

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: February 21, 2018

Final Decision Date Deadline: February 21, 2018

STATEMENT OF THE ISSUE: At its Special Meeting on January 24, 2018, the Rent Board reviewed and provided comments on draft proposed rent registration, vacancy rent increase, and rent adjustment (specifically with respect to changes in space, services, and habitability), regulations. Staff members have incorporated the changes requested from members of the Board and are recommending adoption of the proposed regulations. It is important to note that these proposed regulations do not address fair return (Maintenance of Net Operating Income), capital improvement, or historically low rent petitions for rent adjustments. These concepts will be considered by the Board as separate items.

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> | |

ITEM

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| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) | | |
| <input type="checkbox"/> Public Hearing | <input checked="" type="checkbox"/> Regulation | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Contract/Agreement | <input type="checkbox"/> Rent Board As Whole | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) | |

RECOMMENDED ACTION: ADOPT proposed Purpose and Definitions (Chapter 1), Rent Registration (Chapter 4), Vacancy Rent Increase (Chapter 7) and Individual Rent Adjustment for Changes in Space, Services, or Habitability (Chapter 9) regulations– Rent Program (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

G-1.



AGENDA REPORT

DATE: February 21, 2018

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Paige Roosa, Deputy Director
Michael Roush, Legal Counsel

SUBJECT: ADOPTION OF PURPOSE, RENT REGISTRATION, VACANCY RENT INCREASE, AND RENT ADJUSTMENT REGULATIONS

STATEMENT OF THE ISSUE:

At its Special Meeting on January 24, 2018, the Rent Board reviewed and provided comments on draft proposed rent registration, vacancy rent increase, and rent adjustment (specifically with respect to changes in space, services, and habitability), regulations. Staff members have incorporated the changes requested from members of the Board and are recommending adoption of the proposed regulations. It is important to note that these proposed regulations do not address fair return (Maintenance of Net Operating Income), capital improvement, or historically low rent petitions for rent adjustments. These concepts will be considered by the Board as separate items.

RECOMMENDED ACTION:

ADOPT proposed Purpose and Definitions (Chapter 1), Rent Registration (Chapter 4), Vacancy Rent Increase (Chapter 7) and Individual Rent Adjustment for Changes in Space, Services, or Habitability (Chapter 9) regulations– Rent Program (Nicolas Traylor/Michael Roush 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item at this time. The cost to administer the Rent Adjustment Petition process is accounted for in the Fiscal Year 2017-18 Rent Program Budget.

DISCUSSION:

Background

For most multifamily rental properties in the City of Richmond, rent increases are limited to the annual change in the Consumer Price Index (a measure of inflation).

The Richmond Rent Board is tasked with establishing standards for allowing individual rent increases and decreases due to a rental unit's conditions, historic rental rates, operating costs, and other reasons.

At its last Special Meeting, the Board adopted regulations to inform the *procedures* whereby Tenants and Landlords can request individual adjustments in the Maximum Allowable Rent. In contrast, the proposed regulations address the *substantive* standards for rent adjustments due to changes in space, services, or habitability, as well as rent registration and vacancy rent increase regulations to assist in determining the Maximum Allowable Rent. The tracking of rent levels and vacancy rent increases is necessary to properly adjudicate individual rent adjustment cases. At its last meeting, the Rent Board did not receive regulations concerning the purpose of Rent Board regulations (Chapter 1); however, given the simplicity of this chapter, such regulations have been prepared for the Rent Board's consideration and potential adoption.

Community Engagement

Regulations governing rent adjustment standards, vacancy rent increases and rent registration will have community-wide impact and are a critical task to further the intent and purpose of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance.

As a first step towards achieving this task, Rent Program staff members held Community Workshops on December 4, 2017, and December 9, 2017, to inform and solicit feedback from community members about possible models and standards for adjusting the Maximum Allowable Rent due to:

- Increases in Operating Expenses/Fair Return Standards
- Increases or Decreases in Space, Services, or Habitability
- Capital/Building Improvements
- Historically Low Rents

A summary of community feedback gathered for individual rent adjustments are contained in Attachment 3.

A copy of the draft substantive rent adjustment regulations for the Board's consideration were posted on the Rent Program website and a listserv message was sent with instructions for submitting comments prior to February 21, 2018 Board meeting.

In mid-February, staff members met with representatives of the Fair and Affordable Richmond coalition and Association of United Richmond Housing Providers to discuss their comments on the draft regulations (Attachment 1).

Updates regarding the process of developing Rent Adjustment Regulations will be posted at <http://www.ci.richmond.ca.us/3521/Rent-Adjustment-Regulations> and disseminated via the Rent Program listserv.

Overview of Proposed Amendments to the Rent Registration, Vacancy Rent Increase, and Rent Adjustment Regulations

Attachment 1 contains a matrix with a description, response, and recommendation to address concerns and questions posed by members of the Rent Board, Fair and Affordable Richmond coalition, and the Association of United Richmond Housing Providers.

In addition to the revisions summarized in the following table, in response to a concern raised by Boardmember Finlay concerning the acknowledgment that there are many provisions that are not addressed in the regulations but are explained in the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, the following disclaimer has been added to the table of contents page:

Note to the reader: These Regulations are intended to help clarify the meaning of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Richmond Municipal Code Chapter 11.100) and to explain how it will be implemented. However, a full understanding of the meaning of any individual regulation or set of regulations may require knowledge of both the Regulations and the Rent Ordinance and may also require knowledge of relevant aspects of State and Federal law. Rent Board staff will assist the public in understanding how to use and follow the regulations. Such assertion does not substitute for legal advice from a competent attorney.

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Additional Amendments Recommended by Staff

The table below summarizes additional modifications to the proposed Rent Registration, Vacancy Rent Increase, and Rent Adjustment regulations recommended by staff members. These amendments have been incorporated into the proposed regulations for the Board's consideration for adoption.

Regulation	Recommended Modification
Throughout	The first letter of the terms "Tenant," "Landlord," "Controlled Rental Unit," and "Base Rent" shall be capitalized.
Throughout	The term "rent ceiling" shall be replaced with "Maximum Allowable Rent"
Throughout	Time periods of five (5) days or less will be specified as "business" days. Time periods of greater than five (5) days will be specified as "calendar" days.
903 (Changes in Number of Tenants)	The addition of a fourth provision, where a Tenant may waive their right to a hearing for a rent increase due to an increase in the Base Occupancy Level, in which case a Hearing Examiner may issue an administrative determination for an increase in the Maximum Allowable Rent.
903 (Changes in Number of Tenants)	The existing content of Subsection (3) provides if the number of Tenants actually occupying a Rental Unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to this subsection, then the Maximum Allowable Rent for that Rental Unit shall automatically decrease by the amount of the rent increase that is no longer justified as a result in the decrease in the number of Tenants). Staff members added a provision to allow for increases in the Maximum Allowable Rent due to an increase in the Base Occupancy Level to remain permanent upon written agreement of the Tenant and Landlord. As such, if the number of tenants actually occupying a rental unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional tenants granted pursuant to subsection (B) (I), then the Tenants may replace the departing Tenant (subject to the Landlord's standard screening methods).
912 (Petition to Obtain Previously Lost Annual General Adjustments (AGAs)	The addition of a provision that rent increases permitted under this Section shall be applied in a manner consistent with Regulation 17-09 ("Banking" of Annual General Adjustment rent increases.) This would mean that Landlords would not be able to increase the rent more than the current year's Annual General Adjustment plus five percent in any 12-month period. The remaining increases would not be forfeited, but would be banked as to not create instability due to a sudden rent level shock.

