

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Bill Lindsay

Phone: 620-6512

Meeting Date: June 21, 2017

Final Decision Date Deadline: June 21, 2017

STATEMENT OF THE ISSUE: Regulation 17-06 provides a means for a landlord to increase rents, in excess of the increases permitted by the Annual General Adjustment, due to capital improvements, including demolition of existing rental units and reconstruction of new rental units on the property, in order to receive a fair return on the property, to encourage landlords to improve the quality of the City's housing stock, to protect the health and safety of tenants and to provide that tenants are not unreasonably displaced as a result.

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"/> Ordinance | <input type="checkbox"/> Other: <u>Training</u> |
| <input type="checkbox"/> Contract/Agreement | <input type="checkbox"/> Council As Whole | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) | |

RECOMMENDED ACTION: RECEIVE draft Regulation 17-06, regarding the establishment of requirements for landlords to obtain an individual rent increase in an amount greater than the Annual General Adjustment based on "Capital Improvements" in order to receive a fair return on the property – Rent Program (Michael Roush 621-1202).

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AGENDA REPORT

RENT PROGRAM

DATE: June 21, 2017

TO: Chair Gray and Members of the Rent Board

FROM: Michael Roush, Legal Counsel

SUBJECT: REGULATION CONCERNING RENT INCREASES AND TERMINATION OF TENANCIES IN CONNECTION WITH CAPITAL IMPROVEMENT PLANS

STATEMENT OF THE ISSUE:

Regulation 17-06 provides a means for a landlord to increase rents, in excess of the increases permitted by the Annual General Adjustment, due to capital improvements, including demolition of existing rental units and reconstruction of new rental units on the property, in order to receive a fair return on the property, to encourage landlords to improve the quality of the City's housing stock, to protect the health and safety of tenants and to provide that tenants are not unreasonably displaced as a result.

RECOMMENDED ACTION:

RECEIVE draft Regulation 17-06, regarding the establishment of requirements for landlords to obtain an individual rent increase in an amount greater than the Annual General Adjustment based on "Capital Improvements" in order to receive a fair return on the property – Rent Program (Michael Roush 621-1202).

FISCAL IMPACT:

Due to the number of procedural tasks associated with administration of the process to withdraw units from the rental market, the fiscal impact of this item is anticipated to be significant. Staff recommend that the Rent Board consider the adoption of a filing fee commensurate with the labor necessary to administer and enforce Regulation 17-07.

DISCUSSION:

Background

In November 2016, Richmond voters passed an initiative measure entitled the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (“Fair Rent Ordinance”), now codified in Chapter 11.100 of the Richmond Municipal Code (“RMC”). The Fair Rent Ordinance provides that in addition to the annual general adjustment of rents that a landlord may impose on a tenant, the Board may approve individual rent increases to a landlord in order for the landlord to receive a reasonable return on property based on the cost of planned or completed capital improvements to the rental unit where the improvements are necessary to bring the property into compliance, or maintain compliance, with applicable local code requirements affecting health and safety, or where the improvements are necessary as a result of substantial deterioration of the rental unit due to normal wear and tear, and where the capital improvement costs are amortized over the useful life of the improvement.

The attached Regulation is intended to provide a means for a landlord to increase rents due to capital improvements, including demolition of existing rental units and reconstruction of new rental units on the property, in order to receive a fair return on the property, to encourage landlords to improve the quality of the City’s housing stock, to protect the health and safety of tenants and to provide that tenants are not unreasonable displaced as a result. This will be accomplished in several ways.

Definition of “Capital Improvement”

A capital improvement means an improvement that materially adds value to the property or appreciably prolongs its useful life, has a useful life of more than a year, and the cost of which is to be amortized over a period of years. A capital improvement includes items such as painting of, or installing new siding on, the exterior of a building, a new roof, an upgrade of a foundation (including for seismic safety), new plumbing, electrical or heating, ventilation, and air conditioning (HVAC) system for the building, significant repairs due to termites or other insects, upgrades for water and energy efficiency or reduction in greenhouse gases, or improvements to enhance accessibility for persons with disabilities. It does not include expenses for routine repairs, replacement or maintenance, such as the interior painting of a unit, replacing carpets and drapes, or repairing or replacing furnished appliances.

