

# Special Meeting of the Richmond Rent Board

January 24, 2018 | City Council Chambers

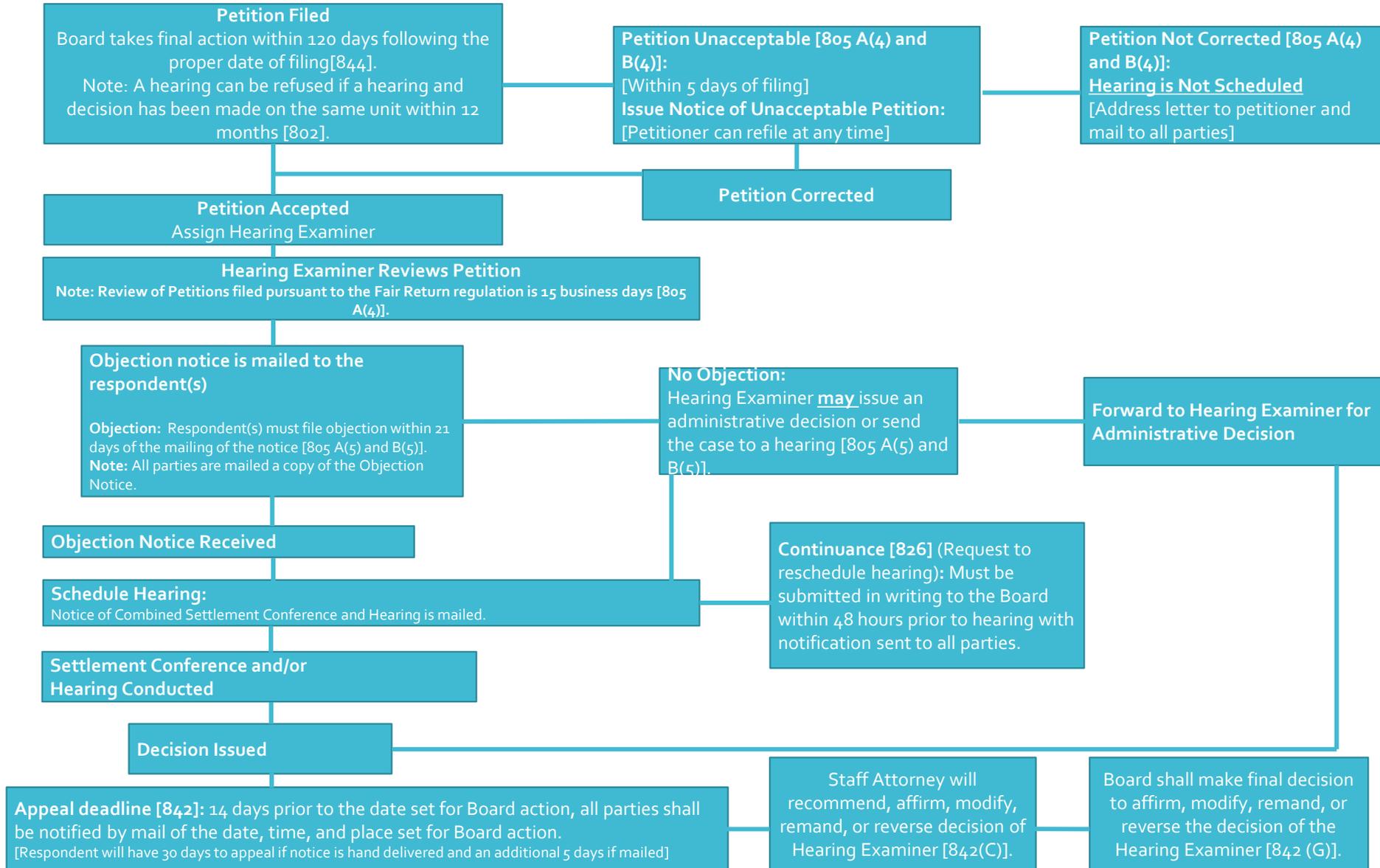
# Item G-1: Petition Process and Hearing Procedure Regulations

Special Meeting of the Richmond Rent Board | January 24, 2018

# Background

- Section 11.100.070(d) of the Rent Ordinance requires the Board to enact rules and regulations governing hearings and appeals of individual rent adjustments.
- At their meeting on January 17, 2018, the Rent Board received draft Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) Regulations.
- Dr. Barton and staff members have incorporated feedback from the Board in the proposed regulations and have prepared a flowchart to illustrate the proposed petition process.

