

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: February 28, 2018

Final Decision Date Deadline: February 28, 2018

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

INDICATE APPROPRIATE BODY

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

ITEM

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

RECOMMENDED ACTION: RECEIVE letters from community members regarding the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance, RMC 11.100 – Rent Program (Cynthia Shaw 620-5552).

AGENDA ITEM NO:

F-2.



Stephen D. Pahl	Sonia S. Shah
Karen K. McCay	Helene A. Simvoulakis-Panos
Fenn C. Horton	John A. List
Catherine S. Robertson	Eric J. Stephenson
Servando R. Sandoval	Lerna Kazazic
Ginger L. Sotelo	-----
Theresa C. Becerra	Sarahann Shapiro
	<i>Special Counsel</i>

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Reply to San Jose Office
Sender's Direct Dial No.: (408) 918-2832
Sender's Email Address: kmccay@pahl-mccay.com

February 20, 2018

Via Electronic Mail Only

City of Richmond Rent Program
Attention: Paige Roosa
440 Civic Center Plaza, Suite 200
Richmond, California 94804
paige_roosa@ci.richmond.ca.us

Re: Comments to DRAFT Rent Adjustment Regulations: *Chapter 4 (Rent Registration), Chapter 7 (Vacancy Rent Increases) and Chapter 8 – Subchapter C (Standards for Individual Rent Ceilings Adjustments)*

Dear Richmond Rent Board Members:

On behalf of the Bella Vista at Hilltop Apartment Community, which offers 1008 apartments for rent in the City of Richmond, all of which are subject to The Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (“Ordinance”), we bring to the Board’s attention the following grounds for opposing the proposed Rent Adjustment Regulations: *Chapter 4 (Rent Registration), Chapter 7 (vacancy Rent Increases) and Chapter 8 – Subchapter C – Standards for Individual Rent Ceilings Adjustments* (“Proposed Regulations”) released for public comment to be received no later than 5:00 p.m. on Tuesday, February 20, 2018. As set forth in more detail below, the Proposed Regulations as drafted:

1. Are preempted by California Civil Code Section 1954.53(a)(1) and California Civil Code Section 827, in that they impermissibly expand the statutory exception to an owner’s right to establish the initial rental rate for a unit;
2. Are preempted by California Evidence Code Section 500, by improperly shifting the burden of proof of a voluntary vacancy to the landlord;
3. Create an insurmountable hurdle in the registration process by requiring a landlord to identify the “services” included in rent where “services” are so broadly defined by the Ordinance; and



City of Richmond Rent Program
February 20, 2018
Page 2

4. Fail to address tenant-created code violations, habitability concerns or other reductions or deteriorations in the condition of the unit when considering downward adjustments in individual rent.

While there are other concerns with respect to the proposed regulations, we urge the Board to decline to adopt the Proposed Regulations unless and until the following legal and practical issues are addressed.

Proposed Regulations are Preempted by State Law

In 1995, the Costa-Hawkins Act (“Act” or “Costa-Hawkins”) was approved and signed into law. Cal. Civ. Code §§ 1954.50 – 1954.535. The Act is a general state law that governs a landlord’s ability to set the initial rent for his, her or its property, even in rent-controlled jurisdictions, with certain exceptions. One exception is where:

The previous tenancy has been terminated by the owner by notice pursuant to Section 1946.1 or has been terminated upon a change in terms of the tenancy noticed pursuant to Section 827, except a change permitted by law in the amount of rent or fees.

Cal. Civ. Code § 1954.53(a)(1) (emphasis added). California Civil Code Section 827 in turn provides that a:

. . . landlord may, upon giving notice in writing to the tenant . . . change the terms of the lease to take effect . . . at the expiration of not less than 30 days. . . .

The notice, when served upon the tenant, shall in and of itself operate and be effectual to create and establish, as part of the lease, the terms, rents, and conditions specified in the notice, if the tenant shall continue to hold the premises after the notice takes effect.

