

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: August 15, 2018

Final Decision Date Deadline: August 15, 2018

STATEMENT OF THE ISSUE: On February 21, 2018, the Rent Board adopted Chapter 7 of the Regulations, titled "Vacancy Rent Increases." This Chapter explains the circumstances whereby a Landlord may reset Rent to whatever the market will bear, a process known as "vacancy decontrol". One of these circumstances is where all of the Original Occupants have vacated the Rental Unit or no longer occupy the Rental Unit as their Primary Residence. Where such a circumstance exists, a Landlord may reset the Rent to market rate. Despite describing circumstances where a Landlord may reset the Rent to market rate, existing Rent Board Regulations do not authorize the filing of petitions where there is a dispute as to whether a qualifying circumstance has been met justifying the resetting of Rents. To remedy the situation, staff members are proposing regulations that would authorize Landlords and Tenants to challenge whether a qualifying circumstance has been met justifying the resetting of Rent to market rate. Specifically, the proposed Regulation 703.5 creates a petition process that would permit a Landlord to challenge whether or not a Rental Unit may be considered the original occupant's Primary Residence. Furthermore, proposed Regulation 706.5 would create a petition process allowing both Landlords and Tenants to challenge the resetting of the initial rental rate based on whether an event of vacancy decontrol has occurred.

INDICATE APPROPRIATE BODY

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|---|---|--|--|---|
| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

ITEM

- 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: AMEND Chapter 7 of the Rent Board Regulations to: (1) add Regulation 703.5 to create a petition process whereby a Landlord may challenge whether the Rental Unit is the original occupant's Primary Residence; (2) add Regulation 706.5 to create a petition process allowing both Landlords and Tenants to challenge the resetting of the initial rental rate based on vacancy decontrol; (3) provide a reference to the Rent Ordinance's definition of Primary Residence; (4) replace references to "signed lease" with the Rent Ordinance's definition of Rental Housing Agreement; and (5) replace the phrase "written notice" with notice, consistent with existing case law— Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

AGENDA ITEM NO:

G-1.



AGENDA REPORT

DATE: August 15, 2018

TO: Chair Gray and Members of the Rent Board

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

SUBJECT: PROPOSED AMENDMENTS TO CHAPTER 7 OF THE RICHMOND RENT BOARD REGULATIONS CONCERNING PETITION PROCESSES AND DETERMINATION OF THE INITIAL RENTAL RATE FOLLOWING A VACANCY

STATEMENT OF THE ISSUE:

On February 21, 2018, the Rent Board adopted Chapter 7 of the Regulations, titled "Vacancy Rent Increases." This Chapter explains the circumstances whereby a Landlord may reset Rent to whatever the market will bear, a process known as "vacancy decontrol". One of these circumstances is where all of the Original Occupants have vacated the Rental Unit or no longer occupy the Rental Unit as their Primary Residence. Where such a circumstance exists, a Landlord may reset the Rent to market rate.

Despite describing circumstances where a Landlord may reset the Rent to market rate, existing Rent Board Regulations do not authorize the filing of petitions where there is a dispute as to whether a qualifying circumstance has been met justifying the resetting of Rents. To remedy the situation, staff members are proposing regulations that would authorize Landlords and Tenants to challenge whether a qualifying circumstance has been met justifying the resetting of Rent to market rate. Specifically, the proposed Regulation 703.5 creates a petition process that would permit a Landlord to challenge whether or not a Rental Unit may be considered the original occupant's Primary Residence. Furthermore, proposed Regulation 706.5 would create a petition process allowing both Landlords and Tenants to challenge the resetting of the initial rental rate based on whether an event of vacancy decontrol has occurred.

Finally, after careful review of Chapter 7, staff members have identified minor conflicts between the definitions included in the Regulations and the definitions included in the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance ("Rent Ordinance.") To resolve the conflict, staff members are proposing replacing

definitions contained within the Regulations with definitions provided in the Rent Ordinance.

RECOMMENDED ACTION:

AMEND Chapter 7 of the Rent Board Regulations to: (1) add Regulation 703.5 to create a petition process whereby a Landlord may challenge whether the Rental Unit is the original occupant's Primary Residence; (2) add Regulation 706.5 to create a petition process allowing both Landlords and Tenants to challenge the resetting of the initial rental rate based on vacancy decontrol; (3) provide a reference to the Rent Ordinance's definition of Primary Residence; (4) replace references to "signed lease" with the Rent Ordinance's definition of Rental Housing Agreement; and (5) replace the phrase "written notice" with notice, consistent with existing case law— Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Background

On February 21, 2018, the Rent Board adopted Chapter 7 of the Regulations, titled "Vacancy Rent Increases." This Chapter explains the circumstances whereby a Landlord may reset the initial rental rate to whatever the market can bear, a process known as "vacancy decontrol" pursuant to the Costa-Hawkins Rental Housing Act, a State law (Civil Code 1954.50 et. seq). Vacancy decontrol typically occurs when either 1) the Rental Unit has been entirely vacated and the vacancies were voluntary; or 2) where all the Original Occupants¹ of the Rental Unit have voluntarily vacated, leaving the Rental Unit occupied by only subtenants. Where there is an entire turnover of Original Occupants, a Landlord may reset the Rent to any amount they choose.

