



## REGULAR MEETING OF THE RENT BOARD OF THE CITY OF RICHMOND

CITY COUNCIL CHAMBERS, COMMUNITY SERVICES BUILDING  
440 Civic Center Plaza, Richmond, CA 94804

**Wednesday, January 17, 2018**

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### **Boardmembers**

Nancy Combs  
Virginia Finlay  
Emma Gerould  
David Gray  
Lauren Maddock

***Link to Rent Board Meeting Agendas and Accompanying Materials:***

[www.ci.richmond.ca.us/3375/Rent-Board](http://www.ci.richmond.ca.us/3375/Rent-Board)

### **COMMUNICATION ACCESS INFORMATION**

This meeting is being held in a wheelchair accessible location. To request disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact Bruce Soublet, ADA Coordinator, at (510) 620-6509 at least three business days before the meeting date.

### **NOTICE TO PUBLIC**

The City of Richmond encourages community participation at public meetings and has established procedures that are intended to accommodate public input in a timely and time-sensitive way. As a courtesy to all members of the public who wish to participate in Rent Board meetings, please observe the following procedures:

**Public Comment on Agenda Items:** Persons wishing to speak on a particular item on the agenda shall file a speaker form with City staff **PRIOR** to the Rent Board's consideration of the item on the agenda. Once the clerk announces the item, only those persons who

have previously submitted speaker forms shall be permitted to speak on the item. Each speaker will be allowed up to two minutes to address the Rent Board.

Public Forum: Individuals who would like to address the Rent Board on matters not listed on the agenda or on items remaining on the consent calendar may do so under Public Forum. All speakers must complete and file a speaker's card with City staff prior to the commencement of Public Forum. The amount of time allotted to individual speakers shall be determined based on the number of persons requesting to speak during this item. The time allocation for each speaker will be as follows: 15 or fewer speakers, a maximum of 2 minutes; 16 to 24 speakers, a maximum of 1 and one-half minutes; and 25 or more speakers, a maximum of 1 minute.

Conduct at Meetings: Richmond Rent Board meetings are limited public forums during which the City strives to provide an open, safe atmosphere and promote robust public debate. Members of the public, however, must comply with state law, as well as the City's laws and procedures and may not actually disrupt the orderly conduct of these meetings. The public, for example, may not shout or use amplifying devices, must submit comment cards and speak during their allotted time in order to provide public comment, may not create a physical disturbance, may not speak on matters unrelated to issues within the jurisdiction of the Rent Board or the agenda item at hand, and may not cause immediate threats to public safety.

City Harassment Policy: The City invites public comment and critique about its operations, including comment about the performance of its public officials and employees, at the public meetings of the City Council and boards and commissions. However, discriminatory or harassing comments about or in the presence of City employees, even comments by third parties, may create a hostile work environment, if severe or pervasive. The City prohibits harassment against an applicant, employee, or contractor on the basis of race, religious creed, color, national origin, ancestry, physical disability, medical condition, mental disability, marital status, sex (including pregnancy, childbirth, and related medical conditions), sexual orientation, gender identity, age or veteran status, or any other characteristic protected by federal, state or local law. In order to acknowledge the public's right to comment on City operations at public meetings, which could include comments that violate the City's harassment policy if such comments do not cause an actual disruption under the Council Rules and Procedures, while taking reasonable steps to protect City employees from discrimination and harassment, City Boards and Commissions shall adhere to the following procedures. If any person makes a harassing remark at a public meeting that violates the above City policy prohibiting harassment, the presiding officer of the meeting may, at the conclusion of the speaker's remarks and allotted time: (a) remind the public that the City's Policy Regarding Harassment of its Employees is contained in the written posted agenda; and (b) state that comments in violation of City policy are not condoned by the City and will play no role in City decisions. If any person makes a harassing remark at a public meeting that violates the above City policy, any City employee in the room who is offended by remarks violating the City's policy is excused from attendance at the meeting. No City employee is compelled to remain in attendance

where it appears likely that speakers will make further harassing comments. If an employee leaves a City meeting for this reason, the presiding officer may send a designee to notify any offended employee who has left the meeting when those comments are likely concluded so that the employee may return to the meeting. The presiding officer may remind an employee or any council or board or commission member that he or she may leave the meeting if a remark violating the City's harassment policy is made.

## REGULAR MEETING OF THE RICHMOND RENT BOARD

### AGENDA

5:00 PM

**A. PLEDGE TO THE FLAG**

**B. ROLL CALL**

**C. STATEMENT OF CONFLICT OF INTEREST**

**D. AGENDA REVIEW**

**E. PUBLIC FORUM**

**F. RENT BOARD CONSENT CALENDAR**

**F-1.** APPROVE the minutes of the December 20, 2017, Regular Meeting of the Richmond Rent Board. *Cynthia Shaw*

**F-2.** RECEIVE letters from community members regarding the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, RMC 11.100. *Cynthia Shaw*

**G. STUDY AND ACTION SESSION**

**G-1.** RECEIVE proposed Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) Rent Board regulations and PROVIDE DIRECTION to staff. *Nicolas Traylor  
Michael Roush*

**H. REPORTS OF OFFICERS**

**I. ADJOURNMENT**

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***Any documents produced by the City and distributed to a majority of the Rent Board regarding any item on this agenda will be made available at the Rent Program Office located on the second floor of 440 Civic Center Plaza and will be posted at [www.richmondrent.org](http://www.richmondrent.org).***

# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 17, 2018

Final Decision Date Deadline: January 17, 2018

**STATEMENT OF THE ISSUE:** The minutes of the December 20, 2017, Regular Meeting of the Richmond Rent Board require approval.

## 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

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|---|--|--|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) |  |  |
| <input type="checkbox"/> Public Hearing   | <input type="checkbox"/> Regulation  | <input checked="" type="checkbox"/> Other: <u>CONSENT CALENDAR</u> |
| <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:** APPROVE the minutes of the December 20, 2017 Regular Meeting – Rent Program (Cynthia Shaw 620-5552).

AGENDA ITEM NO:

**F-1.**

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**RICHMOND, CALIFORNIA, December 20, 2017**

The Regular Meeting of the Richmond Rent Board was called to order at 4:00 PM.

**PLEDGE TO THE FLAG**

**ROLL CALL**

**Present:** Boardmembers Combs, Finlay and Maddock.

**Absent:** Chair Gray and Vice Chair Gerould.

A motion made by Boardmember Combs to nominate and elect Boardmember Finlay as temporary Chair, seconded by Boardmember Maddock passed unanimously with Chair Gray and Vice Chair Gerould absent.

**STATEMENT OF CONFLICT OF INTEREST**

None.

**AGENDA REVIEW**

Item G-3 was removed from Consent Calendar for discussion under Rent Board as a Whole.

**INTRODUCTIONS FROM RENT PROGRAM STAFF**

**PUBLIC FORUM**

Cordell Hindler distributed fliers inviting the Board to attend community events in the month of December. He also invited the board to the Library Commission meeting in the month of January. He thanked the Rent Board personally for allowing him to come to hear more about rent control at the Community Workshops held in December. He commended the board for their great work and training on the requirements of the Brown Act.

Mario Cuellar requested more information on the rent ordinance and rules.

**RENT BOARD CONSENT CALENDAR**

On motion of Boardmember Combs, seconded by Boardmember Maddock, the item(s) marked with an (\*) were approved with Chair Gray and Vice Chair Gerould absent.

\*G-1. Approve the minutes of November 15, 2017, Regular Meeting of the Richmond Rent Board.

\*G-2. Receive letters from community members regarding the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, RMC 11.100.

G-3. Receive and recommend to the Richmond City Council proposed amendments to Chapter 11.102 of the Richmond Municipal Code, and a revised resolution, concerning relocation requirements for Tenants of residential Rental Units. This item was continued from the November 15, 2017 meeting. **This item was moved to the end of the Agenda for discussion.**

**REGULATIONS**

H-1. The matter to adopt Regulation 17-08, regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating a Nuisance. A presentation was made by Michael Roush, Legal Counsel. The presentation included a statement of the issue, background, proposed definition of a reasonable period of time, a general eviction timeline where a tenant breaches the lease or creates a nuisance, a proposed exception for criminal activity, a proposed definition of criminal activity, a general eviction timeline where the tenant commits a violent or drug-related crime, and a recommended action. Discussion ensued. The following individuals gave comments: Francisco Torres, Melvin Willis, Cordell Hindler, and Sarah Aguirre. A motion by Vice Chair Gerould, seconded by Boardmember Combs to adopt Regulation 17-08 regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating a Nuisance with the change that a landlord must provide the tenant five business days to cure a breach of lease or nuisance before serving an eviction notice required under state law. The motion passed by the following vote: **Ayes:** Boardmembers Combs,



## ITEM F-1 ATTACHMENT 1

Finlay, Maddock and Vice Chair Gerould (*present as of 4:45 PM*). **Noes:** None. **Abstentions:** None. **Absent:** Chair Gray.

