Regular Meeting of the Richmond Rent Board

December 20, 2017 | Multipurpose Room

Item G-3: Proposed Amendments to Relocation Ordinance (RMC 11.102) and Resolution

Regular Meeting of the Richmond Rent Board | December 20, 2017

Proposed Amendments to Relocation Ordinance: Purpose

- Reasonably balance the rights and responsibilities of Tenants and Landlords in the case of temporary relocation
- Clarify provisions of the Relocation
 Ordinance that have proven ambiguous in the first year of administration
- 3. Solicit feedback from the Rent Board and members of the public on the proposed amendments

Proposed Amendments to Relocation Ordinance: Background

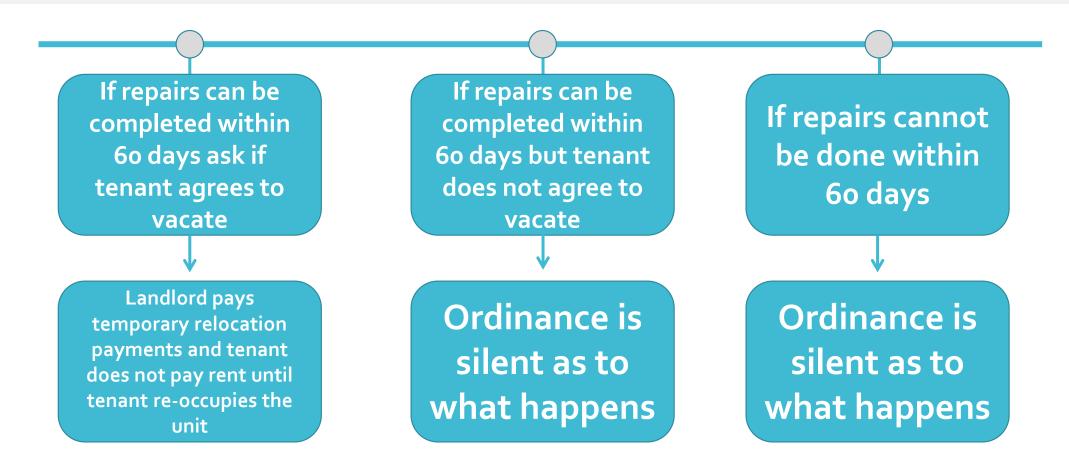
- Section 11.100.050(b) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance provides Tenants evicted for Owner Move-In, Withdrawal from the Rental Market, or Substantial Repairs be provided relocation payments.
- On December 20, 2016, the City Council adopted a <u>provisional</u> Relocation Ordinance (RMC 11.102) and Resolution No. 115-16, establishing Permanent and Temporary Relocation Payments.

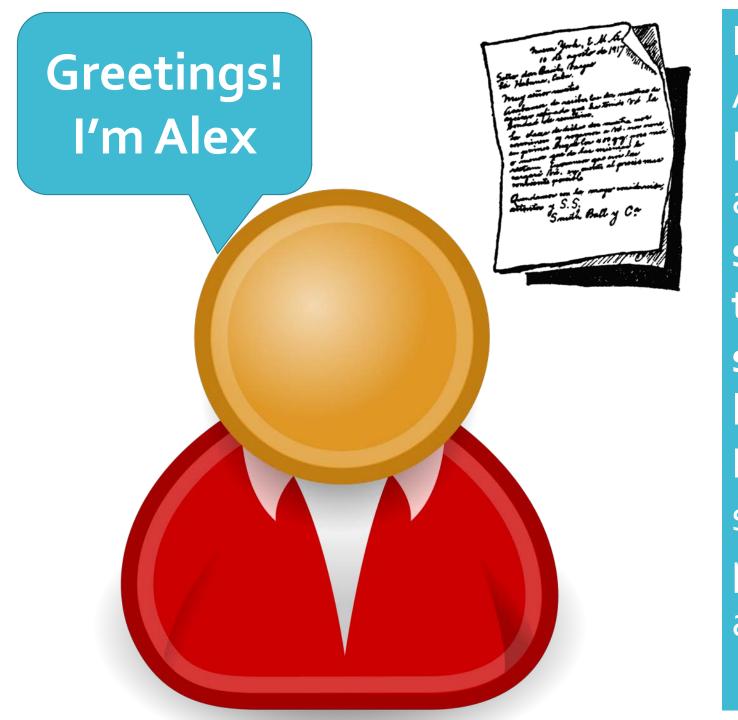
Proposed Amendments to Relocation Ordinance: Background (continued)

- The authority to adopt an amended Relocation Ordinance and Resolution lie with the City Council.
- The Rent Program Department is charged with administration and enforcement of the Relocation Ordinance.
- Application of the current Relocation Ordinance, as written, is ambiguous and could result in costs that may be interpreted as unreasonable by the Courts.
 - Example: The costs of relocating a Tenant under the current Ordinance for a period of 120 days to complete substantial repairs could exceed \$21,000 for one person.