Chapter 7 of the Regulations proscribes requirements that Original Occupants must adhere to in order to maintain their "Original Occupant" status. For instance, where an Original Occupant has not maintained the Rental Unit as their Principal Residence, the Original Occupant shall no longer be considered an Original Occupant, and assuming no other Original Occupants dwell in the Rental Unit, the Landlord may reset the initial rental rate.

In describing the circumstances whereby a Landlord may reset initial rental rate, Chapter 7 of the Regulations utilizes definitions that may conflict with the Rent Ordinance. Furthermore, existing Rent Board Regulations do not authorize the filing of

¹ For the purposes of Regulation 703, the term "original occupant" includes any Tenant in the Rental Unit, with the Landlord's knowledge, who was residing in the unit on or before July 21, 2015, or when the Landlord last established an initial rent for the unit.

petitions where there is a dispute as to whether a qualifying circumstance has been met justifying the resetting of Rents. To remedy the situation, staff members are proposing amendments to Chapter 7 of the Rent Board's Regulations that would authorize Landlords and Tenants to challenge whether a qualifying circumstance has been met justifying the resetting of Rents.

Proposed Amendments to Ensure Consistent Definitions Between the Rent Ordinance and Rent Board Regulations

Chapter 7 of the Regulations utilizes the term "principal residence" where explaining that an Original Occupant must maintain a principal residence at the Rental Unit. The term "principal residence" is neither defined in the Rent Ordinance nor in the Rent Board Regulation. However, the Rent Ordinance does include the term and definition of "Primary Residence". Staff members acknowledge that the two terms are often used interchangeably, as they carry the same meaning; however, to maintain consistency between the Rent Ordinance and Rent Board Regulations, and for the sake of clarity, staff members recommend the term "principal residence" be replaced with "Primary Residence" and reference the Rent Ordinance's definition of Primary Residence within Chapter 7 of the Regulations.

Additionally, Chapter 7 of the Regulations utilizes the terms "agreement" and "lease" in describing requirements that a subtenant must meet to be considered an Original Occupant. The current usage of these terms conflicts with the Rent Ordinance's definition that covers agreements. Specifically, the Rent Ordinance defines a Rental Housing Agreement to be "an agreement, oral, written, or implied, between a Landlord and Tenant for use or occupancy of a Rental Unit and for Housing Services." *Richmond Municipal Code Section 11.100.030(k)*. Not only does this definition in the Rent Ordinance provide greater protection to Tenants than terms such as "agreement" or "written lease" otherwise would not provide, it fully covers the field of lease agreement, subsuming the terms "agreement" and "lease", and disallowing for the usage of terms that would narrow its scope or impede its impact. As such, where the Regulations use the terms "agreement" or "lease," they conflict with the Rent Ordinance's definition of Rental Housing Agreement because a Rental Housing Agreement includes oral and implied agreements, whereas a signed lease agreement precludes both oral and implied agreements. To ensure that protections provided by the Rent Ordinance are being effectuated through Rent Board Regulations, staff members propose amending potentially ambiguous terms that refer to a lease agreement to the term "Rental Housing Agreement," as used in the Rent Ordinance.

Proposed Amendments to Regulation 706(C) to Address Obtuse Outcomes based on Technicalities.

Regulation 706(C) provides the circumstances whereby a prior subtenant may be considered an Original Occupant. Specifically, Regulation 706(C) explains, in pertinent part, that:

A Landlord may set a new initial rent by giving proper written notice if: (1) there has been a complete turnover of original occupants; (2) none of the remaining occupants has signed a lease or rental agreement with the landlord; and (3) the Landlord has not accepted rent after receiving written notice from the last original occupant that they have moved out or will be moving out permanently. If the subtenants hide the fact that the last original occupant has moved out permanently, the Landlord's acceptance of rent does not preclude the Landlord from implementing a vacancy increase...*(Emphasis added)*

Staff members find that the requirement of written notice does not achieve the purported goal of Chapter 7 of the Regulations or the Rent Ordinance and has the potential to lead to obtuse results. Placing aside the unfounded assumption of literacy, there could exist instances where a Landlord who has either oral or constructive notice of an Original Occupants departure is still able to reset the initial rental rate because of the Original Occupant's failure to provide written notice. Such a technicality undermines the legitimacy of the Regulations and runs counter to the purpose of the Rent Ordinance. If the concern of the Regulation is notice, then the form of notice is only relevant when notice is contested. The current rule would swallow all other forms of legitimate notice and lead to odd results. To resolve this issue, Staff is proposing amending the phrase "written notice" to simply "notice."

