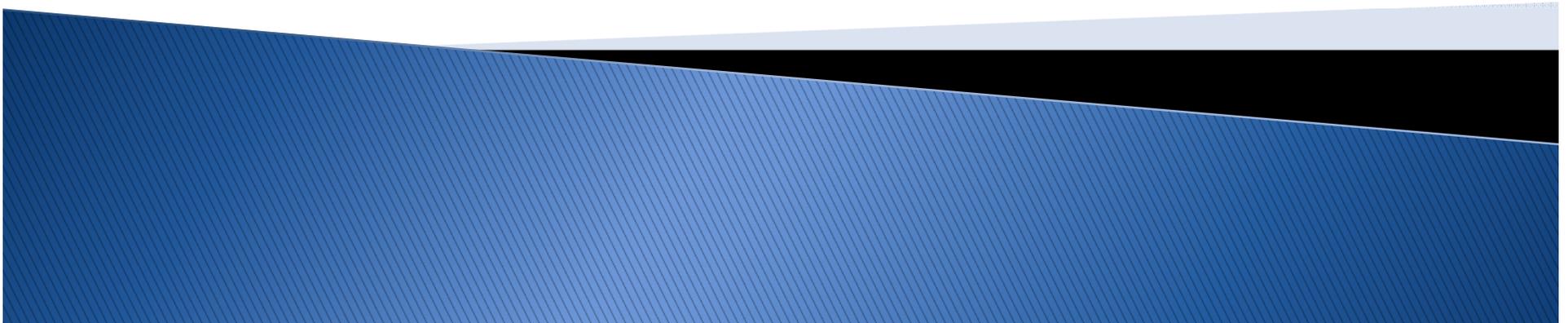


# The Brown Act & Rosenberg Rules of Order

Charles Oshinuga, Staff Attorney  
April 21, 2021, Regular Meeting of the  
Richmond Rent Board



# Contents

1. Meetings
2. Notice
3. Public Comment
4. Closed Session



# Government Transparency: Brown Act

Brown Act: All meetings of a legislative body of a local agency shall be open and public, unless an exception applies

- Purpose – Conduct the people’s business in the open and give the public access to decision making
- “Public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business...”

# What is a Meeting?

- ▶ A meeting occurs whenever a majority of the members of a **legislative body** come together at the same time or place to hear, discuss or deliberate on an item within its jurisdiction.
- ▶ **Legislative body** includes any body created by formal action of the City Council or other legislative body.
  - Includes standing committees, appointed bodies, advisory committee/ task force. Does not include temporary advisory committee composed solely of less than a quorum.

# Government Transparency: Brown Act

## ▶ Meetings:

- *Includes:* direct communication, use of technology, and serial meetings
- *Excludes, for example:* individual contacts, conferences that are open to the public, community meetings, or social or ceremonial occasions. However, majority of members cannot discuss among themselves business within their local agency's subject matter jurisdiction.

# Unlawful Meetings

- Pre-meetings
- Post-meetings
- Seriatim or serial meetings



• “A majority of the members of a legislative body shall not, outside a meeting . . . Use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”

# Types of Serial Meetings

**Sequential:** A talks to B, B talks to C, C talks to D

**Hub-and-spoke:** A or staff talks to B, A or staff talks to C, A or staff talks to D

**Note:** Beware of email (no reply all) and social media



# Posting the Agenda

- Post at least 72 hours before meeting (for regular meetings – set by resolution or other formal action by body)
- Post at least 24 hours before meeting (for special meetings – called by presiding officer or majority of body to discuss discrete items)
- Post where “freely accessible to members of the public”

# Describing an Agenda Item

- Meaningful description:
  - “ [S]ufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item ”
- Identify as action or discussion item
- Members of the public allowed to speak on all items – time limits OK

# The Public's Place on the Agenda

- ▶ Every agenda for a regular meeting must allow members of the public to speak on any item of interest that is within the subject matter jurisdiction of the legislative body
  - Open forum
  - Can limit time, but not content and cannot prohibit criticism



# Why does it matter what is listed on the agenda?

**A LEGISLATIVE BODY  
CANNOT DISCUSS OR ACT  
ON ITEMS NOT ON AN AGENDA.**

# Very Limited Exceptions

1. Public health/safety emergency
2. Need to take immediate action before next regular meeting and comes to the attention of the agency after the agenda is posted (2/3 vote)
3. Item on previous agenda, and continued to next meeting no more than 5 days later