H-2. The matter to adopt Regulation 17-09, regarding the right to raise the Rent up to the Maximum Allowable Rent level, also known as “banking” rent increases, with the limitation, such that the net rent increase in any 12-month period as a result of the application of the current plus any deferred or “banked” AGAs does not exceed five percent (5%) plus the current AGA. This Regulation (17-09) would not become effective until September 1, 2018. This item was continued from the November 15, 2017 meeting. A presentation was made by Nicolas Traylor, Executive Director. The presentation included information about the recommended action. Discussion ensued. A motion made by Vice Chair Gerould, seconded by Boardmember Combs, to adopt Regulation 17-09 regarding banking. The motion passed by the following vote: **Ayes:** Boardmembers Combs, Finlay, Maddock and Vice Chair Gerould. **Noes:** None. **Abstentions:** None. **Absent:** Chair Gray.

### RENT BOARD AS A WHOLE

I-1. The matter to (1) receive an update from staff concerning billing and collection of the Fiscal Year 2016-2017 and Fiscal Year 2017-18 Rental Housing Fees; and (2) approve by motion a Reimbursement Agreement between the Rent Board and the City of Richmond was presented by Executive Director Nicolas Traylor and Deputy Director Paige Roosa. The presentation included information about the purpose of the reimbursement agreement, background, the status of rental housing fee collection, the Rent Program Department financial summary, revised terms, and the recommended action. Discussion ensued. A motion by Boardmember Finlay, seconded by Vice Chair Gerould, to approve the reimbursement agreement between the Rent Board and City of Richmond. The motion passed by the following vote: **Ayes:** Boardmembers Combs, Finlay, Maddock and Vice Chair Gerould. **Noes:** None. **Abstentions:** None. **Absent:** Chair Gray.

## ITEM F-1 ATTACHMENT 1

I-2. The matter to (1) receive an update from staff concerning recent community workshops regarding setting standards for changes in the maximum allowable rent; (2) receive a memorandum from Kenneth Baar regarding the Maintenance of Net Operating Income (MNOI) fair return standard; and (3) direct staff to prepare implementing regulations utilizing the MNOI standard for the Rent Board's consideration in January and February 2018 was presented by Dr. Kenneth Baar and Executive Director Nicolas Traylor. The presentation included information regarding the purpose, the background, community engagement, fair return basics, fair return basics according to the Courts, possible fair rent standards, an illustration of MNOI standard, alternative fair return standards, next steps and the recommended action. Discussion ensued. The following individuals gave comments: Marilyn Langlois and Sherry Zallabach. A motion by Vice Chair Gerould, seconded by Boardmember Maddock, to direct staff to prepare implementing regulations utilizing the MNOI standard for the Rent Board's consideration in January and February 2018. The motion passed by the following vote: **Ayes:** Boardmembers Combs, Finlay, Maddock and Vice Chair Gerould. **Noes:** None. **Abstentions:** None. **Absent:** Chair Gray.

I-3. The matter to receive the 2018 Rent Program Community Workshop Calendar was presented by Executive Director Nicolas Traylor. Discussion ensued. No action was taken on this item.

G-3. The matter to receive and recommend to the Richmond City Council proposed amendments to Chapter 11.102 of the Richmond Municipal, and a revised resolution, concerning relocation requirements for Tenants of residential Rental Unit was presented by Legal Counsel Michael Roush. The presentation included the purpose of a revised Relocation Ordinance, background, an overview of the existing ordinance and the proposed policy amendments. Discussion ensued. The following individuals gave comments: Alana Clark and Marilyn Langlois. A motion by Boardmember Finlay seconded by Boardmember Combs to recommend to the Richmond City Council the proposed amendments to Chapter 11.102 of the Richmond Municipal Code and a revised resolution concerning relocation requirements for residential rental units. The motion passed by the following vote: **Ayes:**

**ITEM F-1  
ATTACHMENT 1**

Boardmembers Combs, Finlay, Maddock and Vice Chair Gerould. **Noes:** None. **Abstentions:** None. **Absent:** Chair Gray.

**REPORTS OF OFFICERS**

Vice Chair Gerould and Boardmember Finlay recommended that the regularly scheduled Rent Board meeting start at 5:00 PM instead of 4:00 PM, every third Wednesday of the month. Vice Chair Gerould made a motion seconded by Boardmember Maddock. The motion passed with Chair Gray absent.

**ADJOURNMENT**

There being no further business, the meeting adjourned at 7:00 PM.

Cynthia Shaw, Ramona Howell  
Staff Clerks

(SEAL)

Approved:

\_\_\_\_\_  
David Gray, Chair

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# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 17, 2018

Final Decision Date Deadline: January 17, 2018

**STATEMENT OF THE ISSUE:** Members of the community have sent letters to the Rent Board and Rent Program staff members. Staff members recommend letters that do not pertain to a specific item on the Rent Board agenda be included as consent items for consideration by the Rent Board.

## 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

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|---|--|--|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) |  |  |
| <input type="checkbox"/> Public Hearing   | <input type="checkbox"/> Regulation  | <input checked="" type="checkbox"/> Other: <u>CONSENT CALENDAR</u> |
| <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:** RECEIVE letters from community members regarding the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, RMC 11.100 – Rent Program (Cynthia Shaw 620-5552).

AGENDA ITEM NO:

**F-2.**

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## ITEM F-2 ATTACHMENT 1

Patrick & Maria Geoghegan, 453 19<sup>th</sup> St Richmond CA

November 12, 2017

RICHMOND RENT BOARD—Standard Rent Regulation & how to implement

Dear Richmond Rent Board,

We have been landlords for over 30 years in Richmond. The 8-unit (all 2 bdrms) apartment building at 453 19<sup>th</sup> St, is the building effected by the rent regulations. I'd like to provide you:

- some history regarding us..as landlords (historically low rents),
- our view on what the standard 'beginning' rent should be,
- our view on what percent below market is 'fair', and
- our view on how the increase should be implemented.

### ***History***

We have owned this building for over 30 years. We have had 1 tenant (Section 8) there for 30 years, 5 tenants from 10-15 years and the final 2 tenants from September 2015. We have consistently held our rents low, as we want long term, happy tenants. We fix things when requested by our tenants', have kept up the exterior, and in fact, have recently replaced the full kitchen & flooring in one of our long time tenant unit. (We want to do that to all of the units, but are delaying until we find out if we are able to raise the rents back to a fair rate.) Also, when the last recession hit, we reduced our rents because it was the right thing to do.

Beginning 3 years ago, we started to raise the rents, as they were so low.

In January 2015, we started to raise our rents from \$1,050/mo to \$1,150/mos.

In January 2016, we raised them to \$1,275/mos.

In September 2016, we raised them to \$1,500/mos.

We received no complaints from our tenants regarding the rent raises because they knew that the rent at \$1,500 was still well below market.

### ***Standard beginning rent***

We feel it would be fair to have the rent's rolled back to the 2015 HUD fair market rent plus each allowable rent increase already implemented for 2016 & 2017 or approximately 7%. The HUD website is:

[https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2015\\_code/2015summary.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2015_code/2015summary.odn)

The 2015 HUD fair market rent, for a 2 bedroom rent was \$1,585, plus the allowable rent increase, or \$1,695.

## ITEM F-2 ATTACHMENT 1

Note that the 2017 HUD fair market rent is \$2,173.

### ***What percent below market is fair?***

Let's look at the percentage below market if we are to use the 2017 HUD rent & the 2015 HUD rent (adjusted for allowable rent increases for 2016 & 2017) for the calculation. It would be  $1,695/2,173$  or 78%, translating to 22% below market. We feel 20% would be more acceptable. But are willing to begin here in good faith.

### ***How the increase should be implemented?***

Most of our unit rents are \$1,225. To reach the \$1,695 (plus, annual allowed increases), we suggest implementing a 15% increase annually until it reaches the full rent. That will take about 3 years.

