

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: July 17, 2019

Final Decision Date Deadline: July 17, 2019

STATEMENT OF THE ISSUE: On June 19, 2019, the Rent Board directed staff members to amend Regulation 842 to include a specific time whereby a request for reconsideration must be heard. Consistent with Rent Board direction, staff members are proposing amendments to Regulation 842 that would describe when the Executive Director or assigned Designee may treat an appeal as a request for reconsideration, and the time in which such a request must be heard.

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

- | | | |
|---|--|---------------------------------|
| <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: AMEND Regulation 842 to do either of the following:

Option A: Within 15 business days after the date to file an appeal has expired, allow the Executive Director or assigned Designee to treat appeals as requests for reconsideration, where there is a clear misapplication of the law, the law has changed, there is a problem with the Record, or any other matter where reconsideration would be appropriate considering administrative efficacy. This amendment would also clarify that the Executive Director or assigned Designee is the individual who grants a request for reconsideration and not the Hearing Examiner.

Option B: Amend Regulation 842 to allow the Executive Director or assigned Designee to send a matter back to the Hearing Examiner within a reasonable period of time without the requirement of a Rent Board Order, where the issue involves a clear misapplication of the law, a problem with the Record, or a change in the law or any other matter appropriate for reconsideration. In such an event, the Executive Director or assigned Designee must submit a written Order of Reconsideration with specific instructions identifying the good cause underlying the granting of reconsideration and the parameters of the hearing on reconsideration – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

AGENDA ITEM NO:

J-1.



AGENDA REPORT

DATE: July 17, 2019

TO: Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Charles Oshinuga, Staff Attorney

SUBJECT: PROPOSED AMENDMENTS TO REGULATION 842 CONCERNING
REQUESTS FOR RECONSIDERATION

STATEMENT OF THE ISSUE:

On June 19, 2019, the Rent Board directed staff members to amend Regulation 842 to include a specific time whereby a request for reconsideration must be heard. Consistent with Rent Board direction, staff members are proposing amendments to Regulation 842 that would describe when the Executive Director or assigned Designee may treat an appeal as a request for reconsideration, and the time in which such a request must be heard.

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Option B: Amend Regulation 842 to allow the Executive Director or assigned Designee to send a matter back to the Hearing Examiner within a reasonable period of time without the requirement of a Rent Board Order, where the issue involves a clear misapplication of the law, a problem with the Record, or a change in the law or any other matter appropriate for reconsideration. In such an event, the Executive Director or assigned Designee must submit a written Order of Reconsideration with specific instructions identifying the good cause underlying the granting of reconsideration and

the parameters of the hearing on reconsideration– Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Background

On January 24, 2018, the Rent Board adopted Chapter 8 of the Regulations, titled “Petition Process and Hearing Procedures.” This Chapter establishes substantive and procedural rules whereby a Landlord or Tenant may file a petition on various claims. After adopting these series of Regulations in January 2018, staff members worked vigorously to acquire adequate staffing and institutional knowledge to properly implement the provisions of Chapter 8 of the Regulations. In August 2018, the Rent Program officially began processing petitions for hearings. To date, the Rent Program has processed and heard 63 Landlord or Tenant petitions and seven appeals.

When a party appeals a matter, it may take as much as several months before the matter is brought before the Rent Board. As it stands now, where staff members identify a problem with the Record in a matter on appeal, staff members cannot remedy the error administratively, but rather must send the matter to the Rent Board for an Order of Remand to address the issue of the Record. The result is that the parties may end up waiting several months before the issue can be resolved by the Rent Board, whereas staff members could have administratively remedied the issue within thirty days. To address this issue, on June 19, 2019, staff members brought the matter before the Board and recommended the Board amend Regulation 842 to allow the Executive Director or assigned Designee to send a matter back to the Hearing Examiner without the requirement of a Rent Board Order, where the issue involves a clear misapplication of the law, a problem with the Record, or a change in the law or any other matter appropriate for reconsideration. The proposed amendments also added a requirement that when the Executive Director or their Designee treats and/or grants a request for reconsideration, it must be followed by a written Order of Reconsideration. The Board agreed with the amendments but decided to postpone the adoption of said amendments and directed staff members to include language that required any determination of reconsideration be made within 15 days after the time to appeal has expired.

