. Earthquake insurance is a separate policy than a traditional homeowner's policy and can be costly, with high deductibles, but in cases of extreme damage, may help homeowners avoid catastrophic financial loss. Insurance can help homeowners repair or rebuild. For renters, earthquake insurance is typically very affordable and can not only protect against loss of building contents but can assist policyholders in paying for alternate housing if their building is damaged to a degree that they cannot live in it. Insurance is especially important for individuals and families that may not have a large financial cushion through savings or family, such as lower income households or young adults. Currently, very few households have earthquake insurance – only 10% of homeowners and 5% of renters have an earthquake policy.

- **Build resilience into your community through building codes for new construction.** While the numbers presented in this paper discuss only existing housing, which, when older, tends to be more fragile and prone to damage than new construction, new construction offers a significant opportunity to build resilience into the next generation of a city. Currently in California, building codes ensure life safety during a major earthquake but are not designed to shelter-in-place standards. This means that while residents will not lose their lives through catastrophic collapse, buildings may very well be damaged to the degree that they will be uninhabitable, leading to displacement, shelter seeking, and costly repairs. Most residents and elected officials are not aware of this and assume that current code ensures adequate performance in an earthquake; while new buildings will most likely perform better than older buildings, “adequate” performance in the eyes of the public may be different than in the eyes of the code developers. Amending the building code with a local amendment that raises new construction standards can help prevent these consequences and build a more resilient future into the next generation of a city.
- **Plan for Whole Community Recovery.** Housing is critical to disaster recovery – when people are able to stay in their homes after a disaster, social networks remain intact, vulnerable populations are less likely to be pushed out, employees are able to return to work faster and keep the economy stronger, and recovery overall moves quicker. Less damage to housing also means fewer repairs and less loss of personal wealth. However, housing is not the only factor that dictates whether residents stay or leave the community. There are a number of other interconnected factors that either ensure that residents can stay or forces them to leave, independent of the state of their housing. One of the most critical, particularly after the first few days, is utility services. While residents may be able to survive for several days or weeks without electricity, access to water and wastewater services are far more critical to public health. After these basic needs, once recovery begins, residents will also need to meet other everyday needs such as access to grocery stores, pharmacies, day care, and doctor's offices as well as be able to access their jobs to maintain their income. Critical to accessing these resources is a functioning transportation system, including bridges and roads as well as public transit. Longer term, societal trends will impact whether people stay or go. If the economy is unable to recover, people may leave to access better jobs elsewhere. If major demographic shifts occur due to displacement, people may choose to leave if they no longer

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feel welcome in their community. Lastly, if residents no longer feel a sense of community because their social group, church community, or neighbors are no longer intact, they may choose to leave the region even if all other aspects are in place.

- **Talk to your neighboring jurisdictions and plan outside your jurisdictional boundaries.** Many neighboring jurisdictions will also be significantly damaged, so displaced people may have to go far to find short and long-term housing. The effects of a major earthquake will impact the whole region, so cooperation between neighboring cities will be critical. You will not likely be able to depend on your neighboring jurisdictions to house displaced residents, leading many displaced residents out of the region entirely. This exodus can be managed by ensuring that adequate shelters are planned for as well as strengthening existing housing. Housing retrofit is most beneficial when it occurs where fragile housing exists, not just within specific jurisdictional boundaries. Nearby cities with similar housing stock should work together to develop similar policies and ensure that buildings are retrofitted along similar timelines to avoid uneven devastation, displacing residents across city boundaries.

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MEMORANDUM

TO: Chair Gray and Members of the Rent Board

FROM: Dr. Kenneth Baar, Consultant

DATE: August 15, 2018

SUBJECT: Rent Adjustments Based on Capital Improvements

I. Introduction

This memorandum discusses the various alternatives that have been adopted by other jurisdictions in regard to allowances for capital replacements and issues related to the selection of a policy. Rent control programs have adopted varying approaches in regard to allowable rent increases for capital improvements.

The principle distinction among these policies has been whether or not they allow rent increases for capital “replacements” without consideration of overall income (rent increase history) and expenses or only allow additional rent increases for capital “replacements” when an owner can demonstrate they are necessary to provide a fair return. Replacements include costs such as roof replacements and replacements of aging structural systems that are inevitable in the course of property ownership.

Richmond’s current fair return –regulation – a maintenance of net operating income (MNOI) standard – provides for the inclusion of capital improvement expenditures as amortized operating costs in considering whether the property yields a fair return. This memo addresses issues related to whether rent increases should also be authorized for the amortized cost of capital improvements (including capital replacements) without consideration of whether the rent increases are needed in order to obtain a fair return. Under the MNOI standard, the cost of a capital replacement is considered in conjunction with consideration of how much rents and overall operating costs have increased since a base year, while “stand alone” rent increase allowances for capital replacements would only consider the cost of the capital improvement.

Among the jurisdictions that allow for increases to cover the costs of capital replacements without consideration of fair return , varying policies have been adopted in regard to: 1) caps on rent increases based on capital improvements; 2) limits on the percentage of capital improvement costs that can be passed through; 3) interest allowances for capital improvement costs, 4) amortization periods for capital improvements, 5) whether capital improvement

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increases expire when amortized or become permanent; 6) whether capital improvement increases are added to the base rent.

Separate from consideration of the costs for capital replacements, separate increase allowances are commonly authorized for specially incentivized improvements, such as seismic upgrades or improvements to increase energy efficiency, without consideration of whether they are necessary to permit a fair return. This memo does not address the policies and issues related to such standards.

II. The Context for Consideration of Allowable Rent Adjustments Based on Capital Improvements

Issues related to capital improvement increases should be placed within the perspective of the overall rent regulation scheme.

A. Capital Improvement Rent Increases Superseded by Vacancy Decontrol

A rationale for capital improvement increases is that they should be permitted because landlord rent increases are constrained by regulation.

Based on this concept, the capital improvement increase regulations of other jurisdictions provide that such increases are not applicable to a tenancy that commences after the performance of capital improvement. This policy is based on the concept that, when there is a vacancy, the landlord has been able to reset the rents at a market level unconstrained by the rent regulation and, therefore, should not be able to claim an additional capital improvement increase.

Usually capital improvement regulations also provide that a claim cannot be made for a capital improvement increase for a unit in which the tenancy commenced a short period before the capital improvement application. Such provisions are also based on the concept that the landlord has just had an opportunity to reset rents at market levels and therefore, should not be permitted additional rent increases for work that would or should have been reasonably anticipated when the tenancy commenced.

To place these restrictions in perspective, it is critical to consider that rates of turnover in tenancies in California are substantial. The Census Bureau's American Housing Survey (AHS) data for Richmond for 2016 projected that 26.2% of all tenancies had commenced within the last 12 months and that 78.2% of all tenancies had commenced in 2010 or later. The data is subject to the limitation that it is based on a small sample. The consequence of the substantial rate of turnover of tenancies is that a substantial portion of rent adjustments for capital improvements would have a short duration since they would be considered only for the duration of the current tenancy. Of course, there are buildings with rates of turnover much below the average.

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One scenario may be a three-year tenancy following the completion of the capital improvement, which commenced one year prior to the capital improvement application. Within the three-year period, the owner would recover approximately 30% of the cost of an improvement, with a 20-year amortization period. (For example, if a capital improvement with a 20-year life cost \$5,000/rental unit and a 7% interest allowance was provided, \$1,400 in rent increases would be provided within three years in order to cover the 7% interest and the first three years of the amortization of the expense.)

In another scenario, a two-year tenancy beginning six months prior to a capital improvement application and ending eighteen months after the completion of the capital improvement, most or all of any capital improvement increase for that unit may be precluded on the basis that the owner has been able to rely on market rents for that unit.

B. Annual General Adjustments

Under the Richmond rent control ordinance apartment owners are permitted annual percentage rent increases equal to the percentage increase in the Consumer Price Index (CPI). The ordinances of Los Angeles, San Jose, and Oakland also provide for annual increases equal to 100% of the percentage increase in the CPI. Other jurisdictions limit annual increases to a portion of the percentage increase in the CPI. Annual increase limits are: San Francisco - 60% of CPI increase, Berkeley - 65%, Santa Monica and West Hollywood - 75%. Since 2000, the CPI has increased by 2.8%/year on average.

C. Increases in Rents

This author was not able to locate systemic data on the rate of increase in rents within the City of Richmond. Assuming that the rates of increase in rents in Richmond have paralleled the trends in the Bay Area, in recent years, rents have increased at a rate far above the rate of increase in the CPI. Furthermore, since 2010 rents in the Bay Area have increased at a rate far above the national average. The Bay Area CPI rent index increased by 40.2% from 2010 to 2017, compared to an increase in the U.S. CPI rent index of 23.6%.

Table A: Consumer Price Index		
Increases in CPI all items and CPI rent index U.S. and S.F. Bay Area compared		
	Pct Increase in CPI-all items 2010-2017	Pct Increase in CPI rent index 2010-2017
U.S.	18.2%	23.6%
SF Bay Area	20.9%	40.2%

Data Source: See CPI tables in Appendix A

III. Options and Policies in Other Jurisdictions

A. Allowable Increases for Capital Replacements

1. Standards for Allowable Capital Replacement Increases that Do Not Take into Account Fair Return

San Francisco, Los Angeles, and Oakland, permit stand-alone rent increases for capital improvements without consideration of rent increases and operating costs.

Each of these cities places limits on the portion of the cost that can be passed through and on the amount of the increase that may be imposed within a year. These limits are described in subsequent portions of this memo.

2. Standards for Allowable Capital Replacements Increases that Take into Account Fair Return

Under approaches that have taken into account fair return in considering capital improvement applications, very few apartment owners have obtained rent increases. This outcome can be attributed to the exceptional rent increases in rents that have occurred due to the vacancy decontrols. They have occurred notwithstanding the limitations of annual allowable rent increases to less than 100% of the annual increases in the CPI.

This type of standard is in effect in Santa Monica and West Hollywood. Recently, San Jose modified its capital improvement increase standards, by limiting stand-alone increases to cases involving new capital improvements, as opposed to capital replacements. Stand-alone increases are limited to new services that increase safety or sustainability of seismic readiness.

Berkeley also uses an approach which differs but provides an outcome substantially similar to using a fair return approach, in the sense that it takes into account rent increases that have occurred, but not operating expenses. Under Berkeley's regulations, increases due to vacancy decontrols which are above the annual general adjustments are an offset against any allowable rent increase for pass-through of capital improvement expenditures. This approach obviates the need to prepare a Maintenance of Net Operating Income fair return application with documentation of operating expenses in order to determine if the previous rent increases were adequate to cover the proposed capital improvement increases.

Table 2: Scope of Review in Considering Allowable Rent Increases for Replacements		
City	Cap Improvement Allowances without consideration of fair return or rent history	Cap Replacement Allowances based on consideration of fair return or rent history
Los Angeles	X	
San Francisco	X	
Oakland	X	
San Jose		x
Berkeley		x
Santa Monica		x
West Hollywood		x

B. Advance Approval Contingent Upon Completion of Capital Improvements

Commonly under rent regulations, apartment owners can obtain advance approval of rent increases based on proposed capital improvements, with implementation of the increase contingent on completion of the capital improvement. This approach is strongly recommended based on the concept that owners should be able to obtain a determination of what rent increases will be permitted prior to making an expenditure based on an expectation about what increase would be approved.

C. Types of Capital Improvements with Special Incentives

New municipal requirements for seismic upgrading have become widespread in recent decades, requiring apartment owners to meet standards that were not in effect when the building was constructed or purchased by the current owner. Commonly, capital improvement standards allow for more favorable allowances of rent increases to cover the costs of seismic upgrades and improvements that increase energy efficiency and/or are for seismic work. Most commonly, the regulations applicable to incentivized improvements allow for 100% cost recovery, as opposed to lower percentages for capital replacements.

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Alternatively, incentivized improvements do not have to be justified with a fair return analysis in jurisdictions that require such consideration for capital replacements. San Jose limits rent increases for incentivized improvements to 3%.

D. Factors that Determine the Amounts of the Capital Replacement Increases in Jurisdictions which Authorize Capital Replacement Increases without Consideration of Fair Return

Each of the following factors are common determinants of the amount of rent increases granted for capital replacement improvements in jurisdictions which authorize capital replacement increases without consideration of increases in overall rents and operating expenses. If increases are authorized without consideration of fair return or overall increases in rental income, these factors should be considered and weighed in conjunction with each other as parts of an overall “package” that play a role in outcomes under a regulation.

