

The Brown Act & Rosenberg Rules of Order

Charles Oshinuga, General Counsel
May 8, 2023, Regular Meeting of the
Richmond Rent Board

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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 the Board 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 November/December
- ▶ Prohibition on having a financial interest in a contract made by the 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

Super-Majority Votes

- ▶ The basic rule: All motions require a simple majority vote to pass.
- ▶ Exceptions:
 - Motion to limit debate
 - Motion to close nominations
 - Motion to object to consideration of a question
 - Motion to suspend rules (Debatable)
 - *Richmond Municipal Code 11.100.060(j)
 - 3 Vote Exception

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



Conflicts of Interest Training

May 8, 2023 | City Council Chambers

Political Reform Act and the Fair Political Practices Commission

► **Background:** In response to the Watergate Scandal, Californians sought to put an end to corruption in politics by reducing the amount of money spent in elections and eliminating anonymous contributions. In 1974, voters amended California's constitution to enact the Political Reform Act (Act), which among other things:

1. Imposed strict conflict of interest laws and required cities and states to establish conflict of interest codes.
2. Banned anonymous contributions of \$100 or more
3. Placed limitations on the value of gifts an official may receive. (Legislature)

Additionally, the voters created The Fair Political Practices Commission (FPPC) to enforce the Act through regulation and Administrative prosecution.

I. Conflicts of Interest

**A. Political Reform Act
-Fiduciary Duty**

B. Government Code Section 1090

C. Gifts and Other Ethics Implications

Political Reform Act: Conflicts of Interest

- ▶ **Basic Rule:** A public official may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a **disqualifying financial interest**.

Disqualifying Financial Interest

- ▶ A public official has a **disqualifying financial interest** if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any qualifying financial interest.
- ▶ The Fair Political Practices Commission employs a **4-step** (previously 8-step) analysis to determine whether a disqualifying financial interest exists.

Step One

- ▶ Is it **reasonably foreseeable** that the governmental decision will have a financial effect on any of the public official's **financial interests**?

Step One: Financial Interest

- ▶ Do you or an immediate family member, or a business in which you are a 10% or more owner, have a **financial interest** in the decision?
 - ▶ Types of financial/economic interests:
 - ▶ Investments in business entities
 - ▶ Interests in real property
 - ▶ Sources of income
 - ▶ Sources of gifts (including agents and intermediaries)
 - ▶ Positions within business entities (including director, officer, partner or trustee)
 - ▶ Personal finances of the official and the official's immediate family

Step One: Reasonably Foreseeable

- ▶ Is it **reasonably foreseeable** that the governmental decision will have a financial effect on that interest?
 - ▶ A financial effect is *presumed* to be reasonably foreseeable if the financial interest is a named party/subject of a governmental decision before your agency.
 - ▶ Even if a financial interest is not explicitly involved in a decision, there *may* still be a reasonably foreseeable financial effect.
 - ▶ As a general rule, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.
 - ▶ FPPC provides factors to help determine whether a financial effect is reasonably foreseeable.

Step Two

- ▶ Will the reasonably foreseeable financial effect be **material**?
 - ▶ Materiality: important or substantial.
 - ▶ Whether a particular effect is material depends on the type of interest.
 - ▶ Interest involving Real Property implicate materiality concerns on numerous basis, one of which is where a decision impacts a property located 500 feet from the Boardmembers property line and such a decision would have an appreciable impact on the members property.
 - ▶ Interest involving Leaseholds implicate materiality where the decision would 1) change the termination date of the lease; 2) increase or decrease the potential rental value of the property ; 3) change the legal use of the property; and/or 4) impact the officials use and enjoyment of the property

Step Three

- ▶ Is the material financial effect **indistinguishable from its effect on the public generally?**
 - ▶ A significant segment of the public will be affected by the decision, and the effect on the official's interest is not unique compared to the effect on that significant segment.
 - ▶ Significant segment=at least 25% of all businesses, real property, or individuals within the official's jurisdiction
 - ▶ Where the only interest the Boardmember has is the member's primary residence, a significant segment is at least 15% of residential real property rather than 25%.
 - ▶ Examples of a unique effect include a disproportionate effect on development potential of real property, and income producing potential of official's business entity due to proximity of a property that is the subject of a decision.

Step Three

- ▶ This exception is known as the **Public Generally** exception.
- ▶ Aside from the **Public Generally** exception, the FPPC has established an exception for those interest involving **Rental Properties**
- ▶ Where the interest involves **Rental Property** and the decision is limited to affecting the respective rights or liabilities of tenants and landlords, including decisions regarding rent control or tenant protection measures, the decisionmaker qualifies for an exception to the rule where the following are met:
 - ▶ 1) The decision is applicable to all rental properties other than those exempted under Costa-Hawkins.
 - ▶ 2) The Boardmember owns three or fewer residential rental units.
 - ▶ 3) The only interest affected by the decisions are either: a) interests resulting from the Boardmembers's lease of residential real property, as the lessor and/or ; b) an interest in the Boardmember's primary residence as either a lessee or owner of the property.

