

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: January 20, 2021

Final Decision Date Deadline: January 20, 2021

STATEMENT OF THE ISSUE: At their meeting on December 16, 2020, the Rent Board received a presentation on proposed 1009(C)1 in the context of Section 11.100.050(a)(6)(B) of the Rent Ordinance. Following discussion, the Rent Board directed staff to revise proposed Regulation 1009 to reflect the interpretation that Section 11.100.050(a)(6)(B) of the Rent Ordinance does not limit Landlords to one Owner Move-In (OMI) eviction per property, but rather means that if the same Landlord or same enumerated relative already occupies a rental unit on the property, that Landlord or enumerated relative may not perform an OMI eviction for themselves or the enumerated relative on the property. Staff members have prepared the revised regulation for the Board's consideration and potential adoption.

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> | |

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

RECOMMENDED ACTION: ADOPT revised proposed Regulation 1009, clarifying the definition of a natural person, the number of allowable evictions, and good faith requirements as they relate to Owner Move-In (OMI) evictions pursuant to Section 11.100.060(a)(6) of the Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance – Rent Program (Nicolas Traylor 620-6564).

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AGENDA REPORT

DATE: January 20, 2021
TO: Chair Maddock and Members of the Rent Board
FROM: Nicolas Traylor, Executive Director
SUBJECT: PROPOSED OWNER MOVE-IN EVICTION REGULATION 1009

STATEMENT OF THE ISSUE:

At their meeting on December 16, 2020, the Rent Board received a presentation on proposed 1009(C)1 in the context of Section 11.100.050(a)(6)(B) of the Rent Ordinance. Following discussion, the Rent Board directed staff to revise proposed Regulation 1009 to reflect the interpretation that Section 11.100.050(a)(6)(B) of the Rent Ordinance does not limit Landlords to one Owner Move-In (OMI) eviction per property, but rather means that if the same Landlord or same enumerated relative already occupies a rental unit on the property, that Landlord or enumerated relative may not perform an OMI eviction for themselves or the enumerated relative on the property. Staff members have prepared the revised regulation for the Board's consideration and potential adoption.

RECOMMENDED ACTION:

ADOPT revised proposed Regulation 1009, clarifying the definition of a natural person, the number of allowable evictions, and good faith requirements as they relate to Owner Move-In (OMI) evictions pursuant to Section 11.100.060(a)(6) of the Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance – Rent Program (Nicolas Traylor 620-6564).

FISCAL IMPACT OF PROPOSED POLICY OPTIONS:

There is no measurable fiscal impact to the Rent Program associated with the proposed regulation.

DISCUSSION:

Background

Section 11.100.050(a)(6) of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (Rent Ordinance) provides that a Landlord may seek to recover

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possession of a rental unit in good faith for the use and occupancy as a Primary Residence by the Landlord or the Landlord's spouse, children, parents, or grandparents. This category of terminations is commonly referred to as "Owner Move-In evictions," or "OMI" evictions.

Policy Direction Provided by the Board

Since their meeting on September 16, 2020, the Board has directed staff members to incorporate the following revisions to proposed Regulation 1009:

- 1009(B) 1: Clarify language to explicitly specify that a Natural Person shall include Owner of a trust, who is both a Trustor and Trustee.
- 1009(D) 5: Clarify language regarding Good Faith requirements, to make clear that consideration of "good faith" by the courts may be considered at the time of the service of a notice of termination pursuant 11.050.100(a) (6).
- 1009(E) Clarify or remove section regarding failure to occupy the rental unit.
- Revise Regulation 1009 to clarify that if a same Landlord or same enumerated relative already occupies a rental unit on the property that same Landlord or same enumerated relative may not perform an owner move-in for themselves or the enumerated relative on the property. This interpretation will allow a Landlord who already occupies a rental unit on the property to be able to perform owner move-in evictions for their enumerated relatives who are not already occupying a rental unit on the property. Landlords would still be prohibited from performing additional owner-move for enumerated relatives not already living on the property if there is a vacant unit.