# Proposed Petition and Hearing Process



## Recommended Action

**ADOPT Regulations for Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) with the following amendments:**

Regulation	Recommended Modification
Regulation 805	Deletion of reference "Debt Service" placeholder
Regulation 823	Petition shall bear burden of proof
Regulation 842	Appellants or respondents who require translation or interpretation services shall be allowed double the amount of time to address the Board
Regulation 843	\$75 appeal fee, with provision that Executive Director may waive the fee for low-income households as defined by the HUD income guidelines for Contra Costa County

# Item H-1: Draft Rent Adjustment Regulations

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# Scope of Proposed Regulations

- Rent Registration (Chapter 4)
- Vacancy Rent Increases (Chapter 7)
- Standards for Individual Rent Ceiling Adjustments (Chapter 8, Subchapter C)

# Proposed Rent Registration Regulations

## Chapter 4 – Registration of Base Rent and Rent Increases (DRAFT)

Regulation (DRAFT)	Topic (DRAFT)
400	Establishes purpose of registration of Base Rent and Rent Increases
401	Establishment of the Base Rent
402	Requires Rent Registration
403	Describes process for filing a change in exempt/non-exempt status
404	Requires landlords to notify the Board in writing of any change in owner and/or manager

# Proposed Vacancy Rent Increase Regulations

Chapter 7 – Vacancy Rent Increases (DRAFT)	
Regulation (DRAFT)	Topic (DRAFT)
701	Provides landlords the ability to establish a new Maximum Allowable Rent for a new tenancy consistent with Civil Code 1954.50 (vacancy decontrol)
702	Describes exceptions for vacancy decontrol
703	Defines “voluntary” and “non-voluntary” vacancies
704	Prohibits vacancy rent increases on existing tenants
705	Provides Landlords and Tenants may still file rent decrease or increase petitions
706	voids any increase in the Maximum Allowable Rent that is obtained by fraud or misrepresentation
707	Describes application of vacancy decontrol on subletting scenarios
708	Establishes the Maximum Allowable Rent following an Owner Move-In Notice or Eviction

# Proposed Vacancy Rent Increase Regulations

## Chapter 8 Subchapter C – Standards for Individual Rent Ceiling Adjustments (DRAFT)

Regulation (DRAFT)	Topic (DRAFT)
871	Establishes purpose of the subchapter
872	Provides that petitions for rent increases or decreases due to reasons provided in this subchapter shall following the same procedures for fair return petitions
873	Defines the base occupancy level (number of tenants) and the permitted rent increase of up to 10% for each additional tenant above the base occupancy level ( <i>does not apply to additional tenants who are spouses, domestic partners, child, grandchild, grandparent, or legal guardian unless the tenants agree.</i> )
874	Establishes the standards for a rent increase due to a change in space or services
875-880	Reserved for Maintenance of Net Operating Income and Historically Low Rent Petitions
881	Establishes process for repayment of rent overcharges

# Proposed Rent Registration Regulations

Proposed Chapter 4

# Proposed Regulation 400: Purpose

- The Rent Board finds that in order to monitor compliance with Annual General Adjustments and provide for Individual Rent Adjustments as required under the Rent Ordinance it is essential that registration of rental units include information on base rents and notification of increases.

# Proposed Regulation 401: Establish- ment of Base Rent

- A. The rent in effect on July 21, 2015 is the Base Rent. If there was no rent in effect on that date, the Base Rent is the rent charged on the first date that rent was charged after that date.
- B. For subsequent tenancies the Base Rent is the initial rental rate in effect on the date the tenancy begins. “Initial rental rate” means the amount of rent actually paid by the tenant for the initial term of occupancy as defined under Regulation Section 701.B.

# Proposed Regulation 402: Rent Registration Required

- (A) A rental unit is properly registered in accordance with this Chapter if the landlord or landlord's representative has:
  - (1) Filed with the Board completed registration statements on the form(s) provided by the Board for the unit and all the units in the same property that include (a) The addresses of all units on the same property, (b) The name and address of the landlord and/or property manager, (c) The date the current tenancy began and, for all tenancies that began after July 21, 2015, an explanation of the circumstances of the termination of the previous tenancy sufficiently detailed to demonstrate whether the unit qualifies for a vacancy increase or not, as described in Chapter 7 Vacancy Rent Increases. (d) The base rent currently in effect for each individual unit and the services included in the rent or the reason it is exempt from rent control and has no current base rent;
  - (2) Paid to the City of Richmond all required registration fees and penalties due for the unit and all the units in the same property; and
  - (3) Filed with the Board, for the unit and all the units in the same property, notification of all subsequent changes in tenancy, rent or lease terms.