General Overview of Appeals Processing and Proposed Reconsideration Process

Pursuant to the Board’s adopted regulations, any party to a petition may file an appeal with the Rent Board within thirty days (thirty-five days if mailed) of the issuance of the Hearing Examiner’s decision. Appeals are both filed with and processed by the Board Clerk. After the 35th day has elapsed, the Board Clerk provides the appeal to the Staff Attorney. The Staff Attorney begins reviewing the file by reading the information

contained in the Rent Program's appeal forms, reviewing all the documentary evidence contained in the Record, listening to all of the oral testimony contained in the audio recording of the hearing, and researching applicable law that will guide the analysis on the issues presented. The Staff Attorney may also consult with attorneys in neighboring jurisdictions if the issues presented are nuanced. As such, the amount of time required for the Staff Attorney to conduct such a review varies depending on the issues presented (a single issue on security deposit will likely take less time than one of Maintenance of Net Operating Income). After the review is complete, the Staff Attorney writes a recommendation to the Rent Board and all the parties. This process is then repeated for the next appeal file in the queue.

During the review process, the Staff Attorney may find issues warranting reconsideration by the Hearing Examiner. For instance, the Record may be incomplete due to an error in the audio recording of the hearing, or there may exist a clear misapplication of the law. Despite the parties not having requested reconsideration, the Staff Attorney may forward the file to the Executive Director or their Designee with a summary of the issues that may warrant treating that specific appeal as a request for reconsideration. In those instances, the Executive Director or their Designee reviews the various issues and decides whether there is good cause to treat the issue as a basis for granting reconsideration. Where reconsideration is granted, the Executive Director or their Designee issues a written Order to all parties explaining the basis of reconsideration, the scope of the issues to be reconsidered, and a modified schedule for hearing, if necessary.

Given the above process, a strict time limit to discover issues warranting reconsideration may be unworkable. For instance, a change in the law that impacts the matter may occur well after the appeal has been filed and reviewed. In such a circumstance, parties would have to wait the additional time to appear before the Rent Board to have their matter remanded to the Hearing Examiner, as the Rent Program would not have the ability to quickly order the matter be reconsidered due to a change in the law. Additionally, a strict time limit could remove a right of a party due to the staff member's inaction. For instance, if a party has specifically requested for reconsideration and staff does not reach the issue within the specified time, the consequence would be that the matter not be reconsidered but rather placed on the track of an appeal.

Proposed Amendments to Regulation 842 to Permit the Executive Director or Assigned Designee to Treat an Appeal as a Request for Reconsideration

To address the aforementioned potential issues and remain consistent with Board direction, staff members have prepared two options for the Board's consideration:

Option A: Amend Regulation 842 to allow the Executive Director or assigned Designee, within 15 days after the date to file an appeal has expired, to send a matter back to the Hearing Examiner without the requirement of a Rent Board Order, where the issue involves a clear misapplication of the law, a problem with the Record, or a change in the law or any other matter appropriate for reconsideration. In such an event, the Executive

Director or assigned designee must submit a written Order of Reconsideration with specific instructions identifying the good cause underlying the granting of reconsideration, the parameters of the hearing on reconsideration, and require the hearing be rescheduled within 60 days.

Option B: Amend Regulation 842 to allow the Executive Director or assigned Designee to send a matter back to the Hearing Examiner within a reasonable period of time without the requirement of a Rent Board Order, where the issue involves a clear misapplication of the law, a problem with the Record, or a change in the law or any other matter appropriate for reconsideration. In such an event, the Executive Director or assigned Designee must submit a written Order of Reconsideration with specific instructions identifying the good cause underlying the granting of reconsideration and the parameters of the hearing on reconsideration

Conclusion

Staff members recommend the Rent Board adopt one of the two options presented in this report.

