

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: February 15, 2023

Final Decision Date Deadline: February 15, 2023

**STATEMENT OF THE ISSUE:** The Richmond voters passed Measure P on the November 8, 2022, ballot by 56%. Measure P amends the existing Ordinance and the provisions of the Richmond Municipal Code ("R.M.C") section 11.100.070(b). The annual rent increase limitation for regulated units, decreased from 100% of inflation to 60% of inflation, as measured by the Consumer Price Index, or a flat 3%, whichever is less. The passage of Measure P necessitates the amendment of Chapter 6: Rent Board Regulations (Annual General Adjustments of Maximum Allowable Rents). Therefore, Rent Program Staff has amended two Regulations and added one Regulation to be consistent with the voter initiative Measure P, entitled the "Richmond Annual Allowable Rental Adjustment Ordinance."

## 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 600 and Regulation 610, and ADOPT Regulation 611, as these changes are necessary to bring Chapter 6 of Rent Board Regulations in alignment with Measure P– Rent Program (Palomar Sanchez, Nicolas Traylor, 620-6564).

AGENDA ITEM NO:

**G-1.**

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# AGENDA REPORT

**DATE:** February 15, 2023

**TO:** Chair Finlay and Members of the Rent Board

**FROM:** Nicolas Traylor, Executive Director  
Palomar Sanchez, Staff Attorney

**SUBJECT:** CHANGES TO REGULATIONS 600, 610, AND ADDITION OF  
REGULATION 611

## **STATEMENT OF THE ISSUE:**

The Richmond voters passed Measure P on the November 8, 2022, ballot by 56%. Measure P amends the existing Ordinance and the provisions of the Richmond Municipal Code ("R.M.C") section 11.100.070(b). The annual rent increase limitation for regulated units, decreased from 100% of inflation to 60% of inflation, as measured by the Consumer Price Index, or a flat 3%, whichever is less. The passage of Measure P necessitates the amendment of Chapter 6: Rent Board Regulations (Annual General Adjustments of Maximum Allowable Rents). Therefore, Rent Program Staff has amended two Regulations and added one Regulation to be consistent with the voter initiative Measure P, entitled the "Richmond Annual Allowable Rental Adjustment Ordinance."

## **RECOMMENDED ACTION:**

AMEND Regulation 600 and Regulation 610, and ADOPT Regulation 611, as these changes are necessary to bring Chapter 6 of Rent Board Regulations in alignment with Measure P– Rent Program (Palomar Sanchez, Nicolas Traylor, 620-6564).

## **FISCAL IMPACT:**

There is no fiscal impact of receiving this report.

**DISCUSSION:**

Background

In Richmond, certain residential rental units' rental rates are controlled by Richmond's Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance. As originally written and adopted by Richmond voters in November of 2016, Landlords were entitled to an annual rent increase equivalent to "one hundred (100%) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year." The Annual General Adjustment for 2022, prior to the passage of Measure P, was five-point two (5.2%) percent.

Measure P amended the Richmond Rent Ordinance by capping rent increases for Controlled Rental Units at three percent (3%) or sixty percent (60%) of the local consumer price index, whichever is lower. Measure P has a phase-in period, which is the period between December 30, 2022, and August 31, 2023. During the phase-in period, a landlord cannot take a Rent increase in an amount greater than the Rental Unit's lawful Rent on August 31, 2022, plus 3%. To remain consistent with the changes made by Measure P, Staff members are recommending changes to Chapter 6 of the Rent Board Regulations.

Propose Amendments to Current Regulations and Adoption of a New Regulation to Ensure Consistency with Measure P

Currently, Chapter 6 of the Richmond Rent Board Regulations provides that a Landlord may take an Annual General Adjustment ("AGA") equal to one-hundred (100%) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any other successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics)("CPI") as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year. On November 8, 2022, voters took to the ballot to make changes to the Rent Ordinance that, among other things, directly impact Chapter 6 of the Rent Board Regulations. Specifically, voters passed the voter initiative known as Measure P (entitled the "Richmond Annual Allowable Rental Adjustment Ordinance"), amending the Richmond Rent Ordinance by reducing the Annual General Adjustment from one-hundred (100%) percent of CPI, to sixty (60%) percent of CPI or 3%, whichever is lower. Additionally, Measure P disallows banking during the phase-in period, a period which extends from December 30, 2022, through August 31, 2023. During this period, and according to Measure P, no tenant's rent on a controlled unit shall be higher than what it was on August 31, 2022, plus a 3% increase.

## ITEM G-1

Therefore, to ensure alignment and consistency with the new law, Rent Program Staff are proposing Amendments to Regulations 600 and 610, and proposing the addition of Regulation 611.

### Proposed Amendments to Regulations 600 and 610

Currently, Richmond Rent Board Regulation 600 explains, in pertinent part, that:

. . . the Annual General Adjustment shall equal one-hundred (100%) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any other successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics)(CPI) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year.

