

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: July 20, 2022

Final Decision Date Deadline: July 20, 2022

STATEMENT OF THE ISSUE: In March of 2020, the novel coronavirus-19 led County officials to issue a stay-at-home order for nonessential employees. This Order led many businesses to close and left Richmond Residents home-bound. To ensure that Landlords and Tenants were still able to engage their rights while minimizing potential health risks, the Executive Director required that the in-person housing counseling sessions temporarily be changed to virtual sessions only. Shortly thereafter, both the County of Contra Costa and the City of Richmond passed numerous eviction and rent moratoria which, among other things, suspended a Landlord's ability to raise rents. These rent increase moratoria expired at the end of day of September 30, 2021. As of June 2022, the Rent Board has heard from four to five constituents expressing concerns regarding their ability to engage in the Maintenance of Net Operating Income (hereinafter, "MNOI") process due to the impacts Covid-19 had on their lives and the Rent Program's operations. In recognition of these concerns, in its June 15, 2022, meeting, the Rent Board directed staff to draft an emergency regulation that would apply only to those Landlords who had filed their MNOI petition during the Local Emergency and later had their petition dismissed or withdrawn. The Regulation would allow those categories of Landlord's to request the Rent Board Order the Hearing Examiner to reconsider the Landlord's previously filed MNOI petition where the Landlord demonstrated a Good Cause basis as to why they failed to pursue their MNOI petition. Consistent with the Rent Board's direction, staff members now present the Rent Board with Resolution 22-07.

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> | |

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

RECOMMENDED ACTION: DISCUSS and ADOPT Emergency Regulation 22-07, which would permit a Landlord, who filed a Maintenance of Net Operating Income petition during the Richmond Local Emergency but failed to pursue their petition, to request the Rent Board Order the Hearing Examiner to reconsider their previously filed petition– Rent Program (Charles Oshinuga/Nicolas Traylor 620-6564).

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AGENDA REPORT

DATE: July 20, 2022

TO: Members of the Rent Board

FROM: Charles Oshinuga, General Counsel

SUBJECT: PROPOSED EMERGENCY REGULATION PERMITTING LANDLORDS TO REQUEST THE RENT BOARD ORDER THE HEARING EXAMINER TO RECONSIDER THEIR PREVIOUSLY FILED MAINTAINENCE OF NET OPERATING INCOME PETITION WHERE THE PREVIOUSLY FILED PETITION WAS FILED DURING THE LOCAL EMERGENCY AND LATER WITHDRAWN OR DISMISSED DUE TO A GOOD CAUSE BASIS.

STATEMENT OF THE ISSUE:

In March of 2020, the novel coronavirus-19 led County officials to issue a stay-at-home order for nonessential employees. This Order led many businesses to close and left Richmond Residents home-bound. To ensure that Landlords and Tenants were still able to engage their rights while minimizing potential health risks, the Executive Director required that the in-person housing counseling sessions temporarily be changed to virtual sessions only. Shortly thereafter, both the County of Contra Costa and the City of Richmond passed numerous eviction and rent moratoria which, among other things, suspended a Landlord's ability to raise rents. These rent increase moratoria expired at the end of day of September 30, 2021.

As of June 2022, the Rent Board has heard from four to five constituents expressing concerns regarding their ability to engage in the Maintenance of Net Operating Income (hereinafter, "MNOI") process due to the impacts Covid-19 had on their lives and the Rent Program's operations. In recognition of these concerns, in its June 15, 2022, meeting, the Rent Board directed staff to draft an emergency regulation that would apply only to those Landlords who had filed their MNOI petition during the Local Emergency and later had their petition dismissed or withdrawn. The Regulation would allow those categories of Landlord's to request the Rent Board Order the Hearing Examiner to reconsider the Landlord's previously filed MNOI petition where the Landlord demonstrated a Good Cause basis as to why they failed to pursue their MNOI petition. Consistent with the Rent Board's direction, staff members now present the Rent Board with Resolution 22-07.