# Brown Act: Closed Session

## Limit Closed Sessions:

- ▶ Allowable only for specific matters
  - Your attorney will determine, but could include, e.g., hiring Executive Director and existing/anticipated litigation
- ▶ Do not disclose closed session info unless authorized
- ▶ Public Comment before going into closed session

# Brown Act: Penalties and Remedies

- **Criminal Penalties** – misdemeanor if undertaken intentionally to deprive public of information to which the public is entitled
- **Civil Remedies** – invalidation of actions and attorneys' fees



# Public Records Act

- ▶ **Reminder:** Emails, documents, voicemails, text messages, etc. about Commission work are public records and are subject to disclosure to the public under the Public Records Act
- ▶ Supreme Court Case *San Jose v. Superior Court*. Personal email accounts used for conduct of public business=public records.

# Public Records Act

- ▶ Public record = any writing containing information relating to conduct of people's business prepared, owned, used or retained by any local agency regardless of physical form or characteristic
- ▶ Disclosable to public unless specific exemption applies
  - Example: Attorney–client privileged, personnel files



# Conflicts of Interest

- ▶ Training in September
- ▶ Prohibition on having a financial interest in a contract made by them or board
- ▶ Prohibition on participating in decision or influencing a decision when you have a disqualifying financial interest (Political Reform Act)
  - 1-866-ASK-FPPC
- ▶ Form 700 from Clerk's office within 30 days of assuming office and April 1 annually
  - Gift restrictions (\$500 in calendar year)

# Rosenberg's Rules of Order

- ▶ No longer feel overwhelmed by the complexities of parliamentary procedure
- ▶ Able to use the rules freely to navigate the meeting
- ▶ Feel comfortable presiding over meetings



# Purpose of the Rules

- ▶ Establish Order
- ▶ Promote clarity
- ▶ Easily understood by the public
- ▶ Enforce the will of the majority while protecting the rights of the minority

# The Role of the Chair

- ▶ Must understand the rules
- ▶ Moves the meeting and agenda
- ▶ Takes the lead role on process
- ▶ Takes less active role in debate

# Basic Format for Agenda Item

- ▶ Announce the agenda item
- ▶ Report on the item
- ▶ Technical questions for clarification
- ▶ Public comments
- ▶ Discussion and debate
- ▶ Invite a motion
- ▶ Second for the motion
- ▶ Understand the motion and vote

# Voting

- ▶ Richmond Municipal Code Section 11.100.060(j)
  - The affirmative vote of three (3) Members of the Board is required for a decision including all motions, regulations, and orders of the Board

# Counting ‘Abstain’ Votes

- ▶ The general (and default rule) is that you count all votes that are “present and voting”. Abstain votes are NOT counted. Members who abstain are counted for purposes of determining quorum, but it is as if the abstain votes on the motion don’t exist.

# Motions

- ▶ Basic motions
- ▶ Motions to amend
- ▶ Substitute motion

# To Debate or Not to Debate

- ▶ The basic rule: All motions are subject to debate or discussion
- ▶ The exceptions:
  - Motion to adjourn
  - Motion to recess
  - Motion to fix the time to adjourn
  - Motion to table
  - Motion to limit debate

# The Motion to Reconsider

- ▶ Special motion and special rule
- ▶ Must be made at a certain time
- ▶ Can only be made by certain members

# Courtesy and Decorum

- ▶ Create the right atmosphere
- ▶ One person at a time
- ▶ Point of privilege
- ▶ Point of order
- ▶ Withdrawing a motion

***This page intentionally left blank***

# MONTHLY ACTIVITY REPORT

April 21, 2021, Regular Meeting of the Richmond Rent Board

Item K-1

## PURPOSE OF THE MONTHLY ACTIVITY REPORT

- Provide members of the Rent Board and Richmond community with a quantitative summary of the Rent Program's activities for the month and fiscal YTD
- Reveal seasonal trends in program demands
  - Shows month-to-month fluctuations in activities
- Monitor agency operations to inform staffing and organizational structure

# MARCH 2021 HIGHLIGHTS

- Conducted our first community workshop webinar in Spanish
  - March 26, 2021: Rights and Responsibilities for Richmond Tenants and Landlords
- Provided 387 housing counseling sessions
  - 40% of these consultations were conducted in Spanish
- Conducted community outreach on the eviction moratorium (Urgency Ordinance 02-2021) adopted by the Richmond City Council on March 23, 2021
- Referred nine households for legal assistance and/or representation
- Conducted one informal mediation
- Closed two petition cases
  - One decision ordered; one petition withdrawn

**RENDA MÁXIMA PERMISIBLE (MAR)**

La renta **máxima** que puede ser cobrada por una **Unidad de Renta Controlada**

Un aumento de renta no puede exceder la **Renta Máxima Permissible**, pero puede ser menor. Incluso si no se cobra la renta máxima, la **Renta Máxima Permissible** sigue siendo la misma. El arrendador puede escoger elevar la renta al máximo de acuerdo con la ley estatal y la regulación bancaria del Consejo de Renta.