Board Interpretation and Policy Direction Regarding Regulation 1009

In accordance with the Board's initial policy direction, Rent Program staff drafted Regulation 1009(C)1 and (C)4, placing limits on how many Owner Move-In evictions could take place on a property. Prior to bringing this policy before the Board for its consideration and adoption at the October 21, 2020, Board meeting, staff members recommended the Board discuss the policy to further understand how it might align or conflict with the Rent Ordinance. After initial discussion at the October Board meeting, the item was continued to the November Board meeting. At the November 18, 2020, Board meeting, Boardmembers opted to continue discussion on Regulation 1009(C)1 in the context of Richmond Municipal Code Section 11.100.050(a)(6)(B) at their meeting in December.

At their December 16, 2020, Regular Meeting, the Board received three options for addressing Regulation 1009. The first option (interpretation 1), reflected the Board's initial policy direction limiting the number of OMI evictions that a Landlord could perform on a property, clarifying that if the same Landlord or enumerated relative already

occupies a Rental Unit on the property (or if a vacancy already exists on the property), that same Landlord may not perform an OMI eviction for themselves or any enumerated relative. This interpretation is reasonable only if the word “same” applies to the Landlord and not the enumerated relative.

The second option (interpretation 2) would not place a limit on the number of OMI evictions that are permissible on a property. This interpretation also hinges on the word “same”, but in this case, the word “same” applies to both the Landlord and the Tenant so that if the same Landlord or same enumerated relative already occupies a rental unit on the property, that same Landlord or same enumerated relative may not perform an OMI eviction for themselves or an enumerated relative on the property. This interpretation permits a Landlord who already occupies a Rental Unit on a property to perform an OMI eviction for enumerated relatives who are not already occupying a Rental Unit on the property. Landlords would still be prohibited from performing additional OMI evictions for enumerated relatives not already living on the property if there is a vacant unit.

The final option presented by staff was to defer to the courts. This would mean that instead of adopting Regulation 1009, the Board would defer to the courts, which would require parties to seek relief and clarification through the judicial process.

After receiving the three policy options, the Board directed staff to draft Regulation 1009 to reflect the second interpretation: that RMC 11.100.050 (a)(6)(B) means that if the same Landlord or same enumerated relative already occupies a rental unit on the property, that same Landlord or same enumerated relative may not perform an OMI eviction for themselves or the same enumerated relative on the property.

Summary of Proposed Regulation 1009

As drafted, Regulation 1009 contains the following sections:

- a. Section A describes the purpose of the regulation.
- b. Section B clarifies the definition of “natural person” for the purpose of the regulation.
- c. Section C clarifies limitations on allowable OMI evictions that may take place on a property.
- d. Section D contains an illustrative list of factors for the courts to consider when evaluating a Landlord’s good faith in terminating a tenancy on the grounds of OMI.

Next Steps

In accordance with Regulation 323, proposed Regulation 1009 would become effective February 19, 2021 (thirty calendar days from the date of the Board meeting) if adopted by the Board. If adopted, senior staff will update informational materials and ensure that housing counselors are trained on the new regulation prior to its effectiveness.

DOCUMENTS ATTACHED:

Attachment 1 – Revised Proposed Regulation 1009 (track-changes)

Attachment 2 – Revised Proposed Regulation 1009 (clean)

1009. Owner Move-In Eviction Pursuant Richmond Municipal Code Section 11.100.050(a)(6)

A. Purpose of Regulation. Richmond Municipal Code Section 11.100.050(a)(6), permits the eviction of a Tenant where a Landlord ~~who~~ seeks to recover possession of a Rental Unit in good faith for use and occupancy as a Primary Residence for themselves, or for an enumerated qualifying relative. In response to community members' inquiries regarding the application of Richmond Municipal Code Section 11.100.050(a)(6), the purpose of this Regulation is to clarify those circumstances whereby the usage of Richmond Municipal Code Section 11.100.050(a)(6) is appropriate, and to aid the courts in interpreting the provisions of Richmond Municipal Code Section 11.100.050(a)(6).