Step Three

- ▶ **Public Generally** exception example:
 - ▶ San Jose Councilmember wanted to participate in decisions relating to the City's Apartment Rent Ordinance and Ellis Ordinance; however, she had a leasehold interest in an apartment subject to both ordinances.
 - ▶ The FPPC found the following:
 - ▶ The councilmember had an interest in real property since she held a lease in real property valued at \$2000 or more.
 - ▶ Decisions related to either City ordinance would have a reasonably foreseeable and material financial effect on the Councilmember's financial interest because the Councilmember's rental unit was subject to both Ordinances and decisions affecting either ordinance could foreseeably affect the potential value of her leasehold. (Prong two of the materiality test).
 - ▶ The Councilmember falls into the Public Generally exception as the amendments would impact a significant segment of the renters in her jurisdiction (all renters were impacted since the amendments would apply to any potential renter signing a leasehold, rather than a particular class of renters) and the impact of the amendments are indistinguishable between this Councilmember and other renters generally. So long as the only interest impacted is the Councilmembers residential leasehold, the Councilmember qualified for the exception.

Step Three

- ▶ **Public Generally** exception example:
 - ▶ Glendale Councilmember wanted to participate in decisions relating to the proposed adoption of a Rent Control Ordinance; however, she had a financial interest in multifamily residential properties.
 - ▶ The FPPC found the following:
 - ▶ The councilmember had a business interest in a rental property based on an investment of \$2000 or greater in various LLCs; a real property interest in rental property based on an ownership interest of 10 percent or greater in various LLCs; a source of income interest based on the fact that she would receive an aggregate of \$500 or more from each of the LLCs she owned or invested in; and a interest in personal finances since an official always has an interest in their personal finances.
 - ▶ Decisions related to the City ordinance would have a reasonably foreseeable and material financial effect on the Councilmember's various interest because the decision of rent control would regulate or otherwise establish conditions for an activity in which her business and financial interest are implicated.
 - ▶ The Councilmember meets the first prong of the Public Generally exception as decision at issue would impact at least 25% of the total residential dwellings. However, the Councilmember did not meet the second prong of the exception as the impact of the decision would not be indistinguishable between this Councilmember and other landlords generally. Because the Councilmember had substantial investments in two residential properties, and ownership interest in multiple properties, the potential cumulative effect of the decision on the Councilmembers properties' would be substantially greater than those on a single residential rental unit.

Step Four

- ▶ Is the public official making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision?
 - ▶ Making a decision includes voting, authorizing or directing an action, appointing a person, or entering into a contract.
 - ▶ Participating in a decision may include providing information, an opinion, or a recommendation.
 - ▶ Attempting to influence a decision includes contacting or appearing before an official in his or her own agency for the purpose of influencing a decision, or *appears before another agency on behalf of his or her agency.*

Bottom Line

- Conflict of interest analysis is complex and highly fact specific.
- When in doubt, seek advice from your General Counsel.

Seeking Legal Advice

- ▶ Attorney Client Privilege
 - ▶ The Privilege is with the Board as an entity and Executive Director, but not with an individual Boardmember
 - ▶ Advice may be shared with other members upon request
 - ▶ Privilege may be waived by the Board as a whole or the Executive Director
- ▶ Impact of receiving Attorney advice
 - ▶ Advice may guide your action but it does not protect you from liability if you are found to have violated the conflict of interest laws
- ▶ FPPC advice will protect decisionmaker from liability if decisionmaker strictly relies on FPPC advice.

Other Conflicts of Interest

- ▶ Even if there is no conflict of interest under the Political Reform Act, there may be a conflict under other provisions of California law.

Government Code § 1090

- ▶ **Government Code § 1090** prohibits elected officials and public employees from having a financial interest in any *contract* made by them in their official capacity.
 - ▶ **Examples of financial interest in a contract:** You have an employment relationship with the person/entity that seeks to contract with your agency; you are the attorney, agent or broker of a contracting party; you are a supplier of services or goods to a contracting party; you are the landlord or tenant of a contracting party; you are the officer or employee of a nonprofit corporation that is a contracting party. The official's interest also includes the community property and separate property interests of the official's spouse.
- ▶ **Effect of a § 1090 violation:** A single official's financial interest in a contract prevents the entire governing board from entering into a contract; unlike a PRA conflict of interest, recusal is not an option.
 - ▶ Possible criminal consequences for a violation.
 - ▶ FPPC now has civil/administrative enforcement authority over § 1090, and can issue advisory opinions