Proposed Regulations 703.5 and 706.5 would permit both Landlords and Tenants to challenge the resetting of initial rental rate based on change of occupancy status

As mentioned, Chapter 7 of the Rent Board Regulations explains the circumstances whereby a Landlord may reset the initial rental rate to whatever the market can bear. These circumstances rely on whether there has been a complete turnover of Original Occupants and are encapsulated in two occurrences: 1) where the Original Occupants no longer maintain the Rental Unit as a Primary Residence or 2) where all the Original Occupants voluntarily vacate the Rental Unit.

Challenging whether the Original Occupant maintains the Rental Unit as a Primary Residence

Regulation 703 implies that where the Original Occupants no longer maintain the Rental Unit as their Primary Residence, the occupants lose their "rent control protection" and upon proper notice the Landlord may reset the initial rental rate to whatever the market can bear. Despite describing the circumstances where a Landlord may or may not reset the Rents, Regulation 703 does not address situations where there is an agreement as to whether the Rental Unit has been maintained as a Primary Residence. In instances where such a disagreement arises or where the occupancy status of an original occupant is unclear, a Landlord should be apply to file a petition for a determination. Because no such process currently exists, Staff is proposing Regulation 703.5.

Regulation 703.5, would create a petition process permitting Landlord's to challenge whether the Rental Unit is the original occupants Primary Residence.

Challenging whether all the Original Occupants have voluntarily vacated the Rental Unit

Chapter 7 of the Rent Board Regulations proscribes limits to a Landlords ability to reset the initial rental rate. Generally, Chapter 7 explains that vacancies must be voluntary in order for "vacancy decontrol" to attach. Where the vacancy is involuntary, the Rental Unit has no experienced a complete turnover of all Original Occupants and the subsequent Occupants Rents must not exceed the amount the prior Occupants were paying. Additionally, there may exist circumstances where subtenants of Original Occupants may themselves be considered Original Occupants, thereby protecting them from an occurrence of "vacancy decontrol". Despite the fact that Chapter 7, explain various rights and obligations of Landlords and Tenants, it does not provide a means whereby a Landlord or Tenant may assert their rights. Landlords may want to be cautious and receive a determination from the Rent that their has been a complete turnover of Original Occupants, prior to resetting Rents. On the other hand, Tenants may want to challenge a Landlord's resetting of the Rents on the grounds that they themselves are Original Occupants or the prior vacancy was not voluntary. Whatever the basis, Landlords and Tenants need to be able to assert their rights described in Chapter 7. To achieve that end, Staff is recommending the Rent Board adopt proposed Regulation 706.5. Regulation 706.5 would create a petition process allowing both Landlords and Tenants to establish the propriety of the resetting of the initial rental rate based on whether an event of vacancy decontrol has occurred.

Conclusion

Staff members recommend the Rent Board adopt the aforementioned amendments to Chapter 7 of the Rent Board Regulations to ensure consistency of terms between the Rent Ordinance and adopted Rent Board Regulations, and to authorize Landlords and Tenants to challenge whether a qualifying circumstance has been met justifying the resetting of initial rental rates.

DOCUMENTS ATTACHED:

Attachment 1 – Chapter 7 of the Rent Board Regulations (Redline Version)

Attachment 2 – Chapter 7 of the Rent Board Regulations (Clean Version)

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Chapter 7: Vacancy Rent Increases

700. New Maximum Allowable Rent

Pursuant to Civil Code Section 1954.50, et seq. ~~as amended, of the Civil Code~~, the Landlord may establish the lawful Maximum Allowable Rent for any Controlled Rental Unit consistent with this ~~R~~Regulation. The new rent level shall thereafter be the new Maximum Allowable Rent for the unit for all purposes including, but not limited to, the computation of all future rent adjustments. The unit shall otherwise remain controlled by the Ordinance and all other regulations of the Rent Board.

A. In these Regulations the terms "new Maximum Allowable Rent" and "initial rental rate" shall have a meaning consistent with Richmond Municipal Code Section 11.100.070 et seq, as amended, and shall refer to the rent established by the Landlord for a Tenant whose tenancy becomes effective after July 21, 2015. For tenancies commencing on or after July 21, 2015, the "initial rent" for a Rental Unit shall be the monthly rent established by the parties at the commencement of the most recent tenancy. Where the rental agreement includes periods for which the Tenant pays reduced, discounted or "free" rent, the Maximum Allowable Rent is calculated as the average of the monthly payments made during the initial term of the agreement or, in the case of a month-to-month tenancy, during the first twelve months of the tenancy.