B. Definition of Natural Person for Purposes of this Regulation. ~~B.~~

1. Only a Natural Person who has at least a 50 percent ownership interest in a Property shall be considered a Landlord.
2. No corporation, partnership, limited partnership, or trust company ~~as~~ defined in California Financial Code, Section 107, real estate investment trust ~~as~~ defined in Section 856 of the Internal Revenue Code, or association shall be considered a Natural Person.

2-3. Notwithstanding Regulation 1009(B)(2), a Natural Person shall include an Owner of a Revocable Trust where the Owner is both the Grantor and Grantee, and holds 50% ownership interest in the Property.

C. Number of Allowable Evictions Under Richmond Municipal Code Section 11.100.050(a)(6).

A "Landlord" as defined in Richmond Municipal Code Section 11.100.050(a)(6), may, in good faith, evict a Tenant from a Rental Unit for the use and occupancy as a Primary Residence for themselves or for their spouse, children, parents, or grandparents; however:-

1. A Landlord that meets the definition espoused in Richmond Municipal Code Section 11.100.050(a)(6) who occupies one of the dwelling units on the Property; shall be prohibited from performing an eviction pursuant to Municipal Code Section 11.100.050(a)(6) on behalf of themselves to recover possession of any other dwelling unit on the Property. shall only be permitted to perform one Owner Move In eviction on the Property for either themselves, their spouse, children, parents, or grandparents.
2. Where an enumerated relative, as described in Municipal Code Section 11.100.050(a), occupies a unit on the Property, a Landlord shall be prohibited from performing an eviction pursuant to Municipal Code Section

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~~11.100.050(a)(6); on behalf of that same enumerated relative to recover possession of any other dwelling unit on the Property.~~

~~2-3.~~ Notwithstanding Regulation 1009(C)(1) and Regulation 1009(C)(2), a Landlord may perform an eviction pursuant to Municipal Code Section 11.100.050(a)(6), on behalf of either themselves or an enumerated relative, regardless of whether that Landlord or that same enumerated relative already occupies a unit on the Property, if who has already performed an Owner Move In for either themselves, their spouse, children, parents, or grandparents, may perform an additional Owner Move In on the same Property if there is a demonstrated need for a Reasonable Accommodation based on a qualifying Disability as defined by Government Code Section 12955.3

~~3-4.~~ The Landlord or enumerated relative must intend to occupy the Rental Unit as their Primary Residence as defined in Richmond Municipal Code Section 11.100.030(h) for at least thirty-six consecutive months following recovery of possession. A Landlord shall only have one Primary Residence.

~~4.~~ If any Landlord as defined by Richmond Municipal Code Section 11.100.050(a)(6) or enumerated relative already occupies one unit on a property, no eviction pursuant to Richmond Municipal Code Section 11.100.050(a)(6), may take place unless there is a demonstrated need for a Reasonable Accommodation based on a qualifying Disability as defined by Government Code Section 12955.3

5. No eviction pursuant to Richmond Municipal Code Section 11.100.050(a)(6) is permitted if a vacancy exists on the Property, unless there is a demonstrated need for a Reasonable Accommodation based on a qualifying Disability as defined by Government Code Section 12955.3

D. Good Faith Requirements.

This subsection illustrates, but does not exhaust, the factors that a Superior Court may consider as relevant evidence in determining whether the Landlord is acting or acted in good faith under Richmond Municipal Code Section 11.100.050(a)(6)(D).

1. A Landlord is not acting in good faith if the Landlord or enumerated relative for whom a Tenant has been evicted does not intend to move into the unit within 90 days of the date that the tenant vacates the unit and/or does not intend to thereafter occupy the Rental Unit for at least ~~thirty-six~~ Six (36) consecutive months as their Primary Residence.
2. Where proof is presented that an ownership interest was granted for the primary purpose of qualifying a person as a Landlord for purposes of eviction under Richmond Municipal Code Section 11.100.050(a)(6), the Landlord is not proceeding in good faith.