Common Law Conflicts of Interest

- ▶ **“Common Law”**: When acting in an adjudicatory or quasi-judicial role, an official's predisposition or personal bias may result in a disqualifying conflict of interest. Whether there exists a disqualifying interest turns on the presentation of evidence of “an unacceptable probability of actual bias on the part of those who have actual decision making power.” (*BreakZone Billiards v. City of Torrence* (2000) 81 Cal. App. 4th 1205, 1236.)
- ▶ **Richmond Rent Board Regulation 318**: Where the Rent Board sits as an adjudicative body to hear matters that fall within its jurisdiction, those members must strive to uphold the integrity of the Rent Board by avoiding impropriety and the appearance of impropriety. Thus, Rent Boardmembers must strive to perform their duties in adjudicating matters that fall within its jurisdiction in a fashion that is impartial, competent, and diligent. To that end, no Rent Boardmember may participate in the consideration or decision of any adjudicative matter in which such person has any personal interest, including equity interest, financial interest, an interest as a landlord, tenant, or management person, or is related by blood or marriage or adoption to a landlord or tenant involved. For the purposes of this Chapter, a personal interest is one where a Boardmember has a vested interest in the outcome of a matter thereby impairing their ability to evaluate the matter impartially. Where issues of partiality arise, Rent Boardmembers shall treat such partiality as a conflict of interest and adhere to Regulation 317, as it relates to disclosure and recusal.

What happens where there is a conflict?

- ▶ **Disclosure:** Those with conflicts must disclose the existence of the conflict and describe with particularity the nature of the financial interest. Additionally, the Boardmember or staff member must give a brief statement describing the circumstances under which they believe the conflict may arise.
- ▶ **Timing:** Pursuant to Richmond Rent Board Regulation 317, the Boardmember must disclose the conflict prior to the item, wherein the conflict exist, is to be called and discussed.
- ▶ **Recusal:** Prior to the discussion of the item where the conflict arises, the conflicted Boardmember shall request the Chair and the Chair shall grant permission to step down from the Dias and leave the Council Chamber or other room where the meeting is held. The Boardmember shall not return until the conclusion of the item wherein the conflict exists.
 - ▶ However, under certain circumstance a conflicted Boardmember may participate as a member of the public and offer comments on the item.
- ▶ **Quorum:** A conflicted Rent Boardmember shall not be counted as part of a quorum and shall be considered as absent for the purpose of determining the outcome of any vote on such matter.

Fiduciary Duty

- ▶ A Fiduciary is one in whom power has been entrusted for the benefit of others. As a public official, you a steward for the people and as such, as fiduciary. As a fiduciary, you carry five distinct duties:
- ▶ **Duty of Care:** Requires that the public official competently and faithfully execute the duties of the office.
- ▶ **Duty of loyalty:** Absolute obligation to put the public's interest before their own direct or indirect personal interests.
- ▶ **Duty of impartiality:** Representing all constituents fairly
- ▶ **Duty of accountability:** Transparency via the Brown Act.
- ▶ **Duty to preserve the public's trust in government:** Avoid impropriety.

III. Gifts and Select Other Ethics Considerations

Gifts

- ▶ **What is a “Gift”?** A “gift” is any payment or other benefit provided to you that confers a personal benefit for which you do not provide goods or services of equal or greater value in return. A gift includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public.
 - ▶ **Exceptions:** Certain items are not considered gifts, including gifts from close family members, informational materials that assist you in the performance of your official duties, and items of value provided when you are making a speech.
 - ▶ **Valuation:** Gifts are generally valued at the fair market value at the time the gift is received. There are some exceptions for specific items (e.g., attendance at certain types of events).

Gifts

- ▶ **\$520 Gift Limit:** State and local officials and employees are prohibited from receiving a gift or gifts totaling more than \$520 in a calendar year from a single source (company or person). This gift limit is adjusted every odd-numbered year.
- ▶ **Gifts to Family Members:** Under most circumstances, a gift to a family member (spouse, domestic partner, or child) is considered a gift to the official.
- ▶ **Disqualification:** Gifts aggregating \$520 or more from certain sources per rolling 12-month period generally disqualify you from participating in matters involving the source of the gifts.
- ▶ **Disclosure:** Gifts aggregating \$50 or more from certain sources must be disclosed on your Form 700 Statement of Economic Interests.
- ▶ **Gifts to the School District:** Under certain circumstances, an item may be considered a gift to the official's agency instead of a gift to the official. Special reporting requirements apply.

Honoraria

- ▶ **Honorarium:** An “honorarium” is any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Government Code § 89501.)
- ▶ **Prohibition:** A public official or employee of a local government agency who is designated in the agency’s conflict of interest code may not accept honoraria payments from any source, if the employee is required to report receiving income or gifts from that source on his or her Statement of Economic Interests. (Government Code §89502(c).) There are some limited exceptions to this prohibition.