DOCUMENTS ATTACHED:

Attachment 1 – Option A: Regulation 842 of the Rent Board Regulations (Redline Version)

Attachment 2 – Option A: Regulation 842 of the Rent Board Regulations (Clean Version)

Attachment 3 – Option B: Regulation 842 of the Rent Board Regulations (Redline Version)

Attachment 4 – Option B: Regulation 842 of the Rent Board Regulations (Clean Version)

ITEM J-1
ATTACHMENT 1
OPTION A

842. Appeal Process

- A. Any appeal shall be filed on a form provided by the Board no later than thirty (30) calendar days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) business days after it is mailed. The appeal must contain a statement of the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state any facts or arguments in support of the grounds alleged in the appeal. Except as provided in Section 842(E), no other documents in support of the appeal will be accepted after the appeal deadline unless specifically requested by the Board. The appeal shall be sent to the Board and opposing parties and their representative. Additionally, appellants shall send a copy of the appeal to the hearing examiner whose decision is being appealed. The Board or staff may order that appeals relating to the same building or property, or different properties of the same Landlord, be consolidated. The opposing party shall file any response to the appeal within fifteen (15) calendar days from the date the appeal is filed.
- B. The hearing examiner's decision shall be stayed pending appeal. In its decision, the Board shall order the appropriate party to make retroactive payments over a reasonably appropriate period to restore the parties to the positions they would have occupied had the hearing examiner's decision been the same as that of the Board or had not been stayed.
- C. At least fourteen (14) calendar days prior to the date set for Board action on the appeal, a Board Staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the hearing examiner for further hearing. Board Staff may supplement the record by including matters of which the Board may take official notice, provided that the parties are notified of such matters at least fourteen (14) days prior to the date set for Board action. Any objection to a staff request for official notice of such matters shall be filed no later than seven (7) calendar days prior to the date set for Board action.
- D. At least fourteen (14) calendar days prior to the date set for Board action, all parties shall be notified by mail of the date, time and place set for Board action on the appeal. Copies of the Board Staff recommendation shall be mailed to all parties and their representatives at least 14 days prior to the Board action. Copies of the official record and the staff recommendation shall be available for public review at the Board office at least fourteen (14) days prior to the date set for Board action. Parties may submit written comments to the Board up to seven (7) days prior to the Board action.
- E. At the Board meeting at which action on the appeal is scheduled, each party or the party's representative will be allowed seven (7) minutes to address the Board at the beginning of the hearing in the following order: appellant for five (5) minutes, respondent for seven (7) minutes, appellant for two (2) minutes. For any party addressing the Board who requires translation the allowable times shall be doubled. The Board has the discretion to allow

**ITEM J-1
ATTACHMENT 1
OPTION A**

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- F. Unless the Board determines that a de novo hearing is required, the Board's decision will be based exclusively on the record before the hearing examiner. Parties shall be instructed not to discuss or comment upon factual matters or evidence that were not presented to the hearing examiner or officially noticed. Parties may discuss or comment upon the legal matters in question and any other pertinent issues raised by the appeal. The Board shall disregard any discussion or comment regarding factual matters that were not in the record before the hearing examiner or officially noticed. The vote of three (3) Board members is required to affirm, modify, remand or reverse the decision of the hearing examiner.
- G. The Board's decision to affirm, modify, remand or reverse the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. When the Board votes to adopt the staff recommendation unchanged, the parties to the appeal will be notified only of the Board's decision. When the Board does not adopt the staff recommendation as written, a written decision of the Board shall be mailed to the parties or their representative of record.
- H. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Executive Director only for good cause shown. A written request and the reasons for it must be received by the Board at least two (2) business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.

I. Reconsideration.

- 1) At the discretion of the Executive Director or their designee, an appeal may be treated as a request for reconsideration and referred back to the ~~H~~hearing ~~E~~examiner for such reconsideration only if it is claimed by the appellant that:
 - a) There was good cause for a failure to respond to a petition; or
 - b) There was good cause for a failure to appear at a settlement conference or hearing; or
 - c) The appellant wishes to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.
 - e)d) The decision resulted from a clearly inaccurate application of the law; hearing staff members discovered a problem with the record; the underlying legal standard upon which the decision is based changed before final disposition of the case, including matters subject to a pending petition for writ of administrative mandamus; or any other reason the case should be remanded for reconsideration for administrative efficiency.

