



Item G-1: Proposed Owner Move-In Eviction Regulation

January 15, 2020 | Regular Meeting of the Richmond Rent Board

Item G-1: Background and Purpose

- At their meetings on November 20, 2019, and December 18, 2019, the Rent Board provided policy direction to the Board with respect to Policy Questions 1, 3, 4, 5, 7, and 8.
- The Board has yet to complete providing policy direction on Policy Questions 2, 6, and 9.
- This presentation provides specific information concerning Policy Questions 2, 6, and 9 to aid the Board in providing policy direction to staff.
- Once the Board has provided direction on all outstanding Policy Questions, staff will draft a regulation for public comment and the Board's consideration.



Policy Question 2:

Should an individual who is a beneficiary with at least 50% recorded interest in a trust that owns the property be able to conduct an Owner Move-In eviction?

Policy Question 2: Policy Considerations

Is the Language of Richmond Municipal Code Section 11.100.050(a)(6) Ambiguous or Vague?

- The Rent Board does not create new law, but adopts Rules and Regulations that explain, govern, and carry into effect the express purpose of the Rent Ordinance. *Aguirre v. Lee (1993) Cal.App.4th 1646, 1652-1653*. The Rules and Regulations cannot abridge, enlarge, extend, modify, or conflict with the Rent Ordinance. *Id.* Where there exist a conflict, the Regulation is null and void. *Id.*
- Richmond Municipal Code Section 11.100.050(a)(6) states "Landlord, as used in this Subsection (a)(6), shall only include a Landlord that is a natural person who has at least a fifty (50) percent recorded ownership interest in the Property."

Policy Question 2: Policy Considerations

Is the Language of Richmond Municipal Code Section 11.100.050(a)(6) Ambiguous or Vague?

- If the language is ambiguous or vague, then the Rent Board should approach this policy question #2, by:
 1. Gaining a general understanding of “Trust”
 2. Discuss the potential benefits and consequences in identifying a Trust as a natural person under particular circumstances.
 3. Take public comment and vote on whether to include Trust as a natural person
- As it relates to gaining a general understanding of trust, the Rent Program has secured Jean Shrem, an attorney who specializes in Trusts and Wills, to speak on the subject matter of Trust.

Policy Question 6:

If the formerly displaced Tenant moves back into the Rental Unit after several years, should a policy exist that allows the Landlord to include the Annual General Adjustment rent increases in the amount of rent charged?

Policy Question 6: Hypothetical Example

Hypothetical Example:

- A Tenant lives in a fully-covered duplex and pays \$1,000 per month in rent (the current MAR). In January 2020, they receive a termination of tenancy notice due to Owner Move-In. They relocate to a new apartment. The Landlord moves into the duplex.
- Fast forward to 2025. The Landlord decides to relocate, and in accordance with the Rent Ordinance, offers the unit back to the Tenant who vacated. The Rent Ordinance requires that the unit be offered at the Rent lawfully paid by the Tenant at the time the Landlord served the termination notice.
- The Tenant was paying \$1,000 when they received the notice of termination of tenancy. Since 2020, the Annual General Adjustment has been 3% per year. The Tenant's MAR, if they had stayed in the unit, would have been \$1,159.28.
- Policy Question 6 asks, what should the Landlord be able to charge after re-renting the unit back to the original Tenant? \$1,000, or \$1,159.28? Should the banking regulation apply?

Policy Question 6: Policy Considerations

Policy Considerations

- The Board must first determine if the wording of the Rent Ordinance is ambiguous as written:

"All Tenants that are displaced based on Sections 11.100. 050(a)(5), (6) or (7) shall have the first right of refusal to return to the unit if it should ever be returned to the market by the Landlord or successor Landlord. Rent shall be the Rent lawfully paid by the tenant at the time the Landlord gave notice of basis listed in Sections 11.100. 050(a)(5), (6) or (7)."

- Berkeley, Los Angeles, San Francisco, San Jose, and Santa Monica all allow intervening AGAs to be applied to the starting rent when the Tenant moves back into the unit
 - "Intervening AGAs" means the AGAs that occurred between the time the Tenant vacated and the time they returned to the Rental Unit when it had been placed back on the rental market.
 - In other words, they represent the AGAs that the Landlord would have been able to apply if the Tenancy had remained in effect.

Policy Question 6: Policy Options

Policy Option 1:

The initial rent when the Tenant moves back into the unit should be the amount of Rent that the Tenant was paying when they moved out.