Proposed Timeline and Next Steps

Proposed Date	Event
February 21, 2018 – Regular Rent Board Meeting	Rent Board considers adoption of Rent Registration, Vacancy Rent Increase, and Rent Adjustment regulations; Rent Board receives Maintenance of Net Operating Income (fair return) regulations
February 28, 2018 – Special Rent Board Meeting	Rent Board considers adoption of Maintenance of Net Operating Income (fair return) regulations; Rent Board receives Capital Improvement and Historically Low Rent adjustment regulations
Early/Mid-March	Rent Board considers adoption of Capital Improvement and Historically Low Rent adjustment regulations at a possible Special Meeting; Hearing Examiner is onboarded
Late March/Early April	First Rent Adjustment Petition hearings are scheduled

DOCUMENTS ATTACHED:

Attachment 1 – Summary of Community and Rent Board Comments

Attachment 2 – Proposed Chapter 1 (Purpose and Definitions), Chapter 4 (Registration of Base Rent and Rent Increases), Chapter 7 (Vacancy Rent Increases) and Chapter 9 (Individual Adjustments of Maximum Allowable Rents) Rent Board Regulations

Attachment 3 – Summary of Comments from December 4 and December 9, 2017, Community Workshops Regarding Setting Standards for Changes in the Maximum Rent

Summary of Community and Rent Board Comments <i>Chapter 4 (Rent Registration), Chapter 7 (Vacancy Rent Increase) and Chapter 9 (Rent Adjustment) Regulations</i>				
Chapter 4: Registration of Base Rents and Rent Increases (PROPOSED)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
400	Establishes the Rent Board finds registration is necessary to carry out its duties under the Ordinance			
401	Defines “new Maximum Allowable Rent” and “initial rental rate”	1.) Section (B) of this Regulation states “where the rental agreement includes periods for which the Tenant pays reduced, discounted, or “free” rent, the Maximum Allowable 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.” It is common practice for Landlords to offer prospective Tenants the first month of rent free, particularly during periods when there is less market demand. But if the calculation is based on an average of the rent charged during the initial term of tenancy, this creates a disincentive to offering free or reduced rent during this initial period of tenancy. Is this intentional? <i>(The Association of United Richmond Housing Providers)</i>	1.) This provision seeks to address a possible loophole where a Landlord and Tenant enter into a lease with a rental contract amount that is higher than the amount <i>actually paid by the Tenant</i> , creating a situation where a Landlord could later circumvent the rent control provisions of the Ordinance by demanding the contract amount of the Rent at a later date.	1.) Staff members do NOT recommend a change to this Regulation.
402	Describes the actions that must be taken and the information that must be provided in order to be properly registered	1.) As written, Landlords are required to provide documentation for Tenancies beginning after July 21, 2015. Shouldn't the date referenced in Regulation 402(A)(1)(c) be the effective date of the Ordinance, rather than the rent rollback date? <i>(The Association of United Richmond Housing Providers)</i> 2.) Regulation 402(A)(3) establishes a requirement for Landlords to notify the Rent Board of all subsequent “changes in the terms of tenancy” in order to be in compliance. To what extent do Landlords need to file notices of a change in the terms of tenancy with the Board? This terminology is vague. <i>(The Association of United Richmond Housing Providers)</i>	1.) Yes. Rent control was not in effect until December 30, 2016. 2.) For the purposes of this Regulation, the Board is concerned with changes in terms of tenancy related to the provision of Housing Services.	1.) Staff members recommend July 21, 2015, be replaced with December 30, 2016. 2.) Staff members recommend “changes in the terms of the tenancy” be replaced with “changes in the provision of Housing Services.”
403	Establishes requirements for reporting changes in exempt status of units			

Chapter 4: Registration of Base Rents and Rent Increases (PROPOSED)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
404	Requires Landlords to notify the Rent Program of changes in name or address of the Landlord and/or Property Manager	1.) What is the purpose of establishing a 60-day deadline for Landlords to file changes in exempt status with the Rent Board? <i>(The Association of United Richmond Housing Providers)</i>	1.) The exempt or non-exempt status of a Rental Unit is a critical piece of information needed by the Rent Program and Board to effectively administer the Ordinance and perform necessary billing and notification functions.	1.) Staff members do NOT recommend a change to this Regulation.
Chapter 7: Vacancy Rent Increases (PROPOSED)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
701	Explains how a new rent is defined for new tenancies			
702	Describes the limited circumstances under which the Maximum Allowable Rent remains the same as in the previous tenancy	1.) This Regulation does not allow a Landlord to establish a new Base Rent when a Rental Unit has: (1) been cited by a government agency as containing serious health, safety, fire, or building code violations (excluding those caused by disasters), (2) the citation was issued at least 60 days prior to the vacancy, and (3) the cited violation had not been abated when the prior Tenant vacated and has remained unabated for at least 60 days. This seems unreasonable in cases where the Tenant or tenant's guest or pets have caused the damages giving rise to the citation. <i>(The Association of United Richmond Housing Providers)</i>	1.) If it is the policy direction of the Board, the Board could choose to include a provision that would allow the Landlord to set a new Base Rent if serious health, safety, fire, or building code violations were caused by the Tenant, guests, or pets.	1.) Staff members recommend adding the phrase "or damages incurred by the Tenant or associated occupants, guests, or pets" to cases where a Landlord would not be prohibited from setting a new Base Rent.
703	Defines the circumstances under which termination of tenancy will be considered non-voluntary			
704	Defines an "original occupant" who may not be given a vacancy rent increase	1.) Regulation 704(B) states "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." But what about Temporary Tenancy agreements? <i>(The Association of United Richmond Housing Providers)</i>	1.) Per the Ordinance, temporary tenancies may only be created in a Single Family Home, which are typically exempt from rent control; however, this provision could be clarified to (a) use the term "Rental Unit" instead of controlled rental unit, since the intent of the Regulation is to apply to all Rental Units covered by the Ordinance and (b) include an exception for Temporary Tenancy agreements.	1.) Staff members recommend modifying this provision to state, "No existing Tenant shall be required to vacate a Rental Unit as a result of a covenant or condition in a rental agreement requiring the Tenant to surrender possession except as permitted under Section 11.100.040(a)(1) of the Ordinance."
705	Establishes that vacancy increases are separate from and do not pre-empt individual rent adjustments			
706	Establishes that increases gained by fraud or intentional misrepresentation are invalid			