Behested Payments

- ▶ **Behested Payments:** A “behested payment” is a donation made at the request of an elected official principally for legislative, governmental, or charitable purposes. For example, an elected board member may ask a third party to contribute funds to a school in his or her district, or to a job fair or health fair. Generally, a donation will be made “at the behest” if it is requested, solicited, or suggested by the elected officer, or otherwise made to a person in cooperation, consultation, coordination with, or at the consent of, the elected officer. This includes donations made on behalf of the official at the behest of his or her agent or employee.
- ▶ **Reporting:** Behested payments totaling \$5,000 or more from a single source in a calendar year must be disclosed by the official on a Form 803, which is filed with the official’s agency within 30 days of the date of the payment(s). (Government Code § 82015; FPPC Regulation 18215.3.)

Form 700

Statement of Economic Interests

- ▶ State and local government officials and employees designated in their agency's conflict-of-interest code must file a Form 700 Statement of Economic Interests disclosing their personal assets and income. Form 700s are typically required of candidates, upon assuming office, annually, and upon leaving office. Form 700s are public documents and any member of the public may inspect and receive a copy of any statement.

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How to Agendize items & Staff Role

Charles Oshinuga, General Counsel
May 8, 2023, Regular Meeting of the
Richmond Rent Board

Contents

1. Agenda Overview
2. Staff Agendizing Items
3. Rent Board Agendizing Items
4. Boardmembers Agendizing Items

What is an Agenda Item?

- A topic of discussion that falls within the subject matter jurisdiction of the Rent Board.
- Agendizing the topic of discussion serves to notify the public of the issues and potential Board action so that the public can engage in meaningful participation.

What is an Agenda Item cont'd

- 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

Why does it matter what is listed on the agenda?

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

How to Agendize an Item

Three main ways:

- ▶ Staff agendizes an item.
- ▶ The Board as a whole directs staff to include an item on the agenda.
- ▶ An individual Boardmember agendizes an item.

Agenda: Staff Agendizes an Item

- **Staff identifies an issue:**
 - Counseling sessions
 - Public Feedback
 - Staff comments and/or review
- **The issue(s) is discussed internally**
 - Creating or adjustment of administrative policies and procedures.
- **If it cannot be resolved internally, agendize the issue to the Board**
 - Issue is too pervasive or requires new Rules and Regulation.

Agenda: Staff Agendizes an Item, cont'd

- **Staff Report:**
 - The tool by which topics for discussion are brought before the Rent Board.
 - Typically contains the following:
 - Overview
 - Recommended Action
 - Fiscal impact
 - Brief discussion of the topic to be discussed
- **Staff request the Board to direct it to further explore the issue and return with policy options.**
- **Staff engages in researches, analyzes, and outreach**
 - Explore what other jurisdictions have done
 - Best ways to resolve the issue
 - Shop the various options around to the public
- **Return to the Rent Board with various policy options, which ultimately gets translated into a Rule and/or Regulation.**

Owner Move-In Example

- **Questions concerning how many evictions a Landlord can perform on a property**
 - Counselors
 - Attorneys
- **Staff decided the issue impacted the community as a whole and agendized it to the Board.**
- **Board directed staff to research the issue and return with policy options**
- **Staff engaged in months of research and outreach**
- **Staff presented its findings to the Board with various policy options**
- **Board selected its preferred set of options and directed staff to memorialize its selection in a set of Rules and Regulations.**
- **Legal review altered a few options**
- **Staff presented the Board with the Regulations and the Board adopted it.**

Agenda: Rent Board as a whole Agendizes an Item

- ▶ At the conclusion of a discussion of an item that is before the Rent Board, the Rent Board may direct staff to take any action that is related to the item of discussion.
 - Majority vote
 - Consistent with the Brown Act
 - Cannot exceed the parameters of the current item.
 - Limited discussion
 - The time to debate the consequence of the potential item is when the item returns to the Rent Board
 - Timing
 - The Board may instruct staff when it wants the item to appear before it.

Agenda: Individual Board Member

- ▶ An individual Board member may agendaize for discussion any topic that falls within the subject matter jurisdiction of the Rent Board.
- ▶ Subject matter jurisdiction: Those issues that reasonably relate to rents and/or evictions

Agenda: Individual BoardMember, cont'd:

- ▶ Identify the topic or issue of concern
- ▶ Contact staff members and request data that will support or illuminate the concern
- ▶ Request staff to provide a staff report template
- ▶ Fill in the appropriate sections of the template staff report
 - The report does not have to be long but should contain enough information to aid the public and the Board in a fruitful consideration of the item.
 - Staff will review the language contained in the “Recommended Action” section.
- ▶ Submit the completed staff report to staff.
 - Staff will help post the staff report as an item to be discussed at the next Board meeting
- ▶ Optional: Prepare a PowerPoint for the Board
 - Typically, the maker of the item simply gives an oral presentation of their staff report and elicits conversation from the sitting Boardmembers
- ▶ Optional: Staff may prepare a staff report that either opposes, supports, or contextualizes the Boardmembers’ Staff Report.