Cal. Civ. Code § 827(a) (emphasis added). As such, under Section 827, a landlord has the right to change the terms of a month-to-month tenancy, but, if the change is not acceptable to the tenant, he or she may choose to terminate their tenancy before the notice takes effect. If the tenant chooses to terminate before the notice takes effect, the tenancy will have terminated “upon a change in terms of tenancy.” If the tenant chooses not to terminate before the notice takes effect, then there is no termination upon a change in terms of tenancy under the Act.

“When attempting to ascertain the ordinary, usual meaning of a word, courts appropriately refer to the dictionary definition of that word.” Wasatch Property Management v. Degrade, 35 Cal. 4th 1111, 1121-22 (2005) (citing People v. Leal, 33 Cal. 4th 999, 1009 (2004)).



City of Richmond Rent Program
February 20, 2018
Page 3

Webster's dictionary defines "upon" as meaning, among other things, "*with little or no interval after.*" Webster's New International Dictionary (2d ed. 1950) p. 175 (emphasis added). The Proposed Regulations improperly attempt to extend the definition well beyond the ordinary and usual meaning of the word "upon." Proposed Regulation Section 702(A)(1)(b) provides, in pertinent part, that:

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 rent ceiling (prior to the new tenancy).

Prop. Reg. § Section 702(A)(1)(b) (emphasis added). No court would interpret "within twelve months," as being the same as "little or no interval after" the issuance of a Section 827 notice.

Section 827 notices are often used by owners to benefit the entire community in reaction to situations unanticipated when entering into the initial lease agreement. If there is an increase in criminal activity at or around a property, an owner may issue a Section 827 change in terms to implement or expand no loitering policies on the private property. Such policies can reduce gang activity and drug trafficking which may have developed at or around a community. If residents complain about a lack of visitor parking, owners may issue a Section 827 change in terms to prohibit residents from using visitor or guest parking for tenant vehicles, which conduct makes such spaces unavailable for actual visitors of tenants. Section 827 notices also are used to implement parking permit programs to ensure that only resident vehicles are parked on a property where parking for residents becomes a problem as a result of unauthorized vehicles being stored on a property. If the Proposed Regulations are adopted as written, owners will be discouraged from taking such proactive steps for the benefit of their residents since, in doing so, owners risk losing their ability to set the initial rate of a new tenancy occurring within a year after the issuance of the policy change initiated to benefit the community as a whole.

Section 827 notices are also used to implement changes necessary to comply with applicable law, such as when new local laws are passed. For example, when the City of Richmond required landlords to add a "smoke-free addendum" to their current month-to-month lease, such could only have been accomplished through a Section 827 notice of change in terms. Under the Proposed Regulations, any tenant who vacated within twelve months of issuance of the City-required smoke-free addendum would be presumed to have "terminated upon a change in terms of tenancy" depriving the owner of its statutory right to set the initial rent of the next tenancy. Such a result is preempted by Costa-Hawkins which creates a limited exception to an owner's right to set initial rents where the prior tenancy has been terminated **upon** a change in



City of Richmond Rent Program
February 20, 2018
Page 4

terms of tenancy noticed pursuant to Section 827. In order to comply with state law, the Proposed Regulations must be changed to limit the exception, as the Act does, to terminations occurring prior to the effective date of a notice issued pursuant to Section 827.

Improperly Shifts the Burden of Proof to Landlords

The Regulations are also preempted by Evidence Code Section 500 (“Section 500”), which states:

Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.

In other words, Section 500 mandates that where a party is asserting a claim, he or she is responsible for proving the underlying facts necessary to establish said claim. The Proposed Regulations are in direct conflict with Section 500. As previously quoted, Proposed Regulation Section 702(A)(1)(b) provides, in pertinent part, that:

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 rent ceiling (prior to the new tenancy).