Overview of Existing Ordinance: 11.100.050 A Tenant must Temporarily Vacate in Order to Undertake Substantial Repairs

After the landlord has notified the City and has obtained all permits from the City of Richmond the landlord informs the tenant they will need to temporarily vacate for substantial repairs, which cannot be done while the tenant remains in their rental unit.





I want to introduce you to Alex. Alex is a tenant in Richmond. Alex just received a notice from their landlord stating Alex needs to temporarily vacate for substantial repairs. The landlord is replacing the roof. In the next few slides we will show you how Alex is protected under the existing and proposed ordinance.

Existing Ordinance: Alex Agrees in Writing to Temporarily Vacate

Once Alex agrees in writing to temporaril Scenario under the ordinance, Alex Has the following options for the **first** 60 days.

Choice 1: Alex can choose to continue paying rent and

Choice 2: Alex can choose not to continue paying rent eir landlord have to pay mporary ion payment

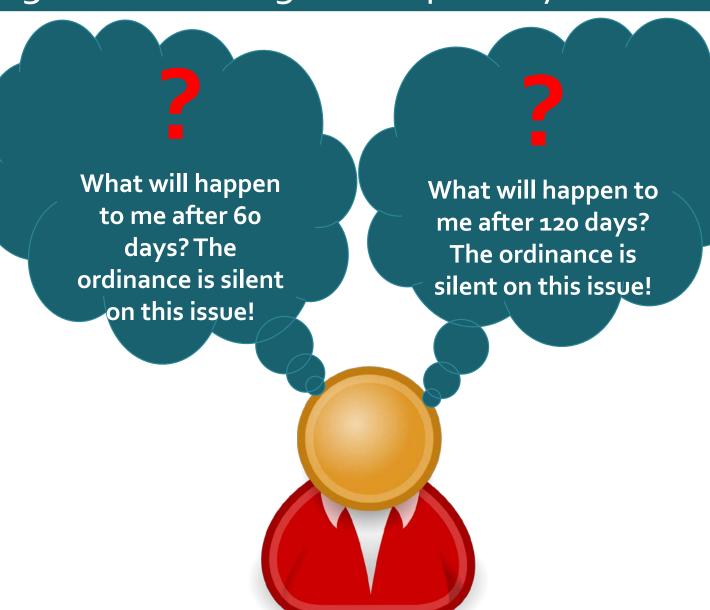


What is a Temporarily Relocation Payment?

Per Diem Description	Amount*	Term (a)
Hotel or Motel	\$145	Per day per household
Meal Expenses	\$29	Per day per person
Laundry	\$1	Per day per household
Pet Accommodations	Cat - \$28 Dog - \$51	Per day per animal

Existing Ordinance: Alex Agrees in Writing to Temporarily Vacate

After the **first 60 days** are over the existing ordinance is silent on how to proceed. Creating an undue financial burden to the landlord and may be considered unreasonable by the courts.



Proposed Policy: Alex Agrees in Writing to Temporarily Vacate

Under the proposed policy, after 60 days, Alex will have the following protection.



Proposed Policy: Alex Agrees in Writing to Temporarily Vacate

Under the proposed policy, after 120 days, Alex will have the following protection and choices.

Choice 1 (proposed):
Landlord must pay a
Rent Differential
Payment and Alex
has no obligation to
continue paying
rent

Choice 2 (proposed):
Alex finds
alternative
permanent housing
and the landlord
must pay a
Permanent
Relocation Payment

What is a Rent Differential Payment?

Number of Bedrooms	Fair Market Rate Payment*
o Bedroom	\$1,363 per month
1 Bedroom	\$1,637 per month
2 Bedroom	\$2,064 per month
3 Bedroom	\$2,866 per month
4 Bedroom	\$3,303 per month

Note: If the rent is higher than the HUD market rate (FMR) then the tenant will not receive a rent differential payment *The figures presented are amounts for 2017.

What is the Applicable Permanent Relocation Payment?