## Proposed Regulation 402: Rent Registration Required (con't)

- (B) In designating a rental unit as properly registered, the Board's intent is to facilitate the rent registration and individual adjustment of rent ceiling processes and the dissemination of information regarding the registration of rental units. Such designation shall not be construed as the Board's certification of the lawful base rent, current lawful rent ceiling or any other information provided on the rent registration statement. Nothing in this Regulation shall preclude the Board nor any person from challenging the accuracy of any information provided in any registration statement or declaration in the context of any proceeding or action.
- (C) A landlord shall be found in substantial compliance with registration requirements when: (1) The landlord has made a good faith effort to comply with the Ordinance and regulation concerning registration sufficient to reasonably carry out the intent and purpose of the Ordinance and Regulations; and (2) The landlord has cured any defect in compliance in a timely manner after receiving notice of a deficiency from the Board.

# Proposed Regulation 403: Changes in Exempt Status

- (A) Within sixty (60) days of the date a rental unit formerly exempt from rent stabilization comes under coverage of the Ordinance, the landlord shall file an initial registration statement, or an amended registration statement of an initial registration statement has been previously filed, for the rental unit.
- (B) Within sixty (60) days of the date a covered rental unit becomes exempt from rent stabilization under the Ordinance, the landlord shall notify the Board in writing of the exempt status of the rental unit and the basis for the exemption.
- (C) Within thirty (30) days after the filing of a new rent registration statement, the Board shall provide a true and correct copy of said statement to the occupant of the respective unit.

# Proposed Regulation 404: Notification of Changes of Name or Address of Landlord or Property Manager

- (A) Within sixty (60) days of any change in the owner and/or property manager of a rental unit, the landlord shall notify the Board in writing of the change.
- (B) Within sixty (60) days of any change in the address of the owner and/or property manager of a rental unit, the landlord shall notify the Board in writing of the change. The Board shall send all notices to the landlord at the most current address provided by the landlord. Failure to receive a notice as a result of noncompliance with this section shall not be a good cause for purposes of waiving penalties owed to the Board.

# Proposed Vacancy Rent Increase Regulations

Proposed Chapter 7

# Proposed Regulation 701: New Maximum Allowable Rent

- (A) Pursuant to Section 1954.50, et seq. of the Civil Code, the landlord may establish the lawful maximum allowable rent for any controlled rental unit consistent with this regulation. The new rent level shall thereafter become the maximum lawful rent ceiling for the unit for all purposes including, but not limited to, the computation of all future rent adjustments. The unit shall otherwise remain controlled by all other regulations of the Rent Board.
- (B) In these Regulations the terms "new rent level," "new rent ceiling" and "initial rental rate" refer to the rent established by the landlord for a tenant whose tenancy becomes effective after July 21, 2015. For tenancies commencing on or after July 21, 2015, the "initial rent" for a rental unit shall be the monthly market rent established by the parties at the commencement of the most recent tenancy. Where the rental agreement includes periods for which the tenant pays reduced, discounted or "free" rent, the monthly market rent is calculated as the average of the monthly payments made during the initial term of the agreement or, in the case of a month-to-month tenancy, during the first twelve months of the tenancy.

# Proposed Regulation 702: Vacancy Rent Levels

- (A) Commencing July 21, 2015 a landlord may establish the initial rent rate for all new tenancies consistent with Civil Code Section 1954.50, et seq., and any Board regulations enacted consistent therewith, except where any of the following applies:
  - (1) (a) The previous tenancy has been lawfully terminated .by the landlord pursuant to Civil Code Section 1946, or
  - (b) The previous tenancy has been lawfully terminated upon a change in terms of tenancy noticed pursuant to Civil Code Section 827, except a change permitted by law in the amount of rent or fees or resulting from the owner's termination of or failure to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified tenant of the unit. A tenancy shall be presumed to have terminated upon a change in terms of tenancy if the tenant(s) vacate(s) the rental unit within twelve months of the landlord's unilateral change in the terms of the rental agreement. Absent a showing by the landlord that the tenant(s) vacated for reasons other than the change in the terms of the rental agreement, the initial rental rate for the new tenancy shall be no greater than the most recent rent ceiling (prior to the new tenancy).