Prop. Reg. § Section 702(A)(1)(b) (emphasis added). Costa-Hawkins gives owners the right to set the initial rental rate for a dwelling unit except in specified circumstances. If a tenant, the Board or the City contends a landlord has demanded or accepted a rent payment in excess of the Maximum Allowable Rent, the Ordinance gives the landlord the right to seek relief in court or, for tenants, through an administrative complaint process. *See, e.g.*, Ordinance §§ 11.100.060(e)(14), 11.100.100, 11.100.110. In any such action, under Evidence Code Section 500, the claiming party would have the burden of proving the landlord accepted a rent amount in excess of what was allowed by the Ordinance and the Board cannot legally shift that burden onto the landlord.

In considering the City of Oakland’s Just Cause for Eviction Ordinance, adopted as initiative Measure EE (the “Oakland Ordinance”), the California Court of Appeal, First District, determined that language similar to the foregoing quoted provision of the Proposed Regulations was preempted by Section 500. The Oakland Ordinance stated that “[w]here the owner of record recovers possession under this Subsection (9) [for an owner move-in eviction], and where



City of Richmond Rent Program
February 20, 2018
Page 5

continuous occupancy for the purpose of recovery is less than thirty-six (36) months, such recovery of the residential rental unit shall be a presumed violation of this Ordinance.” Rental Hous. Ass'n of N. Alameda Cty. v. City of Oakland, 171 Cal. App. 4th 741, 757 (2009) (*quoting* Oakland Ordinance, § 6.A(9)(a)). The Appellate Court noted that the quoted portion of the Oakland Ordinance would:

. . . arise only in a tenant’s post-eviction suit against a landlord. In such a suit, the tenant seeks damages based on the landlord’s violation of the [Oakland] Ordinance for the landlord’s failure to occupy the unit following eviction. The tenant must argue the eviction was a pretext and a showing that the landlord thus violated the [Oakland] Ordinance is an essential part of the tenant’s cause of action. The tenant therefore has the burden of proof under Evidence Code section 500 to show the landlord has violated the owner move-in cause for eviction allowed by Measure EE. Section 6.A(9)(a) impermissibly shifts that burden.

Rental Hous. Ass'n of N. Alameda Cty. v. City of Oakland, 171 Cal. App. 4th at 757. The burden shift in the Proposed Regulations is just as impermissible as the attempted burden shift in Oakland as they are both preempted by California Evidence Code Section 500.

Not only is the proposed burden shift preempted by state law, it is practically impossible for a landlord to prove why a tenant vacated as there is no legal requirement for a tenant to give their landlord a reason for terminating a tenancy and there is no way for a landlord to compel a vacating tenant to provide one. Bella Vista at Hilltop has 1008 rental units. In any given month, the community may receive between 29 and 55 notices of termination from residents. While the community asks for a reason, more often than not, none is provided. Although a resident may sometimes tell management staff when they are serving their notices of termination that they have decided to purchase a home or that their decision is job-related, they are moving closer to family, or looking for a larger (or smaller) home due to a change in household size in casual conversation, such statements would not be admissible in most proceedings and most written notices only provide the date of termination, not the reasoning behind it. While most landlords would like to have this information as it would assist in marketing efforts, anticipating turnover, and directing resources to help retain existing residents, they cannot compel tenants to tell them their reasons or provide admissible evidence regarding their decisions.

Rent Registration Requirements Impose Insurmountable Hurdles on Landlords

The Proposed Regulations also require landlords to provide information regarding a tenant’s reason for terminating in order to be “properly registered” under the Ordinance. Proposed Regulation Section 402(A)(1)(c), as currently drafted, requires a landlord to file with the board completed registration statements which include:



City of Richmond Rent Program
February 20, 2018
Page 6

The date the current tenancy began and, for all tenancies that began after July 21, 2015, *an explanation of the circumstances of the termination of the previous tenancy **sufficiently detailed** to demonstrate whether the unit qualifies for a vacancy increase or not*, as described in Chapter 7 Vacancy Rent Increases.