Recommended Action

- ▶ Receive training on agenda scheduling and appropriate content of said agenda.

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REGULAR MEETING OF THE RICHMOND RENT BOARD

May 8, 2023 | 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.

Stayed: To put on hold

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 may 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?

- Only final decisions of the Rent Board are enforceable. If the Hearing Examiner's decision is appealed, it is not enforceable until the Rent Board has heard the matter.
- 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

Standard of Review

The Standard of Review on Appeal shall be Substantial Evidence. Under the Substantial Evidence standard, the Board shall not reweigh the evidence nor second guess the factual findings of the Hearing Examiner, even if there was contrary evidence in the Record. Instead, the Board shall look only to the evidence contained in the Record which supports the prevailing party, and determine whether there existed Substantial Evidence in the Record to support the Hearing Examiner's findings.

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
 - When the Board does not adopt staff recommendation as written, a written decision of the Board must be mailed to all parties

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

DISCUSSION - 2023-24
BUDGET AND FEE STUDY
CITY OF RICHMOND RENT PROGRAM

ITEM M-1 | May 8, 2023, Special Rent Board Meeting
www.richmondrent.org

CONTENTS OF THIS PRESENTATION

(1) Rent Program Mission Statement, Organization and Goals



(2) Discuss Fiscal Year 2023-24 Budget and Fee Timeline



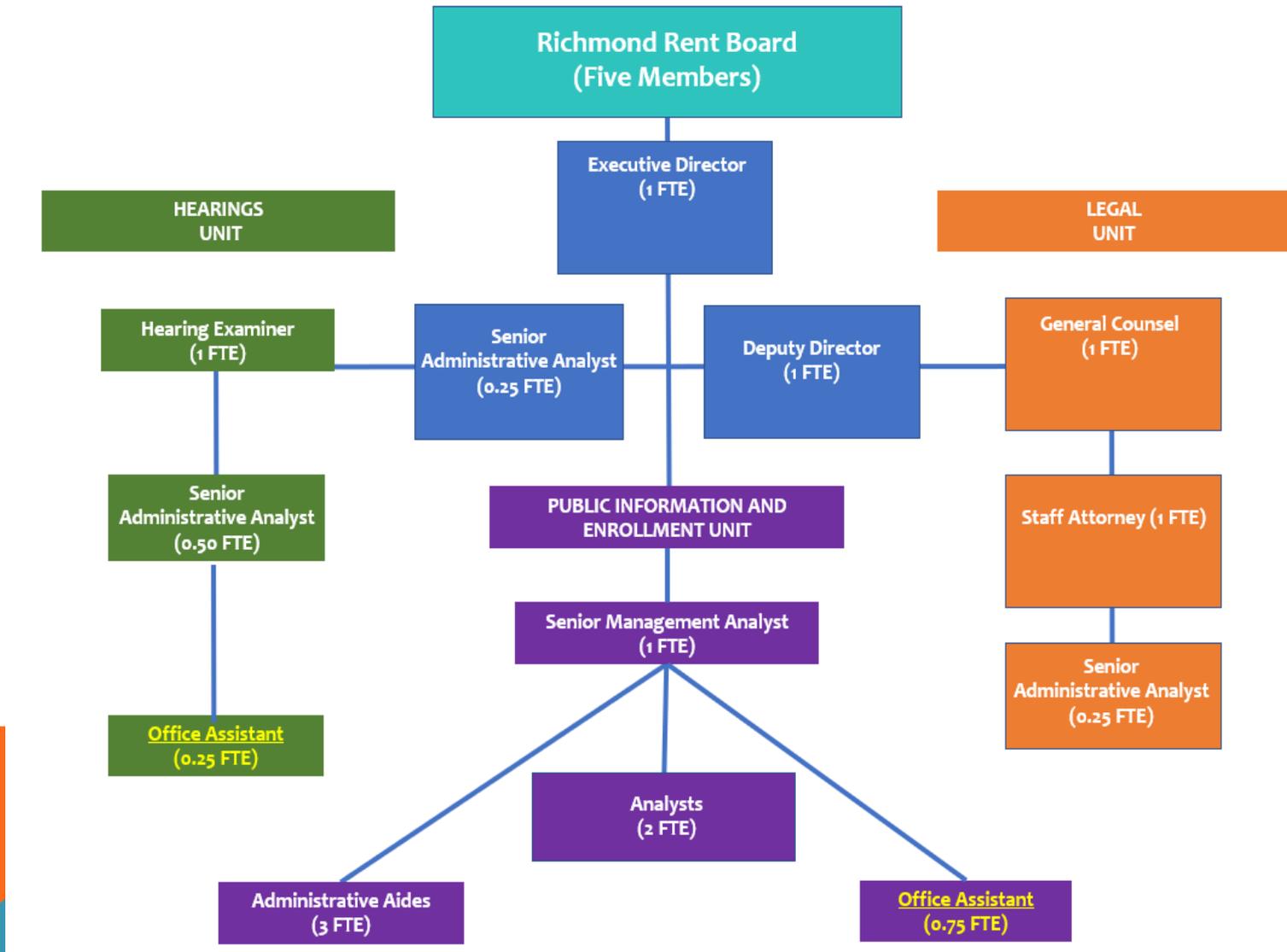
(3) Board Review – Q and A



RENT PROGRAM MISSION STATEMENT

The mission of the Rent Program is to promote neighborhood and community stability, healthy housing, and affordability for Richmond tenants through the regulating of those landlord/tenant matters that reasonably relate to rents and evictions, while maintaining a landlord's right to a fair return.