Chapter 7: Vacancy Rent Increases (PROPOSED)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
707	Defines “original occupant” and protects the landlord’s right to a vacancy increase when the original occupants no longer reside in the unit	1.) Section (C) of this Regulation is unclear as written. The purpose appears to be to allow a Landlord to establish up to a 6-month buffer period after all original occupants vacate before setting a new Base Rent. The mere acceptance of rent after all original occupants have vacated should not waive their rights to set a new Base Rent. <i>(The Association of United Richmond Housing Providers)</i>	1.) The interpretation of the purpose of this Regulation is correct; staff members agree it could be written in a clearer manner.	1.) Staff members recommend a rephrasing of this regulation to more clearly explain the purpose and intent of the regulation.
708	Provides that a Landlord who serves a 30 or 60-day notice of termination for Owner Move-In may rescind the notice, but if the Tenant moves out within one year, the tenancy is presumed to have been terminated as a result of the notice. Rent for the next tenancy shall be no more than the Maximum Allowable Rent for the tenant who vacated, plus any subsequent increases authorized by the Rent Board			
Chapter 9: Standards for Individual Rent Ceiling Adjustments (PROPOSED) (formerly Chapter 8C)				
Reg.	Topic (PROPOSED)	Concern/Question (Raised By)	Answer to Concern or Question	Staff Recommendation (Incorporated in Attachment 2)
901	Defines the purpose of the Chapter - Protects tenants from unreasonable rent increases while allowing landlords a fair return on their investment			
902	Provides Rent Adjustment Petitions will follow the process established in Chapter 8A and 8B of the Rent Board regulations			
903	Explains when changes in the number of tenants may result in an increase or decrease in the Maximum Allowable Rent	1.) What if the number of tenants exceeds the maximum occupancy level? Is the Rent Board responsible for enforcing building, health, and safety codes? <i>(Rent Board)</i> 2.) If a unit is over-occupied and one Tenant is required to move out, are Tenants automatically eligible for a rent decrease? <i>(Rent Board)</i> 3.) The list of individuals for whom a rent increase may not be imposed for an increased number of occupants is quite extensive. Section B (2) appears to give a “carte	1.) A determination of whether the number of occupants violates building, health, or safety codes would ultimately be up to the Building Official to determine. 2.) No. Tenants may only request a downward rent adjustment if the Landlord unreasonably restricts the Tenants’ ability to maintain the Base Occupancy Level. 3.) This provision is important to provide protections for families, which is referenced in Section 11.100.050(a)(2)(ii) (Protections for Families)	1.) Staff members do NOT recommend a change to this Regulation. 2.) Staff members do NOT recommend a change to this Regulation. 3.) Staff members do NOT recommended a change to this Regulation.

		<p><i>blanche</i>” to allow anyone to join the original tenants. Would the Landlord be able to screen the Tenants at least? (<i>Rent Board</i>)</p> <p>4.) It is important to address situations where Tenants must take in a brother or sister who is sick or disabled. (<i>Rent Board</i>)</p> <p>5.) It seems unreasonable that Tenants would have the ability to request a rent decrease due to a decrease in the number of occupants in the Rental Unit due to reasons beyond the Landlord’s control. Why should the Landlord be subject to a rent decrease just because the Tenants didn’t replace someone who moved out? (<i>Rent Board</i>)</p> <p>6.) An increase in the Maximum Allowable Rent of up to 10% for an additional occupant is not enough to make the Landlord allow the Tenant to add an occupant. This could create situations where a Tenant wants and is willing to pay more rent to add their boy/girlfriend, partner, friend, etc., but the Landlord won’t allow it simply because a mere 10% rent increase is not</p>	<p>of the Rent Ordinance. The Landlord maintains the ability to reasonably screen prospective Tenants if they will be financially responsible for payment of rent.</p> <p>4.) If it is the policy direction of the Board, caretaker/attendant may be added to the list of individual who may be added but for which an individual rent adjustment may not be granted.</p> <p>5.) A rent decrease may only be possibly permitted if a <u>Landlord</u> <i>unreasonably prevents</i> the Tenants from maintaining the Base Occupancy Level. In addition, the Landlord would still have the right to reasonably screen prospective Tenants. To further address this concern, staff added language in Section C to clarify the types of actions that would be deemed “unreasonable,” for screening prospective Tenants, such as a Landlord who adopts a more restrictive screening policy to replace previous Tenants than those used to screen the original occupants. Additionally, Section 11.100.050(a)(2)(i)(c) allows Landlords to refuse a Tenant’s written request to sublease on the ground that the total number of occupants in a Rental Unit exceeds the maximum number of occupants as defined in California Health and Safety Code Section 17922.</p> <p>6.) The Board has discretion about how much of an increase should be granted for additional occupants.</p>	<p>4.) Staff members recommend adding caretaker/attendant to the list of individuals who may be added but for which an individual rent adjustment may not be granted and included qualifying language to stipulate that this is true only as required for a reasonable accommodation for a person with a disability.</p> <p>5.) Staff members do NOT recommend a change to this Regulation.</p> <p>6.) Staff members suggest a compromise of allowing up to a 25% increase for the first additional occupant, 12.5% rent increase for the second additional occupant, 6.25% rent increase for the third additional occupant, and so on and so forth. (Note: as written, this policy would not apply to the addition of a Tenant’s spouse, registered domestic</p>
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		<p>enough of an incentive. Why not make this percentage higher, like 25%? By establishing a low maximum rent increase for additional occupants, this policy is, perhaps unintentionally, discouraging density. <i>(The Association of United Richmond Housing Providers)</i></p>		<p>partner, child, grandchild, parent, grandparent, legal guardian, parent, or caretaker/attendant as required for a reasonable accommodation.)</p>
<p>Chapter 9: Standards for Individual Rent Ceiling Adjustments (PROPOSED) <i>(formerly Chapter 8C)</i></p>				
Reg.	Topic (PROPOSED)	Concern/Question <i>(Raised By)</i>	Answer to Concern or Question	Staff Recommendation <i>(Incorporated in Attachment 2)</i>
904	<p>Explains when changes in space or services may result in an increase or decrease in rent and how decreases are determined</p>	<p>1.) Section 2 of the Regulation states where a Landlord adds non-habitable space or increases the services provided to a unit, the lawful rent ceiling may be increased by an amount representing the market value of the additional space or increased service. "Market value" is a potentially problematic term given its ambiguity. Is there a term that better suits the intention of this section? <i>(Rent Board)</i></p> <p>2.) Concerns about the possible misuse of Regulation 904 in the event that a Landlord would like to increase the rent due to an increase in space or services but some of the Tenants object to the additional service. <i>(Community member)</i></p> <p>3.) Concerns about the reference to "Capital Improvements" and reconfigured space in this Section. <i>(Fair and Affordable Richmond)</i></p> <p>4.) Regulation 904(B)(1) allows for decreases in the Maximum Allowable Rent when a Tenant is made to suffer a decrease in housing services based on the space and services that were provided on July 21, 2015, or, for tenancies commencing after July 21, 2015, the beginning of the tenancy. Shouldn't this only apply when the</p>	<p>1.) Yes – staff recommend using the term "commercially reasonable value."</p> <p>2.) Rent increases permitted due to an increase in space or services must be approved in writing by the Tenants.</p> <p>3.) It is anticipated the Rent Board will consider Capital Improvement regulations in subsequent Sections and Chapters of regulations.</p> <p>4.) The Regulation could be modified to clarify that the Landlord had to have been notified of the decrease in space or services. Furthermore, the Regulation could be modified to disallow decreases in the Maximum Allowable Rent if the decrease in space or services (e.g. broken appliance) is a direct</p>	<p>1.) Staff members recommend replacing "market value" with "commercially reasonable value."</p> <p>2.) Staff members recommend adding a provision to the regulation to clarify that increases may be denied in any of the following instances:</p> <ul style="list-style-type: none"> • The additional space or service does not clearly benefit a majority of the affected Tenants and a Tenant objects • The additional space or service benefits a majority of the affected Tenants but a majority of the affected Tenants object <p>3.) Staff members do NOT recommend a change to this Regulation.</p> <p>4.) Staff members recommend modifying the first sentence to read, "The Maximum Allowable Rent shall be adjusted downward where a Landlord is aware of and causes a Tenant to suffer a decrease in housing services..." and adding a sentence stating, "Decreases in the</p>