Staff members find that leaving this Regulation unchanged conflicts with current law and would render this Regulation void. A Regulation is not law but rather is a means of effectuating or clarifying existing law. Here, Rent Board Regulation 600 aims to clarify existing law. By incorrectly stating that a landlord is entitled to 100% CPI increase, Rent Board Regulation 600, would not be clarifying existing law.

To resolve this issue, Staff is proposing amending Regulation 600 by removing “one-hundred (100%)” and adding “sixty (60%) percent” and by adding, “or three (3%) percent, whichever is lower.”

Additionally, Regulation 610 provides for the Annual General Adjustment Order for 2022. Specifically, Regulation 610 states, in pertinent part, that,

The 2022 Annual General Adjustment is not to exceed 5.2%.

Staff members find that leaving this Regulation unchanged does not achieve the purported purpose of effectuating and/or explaining existing law, thus, increasing the chances that Rent Board Regulation 610 would lead to unclear and incorrect results. As stated above, during the initial partial year of “phase-in,” no tenant’s rent may be more than what it was on August 31, 2022, plus a 3% increase. Thus, despite already having a Regulation for the 2022 Annual General Adjustment of 5.2%, this Annual General Adjustment must be declared ineffective as of December 30, 2022, to remain consistent with Measure P, and to allow for the newly added Regulation 611 to take effect.

Further, Staff members have found some typos in the Regulation such as the year (“2021-20202”) and in the lettering of the subsections of the Regulation (“D.”, “E.”, and “F.”).

To resolve this issue, Staff is proposing amending Regulation 610 by declaring the ineffective date of the Regulation and the previous AGA of 5.2% as of December 30, 2022, and by rectifying the identified typos.

Proposed Addition of Regulation 611

Currently, no Regulation exists regarding the amount of the Annual General Adjustment following the effective date of Measure P. As stated previously, the AGA Order for 2022, pursuant to Regulation 610, was 5.2%. However, this Regulation became ineffective on December 30, 2022, and an additional Regulation is necessary to explain that the new AGA Order for 2022, through August 31, 2023, is 3%. Staff members find that not having a Regulation to clarify the augmented 2022 AGA does not achieve the purported purpose of effectuating and/or clarifying existing law and has the potential to lead to obscure results.

Further, as previously mentioned, pursuant to Measure P, no tenant's rent on a rent-controlled unit may be more than what it was on August 31, 2022, plus 3%. This, read in conjunction with Regulation 602 ("Banking") has the potential of leading to obscure results and/or potential overcharges as banking allows for previously unapplied AGAs to be added to the tenant's rent, in addition to the current AGA, with limitations. When banking, it is inevitable that the overall increase will be more than the currently allowed AGA percentage increase. Thus, Regulation 611 must clarify that banking is not allowed during the "phase-in" period and consequently, must define what the "phase-in" period is.

To resolve these issues, Staff is proposing the addition of Regulation 611 to Chapter 6 of the Rent Board Regulations.

Conclusion

Staff members recommend the Rent Board adopt the aforementioned amendments and addition to Chapter 6 of the Rent Board Regulations to ensure consistency of terms between the Measure P-amended Rent Ordinance and the Rent Board Regulations.

**DOCUMENTS ATTACHED:**

Attachment 1 – Redline Version: Chapter 6: Proposed Rent Board Regulation Amendments and additional Regulation.

Attachment 2 – Clean Version: Chapter 6: Proposed Rent Board Regulation Amendments and additional Regulation.

**Chapter 6: ANNUAL GENERAL ADJUSTMENTS OF MAXIMUM ALLOWABLE RENTS**

**600. Purpose**

The Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that no later than June 30 of each year the Board shall announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year. It further provides that the Annual General Adjustment shall equal ~~sixty one hundred (60100%)~~ percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any other successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics)(CPI) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year, or three (3%) percent, whichever is lower.

*[Formerly Regulation 17-05; adopted June 21, 2017]*

*[Amended DATE]*

**610. Annual General Adjustment Order for 2022**

The percentage increase in the CPI from 2021-2020~~2~~ is 5.2%, and thus, the following Annual General Adjustment shall apply:

- A. The 2022 Annual General Adjustment is not to exceed 5.2%.
- B. The Annual General Adjustment granted by this Regulation shall become effective on September 1, 2022, and shall become ineffective on December 30, 2022, as indicated in Regulation 611.~~provided that the Landlord is in full compliance with all applicable provisions of the provisions of the Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance, outstanding Rent Board and/or Hearing Examiner Orders, and any other applicable Regulation.~~
- C. Where the Landlord is entitled to the adjustment pursuant to the provisions of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance, and any other applicable Regulation, the Annual General Adjustment granted by this Regulation does not automatically provide for a rent increase. A Landlord may increase Rent by the 2022 Annual General Adjustment for tenancies in effect prior to September 1, 2021, only if the Landlord is in compliance with Regulation 601, and has complied with any existing Rent Board and/or Hearing Examiner Order.