Potential Pros:

- Simplicity: Tenant pays what they were paying when they moved out – follows a strict reading of the Rent Ordinance
- Provides greatest protection for Tenants by tightly limiting the amount of rent that may be charged

Potential Cons:

- Disregards changes in the cost-of-living index (inflation) and could thus be challenged as not providing Landlords with a Fair Return
- Greater administrative burden - the AGA is the primary “fair return” vehicle provided by the Rent Ordinance. Denying Landlords AGAs could thus result in more petitions filed with the Rent Program for Landlords seeking to receive a fair return

Policy Question 6: Policy Options

Policy Option 2:

The initial rent when the Tenant moves back into the unit can be up to the Maximum Allowable Rent for the unit (calculated by adding each year's AGA to the Tenant's Base Rent, as if their tenancy had never been terminated.) This circumstance would be exempt from the Board's adopted banking limitations (Regulation 602).

Potential Pros:

- Addresses changes in the cost-of-living index (inflation) – Landlords can charge what the rent would have been if the Tenancy had never been terminated
- Simple administration – the Rent Program will continue tracking the MAR over time, so both Tenants and Landlords will know what rent can be charged, year after year, if the unit is returned to the rental market.

Potential Cons:

- Could result in rent shock for tenants who were paying very low rents; however, the degree to which this is true would need to be assessed on a case-by-case basis, since the amount of rent the tenant was paying in their last rental unit has no bearing on amount of rent charged for the OMI unit

Policy Question 6: Policy Options

Policy Option 3:

The initial rent when the Tenant moves back into the unit should be the amount of Rent that the Tenant was paying when they moved out; however, the Landlord may increase the rent (with proper notice) up to the Maximum Allowable Rent (calculated by adding each year's AGA to the Tenant's Base Rent, as if their tenancy had never been terminated) subject to the Board's adopted banking limitations (Regulation 602).

Potential Pros:

- Addresses changes in the cost-of-living index (inflation), but at a slower pace – Landlords may *eventually* charge what the rent would have been if the Tenancy had never been terminated
- Provides protection for Tenants against rent shock – the maximum rent increase in a 12-month period wouldn't exceed the current year's AGA plus five percent

Potential Cons:

- For longer time periods (e.g. 5-10 years), it could take some time for Landlords to be able to charge up to the MAR, given the limitations imposed by Reg 602
- More complex administration – while the Rent Program tracks the Maximum Allowable Rent for each unit, it can be more challenging to determine the amount of rent that was charged when the Tenant moved out. Furthermore, more staff time would need to be allocated to ensuring Landlords and Tenants understand how the process works (e.g. rent increase may be issued, but only with proper notice, and subject to Regulation 602)



Policy Question 9:

What types of additional forms or documentation should be required for compliance, if any? Should a policy exist that the Rent Program is required for monitoring compliance with the Owner Move-In requirements of the Rent Ordinance?

Policy Question 9: Proposed OMI Compliance Process (Applies to All Rental Units)

Landlord serves Tenant with a notice of termination of tenancy for Owner Move-In. The notice includes a **Notice of Interest in Renewing Tenancy form**, which the Tenant can complete to inform the Landlord of their interest in re-renewing the Tenancy if the rental unit becomes available.



Rent Program staff review the notice and send a letter to the Landlord and Tenant explaining their respective rights and obligations associated with an OMI eviction



Within 90 days of the date of service of the notice of termination of tenancy, the Landlord is required to file a **Statement of Occupancy form** with the Rent Program (this form must be re-completed annually for three years)



For three years following the OMI eviction, Rent Program staff send a postcard to the former rental unit, notifying unauthorized occupants (e.g. another Tenant) that they should contact the Rent Program



If it is determined that the unit has been re-rented before the three year period expires, Rent Program staff (1) follow up with the Landlord about Property Enrollment and Tenancy Registration requirements and (2) notify the former Tenant of their right to pursue legal action

Estimated Fiscal Impact to the Rent Program of Proposed Compliance Process: 0.1 FTE

- **0.05 FTE Staff Attorney**
 - Review notice of termination
 - Follow up with community members if potential defects are identified
- **0.05 FTE Administrative Aide**
 - Draft Notice of Interest in Renewing Tenancy and Statement of Occupancy forms
 - Prepare and send Rights and Obligations Letter
 - Prepare and mail OMI postcard
 - Maintain records