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# Proposed Regulation 702: Vacancy Rent Levels (con't)

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- (2) A new tenancy begun within three years of the date that the owner terminated or failed to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified tenant of the unit unless the new tenancy is exempted from this limitation pursuant to Civil Code Section 1954.53 (a) (l) (B). During the three year period, the rental rate for any new tenancy established in that vacated unit shall be at the same rate as under the terminated or non-renewed contract or recorded agreement, increased by any subsequently authorized Annual General Adjustments.
- (3) The landlord has otherwise agreed by contract with a public entity to limit or otherwise restrict rent levels in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of title 7 of the Government Code.

# Proposed Regulation 702: Vacancy Rent Levels (con't)

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- (4) The dwelling or unit has been cited in an inspection report by the appropriate government agency as containing serious health, safety, fire or building code violations as defined by Health & Safety Code Section 17920.3 excluding those caused by disasters, for which a citation was issued at least 60 days prior to the date of the vacancy, and the cited violation had not been abated when the prior tenant vacated and had remained unabated for at least 60 days, unless the time for correction was extended by the agency that issued the citation.
- (5) The prior tenant was the spouse, child, parent or grandparent of a landlord who recovered possession of the unit pursuant to RMC 11.100.050 (a) (6).
- (6) The prior tenant vacated the property as a proximate result of the conduct by the landlord such that the vacancy is non-voluntary, except for evictions for just cause as provided under RMC 11.100.050.

# Proposed Regulation 703: Voluntary and Non- Voluntary Vacancies

- (A) For the purposes of this Regulation, a "voluntary" vacancy shall mean a vacancy that results from the independent choice of the tenant, without intimidation, pressure, or harassment.
  - (1) For purposes of this section "abandonment" is defined as the tenant's independent choice, without intimidation, pressure, or harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the landlord terminates the tenancy pursuant to Civil Code Section 1951.3. Such abandonment is considered voluntary.

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# Proposed Regulation 703: Voluntary and Non- Voluntary Vacancies (con't)

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- (B) Non-Voluntary Vacancy means a vacancy resulting from conduct by the landlord which constitutes:
  - (1) Acts prohibited by law
  - (2) Constructive eviction
  - (3) A breach of the covenant of quiet enjoyment of the property
  - (4) Harassment
  - (5) Threats to withdraw the property from the rental market pursuant to the Government Code Section 7060-7060.7 (Ellis Act}
  - (6) Or notices of any kind that negligently or intentionally misrepresent to a tenant that they are required to vacate the controlled unit.

# Proposed Regulation 703: Voluntary and Non- Voluntary Vacancies (con't)

- (C) "Harassment" shall be defined as a knowing and willful act or course of conduct directed at a specific tenant or tenants which:
  - (1) Would cause a reasonable person to fear the loss of use and occupancy of a residential unit or part thereof, or of any service, privilege or facility connected with such use and occupancy, without legitimate reason or legal justification;
  - (2) Materially interferes with a tenant's peaceful enjoyment of the use and/or occupancy of a residential rental unit
  - (3) A single act may constitute harassment for purposes of determining whether a vacancy was voluntary. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.
  - (4) Acts constituting harassment include, but are not limited to the following: (a) Eviction on the grounds of owner or relative occupancy pursuant to Rent Ordinance section 11.100.050 (a) (6) which is not in good faith.

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# Proposed Regulation 703: Voluntary and Non- Voluntary Vacancies (con't)

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- (b) The threat or repeated threat to evict a tenant in bad faith, under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit.
- (c) Reduction in housing services under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;
- (d) Reduction in maintenance or failure to perform necessary repairs or maintenance under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;
- (e) Abuse of the landlord's right of access into a residential unit within the meaning of California Civil Code §1954;
- (f) Verbal or physical abuse or intimidation;
- (4) A vacancy occurring as result of the filing of a Notice of Intent to Withdraw under Government Code Section 7060-7060.7 (the Ellis Act) shall not be considered voluntary.
- (5) A tenancy and subsequent vacancy created as a sham shall not be considered voluntary. A sham tenancy may be presumed where the occupant did not have a bona fide landlord-tenant relationship with the landlord, or occupied the property for less than four (4) months and principally for the purpose of vacating the property to establish eligibility for vacancy-related increase.