*[Adopted April 20, 2022]*

*[Amended DATE]*

**611. Annual General Adjustment Order for 2022 Pursuant to the Richmond Annual Allowable Rental Adjustment Ordinance (R.M.C. 11.100.070(b)(1), as amended by voter initiative Measure P)**

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Notwithstanding Regulation 610, and pursuant to the passage of the Richmond Annual Allowable Rental Adjustment Ordinance, over the "phase-in" period no tenant's rent on a controlled unit shall be higher than what it was on August 31, 2022, plus a 3% increase, and thus the following Annual General Adjustment shall apply:

A. Following the effective date of R.M.C. 11.100.070(b)(1), as amended by voter initiative Measure P, the 2022 Annual General Adjustment is not to exceed 3%.

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B. The Annual General Adjustment granted by this Regulation shall become effective on December 30, 2022, provided that the Landlord is in full compliance with all applicable provisions of the provisions of the Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance, outstanding Rent Board and/or Hearing Examiner Orders, and any other applicable Regulation.

C. Where the Landlord is entitled to the adjustment pursuant to the provisions of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance, and any other applicable Regulation, the Annual General Adjustment granted by this Regulation does not automatically provide for a rent increase. A Landlord may increase Rent by the 2022 Annual General Adjustment for tenancies in effect prior to September 1, 2021, only if the Landlord is in compliance with Regulation 601, and has complied with any existing Rent Board and/or Hearing Examiner Order.

D. Notwithstanding Regulation 602, banking is not allowed during the "phase-in" period.

(1) As defined in the Richmond Annual Allowable Rental Adjustment Ordinance, the "phase-in" period is from the effective date of the Richmond Annual Allowable Rental Adjustment Ordinance through August 31, 2023. After the phase-in period, the regular provisions shall apply.

[Adopted DATE]

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**Chapter 6: ANNUAL GENERAL ADJUSTMENTS OF MAXIMUM ALLOWABLE RENTS**

**600. Purpose**

The Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that no later than June 30 of each year the Board shall announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year. It further provides that the Annual General Adjustment shall equal sixty (60%) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any other successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics)(CPI) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year, or three (3%) percent, whichever is lower.

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- B. The Annual General Adjustment granted by this Regulation shall become effective on September 1, 2022, and shall become ineffective on December 30, 2022, as indicated in Regulation 611.
- C. Where the Landlord is entitled to the adjustment pursuant to the provisions of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance, and any other applicable Regulation, the Annual General Adjustment granted by this Regulation does not automatically provide for a rent increase. A Landlord may increase Rent by the 2022 Annual General Adjustment for tenancies in effect prior to September 1, 2021, only if the Landlord is in compliance with Regulation 601, and has complied with any existing Rent Board and/or Hearing Examiner Order.

*[Adopted April 20, 2022]*

*[Amended DATE]*

**611. Annual General Adjustment Order for 2022 Pursuant to the Richmond Annual Allowable Rental Adjustment Ordinance (R.M.C. 11.100.070(b)(1), as amended by voter initiative Measure P)**

Notwithstanding Regulation 610, and pursuant to the passage of the Richmond Annual Allowable Rental Adjustment Ordinance, over the “phase-in” period no tenant’s rent on a controlled unit shall be higher than what it was on August 31, 2022, plus a 3% increase, and thus the following Annual General Adjustment shall apply:

- A. Following the effective date of R.M.C. 11.100.070(b)(1), as amended by voter initiative Measure P, the 2022 Annual General Adjustment is not to exceed 3%.
- B. The Annual General Adjustment granted by this Regulation shall become effective on December 30, 2022, provided that the Landlord is in full compliance with all applicable provisions of the provisions of the Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance, outstanding Rent Board and/or Hearing Examiner Orders, and any other applicable Regulation.
- C. Where the Landlord is entitled to the adjustment pursuant to the provisions of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance, and any other applicable Regulation, the Annual General Adjustment granted by this Regulation does not automatically provide for a rent increase. A Landlord may increase Rent by the 2022 Annual General Adjustment for tenancies in effect prior to September 1, 2021, only if the Landlord is in compliance with Regulation 601, and has complied with any existing Rent Board and/or Hearing Examiner Order.
- D. Notwithstanding Regulation 602, banking is not allowed during the “phase-in” period.
  - (1) As defined in the Richmond Annual Allowable Rental Adjustment Ordinance, the “phase-in” period is from the effective date of the Richmond Annual Allowable Rental Adjustment Ordinance through August 31, 2023. After the phase-in period, the regular provisions shall apply.

[Adopted DATE]