Maximum Cap per Unit Type (a) (b)	Base Amount*	Qualified Tenant Household Amount (c)*
Studio	\$6,850	\$7,850
1 Bedroom	\$10,500	\$12,100
2+ Bedroom	\$14,250	\$16,400

- (a) If a Rental Unit is occupied by one Tenant then the entire per unit Relocation Payment shall be paid to the Tenant. If more than one Tenant occupies the Rental Unit, the total amount of the Relocation Payments shall be paid on a pro-rata share to each Eligible Tenant.
- (b) The Relocation Payments will be calculated on a per Rental Unit basis, distributed on a per Tenant basis, and includes a maximum cap per Rental Unit.
- (c) A "Qualified Tenant Household" is any household that includes at least one Tenant that is a Senior Citizen, Disabled, or has at least one minor dependent child.
- *The figures presented are amounts for 2017.

Existing Ordinance: Alex Does Not Agree to Temporarily Vacate

Alex did not agree to temporarily vacate, but the landlord

proceeds to tempor Scenario 2

terminate the tenancy, pursuant to a court order. Alex has the following choices for the **First 60 days.**

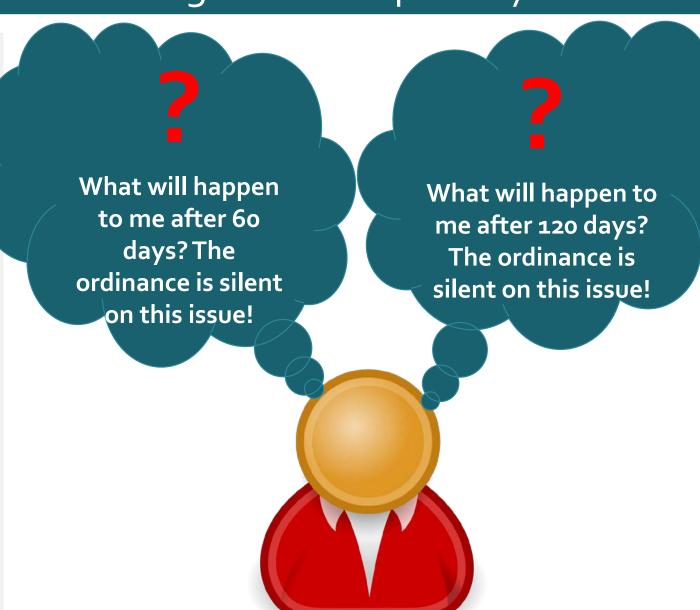
Choice 1: Alex can choose to continue paying rent and their landlord will

Choice 2: Alex can choose not to continue paying rent and their landlord ot have to pay Temporary ation Payment



Existing Ordinance: Alex Does Not Agree to Temporarily Vacate

Once the **first 60 days** are over the existing ordinance is silent on how to proceed. Creating an undue financial burden to the landlord and may be considered unreasonable by the courts.



Proposed Policy: Alex Does Not Agree to Temporarily Vacate

Under the proposed policy, after 60 days, Alex will have the following protections.



Proposed Policy: Alex Does Not Agree to Temporarily Vacate

Under the proposed policy, after 120 days, Alex will have the following protections and choices.

Choice 1 (proposed):
Landlord must pay a
Rent Differential
Payment and Alex
has no obligation to
continue paying
rent

Choice 2 (proposed):
Alex finds
alternative
permanent housing
and the landlord
must pay a
Permanent
Relocation Payment



I want to introduce you to Chandler. Chandler is a tenant in Richmond. Their rental unit has a busted sewage pipe and there is raw sewage in the unit. In the next few slides we will show you how Chandler is protected under the existing and proposed ordinance. Let's take a look!

Existing Ordinance

Chandler Must Vacate!

If a tenant must vacate due to governmental order or other situation making it unsafe or unhealthy for a tenant to occupy the ordinance is silent on what protection or choices Chandler has.



Proposed Policy

Chandler Must Vacate! Under the proposed policy, for the first 60 days, Chandler will have the following protections.



Proposed Policy

Chandler Must Vacate! Under the proposed policy, after 60 days, Chandler will have the following protections and choices.