Requirements of the Capital Improvement Plan

A Capital Improvement Plan must not only be for a capital improvement as described above but also (1) the cost of the capital improvement must not be less than the product of eight times the amount of the monthly rent times the number of rental units that will be improved and (2) the Board, acting through the Executive Director, must approve the Plan. A landlord requesting a rent increase above the annual general adjustment for a capital improvement must file such a request with the Board, along with supporting

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documentation. Supporting documentation may include copies of invoices, signed contracts, material and labor receipts and the like, or if the work is to be done following approval of the Plan, documentation based on reasonable estimates of cost.

The Regulation addresses the “Calculation of Rent Increases for Capital Improvements”. In part, the Executive Director is to calculate the amount of the rent increase by amortizing the cost of the improvement over a 20 year period. Because actual interest rates to finance the cost of improvements may vary depending on the creditworthiness of the builder, for simplicity, the adopted Policy provides the Executive Director is to use “one-half of the sum of an assumed interest rate of the Wall Street Journal (Western Edition) plus one percent.” For example, if that assumed interest rate were 4%, the Executive Director would apply an interest rate of 2.5% [4% plus 1% divided by 2, yields 2.5%].

For example, assume the property has 10 units, monthly rent for each unit is \$1000, the improvements qualify as a capital improvements, the documented cost of the improvements is \$200,000, the assumed interest rate is 4% and the cost is amortized over 20 years. The landlord would be entitled to a monthly rent increase of \$120, a rent increase of 12%. If the Capital Improvement Plan is approved, the rent increase would go into effect when the work is completed.

Restriction for Capital Improvements Commencing Before July 21, 2015

No rent increase will be considered for capital improvements started before July 21, 2015. For a rent increase capital improvements started after July 21, 2015, but completed before June 30, 2017, a landlord must submit a Capital Improvement Plan by December 31, 2017; and for capital improvements started after July 21, 2015 but completed after June 30, 2017, the landlord must submit a Capital Improvement Plan within 12 months of the completion of the work.

Relocation Requirements

If the landlord believes, and the Executive Director determines, that the work cannot be accomplished reasonably and safely with the tenant in the unit and the tenant has informed the landlord the tenant wishes to return to the unit after the work is completed (and pay the increased rent), the landlord is responsible for relocating the tenant temporarily either by paying the tenant the temporary relocation fees under the Relocation Fee Resolution or by providing alternative housing to the tenant if there is a comparable vacant unit in the building or if the landlord owns other property in the City in which there is a comparable (and vacant) unit. In these latter two situations,, the landlord would be responsible not only for paying the tenant’s cost to relocate to the alternative unit but also the cost to relocate to the tenant’s original unit. Also, the tenant would pay only the rent in effect when the tenant was displaced during the time of temporary relocation. Improvements that can be completed within six months are presumed to result in only a temporary relocation. Otherwise, the tenant will be

permanently relocated and receive the permanent relocation benefits under the Relocation Fee Resolution.

Demolition of the Rental Unit(s)

The Capital Improvement Plan Policy addresses the demolition of existing rental units followed by construction of new rental units. Where a landlord intends in good faith to demolish rental units and construct new rental units on the same property, the Policy provides a landlord must file a Capital Improvement Plan with the Executive Director. The Plan must demonstrate the landlord has obtained from the City and any other regulatory agency all necessary permits not only to demolish the existing unit but also to construct the new units. The Plan must indicate the proposed time frame when the landlord intends to terminate the tenancies, when the landlord intends to begin and complete demolition and when the landlord intends to begin and complete construction of the new rental units.