1. Share of Cost that Can be Passed Through

Commonly among the ordinances that permit adjustments for capital improvements without consideration of overall income, only a portion of the expenditure is considered when calculating the allowable increase.

Los Angeles permits a pass-through of 50% of the cost. San Francisco permits a pass-through of 50% of the costs in buildings with six units or more and 100% of the cost in buildings with less than six units. Oakland allows a pass-through of 70% of the cost.

Table 3: Portion of Capital Improvement Cost Included in Rent Adjustment Calculation	
City	Portion of Cost Passed Through
Los Angeles	50%
San Francisco	5 units or less - 100% 6 or more units - 50%
Oakland	70%

2. Caps on Allowable Pass-through Amounts

Caps on the allowable rent increase for a stand-alone capital improvement increase are common. The most common cap is a 10% ceiling on the allowable increase within a year, with a provision that additional increases may be imposed in future years. The overall cap may be a

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ceiling on a combination of the annual general adjustment and the capital improvement increase.

3. Amortization Periods

Allowable amortization periods vary greatly among the standards. As a practical matter, the length of the amortization period is a central determinant of the increase that will be obtained as a result of the capital improvement, since it determines what portions of the cost will be recovered before vacancies for most units supersede the pass-through.

Los Angeles uses a five-year amortization period. San Francisco uses seven and ten year periods for buildings with more than five units and ten, fifteen, and twenty year periods for buildings with five units or less.

Table 4: Amortization Periods Under Capital Replacement Standards	
City	Incentive Categories
Los Angeles	5 years
San Francisco	5 units or less - 10,15,20 years 6 or more units 7 or 10 years
Oakland	Detailed Cap Imp Schedule 5 to 20 years

4. Interest Allowance

Under some of the regulations authorizing stand-alone capital improvement increases, an interest allowance is provided. There are about as many variations of the allowable interest rate as jurisdictions which include an interest allowance. Some jurisdictions allow the use of the actual interest rate incurred for the cost of the capital improvement. Other jurisdictions only permit uniform rates tied to published interest rates.

If an interest allowance is provided, it should be uniform for all owners, rather than tied to their actual financing costs and/or whether or not they used their own funds to finance the improvement. As discussed it in this author's report on fair return cases, in three cases,

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California appellate cases have concluded that differences in allowable rent increases based on differences in individual owners financing arrangements have no rational basis.¹

Also, if an interest allowance is provided, this author recommends that it be tied to the same index that is included in the fair return standard. That index, the PMMS (Federal Home Loan Mortgage Corporation, Prime Mortgage Market Survey), reflects costs of obtaining capital for home purchases with an additional two percent to reflect higher interest costs that would be expected for commercial real estate borrowing.

5. Whether Capital Improvement Increases Expire when Amortized or Are Permanent

During the Board's consideration of a fair return standard, there was considerable discussion of whether capital improvement increases should be permanent or should terminate after the amortization period.

In considering this issue, it would be reasonable to take into account other aspects of any capital improvement standard such as whether there is an interest allowance, the length of the amortization periods, and/or portion of the cost that can be passed through.

For example, in the case of major capital replacement, with a 20-year amortization period, it is virtually certain that an expiration clause would have only a tiny impact because virtually all of the units would have become vacant prior to the time required to amortize the expense.

6. Whether Capital Improvement Allowances Are Added to Base Rent for the Purposes of Calculating Annual Allowable Increases

Under some regulations capital improvement increases are separate surcharges which are not incorporated into the base rent, while under others, the increases become part of the base rent.

As a practical matter, assuming current trends in the CPI continue, including the increase in the base rent would result in adjusting the increase upward by about 3% a year. For example, if a \$50 capital improvement increase was granted, after three years, if the increase is added to the base rent, the increase may be adjusted by a total of 10% in annual increases (about \$55.)

E. Consideration of the Income of Tenant

Under the regulations of some jurisdictions, capital improvement increases are limited for units occupied by low income tenants. Santa Monica limits the allowable rent increase within a year for a low-income tenant to 12%. This ceiling may be contrasted with ceilings in other jurisdictions which limit overall annual increases for all tenants to 10% per year.

¹ See Board packet of Dec. 20, 2017.

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Without addressing the issue of consideration of a tenant's income within a rent increase standard in detail, this author believes that the inclusion of such a standard in a rent regulation would raise a host of issues. One possibility is that it could result in a disincentive to rent to low income tenants. Other issues would emerge about the design of such a standard (e.g. would assets be weighed and, if so, how?) and the administration of a tenant income verification process.

F. "New" Improvements

A separate category of improvements are new items that were not present in a rental building on the base date such as a security system or a physical fitness facility. Allowable increases for these types of improvements are covered within the regulations governing "Changes in Space or Services" (Sec 904 (A)(2)).

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- 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.

[Adopted February 21, 2018]

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 100% 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 2015 is the Base Year. The Base Year CPI shall be 2015, 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 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 may be 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

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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:

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 is a difference in the number of rental units between the Base Year and the current year, in making calculations of net operating income in the Base Year and the current year, the rental income and expenses for the same number of units shall be used in calculating the net operating income for both periods.

The purpose of this provision is to ensure that a petitioner is not requesting that the current fair net operating income reach a level which was provided in the Base Year by a larger number of units or is limited to a net operating income which was formerly provided by a smaller number of units.

If there are units that are vacant or owner-occupied at the time a petition is filed which were rented in the Base Year, for the purposes of the MNOI analysis a rental income for the unit shall be calculated on the basis of average rents for comparable units in the building which have been permitted vacancy decontrol increases within the past two years. If there are no comparable units in the property rental income for the vacant or owner occupied units, the rent shall be calculated on the basis of recently established initial rents for comparable units in the City. If there are units that were rented in the current year, which were vacant or owner-occupied in the Base Year, for the purposes of the MNOI analysis a rental income for the unit for the Base Year shall be calculated on the basis of average rents for comparable units in the building in the Base Year. If there are no

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comparable units in the property, rental income for the vacant or owner occupied units in the Base Year shall be calculated on the basis of Base Year rents for comparable units in the City. In the alternative, the Hearing Examiner may use another reasonable methodology to insure compliance with the purposes of this subsection.

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 provision of the utility is not considered because it is recouped from the Tenants on a cost pass-through basis..
- iv. Real property taxes and insurance, subject to the limitation that property taxes attributable to an assessment in a year other than the Base Year or current year shall not been 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.

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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 UPON ESTABLISHMENT OF CAPITAL IMPROVEMENT REGULATION).

- 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 11.100.070 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 Improvements. Operating expenses include the amortized costs of capital improvements 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:

The costs are amortized over the period set forth in Section (A)(6)(b)(viii) of this regulation and in no event over a period of less than thirty-six (36) 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.

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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.

Amortization of Capital Improvements	
In amortizing capital improvements, the following schedule shall be used to determine the amortization period of the capital improvements	Years
<i>Appliances</i>	
Air Conditioners	10
Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5
Cabinets	10
Carpentry	10
Counters	10
Doors	10
Knobs	5
Screen Doors	5
Fencing and Security	5
Management	5
Tenant Assistance	5
<i>Structural Repair and Retrofitting</i>	
Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
Electrical Wiring	10
Elevator	20
<i>Fencing</i>	

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Chain	10
Block	10
Wood	10
<i>Fire Systems</i>	
Fire Alarm System	10
Fire Sprinkler System	20
Fire Escape	10
<i>Flooring/Floor Covering</i>	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
Fumigation Tenting	5
Furniture	5
Automatic Garage Door Openers	10
<i>Gates</i>	
Chain Link	10
Wrought Iron	10
Wood	10
<i>Glass</i>	
Windows	5
Doors	5
Mirrors	5
<i>Heating</i>	
Central	10
Gas	10
Electric	10
Solar	10
Insulation	10
<i>Landscaping</i>	
Planting	10
Sprinklers	10
Tree Replacement	10

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<i>Lighting</i>	
Interior	10
Exterior	5
Locks	10
Mailboxes	10
Meters	10
<i>Plumbing</i>	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
<i>Painting</i>	
Interior	5
Exterior	5
<i>Paving</i>	
Asphalt	10
Cement	10
Decking	10
Plastering	10
Sump Pumps	10
Railings	10
<i>Roofing</i>	
Shingle/Asphalt	10
Built-up, Tar and Gravel	10
Tile	10
Gutters/Downspouts	10
<i>Security</i>	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
Sidewalks/Walkways	10
Stairs	10

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Stucco	10
Tilework	10
Wallpaper	5
<i>Window Coverings</i>	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

- 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.

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- 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.
 - 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

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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 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 twenty four (24) 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. Extensions may be granted due to reasonable delays in the completion of capital improvements as determined by the Hearing Examiner.

(9) Any unit which received a vacancy rent increase pursuant to Civil Code section 1954.53 within one year 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

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 to fifteen percent (15%) of the Maximum Allowable Rent on the date the petition is filed.

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 (A)(6)(b)(ix) of this regulation. One twelfth (1/12) 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.

[Adopted March 21, 2018]

906-910 (RESERVED)

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 Regulation 911(B), below. For purposes of this Regulation, any receipt or retention of rent, including security

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: August 15, 2018

Final Decision Date Deadline: August 15, 2018

STATEMENT OF THE ISSUE: The advent of Air B&B, VRBO, Home of Residence, and other short-term rental platforms have led many California cities to adopt Ordinances aimed at regulating the use of these short-term rentals and mitigating the impact that short term rentals may impose on the City's rental housing supply. At their Regular Meeting on July 18, 2018, Board members directed staff to explore the Rent Program's possible role in regulating short-term rentals, specifically after a Rental Unit has been Withdrawn from the Rental Market pursuant to the Ellis Act. Staff members have conducted a preliminary review of the City's existing policy framework and are seeking direction from the Board to continue this research and devise recommendations for the Board's consideration at a future 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

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

RECOMMENDED ACTION: DIRECT staff members to study the issue of the Short-Term Rental housing market as it relates to withdrawn accommodations and propose policy solutions that the Board could recommend to the City Council for consideration to mitigate possible adverse effects of Short-Term Rentals on the City's rental housing supply – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

AGENDA ITEM NO:

H-2.

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AGENDA REPORT

DATE: August 15, 2018

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Charles Oshinuga, Staff Attorney

SUBJECT: SHORT TERM-RENTALS (AIR B&B, VRBO)

STATEMENT OF THE ISSUE:

The advent of Air B&B, VRBO, Home of Residence, and other short-term rental platforms have led many California cities to adopt Ordinances aimed at regulating the use of these short-term rentals and mitigating the impact that short term rentals may impose on the City's rental housing supply. At their Regular Meeting on July 18, 2018, Board members directed staff to explore the Rent Program's possible role in regulating short-term rentals, specifically after a Rental Unit has been Withdrawn from the Rental Market pursuant to the Ellis Act. Staff members have conducted a preliminary review of the City's existing policy framework and are seeking direction from the Board to continue this research and devise recommendations for the Board's consideration at a future meeting.

RECOMMENDED ACTION:

DIRECT staff members to study the issue of the Short-Term Rental housing market as it relates to withdrawn accommodations and propose policy solutions that the Board could recommend to the City Council for consideration to mitigate possible adverse effects of Short-Term Rentals on the City's rental housing supply – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item at this time.

DISCUSSION:

Background

Short-term rentals of residences and its related platforms such as Air B&B and VRBO have had a significant impact on cities in the Bay Area. While some local government officials view short-term rentals as an opportunity to provide ancillary income to city residents, help expand city tourism and available transient occupancy opportunities during peak hotel/motel occupancy times, such as major sporting events, and stimulate commercial activity within a city, others perceive short-term rentals as disruptive to communities, providing yet another mode of displacement of renters, and a threat to the existing rental housing stock.^{1,2} To address these negative impacts, cities such as Tiburon, Danville, Monterey, and Pacific Grove, have gone as far as to pass ordinances prohibiting short-term rentals, in effect punishing individuals who engage in Air B&B and similar platforms. Yet not all cities have addressed its legitimate concerns with short-term rentals with a total ban. Many cities, such as San Francisco, Marin, San Jose, and Berkeley, have passed short-term rental ordinances, regulating the activity of renting one's residence out on a short-term basis and mitigating the impact this activity may have.

Currently, the City of Richmond does not have a short-term rental ordinance aimed specifically at regulating the use of platforms such as Air B&B. However, the City does employ its broad definition of a "hotel" found in Richmond Municipal Code Section 7.88.020(2), to levy taxes on any resident engaged in the use of short-term rentals. These provisions of the Municipal Code are unclear as to whether residents engaged in short-term rentals would be regulated in the same fashion as hotels.