Choice 1 (proposed):
Landlord must pay a
Rent Differential
Payment and
Chandler has no
obligation to
continue paying
rent

Choice 2 (proposed):
Chandler finds
alternative
permanent housing
and the landlord
must pay a
Permanent
Relocation Payment

Summary

The proposed policy is important for the following reasons:

- It will provide options and greater clarity for both Tenants and Landlords in otherwise uncertain and stressful situations.
- Tenants will have an idea of available financial support and will have a better ability to adequately plan, if the situation arises.
- Landlords are incentivized to maintain the rental unit adequately to avoid a substantial repair or governmental order in the future because of the large financial burden of relocation.
- The landlord will know what to expect prior to undergoing substantial repairs or following a governmental order to temporarily terminate tenancy.

Amended Relocation Ordinance: Recommended Action

• 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.

Item H-1: Regulation 17-08 Written Warning Notices to Cease

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Regulation 17-08: Statement of the Issue

- A regulation is necessary to clarify when Written Warning Notices to Cease are required prior to terminating a tenancy due to a tenant's breach of lease or creating a nuisance, particularly with respect to behavior that impairs health and safety.
- At their meetings on October 18, 2017, and November 15, 2017, the Rent Board directed staff to return in November with a revised Regulation 17-08.
- This presentation addresses those concerns discussed by Board at the November 15, 2017, meeting.

Regulation 17-08: **Background**

Written Warning Notice Requirements (RMC 11.100.050(d)):

- Must be served by a Landlord a "reasonable" amount of time before terminating a tenancy due to Breach of Lease or Creating Nuisance
- 2. Shall inform the Tenant that a failure to cure may result in the initiation of eviction proceedings
- 3. Shall inform the Tenant of the right to request a reasonable accommodation
- 4. Must include the contact number for the Rent Program
- 5. Must include sufficient information and details about the incident or violation to allow a person to comply with the Warning Notice and cure the problem

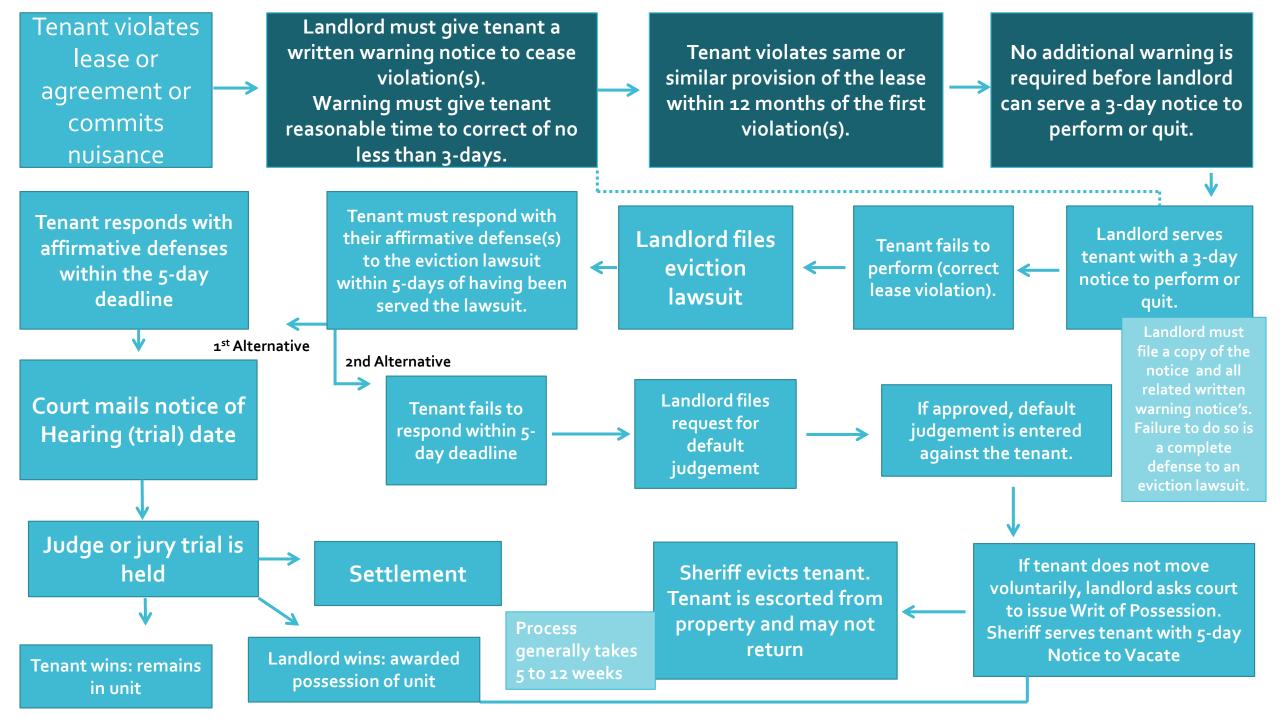
Regulation 17-08: Proposed Definition of a "Reasonable" Period of Time