If the Executive Director has approved the Capital Improvement Plan as to demolition/reconstruction, the landlord may take action to terminate the tenancy as provided by law. The notice to terminate the tenancy shall provide the tenant with at least 120 days to vacate, a statement the tenant is entitled to relocation payments and the amount thereof as provided in the City's Relocation Resolution, notice that the tenant has the right of first refusal to rent the new rental unit once built, and advise the tenant of the right to damages if the landlord does not demolish the rental unit and construct new rental units as set forth in the approved Plan.

The landlord is to notify the Executive Director when all rental units to be demolished have been vacated. The landlord must begin demolition, begin construction of the new rental unit(s) following demolition of the units and, in the reasonable judgment of the Executive Director, diligently complete construction of the new rental units, all as set forth in the approved Capital Improvement Plan. Even if these requirements are met, the newly constructed rental units remain subject to rent control, notwithstanding any provision of law that otherwise exempts newly constructed units from rent control. A landlord may, however, file a petition for a rent adjustment as provided in the Fair Rent Ordinance.

If the landlord demolished the rental units but did not start construction and/or did not complete construction of the rental units as required under the Plan, the Plan is null and void. The landlord must offer to rent the new rental unit (if constructed) to the displaced tenants on a right of first refusal; no matter to whom it is rented, the unit shall be rented at the lawful rent in effect at the time of tenant displacement, plus any annual allowable adjustments. The landlord will also be liable to any tenant who was displaced from the rental property for actual and punitive damages. These sanctions are consistent with State law where a landlord withdraws a rental unit from the rental housing market "permanently" but then, within a five year period, changes his or her mind.

DOCUMENTS ATTACHED:

Attachment 1 – Draft Regulation 17-06, regarding the establishment of Capital Improvement Plan requirements for Landlords petitioning the Rent Board for an individual rent increase in an amount greater than the Annual General Adjustment

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DRAFT RICHMOND RENT BOARD REGULATION 17-06 **Regarding Establishment of a Capital Improvement Plan (CIP)**

1. Capital Improvement Plan Regulation – Purpose. The purpose of this Capital Improvement Plan is to encourage Landlords to improve the quality of the City’s rental housing stock, to ensure Landlords receive a just and reasonable return on their capital improvement expenditures, and to ensure that Tenants are not unreasonably displaced as a result of capital improvements to their Rental Units or the buildings housing such Rental Units. Except for “Capital Improvement” as set forth in Section 2 of this Regulation, terms in this Regulation are the same as those terms are used in the City of Richmond’s Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100 of the Richmond Municipal Code).

2. Definition of Capital Improvement. A capital improvement, for purposes of this Regulation, shall be any improvement to a Rental Unit or property that (a) materially adds to the value of the property, (b) appreciably prolongs the useful life or adapts the property to new use, including demolition of one or more Rental Units and the reconstruction of new residential rental housing on the property, (c) has a useful life of more than one year and, under the straight line depreciation provisions of the Internal Revenue Code and the regulations issued pursuant thereto, is required to be amortized over the useful life of the improvement and (d) has a documented cost that is not less than the product of eight times the amount of the rent multiplied by the number of Rental Units to be improved. Excluded as capital improvements are routine repairs, replacement or maintenance including, but not limited to, interior painting of a Rental Unit, plastering, replacing broken windows, replacing carpets or drapes, cleaning, fumigating, routine landscaping, standard repairing of electrical and plumbing services, and repairing or replacing furnished appliances and for these exclusions the Board shall not grant a rent increase that exceeds the annual general adjustment and no Landlord shall terminate a tenancy based thereon.