[Adopted February 21, 2018]

701. Vacancy Rent Levels

A. Commencing July 21, 2015, a Landlord may establish the initial rent rate for all new tenancies consistent with Civil Code Section 1954.50, et seq. ~~as amended,~~ and any Board regulations enacted consistent therewith, except where any of the following applies:

(1)

- a. The previous tenancy has been ~~lawfully~~ terminated by the Landlord pursuant to Civil Code Section 1946, or;
- b. The previous tenancy has been ~~lawfully~~ terminated upon a change in terms of tenancy noticed pursuant to Civil Code Section 827, except a change permitted by law in the amount of rent or fees or resulting from the owner's termination of or failure to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified Tenant of the unit. A tenancy shall be presumed to have terminated upon a change in terms of tenancy if the Tenant(s) vacate(s) the Rental Unit within twelve months of the Landlord's unilateral change in the terms of the rental agreement. Absent a showing by the Landlord that the Tenant(s) vacated for reasons other than the change in the terms of the rental agreement, the initial rental rate for the new tenancy shall be no greater than the most recent Maximum Allowable Rent (prior to the new tenancy).

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- (2) A new tenancy begun within three years of the date that the owner terminated or failed to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified Tenant of the unit unless the new tenancy is exempted from this limitation pursuant to Civil Code Section 1954.53(a)(1)(B). During the three year period, the rental rate for any new tenancy established in that vacated unit shall be at the same rate as under the terminated or non-renewed contract or recorded agreement, increased by any subsequently authorized Annual General Adjustments.
- (3) The Landlord has otherwise agreed by contract with a public entity to limit or otherwise restrict rent levels in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of title 7 of the Government Code.
- (4) The dwelling or unit has been cited in an inspection report by the appropriate government agency as containing serious health, safety, fire or building code violations as defined by Health and Safety Code Section 17920.3 excluding those caused by disasters or damages incurred by the Tenant or associated occupants, guests, or pets, the citation was issued at least sixty (60) calendar days prior to the date of the vacancy, and the cited violation had not been abated when the prior Tenant vacated and has remained unabated for at least sixty (60) calendar days, unless the time for correction was extended by the agency that issued the citation.
- (5) The prior Tenant was the spouse, registered domestic partner, child, parent or grandparent of a Landlord who recovered possession of the unit pursuant to RMC 11.100.050(a)(6).
- (6) The prior Tenant vacated the property as a proximate result of the conduct by the Landlord such that the vacancy is non-voluntary, except for evictions for just cause as provided under RMC 11.100.050.

[Adopted February 21, 2018]

702. Voluntary and Non-Voluntary Vacancies

- A. For the purposes of this Chapter, a "voluntary" vacancy shall mean a vacancy that results from the independent choice of the Tenant, without intimidation, pressure, or harassment. For purposes of this section "abandonment" is defined as the Tenant's independent choice, without intimidation, pressure, or harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the Landlord terminates the tenancy pursuant to Civil Code Section 1951.3. Abandonment is considered voluntary.
- B. Non-Voluntary Vacancy means a vacancy resulting from conduct by the Landlord which constitutes:
 - (1) Acts prohibited by law;

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- (2) Constructive eviction;
 - (3) A breach of the covenant of quiet enjoyment of the property;
 - (4) Harassment;
 - (5) Threats to withdraw the property from the rental market pursuant to the Government Code Section 7060-7060.7 (Ellis Act) and Rent Board Regulation 17-07; and,
 - (6) Notices of any kind that negligently or intentionally misrepresent to a Tenant that the Tenant is required to vacate the Rental Unit.
- C. "Harassment" shall be defined as a knowing and willful act or course of conduct directed at a specific Tenant or Tenants which:
- (1) Would cause a reasonable person to fear the loss of use or occupancy of a Rental Unit or part thereof, or of any service, privilege or facility connected with such use or occupancy, without legitimate reason or legal justification; or
 - (2) Materially interferes with a Tenant's peaceful enjoyment of the use and/or occupancy of a Rental Unit; or
 - (3) A single act may constitute harassment for purposes of determining whether a vacancy was voluntary. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.
 - (4) Acts constituting harassment include, but are not limited to the following:
 - a. Eviction on the grounds of an Owner Move-In pursuant to Ordinance section 11.100.050(a)(6) which was not in good faith.
 - b. The threat or repeated threat to evict a Tenant in bad faith, under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a Rental Unit.
 - c. Reduction in housing services under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a Rental Unit;
 - d. Reduction in maintenance or failure to perform necessary repairs or maintenance under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a controlled Rental Unit;
 - e. Abuse of the Landlord's right of access into a residential unit within the meaning of California Civil Code §1954; or
 - f. Verbal or physical abuse or intimidation.
 - (5) A vacancy occurring as result of the filing of a Notice of Intent to Withdraw under Government Code Section 7060-7060.7 (the Ellis Act and Rent Board Regulation 17-07) shall not be considered voluntary.