- The Rent Ordinance requires that a Landlord serve a Tenant a Written Warning Notice to Cease within a "reasonable" time period prior to serving the Tenant a notice to terminate a tenancy for the reason described in the Warning Notice.
 - A "reasonable" time period means either:
 - At least 3 business days;
 - -OR-
 - If it is unreasonable that the time period to cure the violation can be accomplished in 3 business days, the Tenant must have started to cure the violation within 3 business days of receiving the Warning Notice, and diligently makes progress to cure the violation.

(Proposed Regulation 17-08, Section 2(a))

General Eviction Timeline where Tenant Breaches the Lease or Creates a Nuisance

(See next slide)



Regulation 17-08: Proposed Exception for Criminal Activity

- A Landlord may initiate an action to terminate a tenancy (e.g. service of a 3-day notice) if:
- 1. The Tenant or a guest or invitee of the Tenant has engaged in criminal activity in or near the Rental Unit;
 - -AND-
- 2. The criminal activity or violent or abusive behavior has been reported to law enforcement and there is an official report, such as a police report, to document the criminal activity.

(Proposed Regulation 17-08, Section 3(a)).

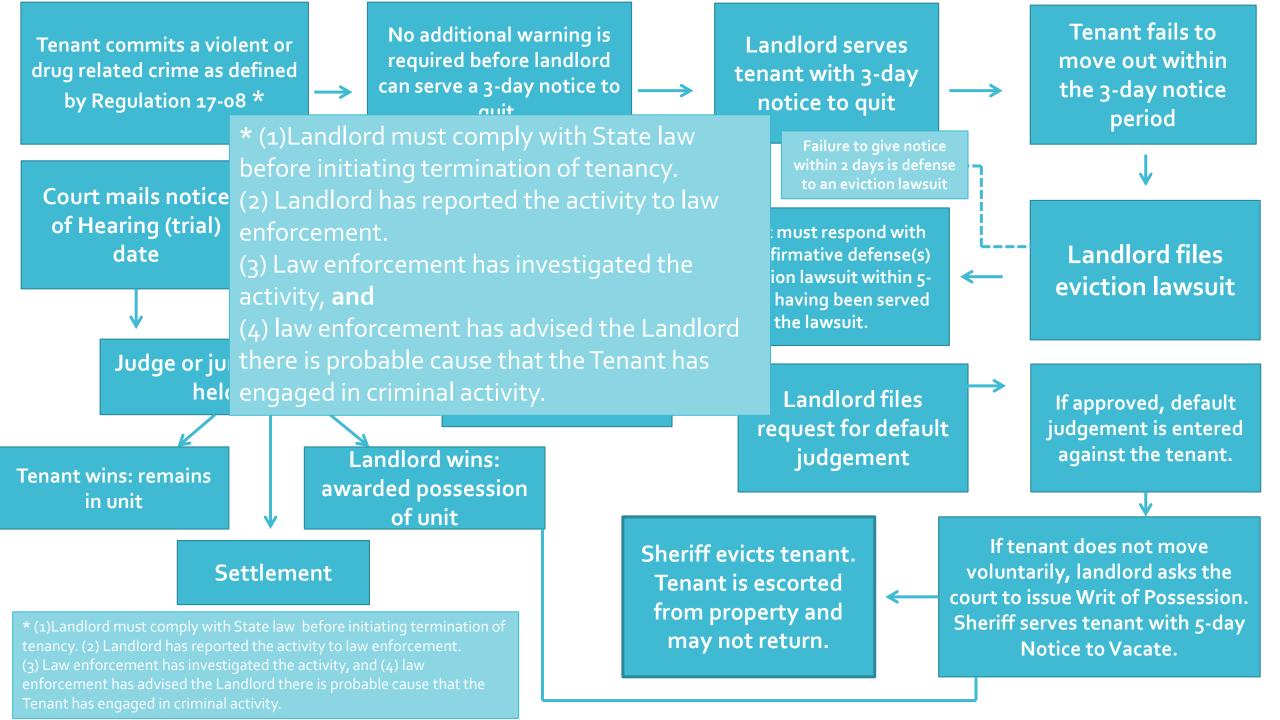
Regulation 17-08: Proposed Definition of "Criminal Activity"