Item G-1: Next Steps

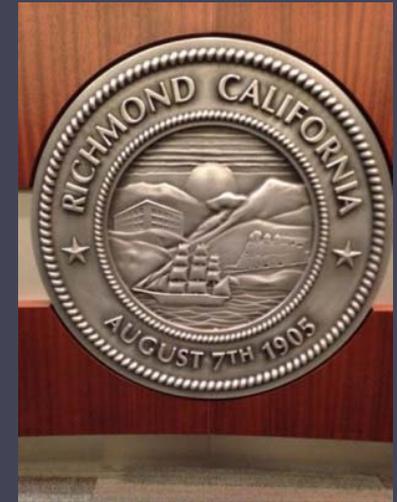
- **With policy direction from the Board, staff members anticipate a proposed Owner Move-In eviction regulation would be prepared during the month of February.**
- **It is anticipated that the proposed regulation will be circulated for community feedback before being brought before the Rent Board for consideration and potential adoption.**

Item G-1: Recommended Action

RECEIVE a presentation from Rent Program staff members including a summary of termination of tenancy notices filed with the Rent Program by property type, proposed policy options regarding a proposed Owner Move-In eviction regulation, and an analysis of the anticipated fiscal impact of administering an Owner Move-In eviction regulation, and **PROVIDE** policy direction to staff.

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Rent Board Governance Regulations



Item G-2

January 15, 2020 Regular Meeting of the Richmond Rent Board

Statement of the Issue

- At their Regular Meeting on July 17, 2019, the Rent Board received a presentation regarding possible governance policies and directed staff to consult with peer jurisdictions to understand the purpose of their existing governance policies and the reason why they were adopted for the following topics:
 - Boardmember vacancies
 - Conflicts of interest
 - Requiring second readings for regulations
 - When and where meetings should occur
- Staff members have consulted with peer jurisdictions and are seeking Board approval of their policy recommendations.

Background

- The Rent Ordinance establishes basic provisions governing the Rent Board, such as:
 - Composition
 - Eligibility
 - Full Disclosure of Hearings
 - Term of Office
 - Powers and Duties
 - Rules and Regulations
 - Community Education
 - Meetings



Background (continued)

- The Rent Ordinance establishes basic provisions governing the Rent Board, such as:
 - Quorum
 - Voting
 - Dockets
 - Financing
 - Integrity and Autonomy of Board
 - Budget
 - Personnel
 - Board Legal Work

Background (continued)

- The Rent Ordinance establishes basic provisions governing the Rent Board, such as:
 - Contracts and Purchases
 - Conforming Regulations
 - Reporting and Fee Payment Requirements

Historical Context from Peer Jurisdictions

- Berkeley and Santa Monica's governance regulations were adopted in one fell swoop at the beginning of their Program's existence and then amended along the way (as issues arose, particularly around litigation and conflict of interest).
- In Santa Monica and Berkeley, the governance regulations were modeled around similar regulations/rules that had already been adopted by their respective City Councils.
 - These governance regulations were further revised about 10 years after they were initially adopted in part due to changes in state law around the Brown Act.

Need for Additional Rules on Governance

- Rent Board regulations help to clarify the purpose and intent of the Rent Ordinance. While certain governance regulations may not be ripe for the Board's consideration, other essential regulations should be established to codify or amend the Board's existing procedures. Additional governance regulations may be proposed as circumstances arise and as new laws are adopted on a state or federal level that require amendments or additions to existing policy.
- At a minimum, and consistent with the Board's direction on July 17, 2019, staff members have developed policy questions and recommendations with respect to the following topic areas:
 - 1. Policies regarding procedural requirements for the adoption, amendment, and repeal of Rent Board regulations**
 - 2. Policies concerning meeting procedures**
 - 3. Policies concerning conflicts of interest**

Policies Regarding Procedural Requirements for the Adoption, Amendment, and Repeal of Rent Board Regulations

- Policy Question #1: Should regulations adopted, amended, or repealed by the Board require a “second reading”?

Pros of Requiring “Two Readings”

- **Pros:**
 - **Consistency with other legislative bodies:** Two readings are required by the City Council to adopt an Ordinance
 - **Public has more notice** and is given additional opportunities to weigh in on the proposed regulation
 - **Boardmembers have more opportunities** to weigh in on the proposed regulation (e.g. if a Boardmember misses the first reading, they still have an opportunity at the second reading)

Cons of Having “Two Readings”

- Cons:
 - **Lack of efficiency:** requiring two readings could lead to unnecessary delays in the adoption of regulations (essentially leading to three meetings prior to being able to adopt a regulation)
 - **Decreased adaptiveness:** if the Board requires two readings to adopt a regulation, the Board may not have the ability to respond to an urgent situation through the adoption of a regulation.
 - **Increased staff time:** Requiring two readings for all regulations may result in more items on Rent Board meeting agendas, and thus more staff time would be required to prepare the agenda packets.