Prop. Reg. § 402(A)(1)(c) (emphasis added). As previously stated, neither the Ordinance nor the Proposed Regulations provide any mechanism for a landlord to obtain this information from vacating tenants and we would expect most tenant advocates would object to a landlord mandating disclosure of what many people would consider private information regarding their personal lives and living arrangements. People move for many, many reasons some of which can be very personal and private: divorce, domestic violence, loss of a job, death or incapacity of a loved one, immigration issues, etc. and often tenants are not willing to share such personal information with their landlord. For the Board to adopt regulations mandating owners to provide information which they cannot legally compel tenants to give in order to be “properly registered” and, therefore, entitled to implement the Annual Allowable Rent Adjustment and establish initial rental amounts is a clear violation of an owner’s due process rights.

The Proposed Regulations further require a landlord to include in the registration statement “the *services* included in the rent.” Prop. Reg. § 402(A)(1)(d) (emphasis added). This is virtually impossible given the definition of “Housing Services” in the Ordinance. The Ordinance defines “Housing Services” to include, but not be limited to:

. . . repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, utilities that are paid by landlord, refuse removal, furnishings, telephone, parking, the right to have a specified number of occupants, **and any other benefit, privilege or facility connected with the use or occupancy** of any Rental Unit. **Housing Services to a Rental Unit shall include a proportionate part of services provided to common facilities of the building** in which the Rental Unit is contained.

Ordinance § 11.100.030(e) (emphasis added).

In order to comply with the Proposed Regulations requiring identification of the “services” included in the rent given how that term is defined by the Ordinance, the landlord would be required to list every element of every rental unit from each plumbing and mechanical system within the building to the floor, wall and window coverings, and each bathroom and kitchen fixture and interior amenity. Since different floor plans may have different amenities or features depending on when they were updated or what building they are in, this alone is an



City of Richmond Rent Program
February 20, 2018
Page 7

overwhelming burden for a landlord, but the registration statement requirements do not stop there. The definition would also mandate disclosure in the registration statement of existing staffing positions which serve residents or relate to the operation of the property since the definition of “services” includes maintenance and janitor services and presumably extends to courtesy patrol, concierge, and other resident services. But wait, there is still more. The Proposed Regulations would also require the landlord, for each unit, to identify the services provided to common facilities of the building. While most landlords highlight certain amenities in marketing and other materials and, while lengthy and time consuming, most can likely provide such information within a registration statement, given the broad definition of “services” in the Ordinance, they would also be required to identify mechanical systems such as boilers, fire suppression, sprinklers, etc.

The Ordinance already diverts significant resources from property operations with its filing requirements. Bella Vista at Hilltop staff spend between approximately one and three hours each day approximately uploading notices of termination of tenancy since they are required to file each and every three-day notice to pay rent or quit and notices to perform covenant or quit, regardless of whether such notices are acted up. This alone is an undue burden given its 1008 rental units especially since management staff has been advised by the City that no one at the City even looks at the notices or does anything with the information provided. In fact, the City often requests information from owners that owners have already provided to the City rather than wade through the avalanche of information provided. To now expand this administrative burden to register each individual unit with its specific features and all “services” as defined by the Ordinance creates an undue burden on housing providers especially given the significant consequences of failing to comply.

Not only will the failure to “properly register” possibly negate future rent increases, but failing to identify each and every “service” as defined in the Ordinance can be used against a landlord in a petition for individual rent ceiling adjustments. As written, Proposed Chapter 8 calculates individual rent ceiling adjustments based upon the “percentage of impairment of the tenant’s use and benefit from the unit.” Prop. Reg. § 874(B)(1) and (2). If a landlord fails to identify each and every benefit, privilege and facility associated with a rental unit, then the percentage calculations will not accurately reflect the percentage of impairment one “decrease” may cause. In fact, the calculation proposed in Proposed Regulation Section 874 is a double-edged sword for any landlord. The more benefits, privileges and facilities identified by the landlord, the smaller percentage of impairment any one “benefit, privilege or service” can be assigned; however, the more benefits, privileges and facilities identified, the more likely a petition will be filed for a decrease in housing services even if the “decrease” is relatively minor and associated with normal and reasonable property operations.