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- (6) A tenancy and subsequent vacancy created as a sham shall not be considered voluntary. A sham tenancy may be presumed where the occupant did not have a bona fide Landlord-Tenant relationship with the Landlord, or occupied the property for less than four (4) months and principally for the purpose of vacating the property to establish eligibility for vacancy-related increase.

[Adopted February 21, 2018]

703. No Vacancy Rent Increase for Original Occupants

- A. The Maximum Allowable Rent for a Controlled Rental Unit occupied by an Original Occupant shall not be increased under the provisions of this Regulation while the existing Tenant occupies the unit as their ~~principal~~ **Primary Residence** ~~as defined in Richmond Municipal Code Section 11.100.030(h)~~. For purposes of this Regulation, the term "original occupant" as used herein includes any Tenant in the Rental Unit, with the Landlord's knowledge, was residing in the unit on or before July 21, 2015, or when the Landlord last established an initial rent for the unit.

No existing Tenant shall be required to vacate a Rental Unit as a result of a covenant or condition in a rental agreement requiring the Tenant to surrender possession except as permitted under ~~Richmond Municipal Code Section 11.100.0450(8a)(1) of the Ordinance~~.

[Adopted February 21, 2018]

703.5. Challenging a Tenant's Occupancy Status

- A. A Landlord may file a petition contesting whether an original occupant maintains a Primary Residency within the Rental Unit. All petitions and hearings must be filed and conducted in accordance with Chapter 8 of these Regulations.**
- B. Where a Landlord files a petition pursuant to Regulation 703.5(A), the Landlord shall bear the burden of proof of establishing by a prima facie showing that the Tenant does not occupy the Rental Unit as a Primary Residence. Primary Residence shall have the meaning defined in Richmond Municipal Code Section 11.100.030(h). Where the Landlord has met the prima facie threshold of evidence demonstrating that the Tenant does not occupy the Rental Unit as a Primary Residence, the burden of proof shall shift to the Tenant, and the Tenant must demonstrate by a preponderance of the evidence that the Rental Unit has been used as a Primary Residence. The Hearing Examiner shall weigh the relevant evidence submitted by both the petitioner and the respondent in making a determination as to whether the Tenant has not maintained the Rental Unit as a Primary Residence. For purposes of this provision, prima facie shall mean sufficient evidence to establish a fact or raise a presumption unless disproved.**
- B-C. If the Hearing Examiner determines that the Tenant did not maintain the Rental Unit as a Primary Residence, then any rent increase properly noticed by the Landlord shall become**

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effective on the specified date contained within a proper notice of rent increase or on the date rent is next due following the Hearing Examiner's decision, whichever is later.

704. Increase and Decrease Petitions

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

[Adopted February 21, 2018]

705. Fraud or Intentional Misrepresentation

Any increase in the Maximum Allowable Rent authorized pursuant to this ~~r~~Regulation that is obtained by fraud or misrepresentation by the Landlord or the Landlord's agent or employee shall be void.

[Adopted February 21, 2018]

706. Subletting

A. An owner may increase the rent by any amount allowed by Civil Code section 1954.50 et seq., as amended, and Section 706(B) of this ~~Chapter~~Regulation, to a sub-lessee or assignee when the original occupant or occupants who took possession of the Rental Unit pursuant to a rental agreement with the owner no longer permanently resides in the Rental Unit. The term "original occupant" as used herein includes any Tenant in the Rental Unit, with the Landlord's knowledge, was residing in the unit on or before July 21, 2015, or when the Landlord last established an initial rent for the unit.

Within fifteen (15) calendar days of any rent increase pursuant to this subsection, a Tenancy Registration form(s) described in Section 402(A)(1) shall be filed with the Board.

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

C. New roommates are considered subtenants of the original occupants as long as they do not ~~sign a lease or have a R~~rental Housing aAgreement with the Landlord, and the Landlord may increase the rent when the unit is occupied only by subtenants who are not Original Occupants. Thus, a Landlord may set a new initial rent by giving proper written notice if: (1) there has been a complete turnover of original occupants; (2) none of the remaining occupants has ~~signed a lease or r~~Rental Housing aAgreement with the landlord; and (3) the Landlord has not accepted rent after receiving ~~written~~ notice from the last original occupant that they have moved out or will be moving out permanently. If the subtenants hide the fact

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that the last original occupant has moved out permanently, the Landlord's acceptance of rent does not preclude the Landlord from implementing a vacancy increase. The Landlord can defer a vacancy rent increase for up to six months after receiving written notice of the last original occupant's departure, by agreeing in writing with the remaining tenants to do so.

- D. Where the Landlord initially rents a Rental Unit to a Tenant and authorizes more than one Tenant to occupy the unit, but fails to place the name of more than one Tenant on the Rental Housing Agreement, all Tenants who occupy the unit within one month, with permission of the Landlord, express or implied, shall be considered original occupants.