The City of Richmond, separate from the Rent Board, has jurisdiction over regulating the use of Short-Term Rentals, such as Air B&B, VRBO, etc.

The City of Richmond is governed by its General Plan. The General Plan is the "blueprint" of the City, and it is used to establish zones for different types of development, uses, traffic patterns, and future development. When it pertains to the issue of land use, the City has sole authority in governance and related regulation.

A short-term rental is a particular "use" of a property. It is neither residential nor commercial; rather it is considered a conditional use involving "transient occupancy". Generally, where a resident seeks to engage in a use other than what the property has been zoned, the resident must seek a permit with the Planning and Building Services Department to obtain a conditional use permit. Therefore, the Planning and Building

¹ Hill, Stephen. "The Unsavory Side of Airbnb." October 19, 2015. *The American Prospect*. Accessed 8/10/18. <http://prospect.org/article/evictions-and-conversions-dark-side-airbnb>

² Dillon, Liam. "California Lawmakers can't figure out what to do with Airbnb. Here's Why." February 3, 2017. *Los Angeles Times*. Accessed 8/10/18. <http://www.latimes.com/politics/la-pol-sac-airbnb-laws-california-legislature-20170203-story.html>.

Services Department is responsible for the regulation of short-term rentals specifically and other uses of land generally.

This view is consistent with the actions of other Bay Area cities. Where a city seeks to regulate the use of short-term rentals, the City Council or Board of Supervisor typically directs its Planning Commission to conduct a study and bring forth policy proposal for the Council to consider. These policy proposals are later converted into an Ordinance for adoption. An example of how the City of San Jose engaged in this process is contained in Attachment 1.

Cities with Rent Stabilization Programs collaborate with their respective Building and Planning Departments to address concerns posed by Short-term Rentals

As mentioned, one of the concerns posed by short-term rentals is that they can potentially decrease the City's rental housing stock and result in displacement. Each potential Rental Unit that is not rented out to a Tenant, is one less unit on the rental market and one less unit of housing. At times, Landlords will engage the Ellis Act to withdraw entire properties from the rental market and engage in the short-term rentals of these withdrawn units. This not only impacts the Rent Program, but the City of Richmond at large.

Despite the importance of this issue, the Rent Board does not govern or regulate land use, and therefore, it would be inappropriate for the Board to act independently to craft policy governing the use of short-term rentals. However, where concerns arise that impact both the Rent Board and the City of Richmond, there is often room for collaboration. The City of San Francisco provides an insightful example of such collaboration.

The City of San Francisco dealt with an issue concerning the Ellis Act, condo-conversion, and short-term rentals. Specifically, owners were utilizing the Ellis Act to withdraw their units, thereby escaping the reach of the City's Rent Stabilization Ordinance, and subsequently would convert their property to "for sale" condominiums or simply engage in short-term rentals of the units. To address this situation, in collaboration with the Rent Board, the San Francisco Board of Supervisors passed a Residential Conversion and Demolition Ordinance. This Ordinance is managed by its Building and Planning Department and regulates the conversion and demolition of buildings.

The Conversion and Demolition Ordinance includes provisions that limit the use of a property after it has been withdrawn from the rental market via the Ellis Act. Specifically, where a building has been withdrawn from the rental market, an owner may not engage in a short-term rental use for 5 years (Attachment 2.)

The Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (hereinafter, "Rent Ordinance") addresses short-term rentals.

The Rent Ordinance regulates the Rents of a rental unit and evictions; it does not regulate land use, which controls permissible use of a property. The Rent Ordinance does, however, address short-term rentals as it relates to Rent amounts and evictions. The Rent Ordinance fully exempts from its provisions particular short-term rentals. Specifically, Richmond Municipal Code Section 11.100.030(d)(2) exempts, "Rental units in hotels, motels, inns, tourists homes and rooming and boarding houses which are rented *primarily to transient guests* for a period of fewer than fourteen (14) days." Where a short-term rental is engaged in its authorized use for a period of more than 14 days, the full provisions of the Rent Ordinance attach, and the respective Rental Units fall within the Rent Board's purview.

Conclusion

The regulation of rents and evictions can only go so far in achieving the overall goal of the Rent Ordinance. If the Rent Board seeks to address the potential loss of housing stock due to short-term rentals or other changes of use of property, collaboration with the Planning and Building Services Department would be necessary to formulate potential policy solutions. If the City Council were to pass an ordinance that regulated short-term rentals, the ordinance could limit the amount of days a short-term rental could occur in Controlled Rental Units, place restrictions on who may engage in short-term renting of residences, etc. Collaboration with Building and Planning would ensure that any potential ordinance is tailored, in part, to address the concerns of the Rent Board.

DOCUMENTS ATTACHED:

Attachment 1 – City of San Jose's Planning Commissions Staff Report regarding Short-term Rentals.

Attachment 2 – San Francisco Conversion and Demolition Ordinance



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 21, 2014

SUBJECT: AN ORDINANCE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (ZONING CODE) TO ALLOW AND REGULATE TRANSIENT OCCUPANCY AS AN INCIDENTAL USE TO PRIMARY RESIDENTIAL USES, TO MODIFY PERMITTING REQUIREMENTS AND OCCUPANCY LIMITATIONS FOR BED AND BREAKFAST INNS, TO AMEND AND ADD LONG-TERM ROOM RENTAL LIMITATIONS AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20.

RECOMMENDATION

The Planning Commission voted unanimously (7-0-0) to recommend that the City Council approve the proposed ordinance as recommended by the Planning Director with the following changes and additions:

1. Revise the limitation for the use from 90 days to 365 days per calendar year with a host (property owner or primary tenant) present and from 90 days to 180 days per calendar year with no host present;
2. Add a provision to require hosts to join a registry to be administered by the City of San José, and to be used by City staff to collect and monitor data on the use; and
3. Provide a status report to the City Council on the effectiveness of the ordinance 18 months after the ordinance is implemented.

OUTCOME

Should the City Council approve the proposed ordinance, the established provisions would allow short-term rentals of residences or "incidental transient occupancy" for up to a specified number of days per calendar year as a Permitted Use with or without a "host" (owner or primary tenant) present, and with or without a "hosting platform," such as Airbnb, as would be defined in the Zoning Code. Incidental transient occupancy would be required to comply with proposed

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Subject: PP14-084 Title 20 Changes to Allow Incidental Transient Occupancy in Residences

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specific performance standards and other provisions in the Zoning Code.

BACKGROUND

On November 20, 2014, the Planning Commission conducted a public hearing on the proposed ordinance. See the attached Staff Report to the Planning Commission for the full analysis, description of the public outreach, and coordination conducted on the proposed amendments to Title 20 (the Zoning Code).

ANALYSIS

City staff summarized the recommended provisions and stated that the changes to the Zoning Code are intended to implement direction from the Mayor and Council to facilitate collection of Transient Occupancy Tax (TOT) from incidental transient occupancy of homes/apartments to generate revenue and to have a level playing field with hotel/motels and bed and breakfast inns. Staff noted that at the Neighborhoods Commission's public hearing on November 12, 2014, Commissioners had questioned the ability of the City to collect taxes from hosts and suggested that the proposed ordinance be considered as a "pilot," with the expectation that it may need to be revised after the City analyzes the effectiveness of its initial implementation. In response to comments from the Neighborhoods Commission hearing, staff added proposed text in Table 20-165 of the draft ordinance that clarifies the responsibilities and record-keeping requirements of the host for payment of TOT.

Public Testimony

At the Planning Commission hearing, some members of the public spoke in favor of making the proposed provisions for incidental transient occupancy more lenient for hosts to encourage income generation for homeowners and revenue for the City. Other speakers recommended more limitations for incidental transient occupancy so that the hospitality industry, and in particular hotel workers, would not be negatively impacted by the proposed ordinance.

Several speakers who identified themselves as Airbnb hosts stated that short-term home-sharing (incidental transient occupancy) allows visitors to live like local residents, brings additional revenue to the City, and helps homeowners keep and improve their homes with the income they earn from the use.

In response to a question from Commissioner Kline as to whether the proposed 90-day per calendar year cap for the use was too limiting, a speaker, who identified herself as a host, stated that she wanted the use to be allowed 365 days a year to accommodate nurses who stay more than 90 days per year, as well as other occupants more regularly throughout the year.

Another speaker stated that home-sharing allows guests to experience San José like local residents and spend money in neighborhoods, and it allows local businesses to get extra

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customers. She added that San José is the capital of Silicon Valley, the champion of innovation, and home-sharing has helped guests pitching start-ups make business connections.

One speaker mentioned that the Airbnb platform allows pre-vetting of guests, that guests behave well, and short-term home-sharing helps homeowners avoid the challenges a landlord may face by taking a long-term renter through an eviction process. Another speaker noted that San Francisco doesn't limit the total number of days for home-sharing if the host is present.

Commissioner Kline asked a speaker what he would recommend for a limit if there was no host. The speaker responded that 180 days would be reasonable. Several speakers emphasized that the duration of the use and the number of guests (incidental transient occupants) allowed in a residence should not be limited.

Some speakers expressed concerns about long-term impacts to the hotel industry from incidental transient occupancy. One speaker stated that a Salesforce convention in San Francisco used Airbnb to arrange accommodations in homes, which took business away from hotels, and that the controls for health, safety, habitability, and insurance that are required for hotel operations are not in place in short-term home-rentals. Another speaker who identified herself as a unionized hotel worker stated that allowing incidental transient occupancy without strict limitations would threaten her livelihood.

A representative from Working Partnerships USA said that incidental transient occupancy transforms residential properties into unregulated hotels, which undermines the City's investment in the hospitality industry, and which could exacerbate the local housing crisis. She said she was concerned that neighborhood instability would occur as a result of transient occupancy in residences and that the item was being fast-tracked. She suggested that it should be deferred to have the City conduct more research about the use. She recommended a cap of 30 days for transient occupancy, and insurance requirements.

Planning Commission Discussion

Planning staff explained that the intent of the proposed cap on the number of days per year for host and no-host operation of the "incidental transient occupancy" use, and on the number of guests per residence, is to ensure that this use is implemented as a minor commercial component of the primary residential use of a home.

The Planning Commission asked staff to clarify the rationale for the proposed provisions and to address issues raised by the speakers. Staff responded that the proposed provisions are intended to respond to the existing context for how incidental transient occupancy is currently operated in San José and to provide performance standards for regulation of this use; the proposed criteria are aligned with provisions currently in the Zoning Code for other types of transient occupancy, and for other incidental uses in residences including but not limited to long-term rentals.

Commissioner O'Halloran commented that he would like to consider the proposed ordinance in terms of a pilot approach to regulating incidental transient occupancy. He asked staff to consider

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the impact of the ordinance on the hospitality industry when presenting a status report. Staff from the Office of Economic Development responded that the City did discuss the proposal with representatives of the hospitality industry, and that these representatives acknowledged that hotels and motels are currently generally at capacity when conventions and large special events occur.

Commissioner Yob asked about the need and effectiveness of Code Enforcement for incidental transient occupancy. Staff responded that a handful of complaints had been made regarding parking and noise impacts from guests, and that long-term residents had the impression that Code Enforcement resources were inadequate to address these concerns as a priority.

Commissioner Bit-Badal questioned staff about the extent and effectiveness of public outreach. Staff summarized public engagement, and noted that no one had stated that incidental transient occupancy should be completely prohibited; rather, the consensus is to limit it.

Commissioner Pham expressed concerns that the proposed ordinance was very open-ended and did not address issues such as insurance requirements. Chair Kamkar said that incidental transient occupancy can allow people to hold onto their homes.

Commissioner Kline observed that the internet has a habit of pushing adjustments to regulations and that we have to consider the "carrot and stick" balance between strictness versus degree of compliance. Commissioner Bit-Badal agreed with Commissioner Kline's sentiments to start with less strict regulations and then tighten if necessary. Planning staff and Senior Deputy City Attorney Lee cautioned that implementing at the outset a more permissive regulatory program, while not foreclosing later more restrictive regulations, could potentially result in legal nonconforming status for uses then legally established. Commissioners Abelite and Yob expressed concern about this possibility.

Chair Kamkar emphasized that hosts need to be honest in reporting income. The Planning Commission then approved a motion to support the staff recommendation with the modifications as noted above in the "Recommendation" section of this memorandum.