**ITEM G-1
ATTACHMENT 1**

		Landlord has previously been made aware of the decrease in space or services (e.g. a broken heater)? What if the decrease in space or services has been caused by the Tenant? It seems unreasonable that a Landlord would suffer a rent decrease due to an event outside of their control. <i>(The Association of United Richmond Housing Providers)</i>	result of intentional action on the part of the Tenant.	Maximum Allowable Rent shall not be granted due to a decrease in space or services that is a direct result of intentional action on the part of the Tenant to purposefully cause a decrease in space or services.”
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905 – 910 are reserved for fair rate of return (Maintenance of Net Operating Income), capital improvement, and historically low rent regulations

Chapter 9: Standards for Individual Rent Ceiling Adjustments (PROPOSED)
(formerly Chapter 8C)

Reg.	Topic (PROPOSED)	Concern/Question <i>(Raised By)</i>	Answer to Concern or Question	Staff Recommendation <i>(Incorporated in Attachment 2)</i>
911	Establishes a process for repayment of overcharges	1.) Regulation 911(E) describes situations where the basis of rent overcharges is ineligibility for Annual General Adjustments is due to violation of housing codes. This Regulation requires that when the Tenant files the overcharge complaint, that they also attach documentation to show that the Rental Unit was in violation of the implied warranty of habitability on September 1 st of the applicable year for which the Tenant is arguing the Landlord was not eligible to apply an Annual General Adjustment rent increase. There are two issues with how this is written: (1) the fact that a Rental Unit is in violation of the implied warranty of habitability on September 1 should not merit complete loss of that year’s AGA and (2) the Tenant should also be responsible for notifying the Landlord of the violation. <i>(The Association of United Richmond Housing Providers)</i>	1.) This Regulation could reasonably be modified to clarify that the unit need not only have been in violation on September 1 st , but prior to and as of September 1 st of the applicable year for which the Tenant is arguing the Landlord was not eligible to apply an Annual General Adjustment rent increase. The Regulation could also include the requirement that the Tenant provide documentation to show that the Landlord was aware of the violation.	1.) Staff members recommend the following additions to the relevant sentence: “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 implied warranty of habitability prior to and as of September 1 st of the applicable year and that the Landlord was aware of such violation of the warranty of habitability. ”
912	Provides for restoration of lost AGAs after deficiencies are corrected			

REGULATIONS OF THE RICHMOND RENT BOARD

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Note to the reader: These Regulations are intended to help clarify the meaning of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Richmond Municipal Code Chapter 11.100) and to explain how it will be implemented. However, a full understanding of the meaning of any individual regulation or set of regulations may require knowledge of both the Regulations and the Rent Ordinance and may also require knowledge of relevant aspects of State and Federal law. Rent Board staff will assist the public in understanding how to use and follow the regulations. Such assertion does not substitute for legal advice from a competent attorney.

Chapter 1: PURPOSE & DEFINITIONS

101. Purpose of the Regulations of the Richmond Rent Board

(A) The Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Richmond Municipal Code Chapter 11.100) (“Ordinance”) governs the actions and regulations of the Richmond Rent Board. Section 11.100.060 (f) “Rules and Regulations” directs the Board to “issue and follow such rules and regulations, including those contained in this Chapter, as will further the purposes of the Chapter.”

(B) The Regulations of the Richmond Rent Board are intended to further the purposes of the Ordinance by establishing the standards and procedures the Board will follow in order to implement the Ordinance.

(C) The Regulations are intended to help clarify the meaning of the Ordinance and explain how it will be implemented. However, a full understanding of the meaning of any individual regulation or set of regulations may require knowledge of both the Regulations and the Ordinance and may also require knowledge of relevant aspects of State and Federal law.

(D) Like all local ordinances, the Ordinance operates within the framework established by the laws of the State of California and the Constitution of the United States of America. Under Section 11.100.060 (r) “Conforming Regulations,” should any part of the Ordinance be “declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by state or federal legislation,” then the Board is empowered to “enact replacement regulations consistent with the intent and purpose of the invalidated provision and applicable law.”

Chapter 4: REGISTRATION OF BASE RENT AND RENT INCREASES

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.

401. Establishment 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 tenancies that commenced after July 21, 2015, the Base Rent is the initial rental rate in effect on the date the tenancy begins. "Initial rental rate" is defined under Regulation Section 701.B.

402. Required Rent Registration

(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 December 30, 2016, an explanation of the circumstances of the termination of the previous tenancy sufficiently detailed to demonstrate whether the unit qualifies for a vacancy rent increase or not, as described in Chapter 7 Vacancy Rent Increases.

(d) The Base Rent currently in effect for each individual unit and the housing services included in the rent or the reason the Rental Unit is exempt from rent control and has no current Base Rent;

(2) Paid to the City of Richmond the Rental Housing Fee, Business License Tax, and any 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 termination of tenancies, subsequent changes in the provision of Housing Services, and rent increases if required pursuant to Regulation 17-10.

(B) In designating a Rental Unit as properly registered, the Board's intent is to facilitate the rent registration and individual adjustment of Maximum Allowable Rent processes and the dissemination of information regarding the registration of Rental Units. Such designation shall

City of Richmond Rent Board
Proposed Regulations

not be construed as the Board's certification of the lawful Base Rent, current Maximum Allowable Rent 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.