[Adopted February 21, 2018]

706.5. Challenging a new initial rent based on Tenant status.

A. A Landlord or Tenant may file a petition for a determination as to whether the provisions of Regulation 706, et seq., or other applicable Regulations of this Chapter have been met warranting the setting of a new initial rent. Where a Landlord or Tenant files a petition pursuant to this Regulation, the petition must conform to the procedural requirements set forth in Chapter 8 of these Regulations. In addition, the Petition shall contain a statement of the issue, the relief being sought, and shall include supporting evidence.

B. The Petitioner shall bear the burden of proof of establishing by a preponderance of the evidence that which is asserted by the Petition. The Hearing Examiner may only address issues raised in both the petition and objections, and where appropriate, the Hearing Examiner may consider issues of Rent overcharges and make orders of relief premised on Rent overcharges.

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

- A. A written request from a Landlord for a Tenant to vacate a unit so the Landlord or a qualifying relative of the Landlord may occupy the unit as a principle residence shall be treated as a Notice to Terminate Tenancy pursuant to Civil Code Section 1946 for the purpose of determining the rent level when the unit is subsequently rented.
- B. A Landlord who serves a 30 or 60-Day Notice of Termination of Tenancy pursuant to Richmond Municipal Code section 11.100.050(A)(6) for the purpose of recovering possession of the unit for their own use or occupancy as a principle residence or the principle residence of a qualifying relative may rescind the notice or stop eviction proceedings but, if the Tenant vacates within one year of the date of service of the notice, the tenancy is presumed to have been terminated by the Landlord as a result of the notice. The rental rate for the next tenancy established in the vacated unit shall be no more than the Maximum Allowable Rent under the Ordinance for the Tenant who vacated, plus any subsequent increases authorized by the Rent Board.
- C. This presumption applies even though the Tenant vacates the unit after the notice has been rescinded. A written statement from the Tenant that the Tenant is leaving of their own

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volition signed as part of a settlement whereby the Tenant is required to vacate the unit is insufficient to rebut this presumption.

- D. A Landlord may rebut the presumption at a hearing based on a preponderance of the evidence. Such a hearing shall follow the process established for an Individual Rent Adjustment.

[Adopted February 21, 2018]

Chapter 7: Vacancy Rent Increases

700. New Maximum Allowable Rent

Pursuant to Civil Code Section 1954.50, et seq. as amended,, the Landlord may establish the lawful Maximum Allowable Rent for any Controlled Rental Unit consistent with this Regulation. The new rent level shall thereafter be the new Maximum Allowable Rent for the unit for all purposes including, but not limited to, the computation of all future rent adjustments. The unit shall otherwise remain controlled by the Ordinance and all other regulations of the Rent Board.

- A. In these Regulations the terms "new Maximum Allowable Rent" and "initial rental rate" shall have a meaning consistent with Richmond Municipal Code Section 11.100.070 et seq, as amended, and shall refer to the rent established by the Landlord for a Tenant whose tenancy becomes effective after July 21, 2015. For tenancies commencing on or after July 21, 2015, the "initial rent" for a Rental Unit shall be the monthly rent established by the parties at the commencement of the most recent tenancy. Where the rental agreement includes periods for which the Tenant pays reduced, discounted or "free" rent, the Maximum Allowable Rent is calculated as the average of the monthly payments made during the initial term of the agreement or, in the case of a month-to-month tenancy, during the first twelve months of the tenancy.

[Adopted February 21, 2018]

701. Vacancy Rent Levels

- A. Commencing July 21, 2015, a Landlord may establish the initial rent rate for all new tenancies consistent with Civil Code Section 1954.50, et seq. as amended, and any Board regulations enacted consistent therewith, except where any of the following applies:
- (1)
- a. The previous tenancy has been terminated by the Landlord pursuant to Civil Code Section 1946, or;
 - b. The previous tenancy has been terminated upon a change in terms of tenancy noticed pursuant to Civil Code Section 827, except a change permitted by law in the amount of rent or fees or resulting from the owner's termination of or failure to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified Tenant of the unit. A tenancy shall be presumed to have terminated upon a change in terms of tenancy if the Tenant(s) vacate(s) the Rental Unit within twelve months of the Landlord's unilateral change in the terms of the rental agreement. Absent a showing by the Landlord that the Tenant(s) vacated for reasons other than the change in the terms of the rental agreement, the initial rental rate for the new tenancy shall be no greater than the most recent Maximum Allowable Rent (prior to the new tenancy).