EVALUATION AND FOLLOW-UP

As recommended by the Planning Commission, staff would provide a status report to the City Council on the effectiveness of the ordinance 18 months after the ordinance is implemented.

POLICY ALTERNATIVES

- **Alternative #1:** Approve the proposed ordinance per Planning staff recommendation with modification to the maximum allowable days per calendar year for host and no-host operation of incidental transient occupancy to 365 days and 180 days respectively, in response to Planning Commission's recommendation.

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Pros:

More days per calendar year allowed for incidental transient occupancy could increase TOT revenue to the City and ancillary revenue for resident hosts.

Cons:

The surrounding neighborhoods will be more greatly affected. The availability of long-term housing, which already is in short supply, could be further reduced. The long-term viability of the hospitality industry could be negatively impacted.

Reason for not recommending: Established residential neighborhoods may become less stable and more transient.

- **Alternative #2:** Approve the proposed ordinance with a City-administered registry requirement for hosts as recommended by the Planning Commission.

Pros:

This proposal would facilitate staff monitoring of the use. It could allow staff to better understand and track the impacts of this decision.

Cons:

This proposal would create costs for the City to administer the registry necessitating more time for staff to formulate the provisions for the ordinance and determine how to recover costs for administration, possibly necessitating a registry fee.

Reason for not recommending: This proposal could reduce net revenue that the City could obtain from TOT on incidental transient occupancy, thereby compromising the intent of the Mayor's direction if a cost recovery fee is imposed.

- **Alternative #3:** Do not approve the proposed Ordinance.

Pros:

The existing prohibition on incidental transient occupancy protects the scarce housing supply and the viability of the hospitality industry.

Cons:

The use already exists and is unregulated. Existing provisions in the Zoning Code limit opportunities for the City to collect TOT on the use.

Reason for not recommending: Existing provisions in the Zoning Code do not facilitate the implementation of Council direction for collecting TOT on the use and having a level playing field with the hospitality industry.

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PUBLIC OUTREACH

Planning staff has engaged the public on the proposed ordinance through: 1) a community meeting held the evening of October 30, 2014 with interested stakeholders including residents, affordable housing representatives, representatives of the hospitality industry, and a representative from a hosting platform for incidental transient occupancy, which was attended by approximately 50 people; 2) with the PBCE Developers' Roundtable held the morning of October 17, 2014, which was attended by approximately 20 people; and 3) a presentation to the Neighborhoods Commission on November 12, 2014. These meetings provided forums for public input on the proposed amendments. Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

COORDINATION

Preparation of this report and the proposed ordinance were coordinated with the City Attorney's Office and the Office of Economic Development.

CEQA

Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan, EIR Resolution No. 76041 and addenda thereto (File No. PP14-084).

/s/

HARRY FREITAS, SECRETARY

Planning Commission

For questions please contact Steve Piasecki, Interim Planning Official, at 408-535-7893.

Attachments: Planning Commission Staff Report

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PC AGENDA: 11-19-14

ITEM: 4.e.



Memorandum

TO: PLANNING COMMISSION

FROM: Harry Freitas

SUBJECT: SEE BELOW

DATE: November 7, 2014

SUBJECT: An Ordinance of the City of San José amending Title 20 of the San José Municipal Code (Zoning Ordinance or Zoning Code) to amend Sections 20.30.110 of Chapter 20.30 and 20.60.030 of Chapter 20.60, and 20.200.470 of Chapter 20.200; to add new Sections 20.40.115 of Chapter 20.40, 20.70.130 of Chapter 20.70, and 20.75.230 of Chapter 20.75; to amend Part 2 of Chapter 20.80; and to add a new Part 2.5 to Chapter 20.80, all to allow and regulate transient occupancy as an incidental use to primary residential uses, to modify permitting requirements and occupancy limitations for Bed and Breakfast Inns, to amend and add long-term room rental limitations and to make other technical, non-substantive, or formatting changes in those sections of Title 20.

RECOMMENDATION

Recommend to the City Council the approval of the ordinance outlined in this memorandum to amend Title 20 of the San José Municipal Code to allow and regulate transient occupancy (not to exceed 30 days in duration per rental period) as an incidental use to primary residential uses, to modify permitting requirements and occupancy limitations for Bed and Breakfast Inns, to amend and add long-term room rental limitations, and to make other technical, non-substantive, or formatting changes within those sections of Title 20 all to further the Innovative Economy and Fiscal Sustainability Goals and Policies in the Envision San José 2040 General Plan.

OUTCOME

The proposed amendments to the Zoning Ordinance (Zoning Code or Title 20) would allow short-term rentals of residences or "incidental transient occupancy" for up to 90 days per calendar year as a Permitted Use with or without a "host" (owner or primary tenant) present, and with or without a "hosting platform," as would be defined in the Zoning Code. Incidental transient occupancy would be required to comply with proposed specific performance standards and other provisions in the Zoning Code.

BACKGROUND

Short-term rentals of residences can provide ancillary income to the City's residents, help expand the City's tourism and available transient occupancy opportunities during peak hotel/motel occupancy times, such as major sporting events, and help stimulate commercial activity throughout the City.

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Currently, the City does not have provisions in its Municipal Code to allow short-term rentals of residences (not to exceed 30 days in duration per rental period) as a Permitted Use. However, in fact, these rentals exist in San José, and they meet a demand that visitors and other new arrivals have for short-term occupancy in the City. If effectively managed, short-term rental of residences can provide homeowners and primary tenants an additional opportunity for income to hold on to their residences and invest in upkeep, which can support neighborhood stability and identity.

Short-term rentals that do not exceed 30 days in duration are a type of transient occupancy that is subject to the City's transient occupancy tax of 10% (TOT) per the provisions in Title 4 of the San José Municipal Code. If the City were to allow and regulate these uses effectively, the City could collect TOT from them, thereby increasing revenue to the City's General Fund.

Council Direction

On March 6, 2014, in his Budget Message, Mayor Reed stated, "the Administration should explore applying the TOT to non-hotel lessors utilizing internet-transacted vacation rentals" to generate revenue and have a level playing field with hotels. Subsequently, on April 1, 2014 Councilmember Campos stated during a Rules Committee meeting that the Administration should "develop a method and implementation plan for the requirement that all shareable housing and temporary rental services doing business in San José collect and pay the TOT." Given this interest, City staff from the Office of Economic Development, the Department of PBCE, and the City Attorney's Office has collaborated on a proposed ordinance to legalize short-term rentals of residences. A separate recommendation to Council would include an Agreement with Airbnb to foster remittance of the TOT to the City from Airbnb hosts.

ANALYSIS

The proposed ordinance would allow incidental transient occupancy as a Permitted Use for the purposes of: 1) obtaining TOT revenue for the City; and 2) establishing performance standards for these rentals in order to maintain compatibility with surrounding land uses.

Given the relatively small-scale and scattered locations of incidental transient occupancy today in the City in comparison to the presence in other large cities worldwide, and given the potential costs of regulation that could be incurred by the City, staff recommends a regulatory approach that relies on keeping the implementation of the proposed ordinance simple and low-cost for City staff and hosts.

As proposed by staff, incidental transient occupancy would be allowed by right in conventional and Planned Development Zoning Districts in residences where the residence itself is permitted and is in conformance with all applicable Zoning Code provisions, including performance criteria set forth in Table 20-165 (see attached Draft Ordinance). The provisions would allow incidental transient occupancy for up to 90 days per calendar year with or without a host (owner or primary tenant) present, and with or without a "hosting platform," as would be defined in the Zoning Code.

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To prevent landlords from turning rent-controlled units into full-time short-term rental properties that could result in displacement of renters of affordable units, the performance standards would limit the lessor of such units to “a Person who occupies the unit that is being used for Incidental Transient Occupancy for at least sixty (60) consecutive days, with the intent to establish that dwelling as the Host’s Primary Residence.”

The ordinance would not preclude the rights of landlords or homeowners’ associations to prohibit short-term rentals.

The ordinance would also update provisions for Bed and Breakfast Inns and long-term residential rentals to distinguish more clearly each type of use from each other and align standards to type of use with the intent of maintaining a level playing field among these uses and with Hotels/Motels.

General Plan Consistency

San José’s economy relies on innovation, providing job opportunities and fiscal resources for the City’s residents. General Plan Policies for a Diverse and Innovative Economy address the need to provide broad economic prosperity and support for businesses of all sizes. Along with the Fiscal Sustainability Policies, these Policies also strive for reliable funding sources for the City through economic development actions. San José must manage revenue sources and expenditures to deliver services that protect public health and safety, promote the local economy, and improve the quality of life for San José’s residents in a financially sound and cost-effective manner.

The proposed amendments are consistent with the Innovative Economy and Fiscal Sustainability Goals, Policies and Implementation Actions in the Envision San José 2040 General Plan including but not limited to the following:

Goal IE-1 – Land Use and Employment. Proactively manage land uses to provide and enhance economic development and job growth in San José.

- The proposed amendments to the Zoning Code would facilitate economic development by providing clear provisions for residents in San José to have opportunities for ancillary income generation from the incidental transient occupancy of a portion or all of their residences.

Action IE-2.8 – Business Growth and Retention. Evaluate and periodically update the City’s policies, regulations and ordinances to maintain San José’s competitive ability to attract and grow businesses, including small businesses and home occupations.

- The proposed amendments would facilitate small home-based businesses of short-term rentals.

Goal FS-2 – Cultivate Fiscal Resources. Maintain and expand the revenue sources available to finance the provision of City services.

- The proposed amendments could establish a basis for the City to expand revenue sources available to finance the provision of City services.

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Goal FS-3 – Fiscally Sustainable Land Use Framework. Make land use decisions that improve the City's fiscal condition. Manage San José's future growth in an orderly, planned manner that is consistent with our ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities.

- The proposed amendments would potentially help achieve more equitable sharing of the cost of services provided by the City to residents.

Policy FS-3.4 – Fiscally Sustainable Land Use Framework. Promote land use policy and implementation actions that improve our City's fiscal sustainability. Maintain or enhance the City's projected total net revenue through amendments made to this General Plan in each Review process. Discourage proposed rezonings or other discretionary land use actions that could significantly diminish revenue to the City or significantly increase its service costs to the City without offsetting increases in revenue.

- The proposed amendments would establish provisions that could improve the City's fiscal sustainability through the collection of TOT revenue from incidental transient occupancy.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

Planning staff has engaged the public on the proposed ordinance through: 1) a community meeting held the evening of October 30, 2014 with interested stakeholders including residents, affordable housing representatives, representatives of the hospitality industry, and a representative from a hosting platform for incidental transient occupancy, which was attended by approximately 50 people; and 2) with the PBCE Developers' Roundtable held the morning of October 17, 2014, which was attended by approximately 20 people. These meetings provided forums for public input on the proposed amendments.

As of the writing of this staff report, the proposed ordinance is scheduled for presentation to the Neighborhoods Commission on November 12, 2014. After that public meeting, staff will provide a summary of the outcome to the Planning Commission.

Community members acknowledged that incidental transient occupancy was currently present in residences that are scattered throughout the City, even though the San José Municipal Code does not include provisions to allow the use as Permitted (i.e., allowed without Planning approval by the City). Given this existing context, there is general consensus to amend the Zoning Code to

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regulate this type of use, rather than completely prohibit it. Primary issues that community members raised related to whether the use occurs with or without a host present, the allowable scale and intensity of the use, and where in the City the use may be allowed, including performance standards for property maintenance, parking, host and occupant behavior – such as informing neighbors about when the use will occur and by whom, outdoor activities, maximum noise levels, and minimum trash collection, so that the host and the occupants will be good neighbors.

Community members were also interested in aligning revenue expectations with City service demands raised by the use, including, in particular, demands on Code Enforcement resources. Additionally, some community members voiced preferences for the City to create and maintain a level playing field between requirements for hotels/motels and the proposed incidental transient occupancy use. There were also community members who expressed concerns about the degree to which incidental transient occupancy could negatively impact affordable housing options in the City. More specifically, community comments can be summarized as follows:

1. Require a business license for a host to operate – ideally, regardless of whether or not a hosting platform is used, and regardless of whether host is present or not, but definitely if there are provisions in the proposed ordinance that would allow incidental transient occupancy without a host onsite.
2. Limit the number of days per year both without a host present and with a host present.
3. Allow far fewer than 90 days – or don't allow at all a “no-host” option – at least in “suburban” parts of the City.
4. Align the total number of occupants allowed in a residence to the number of bedrooms in the residence or to the size of the residence.
5. Include provisions for quiet hours, such as lower maximum noise levels and limitations on outdoor activity between certain hours (e.g., between 10:00 PM and 7:00 AM).
6. Require a public registry for each site with contact information for each host and guest information included.
7. Clarify that revenue received by the City through TOT collection from legalizing the incidental transient occupancy use should go to more effective and additional Code Enforcement because the use creates costs for the City to provide services; ideally, there should be cost recovery from revenue generated by the use.
8. Include provisions for neighbors to be able to contact a property manager or host – at the very least require provisions for an interested party to contact a host representative and get a response 24 hours a day, 365 days a year.