**ITEM J-1
ATTACHMENT 1
OPTION A**

- 2) In the event that the Executive Director or their Designee finds good cause exists to treat the Appeal as a request for reconsideration, the Executive Director or their Designee shall, within 15 days from the day to file an appeal has expired, issue an Order of Reconsideration, which shall describe the basis of granting reconsideration, the scope of issues to be reconsidered by the Hearing Examiner, and modified procedures, if any, of the hearing process to expedite the matter for a hearing on reconsidered issues. The Rent Program shall send the Order of Reconsideration to ~~reconsideration under subsection (K) (l) is ordered, the all parties will be so notified within 15 days of the filing of the appeal and, schedule a hearing consistent with the Order of Reconsideration within 60 days from the day the Order of Reconsideration was issued. period a hearing on the reconsidered issues. thereafter, all~~ correspondence shall be directed to the hearing examiner. The threshold issue on reconsideration shall be whether a preponderance of the evidence supports the assertion that good cause existed for the failure to respond to a petition or to appear at a hearing or that the newly offered evidence could not, with reasonable diligence, have been discovered and produced at the hearing. Only if good cause for the failure is found may the hearing examiner reconsider the merits of the petition.

ITEM J-1
ATTACHMENT 2
OPTION A

842. Appeal Process

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- H. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Executive Director only for good cause shown. A written request and the reasons for it must be received by the Board at least two (2) business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.

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 - b) There was good cause for a failure to appear at a settlement conference or hearing; or
 - c) The appellant wishes to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.
 - d) The decision resulted from a clearly inaccurate application of the law; staff members discovered a problem with the record; the underlying legal standard upon which the decision is based changed before final disposition of the case, including matters subject to a pending petition for writ of administrative mandamus; or any other reason the case should be remanded for reconsideration for administrative efficiency.

**ITEM J-1
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OPTION A**

- 2) In the event that the Executive Director or their Designee finds good cause exists to treat the appeal as a request for reconsideration, the Executive Director or their Designee shall, within 15 days from the day to file an appeal has expired, issue an Order of Reconsideration, which shall describe the basis of granting reconsideration, the scope of issues to be reconsidered by the Hearing Examiner, and modified procedures, if any, of the hearing process to expedite the matter for a hearing on reconsidered issues. The Rent Program shall send the Order of Reconsideration to all parties and, schedule a hearing consistent with the Order of Reconsideration within 60 days from the day the Order of Reconsideration was issued.

ITEM J-1
ATTACHMENT 3
OPTION B

842. Appeal Process

- A. Any appeal shall be filed on a form provided by the Board no later than thirty (30) calendar days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) business days after it is mailed. The appeal must contain a statement of the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state any facts or arguments in support of the grounds alleged in the appeal. Except as provided in Section 842(E), no other documents in support of the appeal will be accepted after the appeal deadline unless specifically requested by the Board. The appeal shall be sent to the Board and opposing parties and their representative. Additionally, appellants shall send a copy of the appeal to the hearing examiner whose decision is being appealed. The Board or staff may order that appeals relating to the same building or property, or different properties of the same Landlord, be consolidated. The opposing party shall file any response to the appeal within fifteen (15) calendar days from the date the appeal is filed.
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**ITEM J-1
ATTACHMENT 4
OPTION B**

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- G. The Board's decision to affirm, modify, remand or reverse the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. When the Board votes to adopt the staff recommendation unchanged, the parties to the appeal will be notified only of the Board's decision. When the Board does not adopt the staff recommendation as written, a written decision of the Board shall be mailed to the parties or their representative of record.
- H. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Executive Director only for good cause shown. A written request and the reasons for it must be received by the Board at least two (2) business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.

I. Reconsideration.

- 1) At the discretion of the Executive Director or their designee, an appeal may be treated as a request for reconsideration and referred back to the Hearing Examiner for such reconsideration only if it is claimed by the appellant that:
 - a) There was good cause for a failure to respond to a petition; or
 - b) There was good cause for a failure to appear at a settlement conference or hearing; or
 - c) The appellant wishes to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.
 - d) The decision resulted from a clearly inaccurate application of the law; staff members discovered a problem with the record; the underlying legal standard upon which the decision is based changed before final disposition of the case, including matters subject to a pending petition for writ of administrative mandamus; or any other reason the case should be remanded for reconsideration for administrative efficiency.

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ATTACHMENT 4
OPTION B**

- 2) In the event that the Executive Director or their Designee finds good cause exists to treat the appeal as a request for reconsideration, the Executive Director or their Designee shall, within a reasonable time period, issue an Order of Reconsideration, which shall describe the basis of granting reconsideration, the scope of issues to be reconsidered by the Hearing Examiner, and modified procedures, if any, of the hearing process to expedite the matter for a hearing on reconsidered issues. The Rent Program shall send the Order of Reconsideration to all parties and schedule a hearing consistent with the Order of Reconsideration within a reasonable time period.