3. Effect of Regulation. Sections 4 through 11 of this Regulation allow a Landlord to obtain a rent increase that exceeds the annual general adjustment and/or to seek a temporary or permanent termination of a tenancy in connection with capital improvements. Sections 4 through 11 of this Regulation allow rent for a Rental Unit to be increased in excess of the annual general adjustment to provide a just and reasonable return on the expenditures for capital improvements, where the capital improvements are necessary (a) to bring the property into compliance, or maintain compliance, with applicable local code requirements affecting health or safety or (b) due to substantial deterioration of the Rental Unit(s) other than as a result of normal wear and tear and such capital improvements are (a) for major, long-term improvements or repairs as defined in Section 6 of this Regulation and (b) properly amortized over the life of the improvement. Sections 4 and 12 of this Regulation allow a Landlord to seek in good faith a termination of a tenancy in order to demolish one or more Rental Units on the property if the Landlord reconstructs on the property.

4. When a Capital Improvement Plan Must Be Filed. A Landlord must file with the Board a Capital Improvement Plan, on a Rent Program form, when the Landlord (a) requests a rent increase that exceeds the annual general adjustment in connection with capital improvements not connected to demolition/reconstruction or (b) intends in good faith to demolish the Rental Unit(s) on the property and reconstruct on the same property new Rental Units. The Landlord must provide to the Board supporting documentation when required and as described in Section 7 of this Regulation, the names and addresses of the Tenants affected by the request and must mail a copy of the request (but not the supporting documentation) to each Tenant affected by the request.

5. Calculation of Rent Increases for Capital Improvements. Where a Landlord demonstrates an improvement qualifies as a capital improvement under Section 2 of this Regulation and satisfies one or more of the requirements of Section 3 of this Regulation, the Executive Director shall calculate the amount of a rent increase by amortizing the cost of the improvement, including one half of the sum of an

assumed interest rate of the Wall Street Journal's prime rate (Western Edition) plus one percent, over 20 years (notwithstanding that the useful life of such improvements for straight line depreciation purposes may be longer under the Internal Revenue Code and the regulations that implement such Code) and dividing that cost by the number of Rental Units that benefit by the improvement. The dollar amount of the rent increase as calculated in this Section 5 shall be deducted from the rent then in effect at the conclusion of the 20 year amortization period.

6. Major Long-Term Improvements or Repairs. A Landlord's expenditures for any major long-term improvements or repairs listed in subsection A of this Section 6 shall qualify for an adjustment of the base rent, provided the documented cost thereof is not less than the product of eight times the amount of the rent multiplied by the number of Rental Units to be improved.

(a) The following major, long-term improvements or repairs shall be eligible for a rent increase:

- i. A new roof covering all or substantially all of a building or a structurally independent portion of a building;
- ii. A significant upgrade of the foundation of all or substantially all of a building or a structurally independent portion of a building, including seismic retrofits;
- iii. A new or substantially new plumbing, electrical or heating, ventilation and air conditioning (HVAC) system for all or substantially all of a building;
- iv. Exterior painting or installation/replacement of siding on all or substantially all of a building;
- v. Repairs reasonably related to correcting or preventing the spread of defects that are noted as findings in a Wood Destroying Pest and Organisms Report issued by a pest control company registered in Branch 3 of the State of California Structural Pest Control Board provided that any such expenditures for such repairs exceed \$6,000 or the product of \$1,000 times the number of units in the building, whichever is less;
- vi. The installation of water conservation devices that are intended to reduce the use of water or energy efficient devices, such as a solar roof system, that are intended to save energy and/or reduce greenhouse gases, or;
- vii. Improvements or upgrades to the Rental Unit or the building/complex that meet or exceed disability/accessibility standards as required by law.

(b) In determining the cost of a major repair under this Section 6, no consideration shall be given to any additional cost incurred for increased property damage and/or deterioration due to an unreasonable delay in the undertaking or completing any repair or improvement.

7. Supporting Documentation. The supporting documentation must substantiate the nature and cost of the claimed improvement and may include copies of invoices, signed contracts, material and labor receipts, self-labor logs, cancelled checks, spreadsheets or any other items of documentation accepted and used in the normal course of business; provided, however, if the supporting documentation is based on estimates, the Landlord must subsequently provide to the Board supporting documentation as set forth in the previous sentence.