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

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Staff Response

To the extent provided by law and where practical within the scope of the Zoning Code, staff's recommended amendments address the concerns raised by members of the public. The City's requirements for payment of business tax currently apply to a host if the number of units used for incidental transient occupancy is three (3) or more (i.e., three rooms rented independently to three different transient users if the host is present or three residences if a host is not present). Incidental transient occupancy use that involves fewer than three (3) rental units is not subject to the City's business tax.

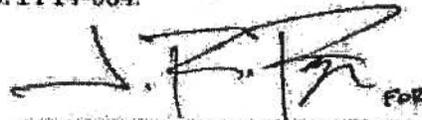
Staff is not opposed to exploring the concept of a public registry of hosts if the scale of incidental transient occupancy increases significantly. However, at the time of the writing of this staff report, based on information that staff has obtained from the City's Code Enforcement Division, from hosting platforms, and from community members, staff has concluded that the current level of incidental transient occupancy in the City may not warrant the investment of City resources to establish and maintain such a public registry. Staff recommends, instead, that the City monitor the level of growth of this use for the next two years with implementation of the ordinance as currently proposed by staff, and consider a registry requirement if there is a significant increase in complaints to Code Enforcement during this period. The City Council could choose to budget General Fund TOT revenues to help offset City costs for Code Enforcement needed to address any complaints about such uses.

COORDINATION

The preparation of the proposed ordinance and this staff report were coordinated with the Office of Economic Development and the City Attorney's Office.

CEQA

Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan, EIR Resolution No. 76041 and addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the Envision San José 2040 General Plan Program approved previously. The Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan entitled, "Envision San José 2040 General Plan," for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011, adequately describes the activity for the purposes of CEQA. The project does not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San José may take action on the project as being within the scope of the Final EIR, File No. PPI4-084.



HARRY FREITAS, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact Jenny Nusbaum, Senior Planner at 408-535-7872.

Attachments: Draft Ordinance

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11/19/2014

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 20.30.110 OF CHAPTER 20.30, 20.60.030 OF CHAPTER 20.60 AND 20.200.470 OF CHAPTER 20.200, ADDING NEW SECTIONS 20.40.115 OF CHAPTER 20.40, 20.70.130 OF CHAPTER 20.70 AND 20.75.230 OF CHAPTER 20.75, AMENDING PART 2 OF CHAPTER 20.80, AND ADDING A NEW PART 2.5 TO CHAPTER 20.80, ALL OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, TO ALLOW AND REGULATE TRANSIENT OCCUPANCY AS AN INCIDENTAL USE OF RESIDENCES AND TO MODIFY PERMITTING REQUIREMENTS AND OCCUPANCY LIMITATIONS FOR BED AND BREAKFAST INNS TO AMEND AND ADD LONG-TERM ROOM RENTAL LIMITATIONS AND TO MAKE OTHER NON SUBSTANTIVE OR FORMATTING CHANGES WITHIN THESE SECTIONS OF TITLE 20

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the City has certified that certain Final Program Environmental Impact Report ("FEIR") for the Envision San José 2040 General Plan and the City Council adopted its related Resolution No. 76041 in connection therewith; and

WHEREAS, pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that no new effects would occur from and no new mitigation measures would be required for the adoption of this Ordinance and that adoption of this Ordinance is within the scope of and in furtherance of the Envision San José 2040 General Plan FEIR, for which findings were adopted by City Council through its Resolution No. 76041 on November 1, 2011; and

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WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the Final EIR and related City Council Resolution No. 76041 prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 20.30.110 of Chapter 20.30 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

"20.30.110 Incidental Uses.

In addition to the occupancy of a dwelling as a residence, the following incidental uses are permitted:

- A. The rental of rooms in a One (1)-Family Dwelling to up to three (3) Guests and in a Two (2)-Family Dwelling to up to two (2) Guests, by each Family and in a Multiple Dwelling Unit to up to two (2) Guests per unit, if such use is clearly incidental to the occupancy of the dwelling unit by said Family as its own residence, and such rental is for a period of time longer than thirty (30) days and there are no more than six (6) persons living in the dwelling.
- B. Use of the dwelling, including a permitted Secondary Dwelling or permitted Guesthouse, for Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80.
- C. State licensed Family Day Care Home.

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GD. The following non-commercial activities:

1. A garage sale consisting of the occupants' personal property;
2. Sale of goods hand-produced by the occupants;
3. Sales parties held for the purpose of selling goods to invited Guests. Such parties shall be held inside a permanent structure or in the rear yard of the dwelling unit.

DE. To qualify as a non-commercial activity:

1. No more than two (2) such sales are allowed in any calendar year;
2. No such sale can be conducted for more than four (4) consecutive days;
3. Such sales shall only be conducted between the hours of 9:00 a.m. and 9:00 p.m.”

SECTION 2. Chapter 20.40 of Title 20 of the San José Municipal Code is hereby amended to add a new Section 20.40.115 to be entitled and read as follows:

“20.40.115 Incidental Use, Residential

Where residential use has been permitted pursuant to a Conditional Use Permit, Special Use Permit or Administrative Permit, Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 is a permitted incidental use of the permitted dwelling.”

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SECTION 3. Section 20.60.030 of Chapter 20.60 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

"20.60.030 Uses

The use regulations for territory situated in a Planned Development District shall be as follows:

- A. Unless and until a Planned Development Permit has been issued and been effectuated, property in such territory may be used only as if it were in its base district alone.
- B. If a Planned Development Permit is effective, any use or combination of uses provided for in said permit is allowed in accordance with and in strict compliance with all terms, provisions and conditions of said permit. Each permitted use shall be confined and limited to the particular location designated therefore in said permit. No use, other than the particular uses specified in the permit, shall be permitted, except as set forth elsewhere in this Title 20.
- C. If a Planned Development Permit permits a residential use. Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 is a permitted use of the permitted dwelling.
- D. If a Planned Development Permit has been issued, the Planned Development District may nevertheless be disregarded and property in such territory used as if it were in its base district alone if such use is confined to part of the subject territory not covered by the permit

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and a requirement to make such use of such part is not a condition of such permit.

SECTION 4. Chapter 20.70 of the San José Municipal Code is hereby amended by adding a Section to be numbered and entitled and read as follows:

“20.70.130 Incidental Use, Residential

Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 of a Live/Work Unit or Multiple Dwelling is a permitted incidental use of the dwelling.”

SECTION 5. Chapter 20.75 of the San José Municipal Code is hereby amended by adding a Section to be numbered and entitled and read as follows:

20.75.230 Incidental Use, Residential

Where residential use has been permitted pursuant to a Conditional Use Permit, Special Use Permit or Administrative Permit, Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 is a permitted use of the permitted dwelling.”

SECTION 6. Part 2 of Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

“Part 2

BED & BREAKFAST INNS

20.80.110 Bed and Breakfast Inns - Criteria for Approval

- A. No Development Permit may be issued for a Bed and Breakfast Inn unless the following criteria are met:

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1. The inn is owner-occupied.
 2. The Building is of historical and/or architectural significance and was designed for residential occupancy.
 3. No separate cooking facilities for Guests are provided.
 4. No more than one daily meal, breakfast, is served to Guests.
 5. No more than one Guest Room has an external entryway.
 6. No Guest may occupy accommodations in the inn for a period of more than ~~fourteen~~ thirty (30) calendar days, counting portions of calendar days as a full calendar day in any three-month period.
 7. A certificate of occupancy for Group R occupancy is obtained from the City Building Division, and all applicable Building and Fire regulations are met.
 8. Any loan funds provided by the City of San José or the redevelopment agency for rehabilitation and/or repair of the subject Building as a residential Building have been repaid in full.
- B. The criteria set forth in subsection A. above shall be deemed to be conditions of any development permit for a Bed and Breakfast Inn, and failure to adhere to said criteria shall be a violation of this Title.

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- C. All Development Permits for a Bed and Breakfast Inn shall set forth the maximum number of Guest Rooms or Guests that may occupy the premises, at any given time, for overnight lodging.

SECTION 7. Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to by adding a Part to be numbered and entitled and read as follows:

"Part 2.5

Transient Occupancy as an Incidental Use to a Residence

20.80.150 Definitions

The definitions set forth in the Section shall govern the interpretation of this Part:

- A. "Adjacent Properties" means the dwelling units located to the sides, rear, front, including across the street, above and below, the dwelling unit in which the Incidental Transient Occupancy is located.
- B. "Host" means any Person, as defined in Title 1 of this Code, who is the owner of record of residential real property, or any Person who is a lessee of residential real property pursuant to a written agreement for the lease of such real property, who offers a dwelling unit, or portion thereof, for Incidental Transient Occupancy.
- C. "Host Present" means the Host is present on the premises of the dwelling unit that is being used for Incidental Transient Occupancy during the term of the Transient Occupancy at all times between the hours of 10pm - 6am.

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- D. "Hosting Platform" means a Person that provides a means through which a host may offer a dwelling unit, or portion thereof, for Incidental Transient Occupancy. This service is usually, though not necessarily, provided through an internet based platform and generally allows an owner or tenant to advertise the dwelling unit through a website provided by the Hosting Platform and provides a means for potential Incidental Transient Users to arrange Incidental Transient Occupancy and payment therefor, whether the Transient User pays rent directly to the Host or to the Hosting Platform.
- E. "Incidental Transient Occupancy" means the use or possession or the right to the use or possession of any room or rooms, or portions thereof for dwelling, sleeping or lodging purposes in any One-Family Dwelling, Two Family Dwelling, Multiple Dwelling, Mobilehome, Live/Work Unit, or Secondary Dwelling, by a Transient User.
- F. "Local Contact Person" mean a person designated by the Host who shall be available at all twenty-four (24) hours per day, seven (7) days per week during the term of any Transient Occupancy for the purpose of (i.) responding within sixty (60) minutes to complaints regarding condition or operation of the dwelling unit or portion thereof used for Incidental Transient Occupancy, or the conduct of Transient Users; and (ii) taking remedial action to resolve such complaints.
- G. "Primary Residence" means a permanent resident's usual place of return for housing as documented by motor vehicle registration, driver's license, voter registration or other such evidence.

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H. "Transient User" mean a person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full calendar days.

20.80.160 General

Incidental Transient Occupancy meeting the criteria of this Part is an allowed use in any One-Family Dwelling, Two-Family Dwelling, Multiple Family Dwelling, Mobilehome, Live/Work Unit, Secondary Dwelling or Guest House.

20.80.170 Performance Criteria

Incidental Transient Occupancy of a residential dwelling is only allowed as an incidental use of such dwelling if the Incidental Transient Occupancy conforms to each of the performance criteria set forth in Table 20-165 below.