# Proposed Regulation 704: No Vacancy Rent Increase for Existing Tenants

- (A) The maximum lawful rent ceiling for any controlled rental unit that is occupied by an existing tenant shall not be increased under the provisions of this Regulation, while the existing tenant occupies their unit. For purposes of this Regulation, "existing tenant" refers to all persons who are defined as "tenants" pursuant to Rent Ordinance section 11.100.030(r), i.e. any renter, tenant, subtenant, lessee, or sub-lessee of a rental unit, or any other person entitled under the terms of a Rental Housing Agreement, written, oral or implied, to the use or occupancy of such rental unit.
- (B) No existing tenant shall be required to vacate a controlled rental unit as a result of a covenant or condition in a rental agreement requiring the tenant to surrender possession.

# Proposed Regulation 705: Increase and Decrease Petitions

- Nothing in this Regulation prohibits tenants or landlords from filing rent decrease or increase petitions pursuant the Board's regulations.

# Proposed Regulation 706: Fraud or Intentional Misrepresentation

- Any increase in the maximum allowable rent authorized pursuant to this regulation that is obtained by fraud or misrepresentation by the landlord or his or her agent, servant, or employee shall be void.

# Proposed Regulation 707: Subletting

- (A) An owner may increase the rent by any amount allowed by Civil Code section 1954.50 et seq., and subsection (B) of this Regulation, to a sub-lessee or assignee where the original occupant or occupants who took possession pursuant to the rental agreement with the owner, no longer permanently reside there. The term "original occupant" as used herein includes any tenant or subtenant who, with the landlord's knowledge, was residing in the unit on or before July 21, 2015 or when the landlord last established an initial rent for the unit. Within fifteen (15) days of any rent increase pursuant to this Subsection, Tenancy Registration form(s) described in Subsection (K) shall be filed with the Board.
- (B) Where one or more of the occupants of the premises pursuant to the agreement with the owner provided for above, remains an occupant in lawful possession of the dwelling or unit, this subdivision shall not apply to partial changes in occupancy of a dwelling or unit made with the consent of the owner. Nothing contained in this subsection shall establish or create any obligation of an owner to permit or consent to a sublease or assignment.

# Proposed Regulation 707: Subletting (con't)

- (C) Acceptance of rent by the landlord shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment, or as a waiver of an owner's rights to establish the initial rental rate, unless the landlord has received written notice from the tenant that is a party to the agreement and thereafter accepted rent. The landlord's right to establish the initial rent shall not be waived if, after receiving written notice that the last original occupant has vacated the premises, the landlord agrees in writing with any tenants still occupying the unit that the landlord's right to establish the initial rental rate, consistent with Civil Code section 827, shall be extended for up to six months following receipt of the notice.
- (D) A landlord may not unilaterally impose or require an existing tenant to agree to new material terms of tenancy or a new rental agreement, unless the provisions are substantially identical to the prior rental agreement.
- (E) Where the landlord initially rents a rental unit to a tenant and authorizes more than one tenant to occupy the unit, but fails to place the name of more than one tenant on the lease, all tenants who occupy the unit within one month, with permission of the landlord, express or implied, shall be considered to be original occupants.

# Proposed Regulation 708: Rent Level Following an Owner Move-In Notice or Eviction

- (A) A written or oral request from a landlord to vacate a unit so the landlord or a qualifying relative of the landlord may occupy the unit as his principle residence shall be treated as a Notice to Terminate Tenancy pursuant to Civil .Code section 1946 for the purpose of determining the rent level when the unit is subsequently rented.

# Proposed Regulation 708: Rent Level Following an Owner Move-In Notice or Eviction (con't)

- (B) A landlord who serves a 30 or 60-Day Notice of Termination of Tenancy pursuant to Richmond Municipal Code section 11.100.050(A)(6) for the purpose of recovering possession of the unit for their own use and occupancy as a principle residence or the principle residence of a qualifying relative may rescind the notice or stop eviction proceedings but, if the tenant vacates within one year of the date of service of the notice, the tenancy is presumed to have been terminated by the owner as a result of the notice. The rental rate for the next tenancy established in the vacated unit shall be no more than the maximum allowed under the Rent Ordinance for the tenant who vacated, plus any subsequent increases authorized by the Rent Board.
- (C) This presumption applies even though the tenant vacates the unit after the notice has been rescinded. A written statement from the tenant that they are leaving of their own volition signed as part of a settlement whereby the tenant is required to vacate the unit is insufficient to rebut this presumption.
- (D) A landlord may rebut the presumption at a hearing based on a preponderance of the evidence. Such a hearing shall follow the process established for an Individual Rent Adjustment.