We thank the Richmond Rent Control Board for allowing us to provide input on the implementation of standard rent regulations.

Sincerely,

Patrick & Maria Geoghegan



## ITEM F-2 ATTACHMENT 2

**From:** Doss & Felix [[mailto:doss\\_felix@yahoo.com](mailto:doss_felix@yahoo.com)]  
**Sent:** Tuesday, December 12, 2017 1:52 PM  
**To:** Rent Control  
**Subject:** Attention: board members

To: Nicolas Traylor, Paige and the Richmond Rent Board  
From: Ray Felix (owner 2719 Nevin 4-plex and other SFHs) and Jerrilee Doss (wife)

Mr. Traylor,

We very much appreciate being included in the brainstorming process for Richmond's Rent Board Regulations. We did not get to meet you in person at the December 4th meeting, but we were there.

We met some of the other landlords. None of the people in our group appeared to be greedy slumlords. They were all reasonable people caught in a bind or a potential bind. All have their own story. Each has his/her own special circumstances. Although we personally believe in the laws of supply and demand for setting the market, we now have rent control for the foreseeable future. In some cases the renters (of us who had historically low rents) may find themselves with higher rents as we have been given a wake-up call and are now finding ourselves negotiating for our rights.

You may hear Access Property Management's name coming up often. We have used them since the 80's. Jan and Ernie manager 350 units (per Jan's comment at another meeting we attended). For sure Jan and Ernie are not greedy. They get 6% of the gross. If they were greedy, they would have pushed us to higher rents. I think they like tenants to stay and stay. They have never suggested to us to raise rents. We have always had to initiate such. Since we both had to retire earlier than expected, we have been managing the properties ourselves mostly. Access collects the rents. Sometimes Access sends a repair person. Sometimes they send out letters. We are hands-on landlords. We have done much of the work at the properties over the past 30+ years. As we are getting older, the labor costs will rise as we should likely stop climbing ladders and getting on the roof at some point. Our costs will be much higher soon.

The rent roll back to 2015 is plainly unfair. I believe that you believe this too. This is why you have included the **historically low rents** in your main topics of conversation. Whereas we may not wish to jack up the rent to market rate/ our maximum allowable, we should be able to do so. We may wish to raise the rent in semi-annual/annual increments to try to bridge the gap - in addition to the 3% COLA.

1. We believe maximum allowable rents should be fair and level for everyone. The landlords we met were not greedy. They were "nice" people. They have tried to offer a good place to live to lots of people. They were just unhappy about getting stuck with rents too low and properties unsellable because rents control the asset value.
2. There are many ways to pick a standard by which to calculate. Google search shows sites like [www.rentjungle.com](http://www.rentjungle.com) show historical data for Richmond rent trends. It gives rents for 1 BR, 2BR and all beds averaged out. We have a print out with data from 2011 to 2017 by month. It shows June 2015 = 1BR \$1590, 2BR \$1998, and all BR \$1893. Another suggestion was using Section 8 pricing. Historically, Section 8 was low, now it is competitive. As we said, setting the base rent of \$2000 (or another number) for a 2 BR unit does not mean this group of landlords will instantly raise the rent and displace our tenants. If history is a predictor, it will be a long time for us to get there. We have relationships with our tenants. The higher base allows our assets to be valued

## ITEM F-2 ATTACHMENT 2

fairly and thus be sellable at a fair price should we decide to sell them. If we sell them, you get a higher tax base. It is the way things work.

3. We landlords don't want you to spend months and millions of dollars coming up with a fair number by hiring some consultant. I am sure some of us would be happy to gather information for you at no cost. Trying to calculate a \$/sq ft + amenities + nearness to transportation + nearness to shopping will prove to be a nightmare calculation. The tenants have always been aware of such and base their decision to rent or not rent on these items. The base rent should be simple. There will be outliers, of course, but I don't think you can calculate all of these.

**Pass through of costs** is a necessary line that should be included in all fees, licenses, taxes, bonds that are for the properties. There is no reason these should not be just part of our general budget. It should not be a way for the city or state to get more revenue from a select few. If a bond gets voted in, it should be equally split to all parties enjoying the upgrades. We were paying 7 school bond funds for every property. We sent out kids to St. David and Salesian(private Catholic). We got no use out of the bonds. We are happy to pay our fair share. We believe in supporting public schools and infrastructure, but we should not pay the share for all the families we house. We already pay taxes on the income.

**Fair Rate of Return** and **Capital/Building improvements** for upgrades and repairs is necessary piece to rent controlled units. Without this we will have difficulty maintaining a good standard of living for the tenants as well as ourselves. Fair rate of Return is meaningless if the rents are stuck below a fair level. We will just fall further and further behind. We will be unable to sell the building at a fair price. Our kids may be stuck with an albatross.

**Increases and Decreases in Services and Habitability** are controls for slumlords. We are Johnny-on-the-spot landlords. Most of our tenants have our home or cell number. They often bypass the call to Access Property Management. We fix leaks, clogs, appliances, etc within hours if possible. For sure we have made a call to schedule a repair within hours. The coin op laundry on site has a phone number posted. Tenants schedule the repair themselves whenever there is an issue. Our tenants never want to move. We had our last vacancy in mid 2015 when we had to ask a Section 8 tenant to leave. She had not been current on her portion of the rent for years. She had a drug selling grandson who was making life awful for the entire building. We had to gut their apartment. They had vandalized the plumbing. The filth was intolerable. The smell was intolerable. We left the unit open a little extra long as we needed to redirect the drug traffic. Knock, knock, knock "Is Crystal home?" We worked with Richmond Police, they were very helpful. We had multiple people begging to move in - never had to advertise the unit. This part of the rules should have no bearing on us or any of the "nice" landlords we met.

**SUBLETTING** - Tenants should not be allowed to sublet without landlords knowledge or consent. We have no way of providing security to the other tenants if we don't know who lives there. We have no contact info for subletting individuals. We would not be able to inspect. This would decrease the ability to maintain a safe, pleasant and healthy environment for all. It is also not fair if a tenant pays us \$1000 and sublets a unit for \$2000. There could be 12 people in there. We pay for water and garbage. Other tenants and their guests have to scramble for parking. They have to deal with noise. They share laundry facilities. It would make our good tenants lives' miserable. Our tenants had to deal with the drug dealing relatives of our previous section 8 tenant. It was awful. There was trash. There was urine and feces between cars in the carport. The

## ITEM F-2 ATTACHMENT 2

mail carrier commented that she was "tired of stepping in piss". We found used condoms and clothes in our gas meter alcove. There was noise and traffic. There were babies and baby daddies and baby mommas dragging kids through this awful environment. There was theft and vandalism. There were people sleeping in the laundry room. They stole clothes. They stole the quarters in the machines. Once they used a sawzall to cut the top off the machine so they could get to \$20 in quarters. \$500 damage and a couple of hours work for \$20. The tools to do the job must have been stolen as they cost more than the profit. The police were helpful. We were diligent. The tenants all have nice neighbors now. We owe it to ourselves and our other tenants to have some control.

Many months ago we looked on Craigslist and realized we were \$60,000/yr in rents below the neighbors/nearby available housing units . We do not wish to put our renters out. We have relationships with these people. We don't plan to move the rents to market rate all at once or in the foreseeable future, but things must be fair. If there is to be rent control, the base rent should be equivalent for all. We should be able to make our decision of where we give discounts just as we make the decisions where/when/if we donate our money.

If you go in our units, some look great and some look scary. The difference is tenant housekeeping /abilities/understanding of maintenance. All our properties have good roofs, good drainage, good windows, good infrastructure, good security and as much curb appeal as we can manage. All of our tenants moved into fresh paint, new or clean almost new carpet, new or almost new clean appliances, nice window coverings, freshly changed locks, etc. Some people are clean and tidy, some people are not. We have been cited by the inspectors for tenant caused housekeeping issues. We try to guide the tenants . Last month we had a new frig delivered to a dirty unit/long term tenants. We went before the delivery men came. Under and behind the frig had not been cleaned since the unit was rented. We got down on hands and knees and scrubbed the area clean while the tenants looked on. They had forgotten how the original floor looked and that it cleaned up to look nice. We showed them how to get the grubby hand prints off the walls. We left them cleaning supplies. Their carpet is about 2 years old (we changed it for them while they occupied the unit). It has never been vacuumed and has lots of food spills as they watch TV while they eat in the living room. We do the best we can. We have had tenants ruin nearly new appliances many times by not understanding the basics. We have had vanity tops melted by unattended cigarettes in non-smoking units. Batteries are continually removed from smoke and CO monitors. We are changing to the sealed units. We try to assist and educate. Essentially, it feels like we are head-of -household to many groups of people. We should not have to subsidize their rents as well based on some arbitrary date or rule.