403. Changes in Exempt Status

(A) Within sixty (60) calendar days of the date a Rental Unit formerly exempt from the rent control provisions of the Ordinance (Section 11.100.030(d) (1)-(6)) becomes a Controlled Rental Unit under the Ordinance, the Landlord shall file an initial registration statement, or an amended registration statement if an initial registration statement has been previously filed, for the Rental Unit.

(B) Within sixty (60) calendar days of the date a Controlled Rental Unit becomes exempt from rent control 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) calendar 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.

404. Notification of Changes of Name or Address of Landlord and/or Property Manager

(A) Within sixty (60) calendar 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) calendar 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.

(C) 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.

Chapter 7. Vacancy Rent Increases

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 be the new Maximum Allowable Rent 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 the Ordinance and all other regulations of the Rent Board.

(B) In these Regulations the terms "new Maximum Allowable Rent" 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 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 Maximum Allowable 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.

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 Maximum Allowable Rent (prior to the new tenancy).

(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) (1) (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.

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(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.

(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 and Safety Code Section 17920.3 excluding those caused by disasters or damages incurred by the Tenant or associated occupants, guests, or pets, the citation was issued at least sixty (60) calendar days prior to the date of the vacancy, and the cited violation had not been abated when the prior Tenant vacated and has remained unabated for at least sixty (60) calendar days, unless the time for correction was extended by the agency that issued the citation.

(5) The prior Tenant was the spouse, registered domestic partner, 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.

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. 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. Abandonment is considered voluntary.

(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) and Rent Board Regulation 17-07; and,

(6) Notices of any kind that negligently or intentionally misrepresent to a Tenant that the Tenant is required to vacate the Rental Unit.

(C) "Harassment" shall be defined as a knowing and willful act or course of conduct directed at a specific Tenant or Tenants which:

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(1) Would cause a reasonable person to fear the loss of use or occupancy of a Rental Unit or part thereof, or of any service, privilege or facility connected with such use or occupancy, without legitimate reason or legal justification; or

(2) Materially interferes with a Tenant's peaceful enjoyment of the use and/or occupancy of a 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 an Owner Move-In pursuant to Ordinance section 11.100.050 (a) (6) which was not in good faith.

(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 Rental Unit.

(c) Reduction in housing services under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a 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; or

(f) Verbal or physical abuse or intimidation.

(5) 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 and Rent Board Regulation 17-07) shall not be considered voluntary.

(6) 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.

704. No Vacancy Rent Increase for Original Occupants

(A) The Maximum Allowable Rent for a Controlled Rental Unit occupied by an Original Occupant shall not be increased under the provisions of this Regulation while the existing Tenant occupies the unit as their principal residence. For purposes of this Regulation, the term "original occupant" as used herein includes any Tenant in the Rental Unit, 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.

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(B) No existing Tenant shall be required to vacate a Rental Unit as a result of a covenant or condition in a rental agreement requiring the Tenant to surrender possession except as permitted under Section 11.100.040(a)(1) of the Ordinance.

705. Increase and Decrease Petitions

Nothing in this Regulation prohibits Tenants or Landlords from filing rent adjustment petitions pursuant the Board's regulations.

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 the Landlord's agent or employee shall be void.

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 Regulation 707, to a sub-lessee or assignee when the original occupant or occupants who took possession of the Rental Unit pursuant to a rental agreement with the owner no longer permanently reside in the Rental Unit. The term "original occupant" as used herein includes any Tenant in the Rental Unit, 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) calendar days of any rent increase pursuant to this subsection, a Tenancy Registration form(s) described in Section (A)(1) of Regulation 402 shall be filed with the Board.

(B) Where one or more of the occupants of the Rental Unit pursuant to the agreement with the owner, remain an occupant in lawful possession of the Rental Unit, this Regulation shall not apply to partial changes in occupancy of the Rental Unit made with the consent of the owner. Nothing contained in this Regulation shall establish or create any obligation of an owner to permit or consent to a sublease or assignment.

(C) New roommates are considered subtenants of the original occupants as long as they do not sign a lease or rental agreement with the Landlord, and the Landlord may increase the rent when the unit is occupied only by subtenants who are not Original Occupants. Thus, a Landlord may set a new initial rent by giving proper written notice if: (1) there has been a complete turnover of original occupants; (2) none of the remaining occupants has signed a lease or rental agreement with the landlord; and (3) the Landlord has not accepted rent after receiving written notice from the last original occupant that they have moved out or will be moving out permanently. If the subtenants hide the fact that the last original occupant has moved out permanently, the Landlord's acceptance of rent does not preclude the Landlord from implementing a vacancy increase. The Landlord can defer a vacancy rent increase for up to six months after receiving written notice of the last original occupant's departure, by agreeing in writing with the remaining tenants to do so.

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(D) 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 Rental Housing Agreement, all Tenants who occupy the unit within one month, with permission of the Landlord, express or implied, shall be considered original occupants.

708. Rent Level following an Owner Move-In Notice or Eviction

(A) A written request from a Landlord for a Tenant to vacate a unit so the Landlord or a qualifying relative of the Landlord may occupy the unit as a 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.

(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 or 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 Landlord 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 Allowable Rent under the 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 the Tenant is 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.

Chapter 9: Standards for Individual Maximum Allowable Rent Adjustments

901. Purpose of Chapter

The purpose of this Chapter 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 Maximum Allowable Rent be made only when the Landlord demonstrates that such adjustments are necessary to provide the Landlord with a fair return on investment under the Ordinance (RMC Sections 11.100.070 (e - k) and as required by the California or United States Constitution.

902. Procedure

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

903. Changes in Number of Tenants

(A) Base Occupancy Level. The Base Occupancy Level for a Rental Unit, as used in this Chapter, shall be the number of Tenants allowed by the Rental Housing Agreement as defined in Section 11.100.030(k) of the Ordinance for the unit effective July 21, 2015, or at the beginning of any subsequent tenancy established after a vacancy.

(B) Increase in Tenants

(1) If the number of Tenants allowed by the Rental Housing Agreement actually occupying a unit as the Tenants' principal residence has increased above the Base Occupancy Level for that unit, then the Maximum Allowable Rent for the unit may be increased by up to twenty-five (25%) for the first additional Tenant above the Base Occupancy Level, up to twelve-and-a-half percent (12.5%) for the second additional Tenant, up to six-and-one-quarter percent (6.25%) for the third additional Tenant, and so on and so forth (where the potential percentage increase is halved for each additional Tenant), in addition to any Maximum Allowable Rent adjustment to which the Landlord is otherwise entitled. A petition seeking rent adjustments solely for an increased number of Tenants will be processed under subsections (D) of this regulation.

(2) No increase in the Maximum Allowable Rent 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, parent, grandparent, legal guardian of a child, parent of any of the Tenants, or caretaker/attendant as required for a reasonable accommodation for a person with a disability, unless the Tenants agree in writing to the specific Maximum Allowable Rent increase.

(3) If the number of Tenants actually occupying a Rental Unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (B)(1), then the Maximum Allowable Rent increase for that Rental Unit shall automatically decrease by the amount of the Maximum Allowable Rent increase that is no longer

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justified, as a result in the decrease in the number of Tenants, unless the Tenant and Landlord agree in writing to permanently increase the Base Occupancy Level.