Staff Recommendation on the “Two Readings” Policy Question

- **Staff Recommendation:** Staff recommends that the Board require two readings prior to the adoption of a regulation; however, the Board should have the discretion to adopt emergency regulations or orders of repeal.
 - Such policies would require only one reading for adoption, if the Board makes a finding that the adoption of a regulation or order of repeal is necessary for the immediate preservation of public peace, health and safety or general welfare.
 - The Board shall also have the authority to enact an emergency regulation or repeal an existing regulation to respond to changes in state or federal law that otherwise affect the administration and/or legality of any section of Richmond Municipal Code Chapter 11.100.

Policies Regarding Procedural
Requirements for the Adoption,
Amendment, and Repeal of Rent Board
Regulations

- Policy Question #2: Should regulations adopted by the Board continue to be effective immediately?

Pros of Immediate Effectiveness of Adopted Regulations

- Pros of Immediate Effectiveness: No lag time between when a regulation is adopted and when it is enforceable

Cons of Immediate Effectiveness of Adopted Regulations

- Cons of Immediate Effectiveness: Lack of an adjustment period for staff and members of the public with respect to new or amended regulations

Staff Recommendation on
Policy Question #2 (Immediate versus
Delayed Effectiveness of Adopted
Regulations)

- **Staff Recommendation:** Staff recommends that regulations become effective either (a) 30 calendar days from the date of adoption by the Board if only one reading is required or (b) immediately after the second reading, if the Board opts to require second readings for regulations.

Rent Board Governance Policies Regarding Meeting Procedures

- Regulations could address policy questions such as:
 - What policies should govern Boardmember decorum and procedure during public meetings? For example, when is the agenda packet published? Where are meetings to be held, and when?

Policy Question #3: When and where are the Rent Board meetings held? When is the agenda packet published? How are meetings conducted?

- Rent Board regulations could codify the existing Rent Board Regular Meeting and agenda packet schedule. Regulations could also clarify that the Board adheres to Rosenberg's Rules of Order during public meetings.

Staff Recommendation Regarding Meeting Procedures

- **Staff Recommendation:** Staff recommends that the Board codify through regulation the following procedures:
 - Regular Rent Board Meetings are held on the third Wednesday of each month beginning at 5:00 P.M. in the City Council Chambers.
 - Amendments to the start time or location of Regular or Special Meetings will be published and publicly noticed when the agenda is posted.
 - Meeting agendas are posted at City Hall for public inspection and all supporting documents are posted online no later than 72 hours before the meeting.
 - The Board adheres to Rosenberg's Rules of Order during public meetings.

Policies Concerning Conflicts of Interest

- Policy Question #4: Should the Board define and adopt procedures to address circumstances that present a conflict of interest?
- Aside from financial and political conflicts of interest, which are codified in state and federal law, the Board currently does not have any adopted policies concerning how personal conflicts of interest are to be handled.
 - For example, imagine a circumstance where a Boardmember is a party to a petition that is appealed to the Board. Regulations could clarify whether or not the Boardmember should be required to recuse themselves in such situations.

Staff Recommendation Regarding Conflict of Interest Regulations

- **Staff Recommendation:** Staff recommend that the Board consider a regulation that would define conflicts of interest as those in which a Boardmember has a self-interest (separate from the interest of the public) in the outcome of an action taken by the Board and would require a Boardmember to recuse themselves from voting on that item. For example, Boardmembers would be required to recuse themselves if they are a party to a petition that is appealed to the Rent Board.

Timeline and Next Steps

- Following approval and/or amendment of the policy recommendations put forth by staff, staff members will draft a series of proposed regulations for the Board's consideration and adoption at a future meeting.

Recommended Action

RECEIVE a presentation on possible Rent Board governance regulations and APPROVE staff policy recommendations concerning (a) procedural requirements for the adoption, amendment, or repeal of Rent Board regulations; (b) Rent Board meeting procedures; and (c) Boardmember conflicts of interest – Rent Program (Nicolas Traylor 620-6564).