Thanks for including us,

Jerrilee Doss and Ray Felix , 510-236-7430, [doss\\_felix@yahoo.com](mailto:doss_felix@yahoo.com)

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# AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 17, 2018

Final Decision Date Deadline: January 17, 2018

**STATEMENT OF THE ISSUE:** Section 11.100.070(c) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") provides Tenants and Landlords with an opportunity to submit a petition to the Rent Board for an upward or downward adjustment of the Maximum Allowable Rent. The following Section 11.100.070(d) specifies the Board shall enact rules and regulations governing hearings and appeals of individual rent adjustments. To that end, in partnership with Dr. Stephen Barton, Rent Program staff members have prepared draft procedural regulations for the Rent Board's consideration.

## 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

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

**RECOMMENDED ACTION:** RECEIVE proposed Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) Rent Board regulations and PROVIDE DIRECTION to staff – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

AGENDA ITEM NO:

**G-1.**

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# AGENDA REPORT

**DATE:** January 17, 2018

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

**FROM:** Nicolas Traylor, Executive Director  
Michael Roush, Legal Counsel

**SUBJECT:** DRAFT PETITION PROCESS AND HEARING PROCEDURE REGULATIONS

## **STATEMENT OF THE ISSUE:**

Section 11.100.070(c) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance ("Rent Ordinance") provides Tenants and Landlords with an opportunity to submit a petition to the Rent Board for an upward or downward adjustment of the Maximum Allowable Rent. The following Section 11.100.070(d) specifies the Board shall enact rules and regulations governing hearings and appeals of individual rent adjustments. To that end, in partnership with Dr. Stephen Barton, Rent Program staff members have prepared draft procedural regulations for the Rent Board's consideration.

## **RECOMMENDED ACTION:**

RECEIVE proposed Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) Rent Board regulations and PROVIDE DIRECTION to staff – Rent Program (Nicolas Traylor/Michael Roush 620-6564).

## **FISCAL IMPACT:**

The cost to administer the Rent Adjustment Petition process is accounted for in the Fiscal Year 2017-18 Rent Program Budget. The proposed draft regulations do not provide for a filing fee at this time, but allows the Rent Board to establish such a fee in the future if deemed appropriate.

**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).

In the coming months, the Rent Board will establish standards for allowing individual rent increases and decreases due to a rental unit’s conditions, historic rental rates, operating costs, and other reasons.

Before the Rent Board considers the substantive fair return and other standards for determining changes in the Maximum Allowable Rent, staff members recommend the Board consider and adopt regulations governing the petition process and hearing procedures.

Overview of Procedural Regulations

The table below contains a brief summary of the topics addressed in the proposed draft procedural regulations (Attachment 1).

<b>Subchapter A – Petition Process (DRAFT)</b>	
<b>Section (DRAFT)</b>	<b>Topic (DRAFT)</b>
801	Acknowledges petition process
802	Addresses situations where a petition has been filed for the same Rental Unit within the previous 12 months
803	Establishes that there is no fee for filing a petition, but that the Board may institute such a fee at a later date
804	Establishes that the proper filing of the petition is the responsibility of the petitioner
805	Establishes the procedure for filing rent increase and decrease petitions
806	Establishes standards for the acceptance of supplemental information after the petition has been filed
807	Defines who is a party to a petition
808	Specifies how opposing parties and the Board are to be notified that a petition has been filed
809	Sets forth a time period within which a party wishing to object to the petition may do so within 21 days of the mailing of the notice required in Section 808
811	Provides that all Landlord petitions pertaining to Tenants in the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate
812	Confidentiality standards for documents filed in connection with an individual rent adjustment
813	Addresses instances meriting an expedited hearing



**ITEM G-1**

<b>Subchapter B – Hearing Procedure (DRAFT)</b>	
<b>Section (DRAFT)</b>	<b>Topic (DRAFT)</b>
821	General principles for hearings
822	Powers of the Hearing Examiner
823	Evidence and Standard of Proof
824	Establishes that the Board may hold a hearing on any individual rent adjustment petition without the petition being first heard by a Hearing Examiner
825	Requires that a notice of the time, date, and place of the hearing shall be mailed to all parties no later than ten days before the scheduled date of the hearing
826	Provides for a continuance of the hearing under specific circumstances
827	Situations or interests that would disqualify a Hearing Examiner or Board Member from taking part in a hearing or appeal
828	Establishes that a Hearing Examiner may by order or subpoena require any necessary documentation from any party
829	Standards for stipulations
831	Requires that there be no communications regarding any pending case outside of the hearing between the hearing examiner and any party, representative, or witness in any case pending before the examiner before the examiner has completed the written decision in that case
832	Permits the parties to make a prehearing agreement. Any agreement must be made on the record and tape recorded.
833	All hearings shall be open to the public
834	Rights of parties to provide evidence and receive assistance from professionals
835	Describes what is included in the hearing record
836	Provides that the record shall be available for inspection or copying by any person
837	Provides the Board shall send a notice of the hearing examiner's decision to all parties to the hearing.
838	The hearing examiner's decision shall be the final decision of the Board in event no appeal is made
841	Right of any party to appear
842	Describes the timeline and process for submitting an appeal
843	Establishes that there is no fee for filing an appeal, but that the Board may institute such a fee at a later date
844	Establishes that the Board shall take final action on any rent adjustment petition within 120 days following the date of proper filing
845	Specifies the conditions for obtaining an individual rent adjustment
846	Provides requirements for the rent increase notices following the granting of individual rent increases

## ITEM G-1

847	Clarifies the effective date for rent decreases
848	Allows for the hearing examiner to notice and conduct a hearing if there is a dispute among any of the parties about compliance with a decision
849	Allows the Rent Board or Executive Director to initiate a hearing after an investigation has resulted in a determination that there may be substantial violations of the Ordinance
851	The Rent Program does not have an escrow process, but one may be established
852	Establishes standards to be applied to escrow determinations
853	Requires the deposit of disputed rents into an escrow account pending the hearing
854	Requires the establishment of escrow accounts pending appeal
855	Specifies that a Tenant's acceptance of a full refund of rent overcharges is deemed to have waived the right to appeal the amount of the refund and notwithstanding a Tenant's appeal of the hearing examiner's decision, the landlord's tender of the full amount of rent overcharges shall constitute compliance with the refund order
856	Addresses disbursement of funds held in an escrow account
857	Provides that a Tenant's deposit of rent into an escrow account shall be a defense to an action brought by the Landlord for nonpayment of rent.

### Community Engagement

Regulations governing the rent adjustment petition process 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 any of the following four broad topic areas:

1. Increases in operating expenses
2. Increases or decreases in space, services, or habitability
3. Capital improvements
4. Historically low rents

A summary of community feedback gathered in each of these subject areas is contained in Attachment 2.

A copy of the draft procedural regulations for the Board's consideration were posted on the Rent Program website and a listserv message was sent with instructions for submitting comments on January 5, 2018. As of January 11, 2018, no comments had been submitted by community members concerning the procedural regulations.

## ITEM G-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.

### Proposed Timeline and Next Steps

<b>Proposed Date</b>	<b>Event</b>
January 17, 2018 – Rent Board Meeting #1	Rent Board considers procedural regulations
Mid-January 2018	Public review period begins; staff hold review sessions with community members
January 24, 2018 – Rent Board Meeting #2 ( <i>Special Meeting</i> )	Rent Board considers substantive regulations; possible adoption of procedural regulations
Late February 2018	Public review period ends; feedback incorporated; Hearing Examiner onboarded
February 21, 2018 – Rent Board Meeting #3	Rent Board considers additional substantive regulations
February 28, 2018 – Rent Board Meeting #4 ( <i>Special Meeting</i> )	Rent Board adopts regulations; first hearings are scheduled

### **DOCUMENTS ATTACHED:**

Attachment 1 – Draft Proposed Subchapter A (Petition Process) and Subchapter B (Hearing Procedure) Rent Board Regulations

Attachment 2 – Summary of Community Feedback from December 4, 2017, and December 9, 2017, Community Workshops

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**Subchapter A. Petition Process**

801. Petitions

(A) Any landlord or tenant seeking an individual adjustment of the maximum allowable rent under Section 11.100.070 of the Ordinance must file a petition in accordance with the procedures set forth in this Chapter.