- "Criminal Activity" includes:
 - Prostitution (Penal Code Section 647(b))
 - Criminal street gang activity (Penal Code Sections 240 and 242)
 - Burglary (Penal Code Section 459)
 - Unlawful use and discharge of firearms (Penal Code Section 245)
 - Sexual offenses (Penal Code Section 261)
 - Any other behavior that involves an imminent or actual threat to the health and safety of the Landlord or other Tenants or actual property damage in excess of \$5,000

(Proposed Regulation 17-08 Section 3(c))

General Eviction Timeline where Tenant Commits a Violent or Drug-Related Crime

(See next slide)



Written Warning Notice Regulation: Recommended Action

 ADOPT Regulation 17-08, regarding Written Warning Notices to Cease before Terminating Tenancies due to a Breach of Lease or Creating Nuisance.

Item H-2: Regulation 17-09 Regarding "Banking" of Annual General Adjustment Rent Increases

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Regulation 17-09: Recommended Action

 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 12month period as a result of the application of current plus any deferred or "banked" AGAs does not exceed five percent (5.0%) plus the current AGA. This Regulation 17-09 would not become effective until September 1, 2018.

Item I-1: Billing Update and Reimbursement **Agreement Between City** and Rent Board

Regular Meeting of the Richmond Rent Board | December 20, 2017

Billing Update & Reimbursement Agreement: Purpose

- Provide a status update on billing and collection of the Rental Housing Fee
- Address concerns raised by the Boardmembers at the October 18, 2017, meeting regarding the terms of the proposed Reimbursement Agreement

Billing Update & Reimbursement Agreement: Background

- Since December 2016, the Rent Program has received financial support from the City's General Fund.
- The Rent Program Department is designed to be self-sustaining, through payment of the Rental Housing Fee.
- The Rent Board has an obligation to repay the City for approximately \$1.1 million expended to date.

Billing Update & Reimbursement Agreement: Background

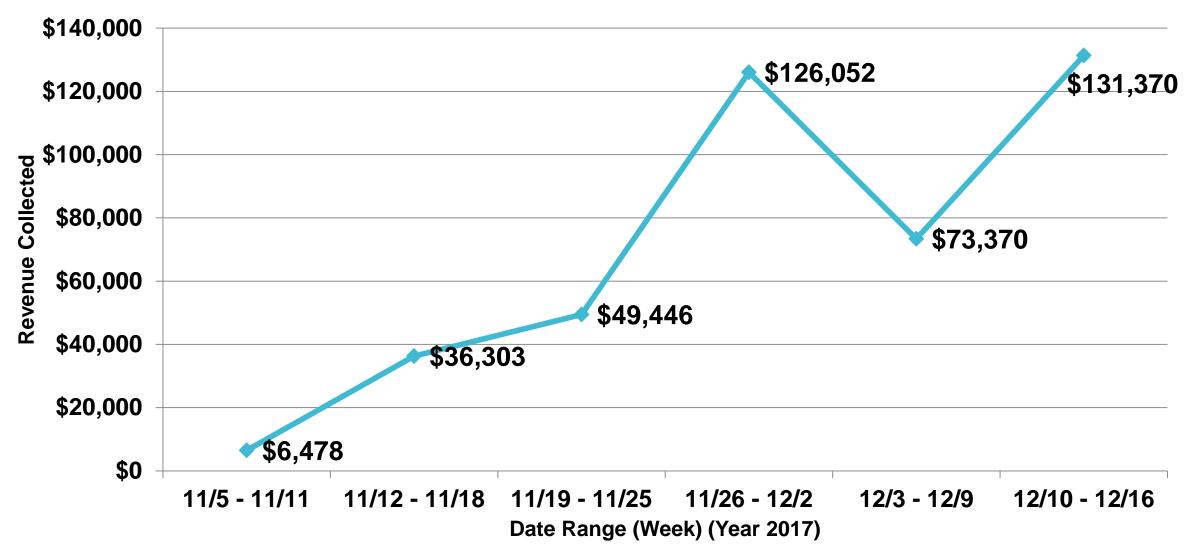
- The Rent Board previously considered the proposed Reimbursement Agreement at their meeting on October 18, 2017.
- Boardmembers were concerned about the proposed two-year repayment term
- Staff met with the City Manager and Finance Director to discuss terms that meet the needs of the City and Rent Board.
- A revised Reimbursement Agreement has been drafted for the Rent Board's consideration.