While we are hopeful it was not the author(s)’ intent to create such an insurmountable burden in drafting the registration statement disclosure requirements, the above are foreseeable



City of Richmond Rent Program
February 20, 2018
Page 8

effects of the Proposed Regulations unless the requirement to identify “services included in the rent” is deleted from the registration statement requirements.

Standards for Individual Rent Ceiling Adjustments Fail to Address Conduct of Tenants

The Proposed Regulations fail to give any consideration whatsoever for “decreases” caused by tenants or circumstances beyond the control of the landlord. In Proposed Regulation Section 874(B)(4)(C), a missing smoke detector is identified as an example of a code violation that poses a significant threat to the health or safety of tenants not only justifying a rent increase, but a penalty absent proof of correction. It is ironic that the Program would use this example in the Proposed Regulations considering the number one reason for missing or inoperable smoke detectors is tenant interference. A smoke detector goes off and a tenant, in an effort to stop the alarm from sounding, removes a battery or knocks it off of the ceiling or wall. Rather than report the incident to the landlord, the tenant leaves the smoke detector inoperable. Under the Proposed Regulations, such conduct would be grounds for decrease in rent as there is no discretion for the hearing officer to consider interference by the tenant or other intervening causes. In fact, throughout Chapter 8 of the Proposed Regulations, the City references Civil Code Section 1941.1 relating to untenable dwellings, but conspicuously absent from the Proposed Regulations is any reference to Civil Code Section 1941.2 which imposes affirmative obligations on tenants before there is any duty on a landlord to repair a dilapidation under Section 1941 or 1942. Failing to take into account tenant conduct when evaluating petitions for decreases, incentivizes tenants to create habitability issues in order to reduce their rent.

The Proposed Regulations also fail to take into account decreases in services, as that term is defined in the Ordinance, necessary for required maintenance of a dwelling unit or building. There should be no decrease in services found where a landlord undertakes to perform reasonably necessary repair and maintenance work on rental property, which has the effect of temporarily interfering with or preventing the tenant's full use of housing services. Such an exception is supported by applicable case law (Golden Gateway Ctr. v. San Francisco Residential Rent Stabilization & Arbitration Bd., 73 Cal. App. 4th 1204, 1213 (1999)) and should be incorporated into the Proposed Regulations. Similarly, there should be exceptions where the decrease in services is caused by circumstances beyond a landlord's control. While Proposed Regulation Section 702(A)(4) contemplates an exception from the voluntary vacancy exceptions for vacancies resulting from health, safety, fire or building code violations caused by disasters, nowhere else in the Proposed Regulations are third party interference or natural disasters taken into account. The Proposed Regulations, which grant arguably unconstitutional levels of discretion in the hearing officers, should at the very least identify such circumstances as factors to be considered when deciding whether a downward adjustment is authorized.



City of Richmond Rent Program
February 20, 2018
Page 9

Conclusion

On behalf of Bella Vista at Hilltop Apartment Community, one of the largest rental projects within the City of Richmond, we urge you to defer adoption of the Proposed Regulations until they can be amended to address the concerns set forth herein. While this Community remains committed to complying with the Ordinance and its implementing regulations, as currently drafted, the Proposed Regulations violate state law, impose insurmountable burdens and fail to take into account the affirmative obligations of tenants under California law to maintain their units. Thank you for your consideration.

Sincerely,

PAHL & McCAY
A Professional Corporation

A handwritten signature in black ink that reads 'Karen K. McCay'.

Karen K. McCay

February 20, 2018

Via Electronic Mail Only

City of Richmond Rent Program
Attention: Paige Roosa
440 Civic Center Plaza, Suite 200
Richmond, California 94804
paige_roosa@ci.richmond.ca.us

Dear Richmond Rent Board Members:

The California Apartment Association (CAA) which represents owners and managers of rental housing submits this letter to comment on items before the Richmond Rent Board (Rent Board) at its February 21, 2018 meeting. CAA respectfully requests that this letter be included as part of the public record.

By way of background, CAA is a non-profit trade association representing the rental housing industry in California. Our members provide homes to millions of California residents and our Contra Costa Division represents CAA members in Contra Costa County. CAA is committed to working with the Rent Board to develop regulations that implement Measure L in a fair, straightforward, and balanced manner. To that end, this letter addresses several of the items before the Rent Board on February 21, 2018.