# Proposed Standards for Individual Rent Ceiling Adjustments due to Changes in Occupants, Space, or Services

Proposed Chapter 8, Subchapter C

# Proposed Regulation 871: Purpose

- The purpose of this subchapter is to protect tenants from unwarranted rent increases, while at the same time allowing rent levels which provide landlords with a fair return on their investment. It is the intent of these regulations that individual upward adjustments in the rent ceilings be made only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment under the Rent Ordinance (RMC Sections 11.100.070 (e - k) and as required by the California or United States Constitution.

# Proposed Regulation 872: Procedure

- Unless otherwise specified, petitions for rent increases and decreases under this Subchapter shall follow the procedures in Chapter 8 Subchapters A and B.

# Proposed Regulation 873: Changes in Number of Tenants

- (A) Base Occupancy Level. The base occupancy level for a unit shall be the number of Tenants allowed by the lease or rental agreement for the unit effective July 21, 2015, or at the beginning of any subsequent tenancy established after a vacancy.
- (B) Increase in Tenants
  - (1) Agreement to increase the number of tenants allowed by the lease or rental agreement above the base occupancy level for that unit shall be grounds for an increase in the Maximum Allowable Rent of up to ten percent (10%) for each additional tenant above the base occupancy level, in addition to any rent ceiling adjustment to which the landlord is otherwise entitled. A petition seeking rent adjustments solely for increased tenants will be processed under subsection (D) of this regulation.

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# Proposed Regulation 873: Changes in Number of Tenants (con't)

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- (2) No rent ceiling increase for additional tenants, as provided for in subsection (B) (1), shall be granted for any additional tenant who is a spouse, registered domestic partner, child, grandchild, grandparent, legal guardian of a child or parent of any of the tenants, unless the tenants agree in writing to the specific rent ceiling increase.
- (3) If the number of tenants actually occupying a rental unit as a principal residence decreases subsequent to any rent ceiling increase for additional tenants granted pursuant to subsection (B) (1), then the rent ceiling for that unit shall automatically decrease, by the amount of the rent ceiling increase that is no longer justified, as a result of the decrease in the number of tenants.

# Proposed Regulation 873: Changes in Number of Tenants (con't)

- (C) Decrease in Number of Tenants Allowed. If any policy or policies imposed by the landlord unreasonably prevent the tenants from maintaining the base occupancy level for that unit, then the rent ceiling for that unit shall be decreased by an amount equal to the percentage by which the number of allowable tenants has been reduced. As used in this regulation, "policy" or "policies" means any rule, course of conduct, act or actions by a landlord.
- (D) Petitions for Rent Increases Grounds for Tenant Objection. Tenants subject to petitions under subsection (B) (I) may file objections with the Board only on the following grounds: (1) The tenant did not agree or chooses to retract the agreement to add additional tenants and pay an additional amount as allowed under (B) (1). (2) The additional tenant claimed by the landlord as justifying a rent increase is a spouse, registered domestic partner, child, grandchild, grandparent, legal guardian of a child or parent of any of the tenants, and the tenant(s) were not informed that they did not need to agree to an increase for such person(s).

# Proposed Regulation 874: Change in Space or Services

- (A) Increase in Space Rent ceilings may be adjusted upward when, with the written agreement of the tenant(s), there is an increase to the usable space or the housing services beyond that which was provided to a unit on July 21, 2015 or when the base rent was first established.
  - (1) Additional or reconfigured space. Where a landlord adds habitable living space to a unit or reconfigures it, the lawful rent ceiling for such unit shall be permanently increased as provided under Section 8XX Capital Improvements.
  - (2) Additional services. Where a landlord adds non-habitable space or increases the services provided to a unit, the lawful rent ceiling for such unit shall be increased by an amount representing the market value of the additional space or increased services. Increases may be denied if a tenant objects and the added or reconfigured space or the services do not clearly benefit a majority of the affected tenants. If the additional or reconfigured space or the services are subsequently reduced or eliminated, the rent increase authorized herein shall be reduced or terminated. Any increase for an additional bedroom shall result in an increase to the base occupancy level for an additional occupant.

# Proposed Regulation 874: Change in Space or Services (con't)

- (B) Decrease in Space or Services; Substantial Deterioration; Failure to Provide Adequate Services; Failure to Comply with Codes, the Warranty of Habitability or the Rental Agreement.
- 1. Decreases in Space or Services. Rent ceilings shall be adjusted downward where a landlord causes a tenant to suffer a decrease in housing services or living space, from the services and space that were provided at the unit on July 21, 2015 or from any services or space provided at the beginning of the tenancy. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the reduction in living space or housing services) by the rent ceiling in effect at the time of the impairment, and for past decreases, multiplied by the period of time the impairment existed. In determining the amount of the downward rent adjustment by the percentage of impairment of use/benefit method, the hearing examiner may consider the reasonable replacement cost of the space or service in question.