Billing Update & Reimbursement Agreement: Status of Rental Housing Fee Collection

As of <u>December 13, 2017</u>:

- Rent Program and IT Department staff members have invoiced 6,790 individuals who collectively own 21,178 Rental Units in the City of Richmond.
- The Rental Housing Fee has been paid for approximately 11.5% of Rental Units identified in the City's database of property information.

Billing Update & Reimbursement Agreement: Rental Housing Fee Revenue Collection



Billing Update & Reimbursement Agreement: Rent Program Department Financial Summary

Fiscal	Budgeted	Amount (as of 12/15/17)	Revenue Collected (as of 12/18/17)	
Year	(excluding reserves)		\$	% of Expended Funds
2016-17	\$920,347	\$789,592	\$150,575	19%
2017-18 (partial)	\$1,940,271	\$319,868 (a)	\$313,965	98% (b)
Total	\$2,860,618	\$1,109,460	\$464,540	42%

Notes: (a) Funds expended in FY 2017-18 are only as of 12/15/17; this amount does not reflect the projected amount of expended funds for the entire Fiscal Year. (b) Reflects only 5.5 months of the 12-month fiscal year.

Billing Update & Reimbursement Agreement: Revised Terms

- Rent Board is required to reimburse the City's General Fund for all funds advanced as soon as possible.
- Invoices will be paid in a timely manner so long as it has funds available to do so.
- In no instance shall amounts invoiced by the City remain unpaid by the Rent Board for more than a two-year period.
 - To date, the Rent Board has received two invoices:
 - 1. 10/6/17 \$347,615 (City staff costs)
 - 2. 10/19/17 \$84,647 (Legal costs)

Billing Update & Reimbursement Agreement Recommended Action

• (1) RECEIVE an update from staff concerning billing and collection of the Fiscal Year 2016-17 and Fiscal Year 2017-18 Rental Housing Fees; and (2) APPROVE by motion a Reimbursement Agreement between the Rent Board and City of Richmond.

Item I-2: Rent Adjustment Standards

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Rent Adjustment Standards: **Purpose**

- Provide an update to the Rent Board regarding recently held community workshops
- 2. Review options for "fair return" methodologies
- 3. Solicit direction from the Rent Board regarding implementing regulations for the Rent Board's consideration in early 2018

Rent Adjustment Standards: Background

- Owners covered by rent regulations have a constitutional right to a fair rate of return on their rental property investment.
- Since a fair return standard is not specified in the Ordinance, determining what a fair return means in the City of Richmond must be done legislatively, through regulations adopted by the Rent Board.
- Community engagement is an essential part of this process.

Rent Adjustment Standards: Community Engagement

- Rent Program staff members held two community workshops regarding setting standards for changes in the MAR in December to inform and solicit feedback from community members on "fair return" and other rent adjustment standards.
- Breakout sessions:
 - Fair Return Standards
 - Increase or Decrease in Space, Services, or Habitability
 - Capital Improvements
 - Historically Low Rents
- Feedback worksheets associated with these topics were completed by participants and are included in the agenda packet (see Attachment 3).



Rent Adjustment Standards: Community Engagement

- Completed Feedback Worksheets and breakout session notes will continue to inform proposed regulations for the Rent Board's consideration in 2018
- Workshop materials and updates regarding the process of establishing rent adjustment standards are accessible at http://www.ci.richmond.ca.us/3521/Rent-Adjustment-Regulations.



Fair Return Standards

Kenneth Baar

Regular Meeting of the Richmond Rent Board | December 20, 2017

"Fair Return" Basics

- Owners covered by rent regulations have a constitutional right to a fair rate of return on their rental property investment.
- The Courts are the ultimate arbitrators of what constitutes a fair rate of return.
- The Courts have not required the adoption of a particular standard for determining whether or not a fair return is achieved.
- Since a fair return standard is not specified in the Ordinance, determining what a fair return means in the City of Richmond must be done legislatively, through regulations adopted by the Rent Board.

"Fair Return" Basics According to the Courts

 In determining if a fair return has been achieved, Rent Boards must allow for growth in the Net Operating Income (NOI)

Net Operating Income = All Revenue – All Expenses (excluding debt service)

 The courts have determined that consideration of debt service has no rational basis. An owner's individual financing scheme may not merit differences in the maximum rent that may be charged.

Philosophical question: Should a Landlord who obtained less optimal financing terms (e.g. a higher interest rate) be able to charge higher rents?