(4) Increases in the Maximum Allowable Rent due to an increase in the Base Occupancy Level shall remain permanent. As such, if the number of Tenants actually occupying a Rental Unit as the Tenants' principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (B) (1), then the Tenants may replace the departing Tenant with another Tenant (subject to the Landlord's standard screening methods).

(C) Decrease in Number of Tenants Allowed.

If any policy or policies imposed by the Landlord unreasonably prevent the Tenant from maintaining the Base Occupancy Level for that unit, then the Maximum Allowable Rent 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.

- (1) A policy shall be deemed unreasonable if it is different from and more restrictive than the policies originally used to screen the current Tenant(s).
- (2) Refusal based on the proposed additional occupant's lack of creditworthiness shall be deemed unreasonable if that person will not be legally obligated to pay some or all of the rent to the Landlord. (RMC Section 11.100.050(a) (1) (i) (c)).
- (3) Refusal shall be deemed reasonable if the increase would bring the total number of occupants above the maximum allowable under Section 503b the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922. (RMC Section 11.100.050(a) (1) (i) (c)).

(D) Petitions for Rent Increases

Grounds for Tenant Objection. Tenants responding to petitions under subsection (B) (1) may file objections with the Board only if 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, parent of any of the Tenants, or caretaker/attendant as required for a reasonable accommodation for a person with a disability, and the Tenant(s) was not informed that the Tenant did not need to agree to an increase for such person(s).

904. Changes in Space or Services

(A) Increase in Space

The Maximum Allowable Rent may be adjusted upward when, with the written agreement of the Tenant(s), there is an increase in the usable space or in 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 Maximum Allowable Rent for such unit shall be permanently increased as provided under Section 8XX Capital Improvements.

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(2) Additional services. Where a Landlord adds non-habitable space or increases the services provided to a unit, the Maximum Allowable Rent for such unit shall be increased by an amount representing the commercially reasonable value of the additional space or increased services. 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.

- (a) Increases may be denied if the added or reconfigured space or services do not clearly benefit a majority of the affected Tenants and a Tenant objects.
- (b) If the added or reconfigured space or services clearly benefit a majority of the affected Tenants, then increases may be denied if a majority of the affected Tenants object.

(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. The Maximum Allowable Rent shall be adjusted downward where a Landlord is aware of and causes a Tenant to suffer a decrease in housing services or living space from the services and space that were provided on July 21, 2015, or from any services or space provided at the beginning of the tenancy. The amount of the rent decrease shall be 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 Maximum Allowable Rent 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. Decreases in the Maximum Allowable Rent shall not be granted due to a decrease in space or services that is a direct result of intentional actions on the part of the Tenant to purposefully cause a decrease in space or services.

2. Denial of Petitions for Unilateral Removal.

The Board will not accept petitions from Landlords who seek a Maximum Allowable Rent 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 was provided at the unit on July 21, 2015, or at the beginning of the tenancy.

3. Inadequate Services, Substantial Deterioration

The Maximum Allowable Rent 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 Unit in compliance with all applicable state and local laws and

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with the terms of the Rental Housing Agreement. The amount of the rent decrease shall be 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 Maximum Allowable Rent in effect at the time of the impairment.

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 Maximum Allowable Rent decrease shall be in an amount that reflects the reduction in value of the Rental Unit 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 Maximum Allowable Rent 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.

(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 thirty-five (35) calendar 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 Unit is 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.

5. Maximum Allowable Rent 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 Rental Unit. A copy of a housing code inspection report from the City of Richmond should be submitted with the petition.

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905 – 910 Reserved for MNOI, Capital Improvements, Historically Low Rent, etc.

911. 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 sixty (60) calendar days of the overcharge refund order.

If the Landlord does not refund any past overcharge(s) to any former Tenant(s) within sixty (60) calendar days, or has made reasonable but unsuccessful efforts to locate the former Tenant(s), the Landlord shall pay the overcharge(s) to the Richmond Rent Board to be held in trust for the former Tenants for one year. Staff shall annually 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.

(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.

(D) 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 timelier filing of the petition.

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(3) If the 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.

(E) 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 prior to and as of September 1st of the applicable year and that the Landlord was aware of such violation of the warranty of habitability. Such documentation may include a copy of an inspection report issued by the City of Richmond.

912. Petition to Obtain Previously Lost Annual General Adjustments (AGAs)

(A) General. When a Landlord who has previously been out of compliance comes into compliance with the Ordinance, regulations, or applicable housing, health and safety codes, the Hearing Examiner may grant all Annual General Adjustment rent increases denied during the period of noncompliance prospectively. For any Rental Unit which has been registered and for which a Base Rent has been listed or for any Rental Unit which a Landlord can show, by a preponderance of the evidence, a good faith attempt to comply with the registration requirements, all Annual General Adjustments which may have been denied during the period of the Landlord's non-compliance shall be restored prospectively once the Landlord is in compliance with the Ordinance or regulation.

In addition, to be eligible for an Annual General Adjustment, the Landlord must state under penalty of perjury that the unit is in substantial compliance with the ordinance, regulations and applicable codes. Specifically, the Landlord shall certify to payment of all fees and penalties owed to the Richmond Rent Program 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 Rent Board on behalf of Tenants of the affected unit.

The Landlord is not entitled to recover any Annual General Adjustments which have been previously regained through a net operating income analysis or for new tenancies that were established after the loss of the Annual General Adjustment.

(B) Petition. Upon the petition of the Landlord, the Landlord's eligibility for previously lost Annual General Adjustments 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 shall govern all additional petition procedures for Annual General Adjustment petitions.

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(C) Rent increases permitted under this Section shall be applied in a manner consistent with Regulation 17-09 (Banking of Annual General Adjustment rent increases.)

Summary of Community Feedback from Community Workshops
12/4/2017 and 12/9/2017

Increases in Operating Expenses, Fair Return Standards

What do you think are the most important factors to consider in setting a fair return standard?

- One factor includes the high costs that Landlords must pay to improve their rental units and keep them up to code.
- Units damaged by previous tenants are another financial burden a landlord has to face.
- Insurance costs to landlords are increasing due to the ability to not add addendum to the current lease (Tenant insurance).
- Considering mortgage payments is an important factor.
- Due to some of their rental units having large families, many Landlords have seen an increase in their utility bills.
- Property taxes have also seen a hike for many Landlords in the previous years.
- Consider the fees that Landlords must pay to conduct business in the City of Richmond (Business License, Fire Prevention, Rental Inspection, and Rental Housing fee).
- Depending on the number of units that a building has, there is a scheduled time as to when they must refinance the building.
- Consider the costs for legal services for issues with tenants.
- Landlords feel that the Annual NOI should stay above the AGI.