PROPOSED RENT PROGRAM ORGANIZATIONAL CHART



PROPOSED FY 2023-24 GOALS



PROPOSED FY 2023-24 GOALS

PROGRAM DEVELOPMENT

- ❖ Continue to invest in staff training and professional development to ensure staff members are knowledgeable of the requirements of the Rent Ordinance, Rent Board Regulations, and related State and Federal laws.
- ❖ Continue to develop online services (e.g., filing system for the submission of Property Enrollment and Tenancy Registration forms, online appointment scheduling system, increasing counseling sessions, as well as the filing of rent increase and termination of tenancy notices).
- ❖ Enhance legal services for Richmond small property owners and tenants to address the impact of the COVID-19 Pandemic. Enhance eviction defense services for Richmond tenants.

OUTREACH

- ❖ Increase awareness of the Rent Ordinance by publicizing and distributing the comprehensive Guide to Rent Control in Richmond and continue to develop online outreach services (e.g., fact sheets, webinars, and podcasts on laws. Enhance support for in-person outreach service for both the Rent Program office and City-wide community events.
- ❖ Expand education efforts through targeted outreach to specific groups, such as (but not limited to) tenants and providers of affordable housing, realtors, monolingual Spanish speaking households, small property owners, and problem properties (those with code violations).
- ❖ Develop systems to produce Notices of the Maximum Allowable Rent (MAR) (sent to Landlords and Tenants when Tenancy Registration Forms are submitted), including a database accessible to the public where community members can research the MAR for a particular rental unit. Build an indicator in the system to notify staff of rent increases beyond MAR.

PROGRAM SUSTAINABILITY AND COMPLIANCE

- ❖ Provide the highest level of service to the rental community. To properly administer these services, the Rent Program must continually collect the Rental Housing Fees to support the necessary operations.
- ❖ Improve and focus on sustainability of the agency. The success of the Program is tied to the ability to retain, develop, and effectively invest and deploy staff resources in the most effective and efficient manner possible.
- ❖ Continue to work collaboratively with other City departments to improve rental housing inspection options, Richmond's Rent Assistance Program, enforcement of the Relocation Ordinance, and the collection of other City fees (e.g., Business License Tax, Fire Prevention Services Fee, and Rental Inspection Program fee).
- ❖ Continue to develop and refine the Rent Program's database, transitioning from using the City's TRAKiT database, to a new database solution designed to work specifically for the needs of the Rent Program.

BUDGET AND RENTAL HOUSING FEE REQUIREMENTS

- ❖ In accordance with Section 11.100.060(I) of the Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, the amount of the Residential Rental Housing Fee will be determined by the City Council after a recommendation by the Board is provided to the City Council.
- ❖ Prior to July 1, the Board shall hold a public hearing on a proposed budget and adopt an annual budget for the ensuing fiscal year. The budget shall be funded by the Residential Rental Housing Fee.
- ❖ Staff members are preparing a draft budget and a corresponding fee study for the Rent Board's consideration and comment. The purpose of this item is to understand the timeline and required for approval and schedule a public hearing for potential adoption of the Fiscal Year 2023-24 Budget.

PROPOSED BUDGET AND FEE STUDY TIMELINE

<p>May 2023</p>	<p>Newspaper announcement is sent to be published in the paper on Wednesday, May & Saturday, May 2023</p>	<p>Cindy</p>
<p>May Regular/Special Rent Board Meeting May <i>Packet published at least 10 days prior</i></p>	<p>PUBLIC HEARING HELD: Board receives revised FY 23/24 Budget and Fee Study and considers adoption (if not adopted, item may be continued in May, potential Special Meetings required)</p>	<p>Fred</p>
<p>City Council Meeting on June 20, 2023 (staff will insert placeholder for subsequent meetings in the event item requires several meetings) <i>(Item request due in eSCRIBE 6/1/23, supporting docs due 6/5)</i></p>	<p>City Council Adopts Resolution Approving FY 23/24 Rental Housing Fee</p>	<p>Nick</p>
<p>June 21, 2023</p>	<p>Rent Program staff notify Finance Department staff of adopted fee for inclusion in the City's Master Fee Schedule</p>	<p>Fred</p>

