

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Bill Lindsay

Phone: 620-6512

Meeting Date: June 21, 2017

Final Decision Date Deadline: June 21, 2017

**STATEMENT OF THE ISSUE:** Section 11.100.050 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance establishes Just Cause for Eviction requirements in the City of Richmond. Additional regulations are necessary to clarify Written Warning Notice requirements prior to termination of tenancy due to the Tenant's Breach of the Lease or Nuisance.

## INDICATE APPROPRIATE BODY

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

**RECOMMENDED ACTION:** RECEIVE draft Regulation 17-08, regarding Written Warning Notice requirements prior to termination of tenancy due to the Tenant's Breach of the Lease or Nuisance – Rent Program (Michael Roush 621-1202).

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**I-6.**

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# AGENDA REPORT

## RENT PROGRAM

**DATE:** June 21, 2017

**TO:** Chair Gray and Members of the Rent Board

**FROM:** Michael Roush, Legal Counsel

**SUBJECT:** DRAFT REGULATION REGARDING WRITTEN WARNING NOTICE REQUIREMENTS FOR TERMINATION OF TENANCY DUE TO BREACH OF LEASE OR NUISANCE

### STATEMENT OF THE ISSUE:

Section 11.100.050 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance establishes Just Cause for Eviction requirements in the City of Richmond. Additional regulations are necessary to clarify Written Warning Notice requirements prior to termination of tenancy due to the Tenant's Breach of the Lease or Nuisance.

### RECOMMENDED ACTION:

RECEIVE draft Regulation 17-08, regarding Written Warning Notice requirements prior to termination of tenancy due to the Tenant's Breach of the Lease or Nuisance – Rent Program (Michael Roush 621-1202).

### FISCAL IMPACT:

There is no fiscal impact to the City at this time.

### DISCUSSION:

#### Background

Section 11.100.050(d) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Ordinance") requires that a Written Warning Notice to Cease be served within a reasonable period of time prior to initiating a termination of tenancy if the cause for termination is Breach of Lease, Nuisance, or Failure to Give Access. The

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written warning notice must inform the tenant that a failure to cure may result in eviction proceedings, or the right to request a reasonable accommodation, and the contact number for the Rent Board. In addition, the notice must include sufficient information allowing a reasonable person to comply with the request to cease.

If termination of tenancy follows the service of a written warning notice, Section 11.100.050(f) requires that any Written Warning Notice served prior to termination of tenancy be attached to the termination notice for which it corresponds. The Ordinance does not specify how many times a Written Warning Notice to Cease must be served, and opportunity to cure the violation be provided, before the landlord may proceed to initiate the termination of tenancy.

### Purpose

Draft Regulation 17-08 provides landlords may proceed directly to terminate a tenancy when there are repeated violations of the same or different breaches of the lease or the tenant continues to commit a nuisance. In addition, Section 3(e) of the Regulation provides that a person who illegally sells a controlled substance in the rental unit or the property on which the rental unit is located, or uses the rental unit/property to further that purpose is a nuisance under California Code of Civil Procedure, Section 1161 and provides the landlord with just cause to terminate the tenancy in accordance with Section 11.100.050 of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance.

In addition, draft Regulation 17-08 establishes the requirements concerning a tenant's request to sublet a rental unit, including the landlord's right to deny the request depending on the number of occupants in the unit and the size of the unit (see Section 11.100.050(a)(2)(i)(c)).

### Proposed Policy Regarding Repeated Violations for Nuisance within 12 Months

As written, draft Regulation 17-08 also provides if the tenant creates the same or substantially similar nuisance within one twelve (12)-month period, the landlord need not serve a further Written Warning to Cease, but may give a notice to terminate the tenancy pursuant to Code of Civil Procedure §1161 for the repeated conduct.

### Proposed Policy Regarding Repeating a Different Nuisance within 24 Months

As written, draft Regulation 17-18 further provides that the first two times a tenant engages in different (or the same) conduct that constitutes a nuisance that interferes with the right of quiet enjoyment of other tenants at the property, the landlord must provide the tenant with a Written Warning Notice to Cease as described in §11.100.050(d). If within 24 months after the Landlord served the first of the two Written Warning Notices to Cease, the tenant again engages conduct that constitutes a nuisance that interferes with the right of quiet enjoyment of other tenants at the

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property, the landlord need not serve a further notice to cease, but may give a notice to terminate the tenancy pursuant to Code of Civil Procedure §1161 for the third incident .

### Substantial Damage to the Rental Unit

The draft Regulation 17-08 also establishes a requirement whereby a Written Warning Notice to Cease indicating the tenant has willfully caused substantial damage to the rental unit must give the tenant at least 45 calendar days after service of the notice to repair the damage or pay the landlord for the reasonable cost of repairing such damage.