AGENDA ACTION:

DISCUSS and ADOPT Emergency Regulation 22-07, which would permit a Landlord, who filed a Maintenance of Net Operating Income petition during the Richmond Local Emergency but failed to pursue their petition, to request the Rent Board Order the Hearing Examiner to reconsider their previously filed petition– Rent Program (Charles Oshinuga/Nicolas Traylor 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Background

Given the spread of the novel coronavirus (“COVID-19”), on March 4, 2020, the Governor declared a state of emergency to strengthen California’s response to the virus. On March 10, 2020, Contra Costa County declared a local emergency to aid the regional healthcare and governmental community in responding to COVID-19. On March 13, 2020, the President of the United States declared a national emergency and made emergency funding available to assist states and local governments in preventing the spread of COVID-19. On that same day, the Contra Costa County Superior Court closed all its locations to the general public. On March 16, 2020, Contra Costa County issued a shelter in place order, prohibiting residence from leaving their homes except as to engage in certain essential activities, or receive certain essential services. On March 17, 2020, the City of Richmond City Manager declared a local emergency and issued an Order prohibiting certain types of evictions.

On April 27, 2020, the City of Richmond City Manager issued an Order which, among other things, suspended an owner’s ability to increase residential real property rent through May 31, 2020. That following month, on May 26, 2020, the City of Richmond City Manager extended her April 27, 2020, Order, setting it to expire on July 15, 2020. The City Manager would go on to extend her Order two additional times, with the City Council ratifying each Order. On October 1, 2020, the City Council allowed the City Manager’s rent increase and eviction moratorium to expire; however, the Contra Costa County’s rent increase and eviction moratorium was still active and applied to the City of Richmond. This rent increase and eviction moratorium did not expire until September 30, 2021. Prior to its expiration, the City Council passed an Urgency Ordinance that again suspended Landlord’s ability to evict Tenants during the Local Emergency.

Given the impact Covid-19 had on the Rent Program operations, Landlords, and Tenants, some Landlords may have been adversely impact in their ability to pursue a previously timely filed Maintenance of Net Operating Income petition. In recognition of this potential adverse impact, the Rent Board, at its June 15, 2022, meeting directed staff to prepare a Regulation that would permit a Landlord, who filed a Maintenance of

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Net Operating Income petition during the Richmond Local Emergency but failed to pursue their petition, to request the Rent Board Order the Hearing Examiner to reconsider their previously filed Maintenance of Net Operating Income petition.

Proposed Emergency Regulation Permits the Landlord to Request that the Rent Board Order the Hearing Examiner to Reconsider the Landlord's Previously Filed Maintenance of Net Operating Income Petition.

The Proposed Emergency Regulation would allow the Landlord to request the Rent Board Order the Hearing Examiner reconsider the Landlord's previously filed Maintenance of Net Operating Income petition. To grant the request, the Regulation requires that the Landlord demonstrate by a Preponderance of the Evidence that they had Good Cause in failing to pursue their previously timely filed Maintenance of Net Operating Income petition. If the Rent Board grants the Landlord's request, then the Hearing Examiner must reconsider the previously timely filed Maintenance of Net Operating Income petition. This Regulation only authorizes the reconsideration of the actual previously timely filed Maintenance of Net Operating Income petition and does not permit a Landlord to submit a new Maintenance of Net Operating Income petition in place of the previously filed petition. This Regulation also makes clear that it does not alter the application of Regulation 905 and requires that the previously timely filed Maintenance of Net Operating Income petition be evaluated under Regulation 905. Finally, this Regulation explains that the Current Year is the year preceding the Landlord's previously timely filed Maintenance of Net Operating Income petition that was later withdrawn or dismissed.

Conclusion

As instructed, Staff members have drafted Resolution 22-07 and accompanying Regulation in a manner consistent with Rent Board direction.

DOCUMENTS ATTACHED:

Attachment 1 – Resolution 22-07 with Attachment A Proposed Emergency Regulation

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ATTACHMENT 1**

CITY OF RICHMOND RENT BOARD RESOLUTION NO. 22-07

ADOPTING TEMPORARY REGULATIONS FOR MAINTAINENCE OF NET OPERATING INCOME PETITIONS THAT WERE PREVIOUSLY FILED DURING THE STATE OF CALIFORNIA’S DECLARED EMERGENCY AND/OR THE CITY OF RICHMOND’S LOCAL EMERGENCY DUE TO THE IMPACTS OF THE NOVEL CORONAVIRUS (COVID-19) OUTBREAK IN THE CITY OF RICHMOND.