2. What did you like or dislike about any of the fair return models presented?

- Landlords disliked that there was no transparent remedial courses of action regarding tenant and Landlord responsibilities for claims and actions.
- A couple of Landlords did not like the ROI model presented.
- Landlords thought the MNOI model was okay but had questions in regards to excluding the debt service and the rent rollback.

ITEM G-1 ATTACHMENT 3

- The ROI model was also questioned and some Landlords wanted to know what exactly was the investment and if it included mortgage payments.
- 3. Please share any additional comments or questions in the space below:**
- A question arose that if a Landlord were to create a rule requiring renter's insurance, would that be considered a "rent increase"?
 - Many Landlords voiced their disapproval of the fact that tenants were allowed to add more tenants into their unit and the Landlord could not increase the rent automatically.
 - The ROV model also had a few questions in regard to some of the wording used such as the meaning of "value".

ITEM G-1 ATTACHMENT 3

Increases or Decreases in Space, Services or Habitability

1. What do you think are the most important factors to consider in establishing rent increase or decrease standards for increase or decreases in services, or habitability issues?

- If the problem means the renter has to move temporarily (mold abatement) they would get a relocation payment so rent decrease should not apply.
- If a decrease in service is based on the landlord bringing the property into compliance with the code then this should not be seen as a decrease in service & not be eligible for a rent decrease.
- The most important factors in establishing a rent increase or decrease should be habitability, the level of inconvenience, lack of safety, and whether or not a code violation is involved.

2. What do you like or dislike about any of the standards presented?

- I don't think landlords should be held liable for pests brought in by renters nor should they have to pay relocation fees for time of abatement.
- I like the standard that takes into account the market value of the service/ space that is being decreased or increased. Using a dollar range seems arbitrary.

3. Please share any additional comments or questions in the space below:

- Changes in rent and habitability are a complicated issue and should be reviewed on a case by case basis.
- Require landlords to respond to tenant notices in a reasonable amount of time. For example 5 business days, there could include a monetary penalty for non-compliance.
- Confusion about occupancy. If one tenant moves out the rent decreases by 25%, but if one is added we can only raise the rent by 10%?
- Notations entered clearly into database for responsibilities regarding claims of service or habitability –tenant responsibility or landlord responsibility?
- How can we apply lease items to decreases in space (like a parking space) - regarding breaches in the lease?

Capital/Building Improvements

1. What do you think are the most important factors to consider in establishing standards for increasing the rent for capital improvements?

- Make improvements for rent increases.
- Good landlords improve property values.
- Resolution should allow a reasonable time period for the cost of repairs to be gradually written off.
- Set a cap on percentages that can be passed through the cost of rent.
- If the capital improvement cap is lower than 10% of the rent, the capital improvement increase should be permanent and be added to the base rent of the unit.
- Owners need to be able to recoup capital improvements.
- Tenants and landlords should be able to negotiate non-capital improvements.
- The board should consider all improvements made on a case by case basis.
- Determine whether the proposed work is required or an optional upgrade. Even if the work is required for code compliance the landlord is responsible for daily repairs and maintenance and that needs to be covered by the base rent not considered an improvement.
- A 5 year amortization schedule is reasonable.
- The considerations should be type of improvement and benefits to the tenant.
- Capital improvements should be dependent on whether it is necessary or not.
- Capital improvements are permanent improvements and the rent increase should also be permanent.
- Capital improvements should depend on whether it is necessary or not.
- Capital improvements from the past 5 years should be included in the rent rate adjustment.

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2. What do you like or dislike about any of the standards presented?

- Do not want the standard for capital improvements to be too narrow. Review capital improvements to be passed because if you don't allow landlords to pass through capital improvements landlords will not want to invest and properties become eye sores.
- If capital improvements cannot be passed on then most of them will not be completed.
- Capital improvements should be retroactive to year 2015. I made many changes to the apartment and then rents were frozen. I should be allowed to raise the rent based on the improvements.
- Pass through costs and the percentages you can pass on should take into account how long the tenant has been there. I disagree on capping the percentage of pass through costs. If the tenant never leaves they are getting all the benefit.
- Giving tenants the option to pre-approve optional capital upgrades along with rent increases could be considered.

3. Please share any additional comments or questions in the space below:

- Capital improvements mean an increase in property value. Why does the tenant have to pay for the landlords increase in property value?
- Policy should be balanced.
- Consider low interest loans for capital improvement projects. It is hard to save for projects under rent control.
- Guidance on the definition of capital improvements with primary examples is needed.
- Property owners need to be supported in maintaining the property.
- Capital improvement should include aesthetic improvements.
- Things that should be included as a possible pass through are: roof, exterior paint, heating, electrical, windows, fencing, appliances, railings, screens, and seismic retrofits.
- Remodeling of the bathroom and/ or kitchen should be considered a capital improvement.

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- There needs to be a fairness ratio. If you bought a property with old systems why should the tenant bear all the costs of the upgrade?
- If you allow less than 100% of total cost you end up with a circular argument where I would file a petition for fair return.
- Giving tenants the option to pre-approve optional capital upgrades along with a rent increase could be considered.
- Capital improvements extend the life of the property.
- There needs to be a provision for the tenant's constructive damage of the rental unit.
- Need clarity on definition of capital improvements.
- Distinction is necessary between required and optional improvements.
- Tenant has the option to receive optional improvement but will see a rent increase.
- Do we want to give tenants an opportunity to request an upgrade and pay the rent increase?
- When can a rent increase take effect?

Historically Low Rents

1. What do you think are the most important factors to consider in establishing standards for increasing the rent due to historically low rents?

- The Rent Program/Board should research market rents from public sources like Zillow and Single-Family Home rents to reflect a true natural rent baseline.
- The Rent Program/Board should take into consideration the increasing operating expenses that they face and the low amount of fair return that they make with the max 6.56% AGA.
- Rental market rates differ depending on the neighborhood and zip code which is something that Landlords feel should be analyzed by the Program.
- Consider rental market rates for 2015.
- Other factors included the type of unit, the condition of the unit, and how long the tenant has been living in the unit.
- The Program/Board should financially analyze how much it would take for Landlords with historically low rents to reach market value.
- The 2015 HUD Income Limits should be used to establish standards for Landlords with historically low rents.
- Analyzing rental units that are not subject to rent control could better help set the standards for Landlords with historically low rents.

2. What did you like or dislike about any of the standards or policy options presented?

- Landlords dislike the fact that no account has been taken of the economic changes in the area including gentrification & high property values that are continuing to rise.
- Landlords disliked the fact that the current rate cap/base rent rollback penalizes landlords that were being nice to their tenants when their tenancy began.
- Landlords also dislike the fact that they are keeping their units in perfect condition and cannot make a fair rate of return.
- One of the main critiques of the policies was that the rental market rate for 2015 was not taken into consideration when coming up with the AGA percentages.