EXPENSE AND REVENUE SUMMARY

FISCAL YEAR	BUDGETED AMOUNT	FUNDS EXPENDED	FEE REVENUE COLLECTED	COLLECTION RATE
2017-18	FY 16-17 (partial): \$1,150,433	\$1,967,834	\$2,753,351	77%
	FY 17-18: \$2,425,338			
2018-19	\$2,804,925	\$2,047,186	\$2,192,672	78%
2019-20	\$2,923,584	\$2,264,738	\$2,684,140	92%
2020-21	\$2,896,242	\$2,137,638	\$2,778,234	96%
2021-22	\$2,893,854	\$2,175,258	\$2,346,795	81%

COMPARISON TO PEER JURISDICTIONS

Jurisdiction Actively Enforced Programs	Program Fees (FY 2022-2023)	Regulated Rental Units (Estimated)
Berkeley	\$290 per unit	19,204
	(Fully Covered Properties)	(Fully Covered Properties)
	\$178 per unit	7,000
	(Partially Covered Properties)	(Partially Covered Properties)
East Palo Alto	\$266 per unit	2,467
Richmond	\$226 per unit	7,665
	(Fully Covered Properties)	(Fully Covered Properties)
	\$127 per unit	10,485
	(Partially Covered Properties)	(Partially Covered Properties)
Santa Monica	\$228	27,484

RENTAL HOUSING FEES FROM PRIOR YEARS

FISCAL YEAR	FULLY COVERED RENTAL UNITS	PARTIALLY COVERED/GOVERNMENTALLY SUBSIDIZED RENTAL UNITS
2017-18	\$145	\$145
2018-19	\$207	\$100*
2019-20	\$212	\$112
2020-21	\$219	\$124
2021-22	\$218	\$123
2022-23	\$226	\$127

* Governmentally Subsidized \$50 for 2018-19

ADOPTED FISCAL YEAR 2022-23 BUDGET

				# UNITS	Proposed Fee	Revenue
				7,665	\$226	\$1,729,668
				10,485	\$127	\$1,333,019
						\$3,062,687

BUDGET

Object #	City Account Description	FY 18-19 ACTUALS	FY 19-20 ACTUALS	FY 20-21 ACTUALS	FY 21-22 PROPOSED	FY 22-23 PROPOSED
	REVENUES					
340445	Fees/Admin Fees	2,189,703	2,681,689	2,764,961	2,893,854	3,062,687
361701	Int & Invest/Pooled-All Other	367	11,537	6,096	14,460	14,000
364867	Revenue from Collections	133	13,042	24,796	30,000	30,000
	TOTAL REVENUES	2,190,203	2,706,268	2,795,854	2,938,314	3,106,687
	EXPENSES					
400001	Salaries & Wages/Executive	530,092	639,594	649,356	677,798	724,848
400002	Salaries & Wages/Mgmt-Local 21	294,152	263,080	183,838	284,628	324,846
400003	Salaries & Wages/Local 1021	128,866	150,317	168,422	169,860	202,332
400006	Salaries & Wages/PT-Temp	49,557	45,905	32,244	43,036	35,776
400031	Overtime/General	4,778	2,094	1,312	2,500	2,500
400048	Other Pay/Bilingual Pay	6,993	9,064	9,719	11,377	11,172
400049	Other Pay/Auto Allowance	4,200	4,200	4,200	4,200	4,200
400050	Other Pay/Medical-In Lieu of	2,700	1,500	-	2,400	-
400079	Comp Absences/WC-Prof-Mgt-Tec	1,486	5,328	-	-	-
	Subtotal - Salaries & Wages	1,022,823	1,121,084	1,049,091	1,195,799	1,305,674