Igual a la **renta base + ajustes generales anuales (AGA) + ajustes individuales a la renta** (aprobados a través del proceso de petición).

MAGALY CHAVEZ

10

## COVID-19 Rental Information and Resources

**COVID-19 and Rentals**  
*What Richmond Landlords and Tenants Need to Know*

RICHMOND RENT PROGRAM

### City of Richmond Urgency Ordinance No. 02-2021 ("Eviction Moratorium")

On March 23, 2021, the Richmond City Council adopted [Urgency Ordinance No. 02-2021 \("Eviction Moratorium"\)](#) establishing a temporary moratorium on certain evictions of residential tenants in Richmond through the state and local emergency and sixty (60) days thereafter.

During the local emergency and continuing for sixty days afterward, landlords are prohibited from evicting tenants in most circumstances, except for the following:

**Rent Program Fact Sheet**  
County and State Laws Concerning Evictions and Rent Increases During the COVID-19 Pandemic

## ITEM K-IRECOMMENDED ACTION

**RECEIVE the Fiscal Year 2020-21 Monthly Activity Report through  
March 2021.**

# MONTHLY REVENUE AND EXPENDITURE REPORT

April 21, 2021, Regular Meeting of the Richmond Rent Board

Item K-2

## PURPOSE OF MONTHLY REVENUE AND EXPENDITURE REPORT

- Closely monitor program finances
  - Monthly and year-to-date
    - Fiscal year: July 1 – June 30
- Budget and variance report categories reflect the City’s financial “object codes”
- Includes encumbrances for contractual services and equipment
- Track the percentage of funds expended versus budgeted
  - Shows the amount of funds expended by category as well as the monthly surplus or deficit
  - Last row shows the Rent Program’s cash balance (cash on hand)

## SUMMARY OF PERIOD 9 (MARCH) REVENUE AND EXPENDITURE REPORT

- Total monthly revenue: \$43,909
- Year-to-date revenue: \$2.35 million (81% collection rate)
- Total monthly expenses: \$186,585
- Year-to-date expenses: \$1.73 million (70% of budgeted expenses)
- Ending cash balance: \$1.27 million

## ITEM K-2 RECOMMENDED ACTION

**RECEIVE the Rent Program FY 2020-21 Monthly Revenue and Expenditure Report through March 2021.**

# THIRD QUARTER BUDGETED VERSUS ACTUAL REPORT

April 21, 2021, Regular Meeting of the Richmond Rent Board

Item K-3

## PURPOSE OF BUDGETED VERSUS ACTUAL REPORTS

- A key element of an effective budget process is monitoring actual results against the budget throughout the year.
- This is done on a quarterly basis to allow management time to make adjustments if necessary to expenditures, policies or operations.
- The best way to monitor budget vs. actual results is to prepare a quarterly financial report that is reviewed by management and the Board.
- Staff members have researched and prepared explanations of variances at or above 25 percent in the report.

## DESCRIPTION OF VARIANCES

- The greatest variances between budgeted and actual expenses in the third quarter of the 2020-21 fiscal year are due in large part to the ongoing effects of the Covid-19 pandemic.
  - All workshops and community events are now held remotely, eliminating the need for refreshments, promotional materials, and supplies.
- The pandemic has also delayed the process of filling vacancies in the Public Information and Enrollment Unit as well as projects that were budgeted to occur in the quarter, such as the printing and mailing of the Guide to Rent Control.
- Management staff are working diligently to fill vacant positions and make progress on projects that have been delayed by the pandemic.
- At this time, staff members do not recommend making any amendments to the budget.



## ITEM K-3 RECOMMENDED ACTION

**RECEIVE** the corrected budgeted versus actual revenue and expenditures report for the third quarter ending March 31, 2021.

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

**APRIL 21, 2021 | City Council Chambers**

# **GENERAL OVERVIEW OF APPEAL PROCESS**

# Rent Board Appeals

## Overview of Terms

Appeal- To seek review of a hearing examiner's decision by the Rent Board.