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3. Please share any additional comments or questions in the space below:

- Rent appraisals need to be done via neighborhoods and not the city as a whole due to different neighborhoods having different rental rates.
- Having to give a full relocation payment to tenants also affects their financial stability and a regulation is needed so landlords with historically low rents could pay a reduced fee instead of the set relocation payment fee.
- Landlords should be given special AGA percentages to be able to reach the minimum standard in the City.
- Having to give excess rent refunds for rent increases in the previous years is making it difficult for them to stay in the rental market. o There should be an exemption where Landlords with historically low rents should not have to give back excess rent refunds.
- Having to rollback their rents makes it even more difficult to get anywhere near the market rate.
- The Rent Program is more of an insurance program for a tenant that seeks to punish Landlords financially.
- Landlords with historically low rents should be allowed to raise their rent to a certain percentage of what the market was in 2015.
- The Rent Program/Board should set an average rent for 2015 and allow Landlords to increase it from there.

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COMMENTS FROM COMMUNITY MEMBERS RECEIVED FROM 1/5 – 1/16/2018

Please accept my comments for consideration in your upcoming meeting.

For the individual rent adjustment considerations, I would like to weigh-in on the following:

1. **Providing for a fair return standard for landlords:** If landlords are not afforded a fair rate of return on their rental properties, in comparison to other investment areas, then inevitably Richmond will end up with more and more run-down housing stock. When the rent for an apartment is locked-in at a price much lower than the going market rent, landlords will have very little incentive to invest money in maintaining and improving their property. This causes landlords to do the bare-minimum in upkeep and spending money, which is a rational response to not receiving a fair return on investment. I would ask that you please take to heart this upspoken down-side to rent control that often gets ignored.
2. **Tenants adding more occupants than allowed:** The California Department of Fair Employment and Housing (DFEH) recommends two persons per bedroom plus one additional person for the overall rental unit. What happens in many cases is that one person is on the lease, but then there are many more people than the max recommendation staying in the apartment. This causes an increase in wear on the apartment and common areas, adds to parking congestion, and adds to utility costs when the landlord pays for utilities. I think that the Rent Control Board should allow for a fair increase in rent (perhaps as a percentage of current rent) if tenants exceed HUDs recommendation for occupancy.
3. **Capital/Building improvements:**
 - a. it is imperative that owners can recoup the cost of capital improvements within a reasonable length of time. Owners will look at the opportunity cost of deploying their capital on building repairs vs. investing elsewhere. Amortizing the repairs over anything longer than 5 years makes most capital improvements not cost-effective.
 - b. Any improvements completed since the rent control board went into effect, but before an official hearing has been completed should be included when considering a rent adjustment. Many landlords have filed petitions many months ago, but have been unable to wait on completing capital improvements (for example in the case of health and safety issues). At a minimum any improvements made since January 01st 2017 should be taken into consideration. I think it would be more fair if capital improvement consideration were retroactive to the date in 2015 when the baseline for rents were set.
 - c. Capital improvements are permanent, and the money spent is money that is not providing the owner a return elsewhere. Therefore, the approved rent increases associated with capital repairs should be permanent and not phase out.
 - d. The standard for capital improvements should not be defined too strictly. It should be a case-by-case basis and the default should be that since landlords own their property they can choose which improvements are deemed reasonably necessary. Of course, the rent board could still deem an improvement ineligible for pass through if it deems that the improvements doesn't improve the quality, safety or use of the building or apartment for the tenants in any way.

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4. Historically Low Rents:

a. The pattern of rent increases with historically low rents should be looked at regardless of the date the owner bought the property. That is to say, if rents have a history of low rents and the owner has bought the building recently, the owner should be able to request a rent adjustment based on the historically low rents. If this isn't the case, and the historically low-rents are only considered since the owner purchased the property, this will have a very negative impact on the housing market. Buildings with low rents will be stuck with those low rents and the value of the building will remain artificially low.

b. The adjustment of historically low rents should not have a cap at some percentage of AGA. Rather, the adjustment should be a function of the low rents vs. a consideration of increasing ALL operating expenses.

Thank you,
Ori Skloot
Richmond Building Owner

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----- Forwarded message -----

From: **Ilona Clark** <in70clark@gmail.com>
Date: Mon, Jan 15, 2018 at 11:11 AM
Subject: Draft Petition and Hearing Procedure Regulations
To: Paige Roosa <paige_roosa@ci.richmond.ca.us>

To the Rent Board and Staff,

Thank you for the opportunity to review these latest proposed regulations.

After a first read, I noticed that the regulations allow for an unlimited number of appeals free of charge. This is also the practice in Oakland and is responsible, in part for a backlog of tens of thousands of cases. Many of these cases involve "frequent fliers" who use the appeals to put off resolution in perpetuity.

This results in the system being unable to provide due process, not only in these cases but in the many others waiting in the wings.

In order to mitigate this, I propose that you charge for appeals. a minimal amount for the first appeal - \$5 for example. and for subsequent appeals charge \$25, then \$125, then \$250, then \$600, and so on. Capping the number of appeals in addition to charging for them would also help contain this problem. These rules should apply no matter which "side" is asking for appeals.

Also, the regulation makes it clear the housing providers will not get a hearing unless they are in compliance with the law. There is no such provision for renters, I propose that renters must also pay their share of the rent board fee (TBD) and be in compliance with any relevant laws pertaining to the rent board and the City in order to benefit from rent board services as well.

In section 807 "tenants in each affected rental unit" should specify that these are the tenants **listed on the lease** of the affected unit.

Finally, I ask that you consider continuing this item until next month so that more of my group has the opportunity to read it and make suggestions.

Thanks so much,
Ilona Clark RN

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Be kind, for everyone you meet carries a heavy burden.

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Be kind, for everyone you meet carries a heavy burden.

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----- Forwarded message -----

From: "**linda n**" <lmno77p@yahoo.com>

Date: Mon, Jan 15, 2018 at 5:53 PM -0600

Subject: Preliminary Drafts of Proposed Rent Board Regulations

To: "Paige Roosa" <Paige_Roosa@ci.richmond.ca.us>, "David Gray" <dgray@ci.richmond.ca.us>, "Emma Gerould" <egerould@richmondrent.org>, "Lauren Maddock"

<lmaddock@richmondrent.org>, "Nancy Coombs" <ncoombs@ci.richmond.ca.us>, "Virginia

Finlay" <vfinlay@ci.richmond.ca.us>, "ntraylor@ci.richmond.ca.us" <ntraylor@ci.richmond.ca.us>

Cc: "Ilona Clark" <in70clark@gmail.com>

To the Rent Board and Staff,

I have printed out the 19 pages and have begun reading them after a month of the cold that's been going around and the activities of the holidays. I am sure you have also been affected by them all. Please consider postponing this item until next month so we can all do it justice. I very much want to be able to make thoughtful suggestions during this time of examining how to make the ordinance effective and fair.

From the first Rent Board meeting it has been obvious to me how difficult starting up this Board is, and I've been impressed with how hard everyone is working to make it a success.

This is one of those times when the public needs to pitch in and help; now we need the preparation time to be able to do so.

Thank you for your consideration on this matter.

Linda Newton