# Proposed Regulation 874: Change in Space or Services (con't)

- 2. Denial of Petitions for Unilateral Removal. The Board will not accept petitions from landlords who seek a rent ceiling decrease for the unilateral removal or reduction of space or services from a tenant's base level space or services. Landlord petitions shall be accepted only when a tenant has expressly agreed in writing to the removal of such space or services. "Base level space or services" are the housing services or living space that were provided at the unit on July 21, 2015 or at the beginning of the tenancy.

# Proposed Regulation 874: Change in Space or Services (con't)

- 3. Inadequate Services, Substantial Deterioration Rent ceilings shall be adjusted downward for any substantial deterioration in a rental unit and/or for any failure to provide adequate housing services occurring during the petitioner's tenancy.
- For purposes of this subsection, a substantial deterioration means a noticeable decline in the physical quality of the rental unit resulting from a failure to perform reasonable or timely maintenance and adequate housing services means all services necessary to operate and maintain a rental property in compliance with all applicable state and local laws and with the terms of the rental agreement.
- The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide adequate service, violation, breach or failure to comply) by the rent ceiling in effect at the time of the impairment.

# Proposed Regulation 874: Change in Space or Services (con't)

- 4. Code Violations, Breach of the Warranty of Habitability.
- (A) Where a condition at the rental unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the rent ceiling decrease shall be in an amount that reflects the reduction in value of the premises due to the unsafe or unhealthy condition.
- (B) A substantial lack of any of the affirmative standard characteristics for habitability set forth in Civil Code section 1941.1 shall be deemed a violation of the warranty of habitability and the rent ceiling shall be decreased by no less than 10% or, for a violation of subsections (b), (c) or (d) of Civil Code section 1941, no less than 20%, until the condition is corrected, notwithstanding seasonal variations in or an absence of impairment to a tenant's use of or benefit from the unit.

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# Proposed Regulation 874: Change in Space or Services (con't)

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- (C) The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of tenants (e.g., dangerous window bars, missing smoke detector) shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Board within 35 days of mailing of the hearing examiner's decision unless the landlord establishes that the violation cannot be corrected within that time due to circumstances beyond the landlord's control.
- (D) No rent shall be charged for a period in which the landlord is found to be in violation of California Civil Code Section 1942.4. (E) For purposes of this subsection, a breach of the warranty of habitability occurs when the rental premises are not in substantial compliance with applicable building and housing code standards, which materially affect health and safety. Minor housing code violations which do not interfere with normal living requirements do not constitute a breach of the warranty of habitability.

# Proposed Regulation 874: Change in Space or Services (con't)

- 5. Rent ceiling reductions pursuant to this Section shall be effective from the date the landlord first had notice of the space or service reduction, deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the condition for which the reduction was granted no longer exists.
- 6. A tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the landlord first received notice of the decreased service, deterioration, code violation or habitability violation. Notice may be actual or constructive. A landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been disclosed by a reasonable inspection of the premises. A copy of a housing code inspection report from the City of Richmond should be submitted with the petition.

# Proposed Regulations 875 – 880: RESERVED

- Section 875 – 880 is reserved for proposed regulations concerning petitions for a Maintenance of Net Operating Income, Capital Improvements, and Historically Low Rents

# Proposed Regulation 881: Overcharges and Other Violations

- (A) Overcharges. If on or after July 21, 2015, the landlord has received rent in violation of the Ordinance, the landlord shall be ordered to refund the overcharge. Any overcharge refund shall be paid to the person or persons overcharged, except as provided in Subsection (B) below. For purposes of this Regulation, any receipt or retention of rent, including security deposits and interest earned on security deposits, in violation of any order, rule or regulation of the Board or any other applicable law shall be deemed to be an overcharge.
- (B) Overcharges paid by former Tenants. If any of the rent overcharge was received from former tenant(s), the landlord shall make reasonable efforts to find the former tenant(s) and refund the overcharge. The landlord shall notify the Board in writing of the nature, extent, and result of those efforts within 60 days of the overcharge refund order.