Table 20-165 Performance Criteria	
Number of Occupants One-Family Dwelling or Mobilehome - Host Present	Incidental Transient Occupancy by up to three (3) Transient Users in a One-Family Dwelling or Mobilehome with the Host present.
Number of Occupants in each Dwelling Unit in Two-Family or Multiple Family Dwelling - Host Present	Incidental Transient Occupancy by up to two (2) Transient Users in each dwelling unit in a Two-Family Dwelling or Multiple Family Dwelling with the Host Present.
Number of Occupants -	Incidental Transient Occupancy where the Host is

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Host Not Present	not present shall be limited to the two (2) people in a studio unit, three (3) people in a one bedroom unit and two (2) people per bedroom for each bedroom in excess of one bedroom, but not to exceed ten (10) persons total.
Contact Information - Host Not Present	For Incidental Transient Occupancy where the Host is not present on the premises during the term of the Transient Occupancy, the Host shall provide written notice of the name and telephone number of the Local Contact Person to all Transient Users and to all occupants of all Adjacent Properties.
Annual Limit on Number of Days for Incidental Transient Occupancy	___ day for the calendar year ___ and ninety (90) days per calendar year thereafter.
Parking Requirements for Incidental Transient Occupancy	For Incidental Transient Occupancies with the Host Present, the dwelling unit has the required number of parking spaces for the dwelling type as set forth in Section 20.90.060.
Limitation in Dwellings Subject to Parts 1-6 of Chapter 17.23 of this Code	Incidental Transient Occupancy is only a permitted use in a dwelling that is subject to Parts 1-6 of Chapter 17.23 of this Code, if the Host is a Person who occupies the unit that is being used for Incidental Transient Occupancy for at least sixty (60) consecutive days, with the intent to establish that dwelling as the Host's Primary Residence.
Payment of Transient Occupancy Tax	Transient Occupancy taxes are collected and paid to the City pursuant to Chapter 4.72 and 4.74 of this Code. Transient Occupancy taxes are the responsibility of the Host, but may be paid by a Hosting Platform on behalf of a Host by shall be collected and paid by the Host unless if the Incidental Transient Occupancy is created through a Hosting Platform that has an agreement with the City for collection and payment of such Transient Occupancy taxes.
Compliance with All Requirements of the Housing Code for	Any building or portion thereof used for Incidental Transient Occupancy shall comply with the requirements of the Housing Code (Chapter

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Dwellings	17.20.)
Recordkeeping Requirements	The Host shall retain records documenting the compliance with these Performance Criteria for a period of three (3) years after each period of Incidental Transient Occupancy. The Host and shall provide copies of such records documenting the compliance with these Performance Criteria, including but not limited to records showing payment of transient occupancy taxes by a Hosting Platform on behalf of a Host, upon request to City Manager, City Attorney, City Auditor or any designee of City Manager, City Attorney or City Auditor.

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SECTION 8. Section 20.200.470 of Chapter 20.200 of Title 20 of the San José
Municipal Code is hereby amended to read as follows:

20.200.470 Guesthouse

"Guesthouse" means a building which is designed or used to accommodate a maximum of ten (10) Guests, where Guest Rooms are provided (1) for a fixed period of at least thirty (30) consecutive calendar days, in exchange for an agreed payment of a fixed amount of money or other compensation based on the period of occupancy; or (2) for Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80."

PASSED FOR PUBLICATION of title this ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

CHAPTER 41A: RESIDENTIAL UNIT CONVERSION AND DEMOLITION

<u>Sec. 41A.1.</u>	Title.
<u>Sec. 41A.2.</u>	Purpose.
<u>Sec. 41A.3.</u>	Findings.
<u>Sec. 41A.4.</u>	Definitions.
<u>Sec. 41A.5.</u>	Unlawful Conversion; Remedies.
<u>Sec. 41A.6.</u>	Administrative Enforcement Procedures.
<u>Sec. 41A.7.</u>	Office of Short-Term Residential Rental Administration and Enforcement.
<u>Sec. 41A.8.</u>	Construction.

SEC. 41A.1. TITLE.

This chapter shall be known as the Residential Unit Conversion Ordinance.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

SEC. 41A.2. PURPOSE.

It is the purpose of this ordinance to benefit the general public by minimizing adverse impacts on the housing supply and on persons and households of all income levels resulting from the loss of residential units through their conversion to tourist and transient use. This is to be accomplished by regulating the conversion of residential units to tourist and transient use, and through appropriate administrative and judicial remedies.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

SEC. 41A.3. FINDINGS.

The Board of Supervisors finds that:

- (a) There is a severe shortage of decent, safe, sanitary and affordable rental housing in the City and County of San Francisco.
- (b) The people of the City and County of San Francisco, cognizant of the housing shortage in San Francisco, on November 4, 1980, adopted a declaration of policy to increase the City and County's housing supply by 20,000 units.
- (c) Many of the City and County's elderly, disabled and low-income persons and households reside in affordable residential units.
- (d) As a result of the removal of residential units from the housing market, a housing emergency exists within the City and County of San Francisco for its elderly, disabled and low-income households.
- (e) The Board of Supervisors and the Mayor of the City and County of San Francisco recognized this housing emergency and enacted an ordinance which established a moratorium on the conversion of residential units to tourist and transient use.
- (f) The conversion of residential units to tourist and transient use impacts especially on persons seeking housing in the low to moderate price range.
- (g) It is in the public interest that conversion of residential units be regulated and that remedies be provided when unlawful conversion has occurred, in order to protect the residents and to conserve the limited housing resources.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

SEC. 41A.4. DEFINITIONS.

Whenever used in this Chapter 41A, the following words and phrases shall have the definitions provided in this Section:

Booking Service. A Booking Service is any reservation and/or payment service provided by a person or entity that facilitates a short-term rental transaction between an Owner or Business Entity and a prospective tourist or transient user, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment services provided for the short-term rental transaction.

Business Entity. A corporation, partnership, or other legal entity that is not a natural person that owns or leases one or more residential units.

Complaint. A complaint submitted to the Department alleging a violation of this Chapter 41A and that includes the Residential Unit's address, including unit number, date(s) and nature of alleged violation(s), and any available contact information for the Owner and/or resident of the Residential Unit at issue.

Conversion or Convert. A change of use from Residential Use to Tourist or Transient Use, including, but not limited to, renting a Residential Unit as a Tourist or Transient Use.

Department. The Planning Department.

Director. The Director of the Planning Department, or his or her designee.

Hosting Platform. A person or entity that participates in the short-term rental business by providing, and collecting or receiving a fee for, Booking Services through which an Owner may offer a Residential Unit for Tourist or Transient Use. Hosting Platforms usually, though not necessarily, provide Booking Services through an online platform that allows an Owner to advertise the Residential Unit through a website provided by the Hosting Platform and the Hosting Platform conducts a transaction by which potential tourist or transient users arrange Tourist or Transient Use and payment, whether the tourist or transient pays rent directly to the Owner or to the Hosting Platform.

Interested Party. A Permanent Resident of the building in which the Tourist or Transient Use is alleged to occur, any homeowner association associated with the Residential Unit in which the Tourist or Transient Use is alleged to occur, the Owner of the Residential Unit in which the Tourist or Transient Use is alleged to occur, a Permanent Resident or Owner of a property within 100 feet of the property containing the Residential Unit in which the Tourist or Transient Use is alleged to occur, the City and County of San Francisco, or any non-profit organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, which has the preservation or improvement of housing as a stated purpose in its articles of incorporation or bylaws.

Owner. Owner includes any person who is the owner of record of the real property. As used in this Chapter 41A, the term "Owner" includes a lessee where the lessee is offering a Residential Unit for Tourist or Transient use.

Permanent Resident. A person who occupies a Residential Unit for at least 60 consecutive days with intent to establish that unit as his or her primary residence. A Permanent Resident may be an owner or a lessee.

Primary Residence. The Permanent Resident's usual place of return for housing as documented by at least two of the following: motor vehicle registration; driver's license; voter registration; tax documents showing the Residential Unit as the Permanent Resident's residence for the purposes of a home owner's tax exemption; or a utility bill. A person may have only one Primary Residence.

Residential Unit. Room or rooms, including a condominium or a room or dwelling unit that forms part of a tenancy-in-common arrangement, in any building, or portion thereof, which is designed, built, rented, leased, let or hired out to be occupied for Residential Use as defined in the San Francisco Housing Code.

Residential Use. Any use for occupancy of a Residential Unit by a Permanent Resident.

Short-Term Residential Rental. A Tourist or Transient Use where all of the following conditions are met:

- (a) the Residential Unit is offered for Tourist or Transient Use by the Permanent Resident of the Residential Unit;
- (b) the Permanent Resident is a natural person;
- (c) the Permanent Resident has registered the Residential Unit and maintains good standing on the Department's Short-Term Residential Rental Registry; and
- (d) the Residential Unit: is not subject to the Inclusionary Affordable Housing Program set forth in Planning Code Section 41.5 *et seq.*; is not a residential hotel unit subject to the provisions of Chapter 41, unless such unit has been issued a Permit to Convert under Section 41.12; is not otherwise designated as a below market rate or income-restricted Residential Unit under City, state, or federal law; has not been the subject of an eviction pursuant to the Ellis Act and Administrative Code Section 37.9(a)(13) within the five year period prior to applying for the Registry if such eviction occurred after November 1, 2014; and no other requirement of federal or state law, this Municipal Code, or any other applicable law or regulation prohibits the permanent resident from subleasing, renting, or otherwise allowing Short-Term Residential Rental of the Residential Unit.

Short-Term Residential Rental Registry or Registry. A database of information maintained by the Department that includes a unique registration number for each Short-Term Residential Rental and information regarding Permanent Residents who are permitted to offer Residential Units for Short-Term Residential Rental. Only one Permanent Resident per Residential Unit may be included on the Registry at any given time. The Registry shall be available for public review to the extent required by law, except that, to the extent permitted by law, the Department shall redact any Permanent Resident names and street and unit numbers from the records available for public review.

Tourist or Transient Use. Any use of a Residential Unit for occupancy for less than a 30-day term of tenancy, or occupancy for less than 30 days of a Residential Unit leased or owned by a Business Entity, whether on a short-term or long-term basis, including any occupancy by employees or guests of a Business Entity for less than 30 days where payment for the Residential Unit is contracted for or paid by the Business Entity.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 74-98, App. 3/16/98; Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; Ord. 218-14, File No. 140381, App. 10/27/2014, Eff. 11/26/2014, Oper. 2/1/2015; Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015; Ord. 104-16, File No. 160423, Eff. 7/24/2016; Ord. 178-16, File No. 160790, Eff. 9/10/2016)

SEC. 41A.5. UNLAWFUL CONVERSION; REMEDIES.

- (a) **Unlawful Actions.** Except as set forth in subsection 41A.5(g), it shall be unlawful for
 - (1) any Owner to offer a Residential Unit for rent for Tourist or Transient Use;
 - (2) any Owner to offer a Residential Unit for rent to a Business Entity that will allow the use of a Residential Unit for Tourist or Transient Use; or
 - (3) any Business Entity to allow the use of a Residential Unit for Tourist or Transient Use.
- (b) **Records Required.** The Owner and Business Entity, if any, shall retain and make available to the Department records to demonstrate compliance with this Chapter 41A upon written request as provided herein.
- (c) **Determination of Violation.** Upon the filing of a written Complaint that an Owner or Business Entity has engaged in an alleged unlawful Conversion or that a Hosting Platform is not complying with the requirements of subsection (g)(4)(A), the Director shall take reasonable steps necessary to determine the validity of the Complaint. The Director may independently determine whether an Owner or Business Entity may be renting a Residential Unit for Tourist or Transient Use in violation of this Chapter 41A or whether a Hosting Platform has failed to comply with the requirements of subsection (g)(4)(A). To determine if there is a violation of this Chapter 41A, the Director may initiate an investigation of the subject property or Hosting Platform's allegedly unlawful activities. This investigation may include, but is not limited to, an inspection of the subject property and/or a request for any pertinent information from the Owner, Business Entity, or Hosting Platform, such as leases, business records, or other documents. The Director shall have discretion to determine whether there is a potential violation of this Chapter 41A. Notwithstanding any other provision of this Chapter 41A, any alleged violation related to failure to comply with the requirements of the Business and Tax Regulations Code shall be enforced by the Treasurer/Tax Collector under the provisions of that Code.
- (d) **Civil Action.**
 - (1) The City may institute civil proceedings for injunctive and monetary relief, including civil penalties, against an Owner, Business Entity, or Hosting Platform for violations of this Chapter 41A under any circumstances, without regard to whether a Complaint has been filed or the Director has made a determination of a violation.
 - (2) **Private Rights of Action.**
 - (A) Following the filing of a Complaint and the final determination of a violation by the Director, any Interested Party may institute civil proceedings for injunctive and monetary relief against an Owner or Business Entity.
 - (B) An Interested Party who is a Permanent Resident of the building in which the Tourist or Transient Use is alleged to occur, is a Permanent Resident of a property within 100 feet of the property containing the Residential Unit in which the Tourist or Transient Use is alleged to occur, or is a homeowner association associated with the Residential Unit in which the Tourist or Transient Use is alleged to occur may institute a civil action for injunctive and monetary relief against an Owner or Business Entity if
 - (i) The Interested Party has filed a Complaint with the Department;

- (ii) The Director has not made a written determination pursuant to subsection 41A.6(a) that there is no violation of this Chapter 41A or basis for an investigation for an unlawful activity;
- (iii) An administrative hearing officer has not issued a final determination pursuant to subsection 41A.6(c) regarding the Complaint within 135 days of the filing of the Complaint with the Department;
- (iv) After such 135-day period has passed, the Interested Party has provided 30 days' written notice to the Department and the City Attorney's Office of its intent to initiate civil proceedings; and
- (v) The City has not initiated civil proceedings by the end of that 30-day notice period.