ITEM F-3: SOLE SOURCE CONTRACT WITH DR. KEN BAAR

The Rent Board staff hired Dr. Ken Baar to offer input, analysis, recommendations, and advice on the fair return standards. **CAA has concerns about the ability of Dr. Baar to be objective or at least not impart a strong bias against the rental housing industry.** A review of Dr. Baar's background raises serious questions about Dr. Baar's ability to approach this project objectively.

Listed below are three articles he has published on the issue of rent control all of which indicate views that help facilitate the climate for which rent control could be acceptable, offer advice to cities and tenant attorneys on the issue of developing or defending rent control, and establish guidance to develop rent control laws:

- He is listed as a co-author of the article "The Emergence of Second Generation Rent Controls" which is designed to, in part, "provide Legal Services attorneys with basic rent control information to aid them in the representation of their clients."
- He authored "The Last Stand of Economic Substantive Due Process-The Housing Emergency Requirement for Rent Control." In this article, Baar goes at length to demonstrate the conditions at which rent control could be deemed appropriate and appears to espouse temporary rent controls.
- He wrote the "Guidelines for Drafting Rent Control Laws." In this document, he goes at great length to outline how cities can draft ordinances and issues cities must consider when developing rent regulation laws.

Copies of these publications can be made available upon request. In reviewing these documents, it is CAA's opinion that while Dr. Baar does have an impressive academic

background and a resume that indicates experience working on rent control issues, he imparts a bias that is not favorable to rental property owners or housing providers.

The Rent Board should, at a minimum, vet additional consultants for this analysis who might be perceived as more neutral or not have a strong bias favoring one side of the issue. Measure L gives the Rent Board the power to hire its own consultants; a RFQ or RFP should be issued to identify the most qualified neutral party to develop the analysis on the important issues the Rent Board is tasked with addressing.

CAA appreciates your dedication to the City of Richmond and looks forward to working in partnership with you on these important issues to ensure an effective and fair implementation of Measure L.

ITEM G-1: DRAFT RENT REGULATIONS

In reviewing the draft regulations, CAA offers the following comments on specific sections of the draft that is before the Rent Board:

Regulation 702(A)(6)

This section states that a landlord may not establish the initial rental rate for a unit (i.e., vacancy de-control does not apply) when the prior tenancy ended as a result of “conduct by the landlord such that the vacancy is non-voluntary, except for just cause as provided under [Measure L].” While CAA in no way condones illegal or unethical behavior by landlords, CAA is concerned that this regulation oversteps the authority of the Rent Board to regulate the rental rate charged at initial occupancy. It is not clear what the Rent Board’s authority is to remove vacancy decontrol in this situation. The Costa-Hawkins Rental Housing Act states that vacancy decontrol applies unless a specific enumerated situation applies, such as a no-cause termination pursuant to Civil Code § 1946 or upon a change in terms. *See* Civil Code § 1954.53(a). In other words, state law does not have any provisions specifically requiring the vacancy to be voluntary in order for vacancy decontrol to apply. This regulation should be re-drafted to mirror the requirements and exclusions of the Costa Hawkins Rental Housing Act.

Regulation 703(C)(4)(e)

This section defines “abuse of the right of access” as provided for in Civil Code § 1954 as a form of “harassment” which can cause a vacancy to be considered involuntary, and thus not eligible for vacancy decontrol. In addition to the issue raised above, there is a technical issue with the wording of this provision. Namely, it’s not clear what it means to “abuse” the right of access. Does “abuse” mean non-compliance with Civil Code § 1954? If so, that should be clear in the regulation. If the standard for “abuse” is something short of violation of the law, that is problematic as it could end up penalizing a landlord for engaging in conduct that is perfectly legal. CAA recommends that this section be removed from the regulation. In the event the Rent Board can provide authority for the position that it can limit vacancy decontrol in situations where the Rent Board deems the vacancy to have been involuntary, then CAA requests that this section be revised to apply only in situations where the landlord has violated the law.