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Proposed  
Regulation  
881:  
Overcharges  
and Other  
Violations  
(con't)

- If the landlord does not refund any past overcharge(s) to any former tenant(s) within 60 days, or has made reasonable but unsuccessful efforts to locate the former tenant(s), the landlord shall pay the overcharge(s) to the Rent Stabilization Board to be held in trust for the former tenants for one year. Each year, no later than the second meeting in March, staff shall provide the Rent Board with an accounting of any unclaimed funds, following which, the Board, by resolution, shall designate a program of the City of Richmond that benefits low- and/or moderate-income tenants to which the unclaimed funds shall be transferred.

# Proposed Regulation 881: Overcharges and Other Violations (con't)

- (C) Other Violations. If the landlord has failed to comply with the Ordinance or any rule or regulation of the Board or in any way charges unlawful rent, the hearing examiner may make an appropriate order for compliance or other appropriate relief.
- (E) Limitation on Liability for the Refund of Overcharges.
  - (1) Except as provided in subsection (2), no order for the refund of rent overcharges shall require the repayment of overcharges that were actually received by the landlord more than three years prior to the date upon which the Individual Rent Adjustment petition is filed.
  - (2) The three year limitation period shall not apply and the landlord shall be ordered to refund to the tenant(s) of the affected unit(s) that portion of the rent payments made by such tenant(s) that have been illegally retained by the landlord from the date which the tenant(s) first paid excess rent, upon proof of any of the following: (a) the landlord willfully failed to register the affected property, or (b) the landlord willfully provided false or inaccurate information to the Board and the tenant(s) were thereby induced to pay excess rent in reliance upon said information, or (c) the landlord, through threats of eviction, physical violence, coercive actions, or intentional misrepresentation on which the tenant reasonably relied, prevented a more timely filing of the petition.

# Proposed Regulation 881: Overcharges and Other Violations (con't)

- (3) If landlord has willfully failed to register the affected property, the three year limitations period shall commence to run on the date upon which the landlord completes all required registration forms for the affected property.
- (F) Supporting documentation. For tenant petitions under this Regulation, the documentary evidence attached to the petition shall include any copies of canceled checks, rent receipts or other documentary evidence of the claimed overcharge. If no such documentary evidence is in the possession of the tenant, the tenant shall state on the petition that they do not have documentary evidence of the overcharge and set forth the factual basis for the claim of overcharge. Where the basis of any overcharge is ineligibility for Annual General Adjustments due to violation of housing codes, the tenant shall attach documentation indicating that the unit was in violation of the warranty of habitability on September 1st of the applicable year. Such documentation may include a copy of an inspection report issued by the City of Richmond.

# Proposed Regulation 882: Petition to Obtain Previously Lost AGA Rent Increases

- (A) General. When an owner who has previously been out of compliance comes into compliance with the ordinance, regulations, or applicable housing, health and safety codes, all AGAs lost during the period of noncompliance may be granted prospectively. For any residential unit which has been registered and for which a base rent has been listed or for any residential unit which an owner can show, by a preponderance of the evidence, a good faith attempt to comply with the registration requirements, all annual rent adjustments which may have been denied during the period of the owner's non-compliance shall be restored prospectively once the owner is in compliance with the ordinance or regulation.

# Proposed Regulation 882: Petition to Obtain Previously Lost AGA Rent Increases (con't)

- In addition, to be eligible, the owner must state under penalty of perjury that the unit is in substantial compliance with the ordinance, regulations and applicable codes. Specifically, the owner shall certify to payment of all fees and penalties owed to the Richmond Rent Program (RRP) which have not otherwise been barred by the statute of limitations, substantial compliance with applicable local and state housing code provisions, and satisfaction of all claims for refunds of rental overcharges brought by tenants or by the RSP on behalf of tenants of the affected unit.
- The owner is not entitled to recover any AGA's which have been previously regained through a net operating income analysis or, for new tenancies that were established after the loss of the AGA.
- (B) Petition. Upon the petition of the landlord, the owner's eligibility for previously lost AGA's shall be determined. At the time of filing the petition, the owner shall submit a proof of service showing that all affected tenants have been provided with a complete copy of the documents filed. Chapter 8 Subsections A and B of these regulations sba1 govern all additional petition procedures for AGA petitions.

## Recommended Action

- **RECEIVE proposed Substantive Rent Adjustment Regulations (Subchapter C: Standards for Individual Rent Ceiling Adjustments), Vacancy Rent Increase Regulations (Chapter 7) and Rent Registration Regulations (Chapter 4).**