8. Limitations on Rent Increases. No rent increase under this Regulation shall be granted in consideration of any capital improvement for which a building permit had been issued prior to July 21, 2015, or, if the capital improvement was for work for which a building permit was not required, for any

capital improvement that was started prior to July 21, 2015. For capital improvements commenced after July 21, 2015, and completed before June 30, 2017, for which a Landlord seeks a rent increase in excess of the annual general adjustment, a Landlord must comply with Section 4 of this Regulation by December 31, 2017. For capital improvements commenced after July 21, 2015, but not completed by June 30, 2017, for which a Landlord seeks a rent increase in excess of the annual general adjustment, a Landlord must comply with Section 4 of this Policy within 12 months of the completion.

9. Executive Director's Determination. The Executive Director or their designee shall review the Landlord's request and supporting documentation and determine whether the documentation is adequate and sufficient to approve the requested rent increase in excess of the annual general adjustment. If the Executive Director or designee so determines and approves the request, the Executive Director or designee shall notify the Landlord. Any approved rent increase shall not take effect until the Executive Director or designee has determined the Landlord has completed the capital improvement; provided, however, if the Landlord has requested a rent increase that exceeds the annual general adjustment based on estimated costs, the Executive Director or designee may grant conditional approval of a rent increase but the rent increase shall not take effect until the Executive Director or designee has determined the Landlord has completed the capital improvement and submitted to the Executive Director adequate and sufficient supporting documentation to approve unconditionally the rent increase that exceeds the annual general adjustment. If the Executive Director does not approve the request for a rent increase that exceeds the annual general adjustment, the Executive Director shall inform the Landlord in what respects the request is deficient.

10. Landlord's Notice to the Tenants That the Rent Increase Has Been Approved. Where the Landlord has requested a rent increase that exceeds the annual general adjustment and the Executive Director or designee has unconditionally approved such rent increase, the Landlord shall notify the Tenants in writing and file copies of such notice with the Board.

11. Relocation Assistance.

- (a) When the Landlord has notified a Tenant of the amount of a rent increase that exceeds the annual general adjustment, as provided in Section 10 of this Regulation, the Landlord must also inform the Tenant that the Tenant must advise the Landlord within 30 days whether or not the Tenant intends to remain in the Rental Unit and pay the rent increase. If the Tenant has advised the Landlord that the Tenant does not intend to remain in the Rental Unit and pay the rent increase or if the Tenant has not advised the Landlord within 30 days one way or the other, the Landlord may take action to terminate the tenancy but is required to provide Permanent Relocation Payment in the amount required for Withdrawal From the Rental Market (RMC 11.100.050(a)(7)) to the Tenant as provided in the City's Ordinance concerning Relocation Requirements for Tenants of Residential Rental Units (Chapter 11.102, Richmond Municipal Code) and enabling resolution.
- (b) Where the Landlord has requested a rent increase that exceeds the annual general adjustment and filed with the Executive Director a Capital Improvement Plan that contemplates the temporary or permanent relocation of a Tenant based on the Landlord's good faith belief that the capital improvement work cannot be accomplished safely with the Tenant in the Rental Unit while the work is performed and the Executive Director concurs, the Executive Director or designee will approve a capital improvement plan that includes terms and conditions of relocating the Tenant either on a temporary or permanent basis as provided further in this Section 11.
- (c) If (1) the approved Capital Improvement Plan requires a Tenant to vacate the Tenant's Rental Unit, (2) the Tenant has informed the Landlord the Tenant will pay the rent increase once the improvement work is complete and (3) at the time the Tenant must vacate the Rental Unit there is a comparable and available replacement Rental Unit satisfactory to the Tenant within the

building/complex or in another building/complex in the City of Richmond owned by the Landlord, the Landlord must (a) relocate the Tenant into such comparable and available replacement Rental Unit satisfactory to the Tenant, (b) offer the Tenant the Rental Unit that the Tenant vacated, or a comparable Rental Unit satisfactory to the Tenant within the building/complex, on a first right of refusal basis (subject to the rent increase) when the capital improvement is completed, (c) provide the Tenant with reasonable and documented costs of relocating the Tenant to and from the replacement Rental Unit and (d) until the Tenant re-occupies the Rental Unit or comparable Rental Unit after the capital improvement is completed, impose on the Tenant the rent the Tenant was charged at the time of the displacement.