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- (2) A new tenancy begun within three years of the date that the owner terminated or failed to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified Tenant of the unit unless the new tenancy is exempted from this limitation pursuant to Civil Code Section 1954.53(a)(1)(B). During the three year period, the rental rate for any new tenancy established in that vacated unit shall be at the same rate as under the terminated or non-renewed contract or recorded agreement, increased by any subsequently authorized Annual General Adjustments.
- (3) The Landlord has otherwise agreed by contract with a public entity to limit or otherwise restrict rent levels in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of title 7 of the Government Code.
- (4) The dwelling or unit has been cited in an inspection report by the appropriate government agency as containing serious health, safety, fire or building code violations as defined by Health and Safety Code Section 17920.3 excluding those caused by disasters or damages incurred by the Tenant or associated occupants, guests, or pets, the citation was issued at least sixty (60) calendar days prior to the date of the vacancy, and the cited violation had not been abated when the prior Tenant vacated and has remained unabated for at least sixty (60) calendar days, unless the time for correction was extended by the agency that issued the citation.
- (5) The prior Tenant was the spouse, registered domestic partner, child, parent or grandparent of a Landlord who recovered possession of the unit pursuant to RMC 11.100.050(a)(6).
- (6) The prior Tenant vacated the property as a proximate result of the conduct by the Landlord such that the vacancy is non-voluntary, except for evictions for just cause as provided under RMC 11.100.050.

[Adopted February 21, 2018]

702. Voluntary and Non-Voluntary Vacancies

- A. For the purposes of this Chapter, a "voluntary" vacancy shall mean a vacancy that results from the independent choice of the Tenant, without intimidation, pressure, or harassment. For purposes of this section "abandonment" is defined as the Tenant's independent choice, without intimidation, pressure, or harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the Landlord terminates the tenancy pursuant to Civil Code Section 1951.3. Abandonment is considered voluntary.
- B. Non-Voluntary Vacancy means a vacancy resulting from conduct by the Landlord which constitutes:
 - (1) Acts prohibited by law;

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- (2) Constructive eviction;
 - (3) A breach of the covenant of quiet enjoyment of the property;
 - (4) Harassment;
 - (5) Threats to withdraw the property from the rental market pursuant to the Government Code Section 7060-7060.7 (Ellis Act) and Rent Board Regulation 17-07; and,
 - (6) Notices of any kind that negligently or intentionally misrepresent to a Tenant that the Tenant is required to vacate the Rental Unit.
- C. "Harassment" shall be defined as a knowing and willful act or course of conduct directed at a specific Tenant or Tenants which:
- (1) Would cause a reasonable person to fear the loss of use or occupancy of a Rental Unit or part thereof, or of any service, privilege or facility connected with such use or occupancy, without legitimate reason or legal justification; or
 - (2) Materially interferes with a Tenant's peaceful enjoyment of the use and/or occupancy of a Rental Unit; or
 - (3) A single act may constitute harassment for purposes of determining whether a vacancy was voluntary. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.
 - (4) Acts constituting harassment include, but are not limited to the following:
 - a. Eviction on the grounds of an Owner Move-In pursuant to Ordinance section 11.100.050(a)(6) which was not in good faith.
 - b. The threat or repeated threat to evict a Tenant in bad faith, under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a Rental Unit.
 - c. Reduction in housing services under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a Rental Unit;
 - d. Reduction in maintenance or failure to perform necessary repairs or maintenance under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a controlled Rental Unit;
 - e. Abuse of the Landlord's right of access into a residential unit within the meaning of California Civil Code §1954; or
 - f. Verbal or physical abuse or intimidation.
 - (5) A vacancy occurring as result of the filing of a Notice of Intent to Withdraw under Government Code Section 7060-7060.7 (the Ellis Act and Rent Board Regulation 17-07) shall not be considered voluntary.

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- (6) A tenancy and subsequent vacancy created as a sham shall not be considered voluntary. A sham tenancy may be presumed where the occupant did not have a bona fide Landlord-Tenant relationship with the Landlord, or occupied the property for less than four (4) months and principally for the purpose of vacating the property to establish eligibility for vacancy-related increase.

[Adopted February 21, 2018]

703. No Vacancy Rent Increase for Original Occupants

- A. The Maximum Allowable Rent for a Controlled Rental Unit occupied by an Original Occupant shall not be increased under the provisions of this Regulation while the existing Tenant occupies the unit as their Primary Residence as defined in Richmond Municipal Code Section 11.100.030(h). For purposes of this Regulation, the term "original occupant" as used herein includes any Tenant in the Rental Unit, with the Landlord's knowledge, was residing in the unit on or before July 21, 2015, or when the Landlord last established an initial rent for the unit.

No existing Tenant shall be required to vacate a Rental Unit as a result of a covenant or condition in a rental agreement requiring the Tenant to surrender possession except as permitted under Richmond Municipal Code Section 11.100.050(8).