Under this subsection 41A.5(d)(2)(B), the prevailing party shall be entitled to the costs of suit, including reasonable attorneys' fees, pursuant to an order of the Court.

(3) **Civil Penalties.** If the City is the prevailing party in any civil action under this subsection (d): an Owner, Hosting Platform, or Business Entity in violation of this Chapter 41A may be liable for civil penalties of not more than \$1,000 per day for the period of the unlawful activity. Interested Parties other than the City may not seek or obtain civil penalties.

(4) **Attorneys' Fees and Costs.** If the City or any other Interested Party is the prevailing party, the City or the Interested Party shall be entitled to the costs of enforcing this Chapter 41A, including reasonable attorneys' fees, pursuant to an order of the Court.

(5) Any monetary award obtained by the City and County of San Francisco in such a civil action shall be deposited in the Department to be used for enforcement of Chapter 41A. The Department, through the use of these funds, shall reimburse City departments and agencies, including the City Attorney's Office, for all costs and fees incurred in the enforcement of this Chapter 41A.

(e) **Criminal Penalties.** Any Owner or Business Entity who rents a Residential Unit for Tourist or Transient Use in violation of this Chapter 41A, or any Hosting Platform that provides a Booking Service for a Residential Unit to be used for Tourist or Transient Use in violation of the Hosting Platform's obligations under this Chapter 41A, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor hereunder shall be punishable by a fine of not more than \$1,000 or by imprisonment in the County Jail for a period of not more than six months, or by both. Each Residential Unit rented for Tourist or Transient Use shall constitute a separate offense.

(f) **Method of Enforcement, Director.** The Director shall have the authority to enforce this Chapter against violations thereof by any or all of the means provided for in this Chapter 41A.

(g) **Exception for Short-Term Residential Rental.**

(1) Notwithstanding the restrictions set forth in this Section 41A.5, a Permanent Resident may offer his or her Primary Residence as a Short-Term Residential Rental if:

(A) The Permanent Resident occupies the Residential Unit for no less than 275 days out of the calendar year in which the Residential Unit is rented as a Short-Term Residential Rental or, if the Permanent Resident has not rented or owned the Residential Unit for the full preceding calendar year, for no less than 75% of the days he or she has owned or rented the Residential Unit;

(B) The Permanent Resident maintains records for two years demonstrating compliance with this Chapter 41A, including but not limited to information demonstrating Primary Residency, the number of days per calendar year he or she has occupied the Residential Unit, the number of days per calendar year the Residential Unit has been rented as a Short-Term Residential Rental, and compliance with the insurance requirement in Subsection (D). These records shall be made available to the Department upon request;

(C) The Permanent Resident complies with any and all applicable provisions of state and federal law and the San Francisco Municipal Code, including but not limited to the requirements of the Business and Tax Regulations Code by, among any other applicable requirements, collecting and remitting all required transient occupancy taxes, and the occupancy requirements of the Housing Code;

(D) The Permanent Resident maintains liability insurance appropriate to cover the Short-Term Residential Rental Use in the aggregate of not less than \$500,000 or conducts each Short-Term Residential Rental transaction through a Hosting Platform that provides equal or greater coverage. Such coverage shall defend and indemnify the Owner(s), as named additional insured, and any tenant(s) in the building for their bodily injury and property damage arising from the Short-Term Residential Use;

(E) The Residential Unit is registered on the Short-Term Residential Rental Registry;

(F) The Permanent Resident includes the Department-issued registration number on any Hosting Platform listing or other listing offering the Residential Unit for use as a Short-Term Residential Rental;

(G) For units subject to the rent control provisions of Section 37.3, the Permanent Resident complies with the initial rent limitation for subtenants and charges no more rent than the Permanent Resident is paying to any landlord per month; and

(H) The Permanent Resident can demonstrate to the satisfaction of the Department that the Residential Unit and the property on which it is located is not subject to any outstanding Building, Electrical, Plumbing, Mechanical, Fire, Health, Housing, Police, or Planning Code enforcement, including any notices of violation, notices to cure, orders of abatement, cease and desist orders, or correction notices. The Department shall not include a property that is subject to any such outstanding violations in the Registry. If such a violation occurs once a Residential Unit has been included in the Registry, the Department shall suspend the Residential Unit's registration and registration number until the violation has been cured.

(2) **Additional Requirements.**

(A) Offering a Residential Unit for Short-Term Residential Rental, including but not limited to advertising the Residential Unit's availability, while not maintaining good standing on the Registry shall constitute an unlawful conversion in violation of this Chapter 41A and shall subject the person or entity offering the unit in such a manner to the administrative penalties and enforcement procedures, including civil penalties, of this Chapter.

(B) Only one Permanent Resident may be associated with a Residential Unit on the Registry, and it shall be unlawful for any other person, even if that person meets the qualifications of a "Permanent Resident," to offer a Residential Unit for Short-Term Residential Rental.

(C) A Permanent Resident offering a Residential Unit for Short-Term Residential Rental shall maintain a valid business registration certificate.

(D) A Permanent Resident offering a Residential Unit for Short-Term Residential Rental shall post a clearly printed sign inside his or her Residential Unit on the inside of the front door that provides information regarding the location of all fire extinguishers in the unit and building, gas shut off valves, fire exits, and pull fire alarms.

(3) **Short-Term Residential Rental Registry Applications, Fee, and Reporting Requirement.**

(A) **Application.** Registration shall be for a two-year term, which may be renewed by the Permanent Resident by filing a completed renewal application. Initial and renewal applications shall be in a form prescribed by the Department. The Department shall determine, in its sole discretion, the completeness of an

application. Upon receipt of a complete initial application, the Department shall send mailed notice to the owner of record of the Residential Unit, informing the owner that an application to the Registry for the unit has been received. If the Residential Unit is in a RH-1(D) zoning district, the following additional requirements shall apply: the Department shall also send mailed notice to any directly associated homeowner association that has previously requested such notice and to any owners and occupants within 300 feet of the property; the Department shall hold the application for 45 days after sending such notice; and the Department shall review and consider any information submitted by any such homeowner association, neighboring owner or occupant, or member of the public regarding the eligibility of the permanent resident and/or the residential unit for listing on the Registry received during the 45-day hold period.

Both the initial application and any renewal application shall contain information sufficient to show that the Residential Unit is the Primary Residence of the applicant, that the applicant is the unit's Permanent Resident, and that the applicant has the required insurance coverage and business registration certificate. In addition to the information set forth here, the Department may require any other additional information necessary to show the Permanent Resident's compliance with this Chapter 41A. Primary Residency shall be established by showing the Residential Unit is listed as the applicant's residence on at least two of the following: motor vehicle registration; driver's license; voter registration; tax documents showing the Residential Unit as the Permanent Resident's Primary Residence for home owner's tax exemption purposes; or utility bill. A renewal application shall contain sufficient information to show that the applicant is the Permanent Resident and has occupied the unit for at least 275 days of each of the two preceding calendar years. Upon the Department's determination that an application is complete, the unit shall be entered into the Short-Term Residential Rental Registry and assigned an individual registration number.

(B) **Fee.** The fee for the initial application and for each renewal shall be \$50, payable to the Director. The application fee shall be due at the time of application. Beginning with fiscal year 2014-2015, fees set forth in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section. Within six months of the operative date of this ordinance* and after holding a duly noticed informational hearing at the Planning Commission, the Director shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of establishing and maintaining the registry and enforcing the requirements of this Chapter 41A, as well as any other information that the Controller determines appropriate to the performance of the duties set forth in this Chapter. After the hearing by the Planning Commission, but not later than August 1, 2015, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of establishing and maintaining the registry, enforcing the requirements of this Chapter 41A and any other services set forth in this Chapter and that the fees will not produce revenue that is significantly more than the costs of providing such services. The Controller shall, if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue that is significantly more than such costs. The adjusted rates shall become operative on July 1.

(C) **Reporting Requirement.** To maintain good standing on the Registry, the Permanent Resident shall submit a quarterly report to the Department beginning on January 1, 2016, and on January 1, April 1, July 1, and October 1 of each year thereafter, regarding the number of days the Residential Unit or any portion thereof has been rented as a Short Term Residential Rental since either initial registration or the last report, whichever is more recent, and any additional information the Department may require to demonstrate compliance with this Chapter 41A.

(4) Requirements for Hosting Platforms.

(A) All Hosting Platforms shall provide the following information in a notice to any user listing a Residential Unit located within the City and County of San Francisco through the Hosting Platform's service. The notice shall be provided prior to the user listing the Residential Unit and shall include the following information: that Administrative Code Chapters 37 and 41A regulate Short-Term Rental of Residential Units; the requirements for Permanent Residency and registration of the unit with the Department; and the transient occupancy tax obligations to the City.

(B) A Hosting Platform shall comply with the requirements of the Business and Tax Regulations Code by, among any other applicable requirements, collecting and remitting all required Transient Occupancy Taxes, and this provision shall not relieve a Hosting Platform of liability related to an occupant's, resident's, Business Entity's, or Owner's failure to comply with the requirements of the Business and Tax Regulations Code. A Hosting Platform shall maintain a record demonstrating that the taxes have been remitted to the Tax Collector.

(C) A Hosting Platform may provide, and collect a fee for, Booking Services in connection with short-term rentals for Residential Units located in the City and County of San Francisco only when the Hosting Platform exercises reasonable care to confirm that those Residential Units are lawfully registered on the Short-Term Residential Rental Registry at the time the Residential Unit is rented for short-term rental. Whenever a Hosting Platform complies with administrative guidelines issued by the Office of Short-Term Residential Rental Administration and Enforcement to confirm that the Residential Unit is lawfully registered on the Short-Term Rental Registry, the Hosting Platform shall be deemed to have exercised reasonable care for the purpose of this subsection (g)(4)(C).

(D) Commencing November 5, 2016, and on the fifth day of every month thereafter, a Hosting Platform shall provide a signed affidavit to the Office of Short Term Rentals verifying that the Hosting Platform has complied with subsection (g)(4)(C) of this Section 41A.5 in the immediately preceding month.

(E) For not less than three years following the end of the calendar year in which the short-term rental transaction occurred, the Hosting Platform shall maintain and be able, in response to a lawful request, to provide to the Office of Short Term Rentals for each short-term rental transaction for which a Hosting Platform has provided a Booking Service:

- (i) The name of the Owner or Business Entity who offered a Residential Unit for Tourist or Transient Use,
- (ii) The address of the Residential Unit,
- (iii) The dates for which the tourist or transient user procured use of the Residential Unit using the Booking Service provided by the Hosting Platform,
- (iv) The registration number for the Residential Unit, and
- (v) The affidavit required in subsection (g)(4)(D).

(5) The exception set forth in this subsection (g) provides an exception only to the requirements of this Chapter 41A. It does not confer a right to lease, sublease, or otherwise offer a residential unit for Short-Term Residential Use where such use is not otherwise allowed by law, a homeowners association agreement or requirements, any applicable covenant, condition, and restriction, a rental agreement, or any other restriction, requirement, or enforceable agreement. All Owners and residents are required to comply with the requirements of Administrative Code Chapter 37, the Residential Rent Stabilization and Arbitration Ordinance, including but not limited to the requirements of Section 37.3(c).

(6) The Department shall designate a contact person for members of the public who wish to file Complaints under this Chapter 41A or who otherwise seek information regarding this Chapter or Short-Term Residential Rentals. This contact person shall also provide information to the public upon request regarding quality of life issues, including, for example, noise violations, vandalism, or illegal dumping, and shall direct the member of the public and/or forward any such Complaints to the appropriate City department.

(7) Notwithstanding any other provision of this Chapter 41A, nothing in this Chapter shall relieve an individual, Business Entity, or Hosting Platform of the obligations imposed by any and all applicable provisions of state law and the Municipal Code including but not limited to those obligations imposed by the Business and Tax Regulations Code. Further, nothing in this Chapter shall be construed to limit any remedies available under any and all applicable provisions of state law and the Municipal Code including but not limited to the Business and Tax Regulations Code.

(Added by Ord. 331-81, App. 6/26/81; amended by Ord. 74-98, App. 3/6/98; Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; Ord. 218-14, File No. 140381, App. 10/27/2014, Eff. 11/26/2014, Oper. 2/1/2015; Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015; Ord. 104-16, File No. 160423, Eff. 7/24/2016; Ord. 178-16, File No. 160790, Eff. 9/10/2016; Ord. 89-17, File No. 170158, App. 4/14/2017, Eff. 5/14/2017)

*** Editor's Note:**

The reference in Sec. 41A.5(g)(3)(B) to "the operative date of this ordinance" was added to the Code as part of the amendments included in Ord. ~~218-14~~, Oper. 2/1/2015.