(B) The petitioner must attach to the petition documentation that is adequate to establish eligibility for the rent adjustment that is requested. The necessary documentation will vary according to the petition and is specified in the appropriate regulation and in the petition form. If the necessary documentation is unavailable, the petitioner's verification of the petition or declaration under penalty of perjury may substitute for the unavailable documentation. It is the policy of the Rent Board that each party submit all supporting evidence as early as possible prior to the hearing. The hearing examiner may refuse to accept documentary evidence at the hearing unless there is good cause for petitioner's failure to submit it prior to the hearing.

802. Previous Recent Hearing

Notwithstanding any other provision of this Chapter, the Board or the Executive Director or their designee may refuse to hold a hearing and/or grant an individual rent ceiling adjustment for a rental unit if an individual hearing has been held and decision made with regard to the recent ceiling for such unit within the previous twelve months.

803. No Petition Filing Fee

There shall be no fee for filing a petition for individual adjustment of the maximum allowable rent. The Board may institute such a fee at a future date, with any waivers and reductions that it deems appropriate.

804. Proper Filing of the Petition

(A) Proper filing of the petition is the responsibility of the petitioner. Provided that the requirements of Regulations 804 (Proper Filing of the Petition) and 805 (Acceptance of Petitions) are satisfied, a petition is deemed properly filed on the date it is received by the Board if it is acceptable.

Board staff will make a preliminary review of each petition after it has been submitted. Petitions that are not signed by the petitioner, illegible, incomprehensible, erroneously completed, incomplete, lack a proof of service on the opposing party or for which the required fees have not been paid will not be considered acceptable.

(B) No landlord petition for an individual rent adjustment will be accepted for filing unless the unit for which the adjustment is requested has been properly registered and all rental increase and change of terms of tenancy notices filed with the Rent Board for at least 30 days. A unit is

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considered properly registered only if the completed registration statement has been filed with the Board, and the registration fee (plus any late fee) has been paid in full.

(C) A petition by a former tenant pursuant to these Regulations shall be commenced within three years from the date the tenant vacated the unit in question.

(D) No individual rent adjustment proceedings will take place for petitions that are not properly filed. The procedures for determining proper filing and allowing an unacceptable petition to be corrected are set out in Regulation 805 (B) (4) and (C) (4).

805. Petition and Noticing Procedures

(A) For rent increase petitions, the following procedure applies:

(1) Rent increase petitions may be filed under the following regulations: 8XX (Fair Return), 8XX (Capital Improvements), 8XX (Change in Space or Services/Code Violations), 8XX (Occupancy Level), 8XX (Debt Service), 8XX (Restoration of Annual General Adjustment), and 8XX (Historically Low Rent).

(2) A copy of the rent increase petition and, except as provided in Regulation 8XX (Capital Improvements), supporting documentation must be served on the tenants of all units affected by the petition.

(3) The landlord shall file with the Board the original petition, two copies of the documentation required by Regulation 801 and by the Regulation pursuant to which the Petition is filed, and a proof of service by first-class mail or in person of the petition and documentation on each affected tenant. The landlord may also file an Agreement of Parties and/or Waiver of Right to Hearing.

(4) Board staff shall review the petition and supporting documentation to determine whether they conform with Board regulations and within five (5) working days shall either mail notice to the landlord that the petition is not acceptable in its current form, with an explanation of its defects (pursuant to Regulation 806 Acceptance of Petitions) or mail a Notice to Opposing Parties to the tenants and landlord, as provided in Regulation 809 (Notice to Opposing Parties and Board). For petitions filed pursuant to Regulations 8XX (Fair Return), the review period shall be fifteen (15) working days. If a petition is found unacceptable, the landlord may refile at any time.

Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor. A landlord may, at any time prior to submission of the matter for an administrative decision, request that a hearing be held.

(5) The notice to the tenant shall include a notice that the tenant has a right to object to the petition, and that if the tenant does not object within twenty-one (21) days of the mailing of the notice, or if the tenant's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be increased by the applicable amount, based on the information in

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the landlord's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition.

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 821 (Hearing), unless no tenant files an objection within the time allowed, the landlord has not requested a hearing and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

(B) For tenant petitions, the following procedure applies:

(1) Tenant petitions may be filed pursuant to 8XX (Change in Space or Services/Code Violations), 8XX (Occupancy Level), 8XX (Overcharges) and Rent Withholding Petitions pursuant to Chapter YY.

(2) A copy of the tenant petition and supporting documentation must be served on the petitioner's landlord.

(3) The tenant shall file with the Board the original petition, two copies of the documentation required by Regulation 801 and by the Regulation pursuant to which the petition is filed, and proof of service by first-class mail or in person of the petition and documentation.

(4) Board staff shall review the petition and supporting documentation to determine whether they conform to Board regulations and within five working days shall either mail notice that the petition is not acceptable in its current form, with an explanation of its defects (pursuant to Regulation 805 Petition and Noticing Procedure) or mail a Notice to Opposing Parties to the landlord and tenants, as provided in Regulation 808 (Notice to Opposing Parties and Board). If a petition is unacceptable, the tenant may refile at any time. Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor.

(5) The notice to the landlord shall include a notice that the landlord has a right to object to the petition, and that if the landlord does not object within twenty-one (21) days of the mailing of the notice, or the landlord's objection does not specify one or more grounds listed in the notice, the rent for the tenant's unit may be decreased by the applicable amount, based on the information in the tenant's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 821 (Hearing), unless neither the landlord nor the tenant requests a hearing within the time allowed and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

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(C) The time limits set forth in this section will prevail over any other time limits set out elsewhere in these regulations.

806. Supplemental Information

(A) The petitioner shall notify the Board and each opposing party of any material change in the information set forth in the petition, especially a change in the identity of any opposing party, as soon as possible prior to the hearing. When there is a change in the opposing party, the petitioner shall serve the new party in accordance with Sections 805 (Petition and Noticing Procedures). Notice and proof of service shall be in accordance with Section 809 (Notices to Opposing Parties and Board). The new party shall thereafter be provided by the Rent Board with notice of the right to object to the petition.

(B) Changes in or additions to the information set forth on the petition may be grounds for a continuance, and may constitute good cause for delaying final Board action under Section 8XX (Time for Decision) of these regulations.

(C) The party responding to the petition shall notify the Board and each opposing party of any material change in the information set forth in the response to the petition, including any additional objections, as soon as possible prior to the hearing.

807. Parties

Parties are the landlord of the affected property, the tenants in each affected rental unit (with all the tenants in one unit constituting one party), and any representatives designated pursuant to Section 834 (Rights of Parties). The person listed as the landlord in a tenant petition for rent adjustment shall be the landlord party, unless the Board is notified to the contrary.

808. Notices to Opposing Parties and Board

(A) Manner of Notice. Notice(s) to opposing parties shall be served by first-class or certified mail, or by personal service on the party or the party's representative of record. Personal service shall be performed according to state law. Notices to the Board shall include a proof of service that proper notice was given to the opposing parties, by means of a written declaration by the server under penalty of perjury, stating the names and addresses of parties served and the date and manner of such service.

(B) Notice after Petition Filed. The Board shall notify the opposing parties of the filing of a petition and send each opposing party a response form that includes notice that the party has a right to object to the petition, a statement of possible objections, notice that the party's failure to object within the time specified may constitute a waiver of the right to have a hearing on objections to the petition, and a brief description of the hearing process.

(C) Other Notices. The Board shall send a copy of all notices, and parties shall send a copy of all documents or communications filed with the Board after the filing of the initial petition, except



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for documents or communications which are filed during the bearing or are confidential, to each party.

809. Response to Petition

(A) A party wishing to object to the petition may do so on the form provided within twenty-one (21) days of the mailing of the notice required under Section 808 (B) (Notice after Petition Filed). Failure to respond may constitute a waiver of the respondent's right to object to the petition. Notwithstanding a party's failure to respond, no petition for an individual rent adjustment shall be granted unless the adjustment is authorized by these regulations and supported by a preponderance of the evidence.