- (d) If (1) the approved Capital Improvement Plan requires a Tenant to vacate the Tenant's Rental Unit, (2) the Tenant has informed the Landlord that the Tenant will pay the rent increase once the improvement work is completed, and (3) at the time that the Tenant must vacate the Rental Unit there is no comparable and available Rental Unit satisfactory to the Tenant in the building/complex or in another building/complex in the City of Richmond owned by the Landlord, the Executive Director will determine whether the Landlord must provide temporary relocation benefits to the Tenant or whether the Landlord may take action to terminate the tenancy. In determining whether a Tenant may be temporarily relocated during the improvement work rather than permanently relocated, the Executive Director will take into consideration the length of the displacement with the presumption that if the work can be completed within six months, the relocation will be temporary. Other terms and conditions concerning temporary relocation may include, but not be limited to, offering the Tenant the Rental Unit that the Tenant has vacated, or a comparable Rental Unit satisfactory to the Tenant within the building/complex, on a first right of refusal basis (subject to the rent increase) when the capital improvement is completed, providing the Tenant with reasonable and documented costs of relocating the Tenant to and from the temporary replacement Rental Unit and requiring the Tenant to pay no more than the rent the Tenant was paying at the time of displacement until the Tenant re-occupies the Rental Unit or the comparable Rental Unit after the capital improvement is completed. If the Executive Director determines the Landlord must provide temporary relocation benefits to the Tenant or the Landlord may take action to terminate the tenancy due to the length of time to complete the work or otherwise, the Landlord shall provide relocation assistance to the Tenant as provided in the City's Ordinance concerning Relocation Requirements for Tenants of Residential Rental Units (Chapter 11.102, Richmond Municipal Code) and enabling resolution.
- (e) For purposes of this Section 11 of the Regulation, a Rental Unit is comparable to the Tenant's Rental Unit if both Rental Units are comparable in size, amenities and, as to a Tenant who is disabled, accessibility to and from the Rental Unit.

12. Demolition Followed by Reconstruction.

- (a) A Landlord must file a Capital Improvement Plan with the Rent Program, on a Rent Program form, when a Landlord intends in good faith to demolish one or more Rental Units on the property and then reconstruct one or more Rental Units on the same property. The Capital Improvement Plan submitted to the Rent Program must demonstrate the Landlord has obtained from the City of Richmond and any other regulatory agency all necessary permits to demolish the Rental Unit(s) and to construct new Rental Units on the same property. The Capital Improvement Plan must indicate the proposed time frame when the Landlord intends to terminate tenancies, begin and complete demolition and begin and complete construction of the new Rental Units.