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 10, 2020, the Contra Costa County Board of Supervisors and Contra Costa Health Services declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 13, 2020, to respond to the unique and continuing public health and safety challenges presented by COVID-19, the Contra Costa County Superior Court closed all locations beginning Monday, March 16, 2020; and

WHEREAS, on March 16, 2020, the Health Officer of Contra Costa County issued an Order through April 7, 2020 that directed all individuals living in the county to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and governmental services; and

WHEREAS, on March 17, 2020, the City Manager, in her role as the Director of Emergency Services, proclaimed the existence of a local emergency pursuant to Chapter 2.20 of the Richmond Municipal Code, and issued an Order that suspended nonpayment of rent evictions in the City of Richmond; and

WHEREAS, on March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20, which directed residents of California to follow state public health directives to stay home or at their place of residence to preserve the public health and safety and capabilities of the healthcare delivery system; and

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WHEREAS, in March of 2020, the Center of Disease Control and Prevention, the California Department of Health, and the Contra Costa County Department of Public Health all issued recommendations including but not limited to social distancing, staying home if sick, canceling or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus; and

WHEREAS, on or about March 30, 2020, the Executive Director of the Richmond Rent Program, following local and state guidance, required that the Rent Program's in-person housing counseling sessions be altered to virtual counseling sessions until a time where the virus and its communicability is brought under control; and

WHEREAS, on April 27, 2020, the City of Richmond found that housing displacement due to rent increase and evictions occurring during the local emergency would hinder individuals from complying with state and local directives to shelter in place, and would lead to the increased spread of Covid-19; and

WHEREAS, on April 27, 2020, the City of Richmond further found that there was an urgent need for the City to enact substantive limitations on evictions and enact a moratorium on rent increases to protect the health, safety, and welfare of its residents in light of the emergency declared regarding the Covid-19 pandemic; and

WHEREAS, on April 27, 2020, the City of Richmond City Manager issued an Order which, among other things, suspended an owner's ability to increase residential real property rent through May 31, 2020; and

WHEREAS, on May 26, 2020, the City of Richmond City Manager extended her April 27, 2020, Order, setting it to expire on July 15, 2020; and

WHEREAS, on July 14, 2020, the City of Richmond City Manager extended her April 27, 2020, Order, setting it to remain in effect until the City Council took action to extend the Order to a date certain, terminate the Order or decline to extend the Order; and

WHEREAS, on July 21, 2020, the City of Richmond City Council ratified the City Manager's July 14, 2020, extension and Ordered that the extension expire on September 30, 2020; and

WHEREAS, on October 1, 2020, the City of Richmond City Manager's April 27, 2020, extended Order expired; however, Richmond residents remained covered under Contra Costa County's eviction and rent moratorium, which, among other things, suspended owners' ability to increase rents; and

WHEREAS, on March 31, 2021, the City of Richmond City Council adopted an Urgency Ordinance, which suspended an owner's ability to perform certain evictions; and

WHEREAS, Richmond Municipal Code Section 11.100, et seq., requires that the Richmond Rent Board control excessive rent increases and arbitrary evictions to the greatest

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extent allowable under California law, while ensuring Landlords a fair and reasonable return on their investment; and

WHEREAS, pursuant to Richmond Municipal Code 11.100.070(d), the Richmond Rent Board, at the recommendation of Kenneth Barr, adopted a petition process that utilized the Maintenance of Net Operating Income methodology, as a way for owners to assert their right to a fair return; and

WHEREAS, the Richmond Rent Board has received constituent concerns regarding the impact Covid-19 had on their ability to fully pursue their Maintenance of Net Operating Income petitions and assert their right to a fair return; and

WHEREAS, the Rent Board has recognized that Covid-19 has had a profound impact on both the lives of Richmond residents and how the Rent Program has had to navigate the conducting of business during the pandemic, such as having to temporarily alter its in person housing counseling sessions to virtual sessions; and

WHEREAS, the Richmond Municipal Code 11.100.070(k), explains that no provision of the Rent Ordinance 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 provide the Landlord with a fair return on investment; and

WHEREAS, based on the aforementioned recitals, the Richmond Rent Board finds it necessary to adopt a temporary Regulation which would allow those landlords that filed a Maintenance of Net Operating Income petition during the Local Emergency, but failed to continue to pursue the petition, to directly request the Rent Board permit them to continue to pursue their previously timely filed Maintenance of Net Operating Income petition as their failure to pursue the petition was based on Good Cause.