Regulation 707(B)

This section deals with the ability of the landlord to increase the rent by any amount allowed by Civil Code § 1954.50, et seq., if all the original occupants of the unit have vacated and only subtenants remain. This is a requirement of The Costa-Hawkins Rental Housing Act. *See* Civil Code § 1954.53(d)(2). However, this section states that it does not apply if the subtenants were “approved” by the landlord. This language is problematic because Measure L law requires the landlord to allow subtenants in various situations (*see* RMC 11.100.050(a)(2)(i) and (ii)). Thus, subtenants that the landlord would not have allowed but for the provisions of Measure L could be considered “approved,” thereby eliminating the landlord’s ability to increase the rent as otherwise allowed by state law.

This provision should be either removed or amended to address the situation in which the landlord allowed the subtenant only because the law required them to.

Regulation 874

The numbering convention of this section is confusing and inconsistent with the rest of the regulations. While the other regulations use a numbering convention which follows a capital letter > number > lower case format, this section uses a capital letter > number > capital letter again, which causes confusion. In addition, the numbered subdivisions of this section are followed by a period, whereas the numbered subdivisions of the other regulations use parenthesis. The numbering of this section should be corrected so as to be consistent with the rest of the regulations.

Regulation 874(A)(4)

This section requires a decrease in the rent ceiling when the unit does not comply with habitability standards. CAA recognizes that landlords have a duty under state law to provide habitable premises. However, CAA objects to this regulation's failure to provide any exception to the requirement that the rent ceiling be reduced when the habitability issues in the unit are caused by the tenant, or where the tenant substantially interferes with the landlord's efforts to make repairs. Civil Code § 1941.2 is very clear that in circumstances where the tenant caused the habitability issue, or where the tenant interferes with the landlord's efforts to make repairs, the landlord is not in breach of the warranty of habitability. CAA requests that Civil Code § 1941.2's provisions be incorporated into the regulation so that landlords are not penalized for the conduct of their tenants.

Regulation 874(B)(4)(B)

This section provides that a 20% reduction in the rent ceiling for a unit is required any time a unit violates "subsections (b), (c), and (d) of Civil Code Section 1941." In addition to the issue discussed above, this section is problematic because Civil Code section 1941 has no subsections. Thus, it is not clear what conduct or standards the regulation is referring to.

RENT BOARD SHOULD DEFER ACTION ON ITEM G-1

CAA would request that the Rent Board take no action on Item G-1 at the February 21, 2018 meeting. Recognizing that the public comment period on the draft regulations closed only 24 hours before the Rent Board was to vote on the regulations does not give the Rent Board ample and adequate time to review, analyze, and study the public feedback.

CAA appreciates your dedication to the City of Richmond and looks forward to working in partnership with you on these important issues to ensure an effective and fair implementation of Measure L.

Sincerely,



Joshua Howard
Senior Vice President
California Apartment Association

ITEM F-2
ATTACHMENT 1

TO: CITY OF RICHMOND RENT PROGRAM
440 CIVIC CENTER PLAZA
SUITE 200
RICHMOND, CA 94804

FROM: LORI D. WICKLIFF (LANDLORD)
5022 STATE AVE
RICHMOND, CA 94804

THESE ARE SOME THE CHANGES I WOULD LIKE TO RECOMMEND FOR THE DRAFT ADJUSTMENTS REGULATIONS (HANDED OUT) AS OF JANUARY 22, 2018.

702 (1A)

ADD: 30 DAY NOTICE

704

HOUSING AGREEMENT, WRITTEN, ~~ORAL OR IMPLIED~~, TO USE OR OCCUPANCY OF SUCH RENTAL UNIT.
****ORAL OR IMPLIED IS NOT A STANDING CONTRACT. I WROTE UP AN ADDENDUM THAT WOULD HELP CLEAR IT UP. I GOT THE IDEA FROM THE BERKELEY RENT BOARD.**

707(A)

I WOULD LIKE THIS STATEMENT ADDED

THE ORIGINAL TENANT SUBLETTING OR ADDING A ROOMMATE THE ENTIRE PREMISES MAY NOT CHARGE THE SUBTENANT MORE THAN THE RENT THE ORIGINAL TENANT PAY THE LANDLORD/OWNER/PROPERTY MGT. THE ORIGINAL TENANT IS RESPONSIBLE FOR THE FULL AMOUNT OF THE RENT TO BE PAID.