(B) Response to Petitions Filed for Violations of Rent Ceiling. In response to a petition filed solely on the basis of violations of rent ceilings, the landlord may defend as to the issue of violations of rent ceilings, but may not counterclaim for an increase of the lawful rent ceiling. To make such counter-claims, the landlord must file a separate petition in accordance with Chapter 8, and Section 802 shall not prevent such a petition from being accepted.

810. RESERVED

811. Consolidation

(A) All landlord petitions pertaining to tenants in the same building and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

(B) In their discretion, the Board or the Hearing Examiner may consolidate petitions pertaining to different buildings on the same property or different properties of the same landlord.

812. Confidentiality

(A) Documents filed in connection with an individual rent adjustment proceeding shall be public records unless a party receives a determination by the hearing examiner that a particular document shall be confidential. For any such determination of confidentiality to be made it must be demonstrated that the document in question is exempt under the California Public Records Act (Government Code Section 6250 et seq) or that the public interest served by not making the document public clearly outweighs the public interest served by disclosure of the document. Unless otherwise specified by the hearing examiner, documents determined to be confidential will be available for inspection by the opposing party but not by the general public.

(B) A party seeking a determination that: a particular document shall be treated as confidential shall make such a request in writing. The request shall be made at the time that the document in question is offered as evidence or is otherwise required to be produced. The examiner may determine that only a portion of the document is to be treated as confidential, and may make such rulings regarding disclosure to both the opposing party and the general public as are consistent with this Section. The request and the ruling thereon shall be included in the record.

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813. Expedited Hearings

(A) The Rent Board recognizes that consistency in rulings by the Rent Board and the courts is desirable. Therefore, in order to provide consistency of decisions in cases where both a Rent Board petition and an unlawful detainer action have been filed, the purpose of this Regulation is to ensure that the Rent Board rules on issues which are involved in petitions before it and in unlawful detainer cases prior to the Court ruling on the same issue.

B. Priority in the scheduling of hearings and in the issuance of decisions shall be given to pending petitions and appeals involving rental units on which eviction proceedings have commenced. An eviction is deemed to commence when either a 3 or 30 day notice to quit is served. A party may request that a petition or an appeal be given priority by filing a request to expedite, accompanied by a copy of either the notice to quit or the unlawful detainer complaint with the Rent Board and serving a copy of the same on the opposing party.

814 – 820. RESERVED

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**Subchapter B. Hearing Procedure**

821. Hearing

It is the policy of the Rent Board that all petitions and objections be decided on their merits, consistent with due process of law and orderly administrative procedures. The regulations of this Chapter are intended to insure that each party is given notice of the grounds for a petition and all objections thereto in advance of the hearing so that all parties will be prepared to present their case at the hearing. Accordingly, the hearing shall be limited to the issues raised by the petition and the objections filed thereto, unless the hearing examiner determines that, in the interest of fairness, additional issues or objections should be considered and thereafter takes all necessary steps to insure that all parties have a full and fair opportunity to respond to new issues, objections or evidence.

822. Hearing Examiner

(A) A hearing examiner shall conduct a hearing to determine whether the individual adjustment petition should be granted. The hearing examiners shall have the following powers with respect to cases assigned to them:

- (1) To administer oaths and affirmations;
- (2) To grant requests for subpoenas and to order the production of evidence;
- (3) To rule upon offers of proof and receive evidence;
- (4) To regulate the course of the hearing and rule upon requests for continuances;
- (5) To call, examine, and cross-examine witnesses, and to introduce evidence into the record;
- (6) To decide the petition administratively without a hearing if no hearing is requested by the petitioner, the responding party fails to timely file objections, and the record is sufficient to render a decision on the petition without hearing live testimony;
- (7) To make and file decisions on petitions in accordance with this Chapter;
- (8) To take any other action that is authorized by this Chapter.

823. Evidence and Standard of Proof

(A) The hearing examiner may require either party to a rent adjustment hearing to provide any books, records and papers deemed pertinent. All required documents shall be made available to the parties involved, at least ten (10) days prior to the hearing or its continuation, at the offices of the Board.

(B) If the hearing examiner finds good cause to believe that the Board's current information does not reflect the current condition of the rental unit, the examiner shall conduct or request the City

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to conduct an appropriate building inspection. Any party may also request the examiner to order such an inspection prior to the hearing.

(C) The hearing examiner need not conduct the hearing according to technical courtroom rules of evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of business regardless of any common law or statutory rule which might exclude such evidence in court proceedings. The hearing examiner may exclude unduly repetitious or irrelevant evidence.

(E) No adjustment in Maximum Allowable Rent shall be granted unless supported by the preponderance of the evidence submitted at the hearing.

824. Board Action

The Board, on its own motion or on the request of any party, may hold a hearing on any individual adjustment petition without the petition first being heard by a hearing examiner. For purposes of these regulations, the Board shall be considered a hearing examiner when holding a hearing under this Section. In the event that the Board elects to hold a hearing, the decision of the Board shall be the final decision of the Board, except in cases where the Board decision is to send the issue to a Hearing Examiner for further review.

825. Notice of Hearing

Notice of the time, date and place of hearing shall be mailed to all parties no later than ten (10) days before the scheduled date of the hearing.

826. Continuances

(A) The date and time of the hearing may be continued, either before the hearing or at the hearing, if the Hearing Examiner finds good cause to do so. Such good cause shall be stated in the record and may include, but is not limited to, the failure of a party to receive notice, the illness of a party or witness or other emergency which makes it impossible for them to appear on the scheduled date, or the failure of a party to provide the hearing examiner with required pertinent information in a timely manner. Mere inconvenience or difficulty in appearing shall not constitute good cause. Continuances may also be granted upon consent of all parties.

(B) Requests for continuances shall be made as soon as possible. A written request for a continuance and the reasons for it must be received by the Board and all other parties at least 48 hours prior to the scheduled hearing, unless good cause is shown for a later request. The written request shall contain acceptable alternative dates and an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance. The request shall be served on both the Board and all opposing parties in accordance with the requirements of Section 808 (Notices to Opposing Parties and Board).

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(C) The hearing examiner or Senior Hearing [Examiner, may deny a request for a continuance if it has not been made in compliance with subsection (B) or where a continuance has previously been granted to the requesting party in the same case.

(D) The Board shall notify the parties if a continuance is granted, and the date and place of the rescheduled hearing.

827. Disqualification of Hearing Officer or Board Member

(A) No hearing examiners or Board members shall take part in any hearing or appeal on a petition for an individual rent adjustment in which they have a personal financial interest in the outcome (such as being the landlord of, or a tenant residing in the property that is involved in the petition), or a personal bias for or against any party. The hearing examiners' or Board members' general status as landlords or tenants, or political or philosophical beliefs shall not constitute personal bias.

(B) Hearing examiners or Board members shall disclose to all parties any prior communication with a party concerning the subject of the petition, as well as any possible or apparent personal financial interest or personal bias.

(C) Hearing examiners or Board members may disqualify themselves at any time. In addition, any party may file a written request for disqualification, stating the grounds, with the Director (for hearing examiners) or the Board Chairperson (for Board members) at least 72 hours prior to the hearing. However, if the identity of the hearing examiner or Board member was not known soon enough to allow this, the written request shall be filed as soon as possible but in no event later than the taking of any evidence at the hearing. Any such request shall be ruled upon prior to the taking of any evidence at the hearing.

828. Subpoenas

The hearing examiner may by order or subpoena require that either party or any other person provide her/him with any books, records, papers, or other evidence deemed pertinent to the petition or that any witness appear and testify. All documents required under this provision shall be made available to the parties at least ten (10) days prior to the hearing, at the office of the Board. Parties to the hearing shall have the right to request the examiner to issue subpoenas on their behalf, but the responsibility for service of such subpoenas remains with the requesting party. The subpoena shall disclose on its face at whose request it has been issued and that it is issued in the name of the Board.

829. Stipulations

The parties, by written stipulation filed with the hearing examiner, may agree upon some or all of the facts or evidence involved in the hearing. Stipulations may also be made orally at the hearing. Any fact or evidence which is the subject of a stipulation shall be treated as having been established by a preponderance of the evidence.