ADOPTED FISCAL YEAR 2022-23 BUDGET - CONTINUED

400103	P-Roll Ben/Medicare Tax-ER Shr	14,937	16,389	15,313	15,992	18,207
400104	P-Roll Ben/PERS Benefits	-	-	-	-	-
400105	P-Roll Ben/Health Insurance Be	146,557	136,575	128,611	140,309	232,291
400106	P-Roll Ben/Dental Insurance	16,652	17,021	17,534	15,508	17,520
400109	P-Roll Ben/Employee Assistance	430	473	422	464	216
400110	P-Roll Ben/Professional Dev-Mg	3,728	5,200	1,500	3,750	6,750
400111	P-Roll Ben/Vision	2,106	2,095	2,049	2,052	2,052
400112	P-Roll Ben/Life Insurance	5,557	4,006	3,433	3,713	4,139
400114	P-Roll Ben/Long Term Disabilit	9,408	10,100	9,259	10,076	12,342
400116	P-Roll Ben/Unemployment Ins	1,860	5,100	4,960	5,730	5,472
400117	P-Roll Ben/Personal/Prof Dev	750	1,493	1,500	5,250	2,250
400118	P-Roll Ben/Worker Comp-Injury Appt	-	-	692	359	-
400121	P-Roll Ben/Worker Comp-Clerica	13,806	12,154	14,541	19,240	24,001
400122	P-Roll Ben/Worker Comp-Prof	69,352	60,744	74,891	79,290	-
400127	P-Roll Ben/OPEB	39,338	43,623	42,145	22,763	40,723
400130	P-Roll Ben/PARS Benefits	642	434	50	94	-
400149	P-Roll Ben/Misc	123,021	140,616	139,314	151,638	156,287
400151	P-Roll Ben/Misc (UAL)	162,985	235,683	271,234	271,391	287,268
	Subtotal Fringe Benefits	611,127	691,706	727,447	747,618	809,518
400201	Prof Svcs/Professional Svcs	32,112	38,241	10,957	18,350	143,455
400206	Prof Svcs/Legal Serv Cost	137,614	193,742	149,994	210,000	210,000
400220	Prof Svcs/Info Tech Services	2,375	-	2,142	-	-
400241	Travel & Trng/Meal Allowance	359	-	-	-	-
400242	Travel & Trng/Mileage	1,284	17	-	-	-
400243	Travel & Trng/Conf, Mtng Trng	280	-	-	-	-
400245	Travel & Trng/Tuition Rmb/Cert	800	800	-	800	800
400261	Dues & Pub/Memberships & Dues	824	1,590	1,453	1,650	1,650
400263	Dues & Pub/Subscription	1,500	-	-	-	-
400271	Ad & Promo/Advertising & Promo Materials	1,559	2,106	1,702	5,675	800
400272	Ad & Promo/Community Events	1,563	1,722	-	-	-
400280	Adm Exp/Program Supplies	5,292	1,600	3,432	3,950	5,380
	Subtotal Prof & Admin Services	185,563	239,819	169,680	240,425	362,085
400231	Off Exp/Postage & Mailing	10,849	5,905	6,528	22,647	17,300
400232	Off Exp/Printing & Binding	12,071	3,295	3,428	25,807	24,404
400233	Off Exp/Copying & Duplicating	46	-	236	500	500
400304	Rental Exp/Equipment Rental	8,721	4,532	2,488	8,000	9,000
400321	Misc Exp/Misc Contrib	3,000	-	1,500	3,000	2,000
400322	Misc Exp/Misc Exp	3,061	2,262	-	2,925	2,000
400341	Off Supp/Office Supplies	8,721	6,024	1,891	6,795	5,000
400344	Off Supp/Computer Supplies	18	783	-	-	-
	Subtotal Other Operating	46,486	22,801	16,072	69,674	60,204
400401	Utilities/Tel & Telegraph	254	414	551	500	500
400538	Contract Svcs/Other Contract Svcs	-	-	103	-	-
400552	Prov Fr Ins Loss/Ins Gen Liab	8,029	8,765	9,047	9,300	9,300
400574	Cost Pool/(ISF)-Gen Liab	55,701	75,144	69,513	79,937	-
400586	Cost Pool/(CAP)-Admin Charges	51,454	51,454	51,454	52,481	-
400591	Cost Pool/(IND)Civic Ctr Alloc	52,420	47,026	50,289	50,286	48,217
400601	Noncap Asst/Comp Hrdware<5K	-	6,526	-	10,800	-
400604	Noncap Asst/Furniture <5K	13,328	-	-	-	-
	TOTAL EXPENSES	2,047,186	2,264,738	2,143,246	2,456,820	2,595,497

10-YEAR FINANCIAL PROJECTION

FINANCIAL STABILITY RECOMMENDATIONS (First 3):

- 1. Maximizing revenue** – A significant challenge for the Rent Program is identifying all units that are subject to the Rental Housing Fee.
- 2. Inflationary increase for Rental Housing Fee** -The City includes an inflationary increase in most of its fees when it adopts its Master Fee Schedule each year. It determines the percentage increase based on the Employment Cost Index from the US Bureau of Labor Statistics. The Rent Board does not include inflationary increases for its fees. Large increases every few years are harder than smaller increases every year for both the Rent Board and the landlords. A steady planned increase in the fee allows planning by both parties, is consistent with the Rent Board's need to match revenues and expenditures and is logical to landlords.
- 3. Reserve policy** - The Government Finance Officers Association (GFOA) recommends that governments should maintain a prudent level of financial reserves to protect against reducing service levels or raising fees because of temporary revenue shortfalls or unpredicted one-time expenditures. Currently at 18%.

FY 2023-24 is in line with projected 10-year Financial Projection for Revenues and Expenditure

RECOMMENDED ACTION

- ❖ **RECEIVE** a presentation regarding the Rent Program budget process and requirements for the Fiscal Year 2023-24 Rent Program operating Budget and corresponding Rental Housing Fee Study and discuss scheduling a Special meeting to review a preliminary proposed Rent Program Budget and corresponding Fee Study for the Fiscal Year 2023-24 Budget.

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