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~~3. Where the same Landlord attempts to concurrently perform two evictions pursuant to Richmond Municipal Code Section 11.100.050(a)(6), that Landlord is not proceeding in good faith.~~

~~4.3~~A Landlord who has served a notice of termination of tenancy under Richmond Municipal Code Section 11.100.050(a)(6) is not proceeding in good faith if the Landlord, at the time of the service of a notice of termination of tenancy pursuant to Municipal Code Section 11.100.050(a)(6), has other vacant Rental Units on the Property where the Tenant currently resides, unless there exists a demonstrated Reasonable Accommodation, ~~from the date of the notice to quit until the date of judgment of an Unlawful Detainer, unless there exists a demonstrated Reasonable Accommodation.~~ A vacant unit shall include any Rental Unit for which the Landlord has received notice that a Tenant intends to vacate, a Rental Unit where the Landlord has obtained a Writ of Possession-Real Property, and any Rental unit which is otherwise vacant and not currently rented.

~~5.4~~The court, in making a determination regarding the presence or absence of gGood ~~f~~Faith in an eviction, should consider, along with any other factors deemed relevant: whether the Tenant has recently reported violations of Richmond Municipal Code Chapter 11.100, Richmond Rent Board Regulations, and/or Richmond Rent Board Orders to the Rent Program/Rent Board; whether the Landlord has vacant Rental Units in other residential rental properties in the City of Richmond; whether the Landlord has previously attempted to evict the Tenantese or other Tenants pursuant to Richmond Municipal Code Section 11.100.050(a)(6); whether the Tenant being evicted is paying a low Rent in relation to other units on the property; whether the eviction is an attempt to move the tenant into a higher priced Rental Unit; and any additional relevant information.

~~6.5~~In making a determination as to whether a wrongful eviction has occurred, the Superior Court should consider a Landlord's failure to comply with any of the provisions set forth in Regulation 1010, as evidence that the contested Owner Move-In was not performed in Good faith-good faith.

~~E. Failure to Occupy the Rental Unit. If the individual specified in the notice terminating tenancy pursuant to Richmond Regulation 11.100.050(a)(6), decides they no longer want to occupy the Rental Unit as their Primary Residence, the Landlord shall immediately offer the Rental Unit back to the Tenant who vacated the Rental Unit. In addition to any other remedies obligated under the City of Richmond Relocation Ordinance, any payment made pursuant to the City of Richmond Relocation Ordinance need not be returned.~~

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ATTACHMENT 1**

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**1009. Owner Move-In Eviction Pursuant Richmond Municipal Code Section
11.100.050(a)(6)**

- A. Purpose of Regulation. Richmond Municipal Code Section 11.100.050(a)(6), permits the eviction of a Tenant where a Landlord seeks to recover possession of a Rental Unit in good faith for use and occupancy as a Primary Residence for themselves, or for an enumerated qualifying relative. In response to community members' inquiries regarding the application of Richmond Municipal Code Section 11.100.050(a)(6), the purpose of this Regulation is to clarify those circumstances whereby the usage of Richmond Municipal Code Section 11.100.050(a)(6) is appropriate, and to aid the courts in interpreting the provisions of Richmond Municipal Code Section 11.100.050(a)(6).
- B. Definition of Natural Person for Purposes of this Regulation.
1. Only a Natural Person who has at least a 50 percent ownership interest in a Property shall be considered a Landlord.
 2. No corporation, partnership, limited partnership, or trust company as defined in California Financial Code, Section 107, real estate investment trust as defined in Section 856 of the Internal Revenue Code, or association shall be considered a Natural Person.
 3. Notwithstanding Regulation 1009(B)(2), a Natural Person shall include an Owner of a Revocable Trust where the Owner is both the Grantor and Grantee, and holds 50% ownership interest in the Property.
- C. Number of Allowable Evictions Under Richmond Municipal Code Section 11.100.050(a)(6).