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- (b) The Executive Director, or their designee, shall review the Capital Improvement Plan, including all necessary permits, and determine whether the documentation is adequate and sufficient to approve the Capital Improvement Plan. The Executive Director, or their designee, will provide the Tenant(s) the opportunity to review the documents before making a decision. If the Executive Director or designee approves the capital improvement plan, the Executive Director or designee shall notify the Landlord and the Tenant(s). If the Executive Director or designee does not approve the capital improvement plan, the Executive Director or designee shall inform the Landlord in what respects the capital improvement plan is deficient.
- (c) If the Executive Director or designee has approved the Capital Improvement Plan, the Landlord may take action to terminate the tenancy as provided by law. The notice to terminate the tenancy shall provide the Tenant with at least 120 days to vacate, a statement the Tenant is entitled to Relocation Payment and the amount thereof as provided in the City's Relocation Requirements for Tenants in Residential Rental Units (Chapter 11.102, Richmond Municipal Code) and implementing resolution, notice that the Tenant has the right of first refusal to rent the new Rental Unit once built, and advise the Tenant of the right to damages if the Landlord does not demolish the Rental Unit(s) and construct new Rental Units as set forth in the approved capital improvement plan. The Landlord shall provide the Executive Director with a copy of the notice.
- (d) When the Tenant vacates the Rental Unit, the Landlord must obtain from each Tenant the Tenant's new address and other contact information (e.g., email address, phone number, etc.)
- (e) The Landlord shall notify the Executive Director when all Rental Units to be demolished have been vacated. The Landlord must begin demolition and must begin construction of the new Rental Unit(s) as provided in the approved capital improvement plan and, in the reasonable judgment of the Executive Director, diligently complete construction of the new Rental Units.
- (f) Even if the Landlord has demolished the Rental Units, started construction and completed construction of the new Rental Units as provided in subsection E of this Section 12, the newly constructed units shall be subject to rent control notwithstanding any provision of law which otherwise exempts newly constructed units from rent control; provided, however, the Board shall have the power to set rents that will provide a fair return and the Landlord shall have the burden of establishing by competent evidence that the rent schedule proposed by the Landlord is necessary to provide a fair return. After the Landlord has received a certificate of occupancy for the new Rental Unit and the Board has set rents for the new units, the Landlord shall notify in writing all displaced Tenants and provide such Tenants with the right of first refusal to rent the new Rental Unit. A displaced Tenant shall notify the Landlord within 30 days whether the Tenant chooses to rent the new Rental Unit.
- (g) If the Landlord has not started demolition of the Rental Units within the time frame established in the Capital Improvement Plan following the Rental Units having been vacated, the Capital Improvement Plan shall be null and void, the Rental Units shall continue to be subject to Chapter 11.100, Richmond Municipal Code, and the Landlord must offer the Rental Units to the displaced Tenants on a right of first refusal basis, at the lawful rent in effect at the time of the Tenant's displacement. A displaced Tenant shall notify the Landlord within 30 days whether the Tenant chooses to re-rent the Rental Unit. The Landlord will be liable to the Tenant for any reasonable costs incurred in the Tenant's re-renting the Rental Unit, notwithstanding the Tenant's earlier receipt of Relocation Payments. The Landlord shall not submit another capital improvement plan based on demolition/immediate construction for 12 months.
- (h) If the Landlord has demolished the Rental Units as provided in subsection E of this Section 12 but did not start construction and/or did not complete construction of the Rental Units as provided

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in subsection E of this Section 12, the Capital Improvement Plan shall be null and void. The new Rental Units (if constructed) will not be exempt under the City's Fair Rent, Just Cause Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) and the Landlord must offer the Rental Units to the displaced Tenants on a right of first refusal basis, at the lawful rent in effect at the time of Tenant displacement, plus any annual general adjustments. A displaced Tenant shall notify the Landlord within 30 days whether the Tenant chooses to rent the new Rental Unit. The Landlord will be liable to the Tenant for any reasonable costs incurred in the Tenant's re-renting the Rental Unit notwithstanding the Tenant's earlier receipt of Relocation Payments and the Landlord shall also be liable to any Tenant who was displaced from the rental property for actual and punitive damages, which action must be brought within three years of the Tenant's displacement. Nothing in this subsection shall preclude a Tenant from pursuing any additional or alternative remedy available under law including, but not limited to, general damages. A Landlord shall not submit another capital improvement plan based on demolition/ reconstruction for 12 months.

- (i) The Landlord shall notify the Executive Director of the names and contact information of all Tenants to whom the right of first refusal was offered and whether such Tenant exercised such right.
- (j) If there are more Tenants who choose to exercise their right of first refusal than there are new Rental Units, the Landlord shall notify the Executive Director who will determine by lottery which Tenants may rent the new Rental Units.

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