[Adopted February 21, 2018]

703.5. Challenging a Tenant's Occupancy Status

- A. A Landlord may file a petition contesting whether an original occupant maintains a Primary Residency within the Rental Unit. All petitions and hearings must be filed and conducted in accordance with Chapter 8 of these Regulations.
- B. Where a Landlord files a petition pursuant to Regulation 703.5(A), the Landlord shall bear the burden of proof of establishing by a prima facie showing that the Tenant does not occupy the Rental Unit as a Primary Residence. Primary Residence shall have the meaning defined in Richmond Municipal Code Section 11.100.030(h). Where the Landlord has met the prima facie threshold of evidence demonstrating that the Tenant does not occupy the Rental Unit as a Primary Residence, the burden of proof shall shift to the Tenant, and the Tenant must demonstrate by a preponderance of the evidence that the Rental Unit has been used as a Primary Residence. The Hearing Examiner shall weigh the relevant evidence submitted by both the petitioner and the respondent in making a determination as to whether the Tenant has not maintained the Rental Unit as a Primary Residence. For purposes of this provision, prima facie shall mean sufficient evidence to establish a fact or raise a presumption unless disproved.
- C. If the Hearing Examiner determines that the Tenant did not maintain the Rental Unit as a Primary Residence, then any rent increase properly noticed by the Landlord shall become effective on the specified date contained within a proper notice of rent increase or on the date rent is next due following the Hearing Examiner's decision, whichever is later.

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704. Increase and Decrease Petitions

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

[Adopted February 21, 2018]

705. Fraud or Intentional Misrepresentation

Any increase in the Maximum Allowable Rent authorized pursuant to this Regulation that is obtained by fraud or misrepresentation by the Landlord or the Landlord's agent or employee shall be void.

[Adopted February 21, 2018]

706. Subletting

A. An owner may increase the rent by any amount allowed by Civil Code section 1954.50 et seq., as amended, and Section 706(B) of this Regulation, to a sub-lessee or assignee when the original occupant or occupants who took possession of the Rental Unit pursuant to a rental agreement with the owner no longer permanently resides in the Rental Unit. The term "original occupant" as used herein includes any Tenant in the Rental Unit, with the Landlord's knowledge, was residing in the unit on or before July 21, 2015, or when the Landlord last established an initial rent for the unit.

Within fifteen (15) calendar days of any rent increase pursuant to this subsection, a Tenancy Registration form(s) described in Section 402(A)(1) shall be filed with the Board.

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

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

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six months after receiving written notice of the last original occupant's departure, by agreeing in writing with the remaining tenants to do so.

- D. Where the Landlord initially rents a Rental Unit to a Tenant and authorizes more than one Tenant to occupy the unit, but fails to place the name of more than one Tenant on the Rental Housing Agreement, all Tenants who occupy the unit within one month, with permission of the Landlord, express or implied, shall be considered original occupants.

[Adopted February 21, 2018]

706.5. Challenging a new initial rent based on Tenant status.

- A. A Landlord or Tenant may file a petition for a determination as to whether the provisions of Regulation 706, et seq., or other applicable Regulations of this Chapter have been met warranting the setting of a new initial rent. Where a Landlord or Tenant files a petition pursuant to this Regulation, the petition must conform to the procedural requirements set forth in Chapter 8 of these Regulations. In addition, the Petition shall contain a statement of the issue, the relief being sought, and shall include supporting evidence.
- B. The Petitioner shall bear the burden of proof of establishing by a preponderance of the evidence that which is asserted by the Petition. The Hearing Examiner may only address issues raised in both the petition and objections, and where appropriate, the Hearing Examiner may consider issues of Rent overcharges and make orders of relief premised on Rent overcharges.

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

- A. A written request from a Landlord for a Tenant to vacate a unit so the Landlord or a qualifying relative of the Landlord may occupy the unit as a principle residence shall be treated as a Notice to Terminate Tenancy pursuant to Civil Code Section 1946 for the purpose of determining the rent level when the unit is subsequently rented.
- B. A Landlord who serves a 30 or 60-Day Notice of Termination of Tenancy pursuant to Richmond Municipal Code section 11.100.050(A)(6) for the purpose of recovering possession of the unit for their own use or occupancy as a principle residence or the principle residence of a qualifying relative may rescind the notice or stop eviction proceedings but, if the Tenant vacates within one year of the date of service of the notice, the tenancy is presumed to have been terminated by the Landlord as a result of the notice. The rental rate for the next tenancy established in the vacated unit shall be no more than the Maximum Allowable Rent under the Ordinance for the Tenant who vacated, plus any subsequent increases authorized by the Rent Board.
- C. This presumption applies even though the Tenant vacates the unit after the notice has been rescinded. A written statement from the Tenant that the Tenant is leaving of their own volition signed as part of a settlement whereby the Tenant is required to vacate the unit is insufficient to rebut this presumption.

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- D. A Landlord may rebut the presumption at a hearing based on a preponderance of the evidence. Such a hearing shall follow the process established for an Individual Rent Adjustment.

[Adopted February 21, 2018]