Appellant- The party who appeals the hearing examiner's decision

Respondent- The party responding to the appeal

De novo- "anew", hearing a case anew

Remand- Send a matter back to the hearing examiner with specific directions

Affirm- To confirm, ratify, or approve a hearing examiner's decision

Reverse- Overturn a hearing examiner's decision

Record- Any and all evidence submitted and admitted during the hearing with the hearing examiner.

Substantial Evidence: Standard wherein the Board does not reweigh evidence but rather considers whether the Record before the Hearing Examiner contained sufficient evidence to support the Hearing Examiner's decision.

# Rent Board Appeals

## Appeal Process

- 30 days from the day of receipt of notice of hearing examiner's decision
- A party is presumed to have received the hearing examiner's decision 5 business days after it is mailed

# Rent Board Appeals

## Appeal Steps

- Appeals must be made on a Rent Program form.
  - Make sure to identify the specific ground your appeal is based on. The Board cannot consider an appeal that fails to state specific grounds of the appeal and specific facts/arguments supporting those grounds.*(Regulation 842 (A))*
  - The Appeal is limited to the record and is not an opportunity to re-litigate the issue unless otherwise specified by the Rent Board. Appeal and supporting documentation must be based on the Record.*(Regulation 842 (A))*

# Rent Board Appeals

## Submitting Appeal Form

- Once the appeals form is completed:
  - Send or personally submit the form to the Rent Program
  - Send a copy to the Respondent and their representative
  - Send a copy to the hearing examiner

# Rent Board Appeals

## Responding to an Appeal

- The Respondent must respond within 15 days from the date the appeal was filed
  - The response need not be on a Rent Program form, but it is highly encouraged that Respondents use a Rent Program form to submit a response
  - The Response is limited to the record and is not an opportunity to re-litigate the issue unless otherwise specified by the Rent Board
  - Send a copy to the Appellant and their representative

# Rent Board Appeals

## What happens when an Appeal is filed?

- Staff will prepare a recommended action to the Board, to either remand, modify, reverse, or affirm the hearing examiner's decision. (*Regulation 842 (C)*)

# Rent Board Appeals

## General Structure of an Appeal Hearing?

- Each party is allowed 7 minutes to present argument (*Regulation 842 (E)*)
  - Appellant argues first and is given 5 minutes
  - Respondent argues next and is given 7 minutes
  - Appellant has the last word and is given 2 minutes
- Where translation is required, that party shall have double the time to argue. (*Regulation 842 (E)*)
- The Board may allow more time to any party at its discretion (*Regulation 842 (E)*)
- Appellant carries the burden of proof of demonstrating substantial evidence exists to overturn the Hearing Examiner's decision

# Rent Board Appeals

## Appeal Hearing that is not De Novo

- Arguments must be based exclusively on the Record before the hearing examiner
- Parties shall not discuss or comment on factual matters or evidence not presented to the hearing examiner or officially noticed by Staff
- Parties may discuss legal matters and any pertinent issues on appeal
- The Board cannot consider any discussions, comments, or evidence brought up during the hearing that is not part of the Record

# Rent Board Appeals

## De Novo Appeal Hearing

- If the Board elects to conduct a hearing De Novo, then a new hearing on the matter will commence.
  - Parties will be permitted to call witnesses
  - Parties will be permitted to present evidence that was not presented at the prior hearing
  - Parties will be permitted to discuss factual matters that were not discussed at the hearing
  - Parties will not be permitted to exceed the scope of the petition in which the matter was brought
- Where the Board elects a De Novo hearing, the Board may continue the matter to give parties appropriate time to prepare their matter.

# Rent Board Appeals

## Ruling on an Appeal

- After hearing arguments from both sides, the Board will take a vote.
  - 3 Board members are required to affirm, modify, remand, or reverse the decision of a hearing examiner
- Any decision the Board reaches must be supported by written findings of facts and conclusions of law.
  - However, the Board may vote to adopt Staff's recommendation unchanged. In that case, the parties to the appeal will be notified only of the Board's decision

# Rent Board Appeals

## Decorum

- Each party is to be respectful and not interrupt one another
- Parties must solely address the Rent Board, unless there is a De Novo hearing where parties are permitted to engage in cross examination
- Address the Rent Board respectfully
- In the event that you hear a comment that you disagree with, hold your response until it is your time to address the Rent Board
- Be aware that the Rent Board may interrupt you at anytime with questions of its own

***This page intentionally left blank***