NOW, THEREFORE, BE IT RESOLVED THAT:

The City of Richmond Rent Board adopts the Regulations contained in Attachment A which will do the following:

- 1) Permit an owner, who filed a Maintenance of Net Operating Income petition during the Richmond Local Emergency but failed to pursue their petition, to request the Rent Board Order the Hearing Examiner to reconsider their previously timely filed Maintenance of Net Operating Income petition.

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Attachment A

Emergency Regulation No. 22-07

Reconsideration of Previously Filed Maintenance of Operating Income Petition During the Local
Emergency

1. **Recitals.** The City of Richmond Rent Board finds the foregoing recitals to be true and correct and hereby incorporates such findings into this Regulation.
2. **Purpose and Intent.** The purpose and intent of this Regulation is to add assurance to a Landlord's right to a fair return by addressing the impact that Covid-19 may have had on a Landlord's ability to pursue their previously timely filed Maintenance of Net Operating Income petition. This Regulation in no way prevents a Tenant from contesting a Landlord's previously timely filed Maintenance of Net Operating Income petition pursuant to Regulation 905.
3. **Applicability.** This Regulation only applies to those Landlords who previously timely filed a Maintenance of Net Operating Income petition during the Local Emergency but either had their petition withdrawn or dismissed.
4. **Construction.** This Regulation in no way alters Regulation 905, except where it permits a Landlord to revive and pursue a previously timely filed Maintenance of Net Operating Income petition. In all other respects, Regulation 905 applies.
5. **Definition.**

"Local Emergency" includes any period of local emergency declared by the City of Richmond in response to the Covid-19 pandemic.

"Current Year" for purposes of this Regulation shall be the calendar year preceding the Landlord's previously timely filed Maintenance of Net Operating Income petition that was later withdrawn or dismissed.

6. **Rent Board Request for Reconsideration.** Where a Landlord previously timely filed a Maintenance of Net Operating Income petition during the Local Emergency, but the petition was either withdrawn or dismissed, the Landlord may directly request the Rent Board for an Order to have their withdrawn or dismissed Maintenance of Net Operating Income petition reconsidered by the Hearing Examiner. When making such a request, the Landlord shall do the following:
 - A. **Rent Program Form.** The Landlord shall submit the request on an approved Rent Program form. If the Rent Program receives the completed form within fourteen (14) days prior to the Rent Board's regularly scheduled meeting, the Landlord's request shall be agendaized and

heard at that month's Rent Board regularly scheduled meeting. Otherwise, the Landlord's request shall be agendaized and heard at the next month Rent Board regularly scheduled meeting.

- B. Evidence.** The Landlord shall submit with their Request for Reconsideration relevant evidence demonstrating Good Cause for their failure to pursue their previously timely filed Maintenance of Net Operating Income petition which resulted in either a withdrawal or dismissal of the petition. For purposes of this Regulation, Good Cause shall mean the taking of reasonable efforts and acting with due diligence to timely pursue a previously timely filed Maintenance of Net Operating Income petition.
- C. Service.** The Landlord shall comply with the service requirements of Rent Board Regulation Chapter 8 and City of Richmond Rent Board Resolution 20-01 and serve those Tenants that were parties to the previously timely filed Maintenance of Net Operating Income petition for which the Landlord seeks Rent Board Reconsideration.
- D. Staff Recommendation.** Rent Program staff members may oppose a Landlord's Request for Reconsideration through an agendaized staff report. If staff members choose to oppose the Landlord's Request for Reconsideration, staff members must provide the Landlord a copy of the staff report and any other documents it intends to rely on, within seven (7) days of the Rent Board meeting.
- E. Oral Argument.** No party has a right to oral argument. However, in its discretion, the Rent Board may permit the parties to present argument related to the Landlord's Request for Reconsideration. Where the Rent Board permits oral argument, the format shall adhere to Regulation 842(D).
- F. Good Cause.** No Landlord's Request for Reconsideration shall be granted unless the Rent Board finds by a Preponderance of the Evidence that the Landlord demonstrated they had Good Cause when failing to pursue their previously timely filed Maintenance of Net Operating Income petition. In its consideration, the Rent Board shall evaluate the following factors, whenever present, when making a determination of Good Cause:

 1. Whether the Landlord had a Covid-19 related issue that impacted their ability to pursue their previously timely filed Maintenance of Net Operating Income petition.
 2. Whether the Landlord was notified of the consequences of withdrawing their previously timely filed Maintenance of Net Operating Income petition.
 3. Whether the Landlord was notified that their previously timely filed Maintenance of Net Operating Income petition lacked completeness prior to the dismissal of their petition.
 4. Whether the Landlord sought and/or received any services from a Richmond Rent Program Housing Counselor related to their previously timely filed Maintenance of Net Operating Income petition.

5. The degree of correspondence between the Landlord and any Rent Program staff member related to their previously timely filed Maintenance of Net Operating Income petition.
6. Whether the previously timely filed Maintenance of Net Operating Income petition was dismissed in error.
7. Any other circumstances relevant to the inquiry of Good Cause.

G. Decision and Order. At the same meeting which it hears the Landlord's request, the Rent Board shall make a decision by a majority vote to either deny or grant the Landlord's Request for Reconsideration. In either case, an Order shall issue to all parties within fourteen days (14), after the Rent has made its decision. If the request is denied, the Order shall include a statement that the request was denied and inform the Landlord of their right to file a Writ with the Superior Court. If the request is granted, the Order shall include a statement that the request was granted and inform the Landlord that a staff member will contact them to aid in the completion of their previously timely filed Maintenance of Net Operating Income petition.

7. Reconsidered Petition. In the event the Rent Board grants the Landlord's Request for Reconsideration, the following shall apply:

A. Previously Filed Petition. This Regulation does not permit the Landlord an opportunity to file a new petition or choose a filing date that differs from the date of the previously timely filed Maintenance of Net Operating Income petition. Rather, the Landlord's actual previously timely filed Maintenance of Net Operating Income petition shall be evaluated and reconsidered by Rent Program Staff members. If the previously timely filed Maintenance of Net Operating Income petition was dismissed, Rent Program staff members shall recover the previously filed petition and email the Landlord, identifying the areas of deficiencies that resulted in the dismissal, consistent with Rent Board Regulation Chapter 8. The Landlord shall have thirty (30) days to respond with the necessary supplemental information to cure the deficiencies.

If the Landlord's previously timely filed Maintenance of Net Operating Income petition was withdrawn, Rent Program staff members shall recover the previously filed petition and determine whether it contains sufficient information for review. In the event that it does not contain sufficient information, Rent Program staff members shall email the Landlord and identify the areas of deficiencies that resulted in the dismissal, consistent with Rent Board Regulation Chapter 8. The Landlord shall have thirty (30) days to respond with the supplemental information necessary to cure the deficiencies.

If the previously timely filed Maintenance of Net Operating Income petition was withdrawn and Rent Program staff members have deemed it adequate for review in accordance with Rent Board Regulation Chapter 8, Rent Program staff members shall recover the previously filed petition and handle the petition as it would normally handle timely filed petitions pursuant to

Rent Board Regulation Chapter 8.

- B. Evaluation of Prior Filed Petitions.** The Evaluation of a previously timely filed Maintenance of Net Operating Income petition shall occur in the same manner as any other timely filed petition for Maintenance of Net Operating Income. In no event, shall a Landlord be permitted to include cost and/or income in their previously timely filed Maintenance of Net Operating Income petition that was not incurred in the Current Year, as defined by this Regulation. All relevant deadlines shall apply and shall be strictly construed.
- 8. Effective Date.** This Regulation will be effective immediately on the date when it is adopted by the Richmond Rent Board and shall expire sixty (60) days after the end of the Local Emergency.