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830 RESERVED

831. Ex Parte Communications

There shall be no communications regarding any pending case outside of the hearing between the hearing examiner assigned to the case and any party, representative or witness in any case pending before the examiner until the examiner has completed the written decision in that case, except for discussions about requests for continuances, building inspections or determinations of confidentiality, prehearing discussions pursuant to Regulation 832 (Agreement Prior to Hearing), where both parties or their representatives have an opportunity to be present, or orders by the examiner to produce evidence pursuant to Regulation 826 (Subpoenas). There may be communications on any matters with other Board staff.

832. Agreement Prior to Hearing

(A) The parties may make a prehearing agreement. The Board staff may contact the parties in an effort to clarify the issues and/or to reach agreement on the individual adjustment prior to the hearing. Any agreement between the parties prior to a hearing must be approved by the Hearing Examiner in accordance with the provisions of this chapter.

(B) Any agreement made by the parties at the prehearing or hearing shall be made on the record and tape recorded. The terms of the agreement shall be read to the parties, and the parties shall state that they understand the terms of the agreement, that they do not want a hearing on the petition, and that they voluntarily agree to the terms of the agreement.

(C) Parties shall submit any proposed joint agreement in writing to the Board. The Hearing Examiner shall approve or reject the agreement as soon as possible. Written notice of the determination shall be mailed to the parties. The notice shall contain the reasons for any rejection. The agreement and its approval or rejection shall be entered into the record.

(D) Parties who prior to a hearing reach an agreement on an individual adjustment which is approved by the Hearing Examiner shall be deemed to have waived their rights to a hearing or appeal on the petition. Such an approved agreement shall also be deemed a hearing for the purposes of Section 802 (Previous Recent Hearing) of these regulations.

However, upon demonstration of fraud, misrepresentation, or similarly compelling reasons, either party may request that the Hearings Unit withdraw the settlement and set the matter for hearing. If such a request is denied, the party may appeal such denial to the Board.

833. Open Hearings

All individual rent ceiling adjustment hearings shall be open to the public.

834. Rights of Parties

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(A) All parties to a hearing shall have the right to appear at the hearing and present evidence and argument in person, and/or have assistance from attorneys, legal workers, recognized tenant organization representatives or any other designated persons. Before a representative is allowed to advocate for, or in any way represent, a party, the party must present to the Board a signed, written statement designating their representative. Representatives shall file written statements with the Board that they are assisting the named party, with the name, address and phone number of the representative. All parties shall also have the right to call, examine, and cross-examine witnesses, to request the examiner to issue orders or subpoenas for witnesses or evidence, and to exercise any other rights conferred by the Ordinance or this chapter.

(B) Unless otherwise specified by regulation or by order of the Rent Board or hearing examiner, any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of a document shall be extended by five days if the document was served by mail.

(C) Except for the failure to timely file an appeal in accordance with Regulation 842 (Appeal Process) the Rent Board or hearing examiner may relieve a party of the consequences of a failure to perform an act on or before a date certain and allow additional time to perform the act where the party demonstrates that there was a good cause for the failure. Application for this relief shall be made within a reasonable time, in no case exceeding thirty days, after the date certain and shall be accompanied by a sworn declaration attesting to the facts alleged to constitute the good cause.

835. Hearing Record

The official record of the hearing shall include the following: an audio recording of the hearing; all exhibits, papers, and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted; a statement of all material officially noticed; all recommended and final decisions, orders, and/or rulings; and the reasons for each final decision, order and/or ruling. This official record shall constitute the exclusive record for the decision on the issues raised at the hearing.

836. Availability of Record

The Board shall make the official record available for inspection and copying by any person and provide a copy of all or part of the official record at a reasonable copying cost.

837. Notice of Decision

The Board shall send a notice of the hearing examiner's decision to all parties to the hearing. Such notice shall include a copy of the findings of fact and law supporting the decision, as well as a statement of their right to and the time limit for any appeal to the Board and/or judicial review of the decision.

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838. Finality of Decision

The hearing examiner's decision shall be the final decision of the Board in the event no appeal is made to the Board.

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841. Right of Appeal

Any party may appeal a hearing examiner's decision to the Board. On appeal, the Board may affirm, reverse, **remand** or modify the decision of the hearing examiner. The Board may conduct a new hearing or may act solely on the basis of the official record before the hearing examiner. The decision on appeal shall be the final decision of the Board, and the Board shall send a notice of the decision to all parties to the appeal, which shall include a statement of their right to judicial review. **Decisions remanded** to the hearing examiner shall be limited to instances where additional findings of fact are required.

(NOTE: 11.100.070 (d) 10 does not provide for remand. **QUESTION** for attorney, can the Board still remand when necessary facts are missing or must the Board conduct the additional hearing process.)

842. Appeal Process

(A) Any appeal shall be filed on a form provided by the Board no later than thirty (30) days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) 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 subdivision (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) 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 examiner's decision been the same as that of the Board or had not been stayed.

(C) At least fourteen (14) days prior to the date set for Board action on the appeal, a staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the examiner for further hearing. Staff may supplement the record by including matters of which the Board may take official notice, provided that the parties are



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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) days prior to the date set for Board action.

(D) At least fourteen (14) 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 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 Public Information Unit of the Board at least 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 appeals is scheduled, each party or their representative will be allowed seven minutes to address the Board at the beginning of the hearing in the following order: appellant for five minutes, respondent for seven minutes, appellant for two minutes.

(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. If the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied.

(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. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Director only for good cause shown. A written request and the reasons for it must be received by the Rent 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.

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(1) At the discretion of the executive director or his or her 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) they wish to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.

(2) In the event that reconsideration under subsection (K) (1) is ordered, the parties will be so notified within 15 days of the filing of the appeal and, 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 settlement conference or 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. .

843. No Appeal Filing Fee

There shall be no fee for filing an appeal to the Board regarding a hearing examiner decision on a petition for individual adjustment of the maximum allowable rent. The Board may institute such a fee at a future date, with any waivers and reductions that it deems appropriate.

844. Time for Decision

The Board shall take final action on any individual adjustment petition within 120 days following the date of proper filing, unless the conduct of the petitioner or other good cause is responsible for the delay. Good cause may include, but is not limited to, continuances granted, the submission of additional information by the petitioner, the filing of a motion for reconsideration, or a request by petitioner to disqualify the hearing examiner or Board member(s).

845. Conditions for Obtaining Individual Rent Adjustments

An individual upward adjustment of a rent ceiling for a rental unit may be awarded but shall not become effective so long as the landlord:

- (A) has failed to register any rental unit on the property with the Board;
- (B) has demanded, accepted, received or retained rent in excess of the lawful rent ceiling for the affected unit;
- (C) has failed to comply with any order of the Board concerning the affected unit or a former tenant of the affected unit; or

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(D) has failed to bring the affected rental unit into compliance with the implied warranty of habitability.

846. Notice for Rent Increases

Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the landlord, following the decision of the hearing examiner or Board, gives the tenant at least a thirty (30) day written notice of such rent increase and the notice period expires.

847. Effective Date for Rent Decrease

(A) If the hearing examiner or Board makes a downward individual adjustment of the rent ceiling, the rent decrease pursuant to such adjustment shall take effect on the date of the next regularly scheduled rent payment, but no later than thirty (30) days after the date of the decision by the hearing examiner or Board.

(B) Where a rent decrease is reversible after correction of a defect in the unit or violation of the provisions of the ordinance or its implementing regulations, the landlord shall be entitled to reinstatement of the prior rent level, retroactive to the date that the landlord corrected the situation that warranted the decrease. The landlord shall notify the tenant and the Hearing Examiner of the correction and provide evidence of compliance.

(C) The compliance notice to the tenant shall include a notice that the tenant has a right to object, and that if the tenant does not object within twenty-one (21) days of the mailing of the notice, or if the tenant's objection does not specify in what way the landlord is not in compliance, the rent for the tenant's unit may be increased by the applicable amount, based on the information in the landlord's notice and the Board's files. Failure to file an objection may constitute a waiver of the right to a compliance hearing.

848. Compliance Hearings

(A) If there is a dispute among any of the parties (or any successor in interest) as to whether there has been compliance with a previously issued decision, the hearing examiner may notice and conduct a hearing to determine whether compliance has in fact occurred, and may issue an appropriate decision which sets forth the extent of compliance, the date of such compliance, and any adjustments to the original decision which are necessary in light of such compliance or non-compliance.

(B) The party or parties (and any successor in interest) who were originally ordered to make repairs, pay back rent, properly register the parcel, or otherwise comply with an order of the Board, shall be required to demonstrate compliance by a preponderance of the evidence submitted at the compliance hearing.