Possible "Fair Return" Standards

Fair Return Standard	Calculation	Example Cities
Maintenance of Net Operating Income (MNOI)	Fair Rent = Base Year NOI adjusted by CPI increase since base year + operating expenses	Berkeley, East Palo Alto, Santa Monica, Los Angeles, West Hollywood, Oakland*, San Jose, Beverly Hills, Mountain View
Return on Investment (ROI)	Fair Rent = Operating expenses + X% of investment	None - Board would need to determine reasonable rate of return on investment
Return on Value (ROV)	Fair Rent = Operating expenses + X% of value	Not used – Courts determined this is circular
Cost Pass-Through	Fair Rent = Prior year rent + increase in operating costs over prior year	Oakland, San Francisco

Illustration of MNOI Standard

Definition of <u>Maintenance of Net Operating</u> <u>Income</u> (MNOI): The net operating income of the current year is compared to a base year, allowing for growth based on CPI and increases in operating expenses.

EXAMPLE SCENARIO

- Factual Assumptions Between the base year and the current year
 - CPI increased by 50%
 - Operating Expenses Increased by 75%
 - Net Operating Income (NOI) Increased by 33%
- The Owner is entitled to a rent increase in order raise net operating income to a level that is 50% above the base year CPI

Illustration of MNOI Standard (continued)

	СРІ	Gross Income	Operating Expenses	Net Operating Income	Fair Return Allowable Rent Increase
Base Year	100	\$100,000	\$40,000	\$60,000	
Current Year	150	\$150,000	\$70,000	\$80,000	
Fair NOI (Base Year NOI Adjusted by the pct. increase in CPI)				\$90,000	
Allowable Fair Return Rent Adjustment					\$10,000
Fair NOI – Current NOI					(= \$90,000-\$80,000)

Maintenance of Net Operating Income Standard

FAIR RENT = BASEYEAR NET OPERATING
INCOME ADJUSTED BY CPI INCREASE SINCE
BASEYEAR + OPERATING EXPENSES

Rate of Return on Investment Standard

Alternative Fair Return Standards

FAIR RENT = OPERATING EXPENSES + X% of INVESTMENT

Commonly measure of investment is original investment adjusted by percentage increase in the CPI since the year of the investment

Rate of Return on Value Standard

FAIR RENT = OPERATING EXPENSES + X% of Value

Not used – Courts concluded standard is circular

Cost Passthrough Standard

FAIR RENT = PRIORYEAR RENT + INCREASE IN OPERATING COSTS

OVER PRIORYEAR

Establishment of Rent Adjustment Standards: Next Steps

PROPOSED TIMEFRAME	EVENT
Early December	Staff held first Community Workshops
Late December	Rent Board receives memo from Ken Baar and provides direction to staff
Late December/Early January	Regulations drafted for review
Mid-January – Rent Board Meeting #1	Rent Board considers procedural regulations
Mid-January	Public review period begins; staff hold review sessions with community members
Late January – Rent Board Meeting #2 (Special Meeting)	Rent Board considers additional regulations
Mid-February	Public review period ends; feedback incorporated; Hearing Examiner onboarded
Mid-February – Rent Board Meeting #3	Rent Board considers additional regulations
Late February – Rent Board Meeting #4 (Special Meeting)	Rent Board adopts regulations; first hearings are scheduled

Standards for Changes in the MAR: Recommended Action

• (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.

Item I-3: 2018 Rent Program Community Workshop Calendar

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2018 Rent
Program
Community
Workshop
Calendar:
Proposed
Schedule

Workshop	Date	
(10:00 AM - 12:00 PM)	(Saturday)	
Being a Landlord in Richmond 101	January 13 th	
Being a Tenant in Richmond 101	February 17 th	
Evictions 101 (Landlord Oriented)	March 17 th	
Evictions 101 (Tenant Oriented)	April 21 st	
Security Deposits – Rights and Responsibilities	May 12 th	
Being a Tenant in Richmond 101	June 9 th	
Realtor and Property Manager Focused Workshop	July 14 th	
Handling Habitability Issues (Tenant Oriented)	August 18 th	
Handling Habitability Issues (Landlord Oriented)	September 15 th	
How to Handle Difficult Tenant Situations (Landlord Oriented)	October 20 th	
How to Handle Difficult Housemate Situations (Tenant Oriented)	November 10 th	
Evictions 101 (Landlord Oriented)	December 8 th	

2018 Rent
Program
Community
Workshop
Calendar:
Recommended
Action

 RECEIVE the 2018 Rent Program Community Workshop Calendar