A "Landlord" as defined in Richmond Municipal Code Section 11.100.050(a)(6), may, in good faith, evict a Tenant from a Rental Unit for the use and occupancy as a Primary Residence for themselves or for their spouse, children, parents, or grandparents; however:

1. A Landlord who occupies one of the dwelling units on the Property shall be prohibited from performing an eviction pursuant to Municipal Code Section 11.100.050(a)(6) on behalf of themselves to recover possession of any other dwelling unit on the Property.
2. Where an enumerated relative, as described in Municipal Code Section 11.100.050(a), occupies a unit on the Property, a Landlord shall be prohibited from performing an eviction pursuant to Municipal Code Section 11.100.050(a)(6) on behalf of that same enumerated relative to recover possession of any other dwelling unit on the Property.

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3. Notwithstanding Regulation 1009(C)(1) and Regulation 1009(C)(2), a Landlord may perform an eviction pursuant to Municipal Code Section 11.100.050(a)(6), on behalf of either themselves or an enumerated relative, regardless of whether that Landlord or that same enumerated relative already occupies a unit on the Property, if there is a demonstrated need for a Reasonable Accommodation based on a qualifying Disability as defined by Government Code Section 12955.3
4. The Landlord or enumerated relative must intend to occupy the Rental Unit as their Primary Residence as defined in Richmond Municipal Code Section 11.100.030(h) for at least thirty-six consecutive months following recovery of possession. A Landlord shall only have one Primary Residence.
5. No eviction pursuant to Richmond Municipal Code Section 11.100.050(a)(6) is permitted if a vacancy exists on the Property, unless there is a demonstrated need for a Reasonable Accommodation based on a qualifying Disability as defined by Government Code Section 12955.3

D. Good Faith Requirements.

This subsection illustrates, but does not exhaust, the factors that a Superior Court may consider as relevant evidence in determining whether the Landlord is acting or acted in good faith under Richmond Municipal Code Section 11.100.050(a)(6)(D).

1. A Landlord is not acting in good faith if the Landlord or enumerated relative for whom a Tenant has been evicted does not intend to move into the unit within 90 days of the date that the tenant vacates the unit and/or does not intend to thereafter occupy the Rental Unit for at least thirty-six (36) consecutive months as their Primary Residence.
2. Where proof is presented that an ownership interest was granted for the primary purpose of qualifying a person as a Landlord for purposes of eviction under Richmond Municipal Code Section 11.100.050(a)(6), the Landlord is not proceeding in good faith.
3. A Landlord who has served a notice of termination of tenancy under Richmond Municipal Code Section 11.100.050(a)(6) is not proceeding in good faith if the Landlord, at the time of the service of a notice of termination of tenancy pursuant to Municipal Code Section 11.100.050(a)(6), has other vacant Rental Units on the Property where the Tenant currently resides, unless there exists a demonstrated Reasonable Accommodation. A vacant unit shall include any Rental Unit for which the Landlord has received notice that a Tenant intends to vacate, a Rental Unit where the Landlord has obtained a Writ of Possession-Real Property, and any Rental unit which is otherwise vacant and not currently rented.
4. The court, in making a determination regarding the presence or absence of good faith in an eviction, should consider, along with any other factors deemed

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relevant: whether the Tenant has recently reported violations of Richmond Municipal Code Chapter 11.100, Richmond Rent Board Regulations, and/or Richmond Rent Board Orders to the Rent Program/Rent Board; whether the Landlord has vacant Rental Units in other residential rental properties in the City of Richmond; whether the Landlord has previously attempted to evict the Tenant or other Tenants pursuant to Richmond Municipal Code Section 11.100.050(a)(6); whether the Tenant being evicted is paying a low Rent in relation to other units on the property; whether the eviction is an attempt to move the tenant into a higher priced Rental Unit; and any additional relevant information.

5. In making a determination as to whether a wrongful eviction has occurred, the Superior Court should consider a Landlord's failure to comply with any of the provisions set forth in Regulation 1010, as evidence that the contested Owner Move-In was not performed in good faith.

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