(C) Any party to the original proceeding, and any successor in interest, may request that a compliance hearing be noticed and held. Such request shall set forth the area of disagreement,

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and a copy of the request must be served upon all adverse parties (and any successor in interest of any adverse party) by the party requesting the hearing.

(D) The procedures set forth in Subchapter B (beginning with Regulation 821) shall apply to compliance hearings.

849. Board Initiated Hearings

(A) The Rent Board or the Executive Director, who may designate such function to appropriate staff, may initiate a hearing after an investigation by the Rent Board or the Executive Director has resulted in a determination that there are substantial grounds to believe that major violations of the Rent Ordinance or Regulations promulgated thereunder have occurred, and that 120 days have passed from the date of the first occurrence of the violations.

(B) The investigation of possible violations of the Ordinance or Regulations may be conducted as a result of the review of the records of the Rent Program or the records of courts and governmental agencies. Investigations of possible violations may also be conducted on the basis of complaints and allegations received orally or in writing by the Executive Director.

(C) If an investigation by the Rent Board or its designee has found substantial grounds to believe that major violations of the Ordinance or Regulations have occurred, a notice of a prehearing shall be prepared and served on the landlord and tenants of the affected units. The notice of prehearing shall state clearly the sections(s) of the Ordinance or Regulations which has (have) allegedly been violated, along with a brief statement of the evidence found during the investigation which supports the determination that an alleged violation has occurred. The notice shall also set forth a proposed order which may be rendered against the alleged violator.

(D) The procedures set forth in Subchapter B. (beginning with Regulation 821) shall apply to Board initiated hearings.

(E) At a Board initiated hearing, the designee of the Executive Director shall present the Board's case. The issues in the hearing shall be disposed of in a final decision and order of a Hearing Examiner, which may be appealed to the Rent Board.

(F) Intervention by any current landlord, current tenant, former tenant and former landlord shall be permitted. Intervention by any other person or entity may be allowed upon a showing that some right, interest, liability or obligation of the person or entity seeking to intervene may be materially affected as a result of the hearing. Requests to intervene shall be made in writing, and should be filed and served upon all parties at least five (5) days before the hearing. However, upon a showing of a substantial interest in the outcome requests to intervene may be made and acted upon at any time prior to the conclusion of the hearing.

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851. Deposit of Disputed Rents into Escrow

The Rent Program does not currently have an escrow process. Once the Executive Director establishes an escrow process, regulations 852 – 857 shall apply.

852. Standards to Be Applied to Escrow Determinations

In deciding whether or not to require the payment disputed amounts in escrow, the Hearing Examiner or the Appeals Panel of the Board shall consider:

- {A) The likelihood that the party requesting the escrow account will prevail on the merits;
- {B) The likely sum or sums involved;
- {C) The likely length of the escrow;
- (D) The likelihood that either party may be prejudiced by the creation of denial of an escrow account;
- (E) The desires of the parties;
- (F) The tenant rent payment history, including any reasons for late or nonpayment of rent;
- (G) The parties' history of compliance or noncompliance with the Ordinance, Regulations and Orders of the Board; and
- (H) All other relevant facts which may affect the right of the tenant not to be required to pay rent in excess of that which is lawful.

853. Requiring Deposit of Disputed Rents into Escrow Pending Hearing

(A) Whenever a petition for individual rent adjustment is filed and it is alleged, or reasonably appears from the circumstances, that the rent charged or demanded by the landlord is in excess of that permitted by the Ordinance and Regulations, any party to the proceedings may make a written request for an order requiring the deposit of rent into an escrow account. Said request shall be made on a form approved by the Board.

(B) Upon receipt of such written request, the Hearing Examiner shall, at the prehearing conference, consider whether an escrow account should be established and may order that reasonably disputed amounts be paid into escrow pending the hearing and the hearing examiner's decision on the petition. The hearing examiner may also condition any continuance or later scheduling of a hearing upon an agreement that rent shall be either paid to the landlord and/or into escrow as may be appropriate.

(C) Pending the Hearing examiner's decision on the petition, an order by the hearing examiner creating, modifying or terminating an escrow account may be appealed to the Board.

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(D) Any party requesting creation of an escrow account shall serve a copy of the request on all other parties to the case.

854. Establishment of Escrow Accounts Pending Appeal

(A) Within twenty (20) days of the date of mailing of the final decision of the Hearing Examiner to the parties, any party may make written application to the Hearings Unit for an order concerning the disposition of any funds held in escrow or creation of an escrow account pending appeal. Any such request shall be made on a form approved by the Board. During the period within which such an application can be made and pending action on said application, no disbursement of funds held in escrow shall be made.

(B) Upon receipt of such written application, the Executive Director or designee may:

- (1) Continue, terminate, or modify any escrow created by the Hearing Examiner; or
- (2) Order that reasonably disputed amounts be paid into escrow pending the decision on any appeal.

(C) In the event that the party applying for the escrow order does not file an appeal within thirty-five (35) days of the date of mailing of the Hearing Examiner's final decision to the parties, any order requiring the maintenance or creation of an escrow account shall automatically be dissolved unless otherwise ordered by the Hearing Examiner. Upon such dissolution, the funds held in escrow shall be disbursed in accordance with the final decision of the Hearing Examiner.

(D) Within twenty-one (21) days of the date of mailing of the appeal, any non-appealing or cross-appealing party may make written application to the Hearing Unit for an order concerning the disposition of any funds held in escrow or creation of an escrow account pending appeal. Any such request shall be made on a form approved by the Board. During the period within which such an application can be made and pending action on said application, no disbursement of funds held in escrow shall be made.

(E) Upon receipt of such written application, the Hearings Unit may:

- (1) Continue, terminate, or modify any escrow created by the Hearing Examiner; or
- (2) Order that reasonably disputed amounts be paid into escrow pending the decision on the appeal;

(F) Any party requesting creation of an escrow account shall serve a copy of the request on all other parties to the case.

(G) In the Decision on Appeal, the Appeals Panel shall order disbursement of any funds held in escrow to the appropriate party.

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855. Landlord's Compliance with Rent Overcharge Refund Order Subject to Appeal

(A) A tenant who accepts a full refund of rent overcharges, pursuant to Regulation 8XX, after receiving written notification that acceptance of the refund will extinguish the tenant's right to appeal the amount of rent overcharges, is deemed to have waived the right to appeal the amount of the refund order. The written notification shall be in language approved by the Board.

(B) Notwithstanding a tenant's appeal of the hearing examiner's decision, the landlord's tender of the full amount of rent overcharges as ordered by the hearing examiner shall constitute compliance with the refund order provided that the amount tendered, if not accepted by the tenant, is deposited into an escrow account established and maintained by the Rent Board. If, on appeal, the Rent Board modifies the hearing examiner's decision and orders additional amounts refunded, a landlord who has tendered the full amount of the original refund order remains in compliance with the refund order so long as the landlord tenders to the tenant the additional amount of rent overcharges within 30 days of the date of the Rent Board's decision on appeal.

856. Disbursement of Funds Held in Escrow

Upon issuance of an order of the Hearing Examiner or an Appeals Panel of the Board, the Executive Director, or their designee, shall cause the funds held in escrow to be disbursed in accordance with the order. Any interest which has accrued on the funds shall be disbursed and distributed in the same proportion as the principal.

857. Effects of Escrow Accounts on Eviction Actions

A tenant's deposit of rent into an escrow account pursuant to an order of the Hearing Examiner or the Board shall be a defense to any action brought by the landlord for nonpayment of that rent.

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# ITEM G-1 ATTACHMENT 2

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## **Increases in Operating Expenses, Fair Return Standards**

### **1. 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 that 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 and that was primarily due to them having trust issues with the Rent Program/Board.
- Landlords thought the MNOI model was ok but had questions in regards to excluding the debt service and the rent rollback.
- 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"?

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- 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”.

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## **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 on a case by case basis.
- Require landlords to respond to tenant notices in a reasonable amount of time. For example 5 business days, could include a monetary penalty for non-compliance.
- Confusion about occupancy. If one moves out rent decreases by 25%, but if one is added we can only raise 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?

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## **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.
- Tenant and landlord 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.

### **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.

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- 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 improvements 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 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.
- 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.

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- Do we want to give tenants an opportunity to request an upgrade and pay the rent increase?
- When can rent increase take effect?

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## 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.
  - 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.