SEC. 41A.6. ADMINISTRATIVE ENFORCEMENT PROCEDURES.**(a) Determination and Notice of Violation.**

(1) After the Director has determined that a violation of this Chapter 41A exists, the Director shall notify the responsible Owner, Business Entity, or Hosting Platform of the determination of violation by certified mail and shall post the notice of violation in a conspicuous location on, or if access to the property is not available in a conspicuous location as close as practicable to, the building or property where the Residential Unit is located.

(2) Once a Complaint has been filed or once the Director has made a determination of violation in the absence of a Complaint, the Department shall include information regarding the Complaint or violation, including whether the Complaint is pending or resolved and, if resolved, any final determination, on the Department's website.

(3) **Contents of Notice.** The notice shall cite to this Chapter 41A and describe the violation(s) with specificity. The notice of violation shall: state that the responsible party shall immediately correct all violations; and assess any applicable administrative penalties as set forth in Subsection 41A.6(d)(1). The notice of violation shall also inform the responsible party of the right to request a Director's hearing under Subsection 41A.6(b) to appeal the determination of violation and any assessed administrative penalties.

(4) If the Director finds there is no violation of this Chapter or basis for an investigation for an unlawful activity, the Director shall so inform the complainant within 60 days of the filing of any Complaint.

(b) **Request for Hearing.** Within 30 days of the notice of violation, the responsible party may request a Director's hearing to appeal the determination of violation and any assessed administrative penalties. The Director shall send a notice of the date, hour, and place of the hearing to the responsible party at the address specified in the request for hearing and to any member of the public who has expressed an interest in the matter.

(c) **Administrative Review Hearings.** The Director may designate a member of Department staff to act in his or her place as the hearing officer. The Director's appointed hearing officer shall hold an administrative review hearing within 45 days of the request for hearing to review all information provided by the Interested Party, members of the public, City staff, and the Owner, Business Entity, or Hosting Platform for the investigation, and the hearing officer shall thereafter make a determination whether the Owner, Business Entity, or Hosting Platform has violated this Chapter 41A.

(1) **Pre-hearing Submission.** No less than ten days prior to the administrative review hearing, parties to the hearing shall submit written information to the Director including, but not limited to, the issues to be determined by the hearing officer and the evidence to be offered at the hearing. Such information shall be forwarded to the hearing officer prior to the hearing along with any information compiled by the Director.

(2) **Hearing Procedure.** If more than one hearing is requested for Residential Units located in the same building at or about the same time, the Director shall consolidate all of the hearings into one hearing. The hearing shall be recorded. Any party to the hearing may at his or her own expense cause the hearing to be recorded by a certified court reporter. Parties may be represented by counsel. All testimony shall be given under oath. Written decisions and findings shall be rendered by the hearing officer within 30 days of the hearing. Copies of the findings and decision shall be served upon the parties by certified mail. A notice that a copy of the findings and decision is available for inspection between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday shall be posted by the Owner or the Director in the building in the same location in which the notice of the administrative review hearing was posted.

(3) **Failure to Appear.** In the event the Owner, authorized Hosting Platform representative, or an interested party fails to appear at the hearing, the hearing officer may nevertheless make a determination based on the evidence in the record and files at the time of the hearing, and issue a written decision and findings.

(4) **Finality of the Hearing Officer's Decision and Judicial Review.** The decision of the hearing officer shall be final. Within 20 days after service of the hearing officer's decision, any party may seek judicial review of the hearing officer's decision.

(5) **Hearing Officer Decision and Collection of Penalties.** Upon the hearing officer's decision, or if no hearing is requested upon the expiration of the appeal period, the Director may proceed to collect the penalties and costs pursuant to the lien procedures set forth in Subsection 41A.6(e), consistent with the hearing officer's decision or the determination of violation if no hearing is requested.

(6) **Remedy of Violation.** If the hearing officer determines that a violation has occurred, the hearing officer's decision shall:

(A) Specify a reasonable period of time during which the Owner, Business Entity, or Hosting Platform must correct or otherwise remedy the violation;

(B) Detail the amount of any administrative penalties the Owner or Hosting Platform shall be required to pay as set forth in Subsection 41A.6(d); and,

(C) For violations by Owners, state that if the violation is not corrected or otherwise remedied within this period, the Department shall remove or prohibit the registration of the Residential Unit from the Short-Term Residential Registry for one year even if the Residential Unit otherwise meets the requirements for Short-Term Residential Rental.

(7) If the hearing officer determines that no violation has occurred, the determination is final.

(d) Administrative Penalties for Violations and Enforcement Costs.

(1) **Administrative Penalties.** Administrative penalties shall be assessed as follows:

(A) For the initial violation by an Owner or Business Entity, not more than four times the standard hourly administrative rate of \$121 for:

(i) each unlawfully converted unit per day from the notice of violation until such time as the unlawful activity terminates; or

(ii) the initial failure of a Hosting Platform to comply with its obligations under subsection 41A.5(g)(4).

(B) For the second and any subsequent violation by the same Owner(s), Business Entity, or Hosting Platform, not more than eight times the standard hourly administrative rate of \$121 for:

(i) each unlawfully converted unit per day from the notice of violation until such time as the unlawful activity terminates; or

(ii) the second and any subsequent failure of a Hosting Platform to comply with its obligations under subsection 41A.5(g)(4).

(2) **Prohibition on Registration and Listing Unit(s) on Any Housing Platform.** In the event of multiple violations of any Owner's or Business Entity's obligations under this Chapter 41A, the Department shall remove the Residential Unit(s) from the Registry for one year and include the Residential Unit(s) on a list maintained by the Department of Residential Units that may not be offered for Tourist or Transient Use until compliance. Any Owner or Business Entity who continues to offer for rent a Residential Unit in violation of this Section 41A.6 shall be liable for additional administrative penalties and civil penalties of up to \$1,000 per day of unlawful inclusion.

(e) **Notice of Violation and Imposition of Penalties.** The Director shall notify the Owner or Hosting Platform by certified mail of the violation and that administrative penalties shall be imposed pursuant to this Chapter 41A. The notice shall state the time of the existence of the violation and the resulting imposition of

penalties. Payment of the administrative penalties and enforcement costs shall be made within 30 days of the certified mailed notice to the Owner or Hosting Platform. If the administrative penalties and enforcement costs are not paid, the Director shall refer the matter to the Treasurer/Tax Collector and/or initiate lien procedures to secure the amount of the penalties and costs against the real property that is subject to this Chapter, under Article XX of Chapter 10 of the Administrative Code to make the penalty, plus accrued interest, a lien against the real property regulated under this Chapter. Except for the release of the lien recording fee authorized by Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to this ordinance shall be deposited as set forth in subsection (f) below.

(f) **Deposit of Penalties.** Any fees and penalties collected pursuant to this Chapter 41A shall be deposited in the Housing Trust Fund for use by the Small Sites Program, which shall reimburse City departments and agencies, including the Department and the City Attorney's Office, for all costs and fees incurred in the enforcement of this Chapter 41A.

(Added as Sec. 41A.8 by Ord. 74-98, App. 3/6/98; redesignated and amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; amended by Ord. 218-14, File No. 140381, App. 10/27/2014, Eff. 11/26/2014, Oper. 2/1/2015; Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015; Ord. 104-16, File No. 160423, Eff. 7/24/2016; Ord. 178-16, File No. 160790, Eff. 9/10/2016)

(Former Sec. 41A.6 added by Ord. 331-81, App. 6/26/81; repealed by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

SEC. 41A.7. OFFICE OF SHORT-TERM RESIDENTIAL RENTAL ADMINISTRATION AND ENFORCEMENT.

(a) The Mayor shall establish an Office of Short-Term Residential Rental Administration and Enforcement, which shall provide a single location to receive and process applications for the Registry and Complaints regarding violations of this Chapter 41A. This office shall be staffed by the Department and other departments as appropriate, with participation from the Department of Building Inspection, the Treasurer/Tax Collector's Office, and other departments as needed, to process applications for the Registry and enforce the requirements of this Chapter 41A in a timely and efficient manner. It is the intent of this Board of Supervisors in directing the establishment of this office to streamline both the process of administering the Registry and enforcing the requirements of this Chapter 41A to protect residential housing from unlawful conversion to Tourist or Transient Use. The Office of Short-Term Residential Rental Administration and Enforcement shall promulgate rules and regulations to simplify and streamline the application process and to minimize the time between the filing of applications and their final approval.

(b) **Monitor Hosting Platforms.** In addition to the administrative enforcement duties outlined in Section 41A.6, the Office of Short-Term Residential Rental Administration and Enforcement shall actively monitor Hosting Platform listings. Within 15 business days of the effective date of Ordinance No. 104-16, the Office of Short-Term Residential Rental Administration and Enforcement shall complete a comprehensive review of active Hosting Platform listings and produce an inventory of potentially non-compliant listings discovered during the review. Subsequent reviews of Hosting Platform listings shall be performed on at least a monthly basis.

(1) The Office of Short-Term Residential Rental Administration and Enforcement shall, upon completion of a Hosting Platform review or discovery of a potentially non-compliant listing, immediately provide notice to Hosting Platforms by electronic mail of all listings that do not have valid registration numbers or are otherwise not in compliance with this Chapter 41A. These notices shall be provided to the City Attorney's Office.

(2) The Office of Short-Term Residential Rental Administration and Enforcement shall have the power to issue and serve administrative subpoenas as necessary to determine whether Owners, Business Entities, and Hosting Platforms have complied with Administrative Code Chapter 41A. The Office of Short-Term Residential Rental Administration and Enforcement shall issue and serve subpoenas to the Hosting Platforms to obtain information necessary to determine whether violations of Administrative Code Chapter 41A have occurred within a reasonable time not to exceed 30 days of discovering potential violations through a monthly review or other investigation effort. Owners, Business Entities, and Hosting Platforms shall have a reasonable opportunity to challenge the administrative subpoena by seeking judicial review before suffering any penalties for refusing to comply.

(c) Reporting to Board of Supervisors.

(1) **Annual Reports.** The Office of Short-Term Residential Rental Administration and Enforcement shall provide a report to the Board of Supervisors regarding the administration and enforcement of the Short-Term Residential Rental program on an annual basis. The report shall make recommendations regarding proposed amendments to this Chapter 41A necessary to reduce any adverse effects of the Short-Term Residential Rental program.

(2) **Quarterly Reports.** The Office of Short-Term Residential Rental Administration and Enforcement shall provide quarterly reports to the Board of Supervisors summarizing the Host Platform monitoring activities during the preceding quarter. The periods covered by the quarterly reports shall commence on January 1, April 1, July 1, and October 1, respectively. At a minimum, each report shall include the number of notices sent to Hosting Platforms, the total number of listings included in those notices, the number of any administrative subpoenas issued upon discovery of potentially non-compliant listings, and the number and amount of penalties imposed on Owners, Business Entities, or Hosting Platforms for violations of their respective obligations under this Chapter 41A. Each report shall break down information by zip code, supervisorial district, and any other criteria as may be requested by the Board of Supervisors.

(Added by Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015; amended by Ord. 104-16, File No. 160423, Eff. 7/24/2016; Ord. 178-16, File No. 160790, Eff. 9/10/2016)

(Former Sec. 41A.7 added by Ord. 331-81, App. 6/26/81; repealed and reenacted by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; redesignated as Sec. 41A.8 and amended by Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015)

SEC. 41A.8. CONSTRUCTION.

(a) Nothing in this Chapter 41A may be construed to supersede any other lawfully enacted ordinance of the City and County of San Francisco.

(b) Clauses of this Chapter 41A are declared to be severable and if any provision or clause of this Chapter 41A or the application thereof is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions of this Chapter 41A.

(Added as Sec. 41A.7 by Ord. 331-81, App. 6/26/81; repealed and reenacted by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012; redesignated and amended by Ord. 130-15, File No. 150363, App. 7/30/2015, Eff. 8/29/2015)

(Former Sec. 41A.8 added by Ord. 74-98, App. 3/6/98; redesignated as Sec. 41A.6 and amended by Ord. 224-12, File No. 120299, App. 11/1/2012, Eff. 12/1/2012)

CHAPTER 41B: [RESERVED]

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