### **DOCUMENTS ATTACHED:**

Attachment 1 – Draft Regulation 17-08, regarding Written Warning Notice Requirements Prior to Termination of Tenancy due to the Tenant's Breach of Lease or Nuisance

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**DRAFT RICHMOND RENT BOARD REGULATION 17-08**  
**Regarding Written Warning Notice requirements prior to termination of tenancy due to the**  
**Tenant's Breach of the Lease or Nuisance**

## 1. Purpose

The purpose of this Regulation 17-08 is to clarify provisions of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance concerning termination of tenancy for breach of lease or Nuisance, and the necessity of providing a written warning notices to cease.

## 2. Termination of Tenancy for Breach of Lease

(a) Regarding the tenant's right to sublease. Section 11.100.050(a)(2)(i) RMC: If (i) a tenant requests the landlord in writing to sublease the rental unit, (ii) the tenant continues to reside in the rental unit as the tenant's primary residence, (iii) the sublease replaces one or more departed tenants under a rental housing agreement on a one for one basis and (iv) the landlord fails to respond to the tenant in writing within fourteen (14) *calendar* days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord.

(1) A landlord's reasonable refusal of the tenant's written request may be based on, but is not limited to, the ground that the total number of occupants in a rental unit exceeds the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922, as described below:

- i. Every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two. Different rules apply in the case of "efficiency units." (See 1997 Uniform Housing Code Section 503(b), Health and Safety Code Section 17958.1.)
- ii. The standard shall be two occupants per bedroom plus one additional occupant.

## 3. Termination of Tenancy for Nuisance

(a) **Definition.** A nuisance, as used in this Regulation, is any conduct that constitutes a nuisance as defined in subsection 4 of Section 1161 of the Civil Code of Procedure or causing substantial damage to the rental unit. Nuisance also includes conduct by the tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance as defined in subsection 4 of Section 1161 of the Code of Civil Procedure.

(b) **Repeated Violations for Nuisance within 12 Months.** The first time a tenant engages in conduct that constitutes a nuisance or is dangerous to persons or property within any 12 month period, the landlord must provide the tenant with a Written Warning Notice to Cease as set forth in §11.100.050 (d), RMC.. If the tenant repeats the same or substantially similar nuisance, the landlord need not serve a further Written Warning to Cease, but may give a notice pursuant to Code of Civil Procedure §1161 for the repeated conduct.

# ATTACHMENT 1

- (c) **Repeating Different Nuisance within 24 Months.** After the first two times a tenant engages in different conduct, each of which constitutes a nuisance that interferes with the right of quiet enjoyment of other tenants at the property, the landlord must provide the tenant with a Written Warning Notice to Cease as set forth in §11.100.050 (d), RMC.. If within 24 months after the landlord served the first of the two Written Warning Notices to Cease, the tenant again engages in conduct that constitutes a nuisance that interferes with the right of quiet enjoyment of other tenants at the property, the landlord need not serve a further notice to cease, but may give a notice pursuant to Code of Civil Procedure §1161 for the third incident of conduct constituting a nuisance .
- (d) **Substantial Damage to the Rental Unit.** A notice that the tenant has willfully caused substantial damage to the rental unit must give the tenant at least 45 days after service of the notice to repair the damage or pay the landlord for the reasonable cost of repairing such damage.
- (e) **Illegal Use of the Rental Unit or the Property on which the Rental Unit is located.** A person who illegally sells a controlled substance in the rental unit or on the property on which the rental property is located, or uses the rental unit or the property on which the rental property is located to further that illegal purpose is deemed to have committed the illegal act in the rental unit or on the property on which the rental unit is located,, in accordance with subsection 4 of Section 1161 of the Civil Code of Procedure.
- (f) Notwithstanding sections (b) and (c) of this Regulation, a landlord shall not take any action to terminate a tenancy under Section 11.100.050 (a)(3) RMC against a victim of domestic violence as defined in Section 6211 of the California Family Code unless the victim has otherwise engaged in conduct constituting a nuisance.

#### 4. Requirement to File Written Warning Notices with the Rent Board.

- (a) Should the Landlord seek to terminate tenancy after the expiration of a Written Warning Notice to Cease, the Landlord shall file a copy of the Written Warning Notice with the Rent Board both before the notice of termination is served on the Tenant and within two business days of service.



# ATTACHMENT 1

I, the undersigned, hereby certify that the foregoing Regulation was duly adopted and passed by the Richmond Rent Board in a regular meeting assembled on June 21, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

\_\_\_\_\_  
MARIAH FAIRLEY  
Rent Board Secretary

\_\_\_\_\_  
Chair

Approved as to form:

\_\_\_\_\_  
MICHAEL ROUSH  
Rent Board Legal Counsel

State of California }  
County of Contra Costa } :ss.  
City of Richmond }

I certify that the foregoing is a true copy of **Regulation 17-08**, finally passed and adopted by the Rent Board of the City of Richmond at a regular meeting held on June 21, 2017.

\_\_\_\_\_  
Mariah Fairley, Rent Board Secretary

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