707(B)

ADD: THE NEW SUBTENANT MUST SIGN A LEASE ADDENDUM.

THIS ADDENDUM JUST CLARIFIES THE POSITION FOR ADDED TENANT AND THE LANDLORD

707(D)

ADD: WHEN THE LAST ORIGINAL TENANT TERMINATES HIS/HER LEASE WITH WRITTEN CONSENT TO THE LANDLORD; THE LANDLORD CAN ASK THE SUBTENANT TO PROVIDE PROOF OF INCOME TO COVER THE NEW ESTABLISHED RENT.

707 (C)

DELETE

CONSISTENT WITH CIVIL CODE SECTION 827, SHALL BE EXTENDED FOR UP TO SIX MONTHS FOLLOWING RECEIPT OF THE NOTICE

LEASE ADDENDUM FOR PURPOSE OF FUTURE

COSTA-HAWKINS RENT INCREASE

(CALIFORNIA CIVIL CODE SECTION 1954.53 et. Seq.)

I, _____ (TENANT) hereby acknowledge that I am moving into
_____ (PROPERTY), effective _____ (DATE).

I acknowledge that I am not an original tenant as defined by Richmond Rent Board Regulation 701 and California Code Section 1954.53 because I am replacing a vacating tenant, and/or I was not a party to the original rental agreement.

I understand that the landlord may increase the rent and create a new rental agreement/lease with new and different terms when the last original tenant permanently vacates the unit.

I also understand that the LANDLORD may accept rent payments directly from me as part of my tenancy and that this acceptance alone does not constitute a waiver of the landlord's right to increase the rent pursuant to Richmond Rent Board Regulation and California Civil Code Section 1954.53 when the last original tenant permanently vacates.

I further understand that the Landlord does not waive his/her right to establish a new rent and lease/rental agreement unless his/her right has received written notice of tenancy termination from the last original tenant and thereafter accepts rent before serving notice of a new rent.

For questions about this form, or its use, please contact the Richmond Rent Board
rentboard@ci.richmond.ca.us

DATED: _____

LANDLORD: _____

DATED: _____

TENANT: _____

**ITEM F-2
ATTACHMENT 1**

-----Original Message-----

From: Sherry Zalabak [<mailto:sherZ@comcast.net>]

Sent: Tuesday, February 20, 2018 9:57 AM

To: Rent Control; NicolusTraylor@ci.richmond.ca.us; Paige Roosa

Subject: ATTN: Rent Board Members

To: Members of the Rent Board

RE: Sherry Zalabak Letter Submitted 2/11/18 RE: Changes in number of Tenants

I write to modify my position as stated in the above correspondence. Since the writing of that letter my research reveals that there are far more unit rents frozen by "historically low rents". Some units rent as low as \$400. pr month. If the 25% compensation for adding a tenant is passed without regard to MNOI, Fair Rate of Return, etc. this would be an insufficient increase to address the added costs pr. tenant to the Housing Provider. The content of my letter of 2/11/18 demonstrates the dramatic increase in service costs during the past several years, and did not include "annual increases in property taxes", "special assessments" and alarming hike in "sewer assessments" attached to water bills.

Given this data I propose that the recommendation of a 25% increase be the MINIMUM increase. It is only prudent and fair to consider the specifics of a situation when making a deserving and reasonable decision. Please consider this in your discussions and decisions.

Sherry Zalabak,

Member AURHP "Association of United Richmond Housing Providers"

ITEM F-2 ATTACHMENT 1

-----Original Message-----

From: Sherry Zalabak [<mailto:sherz@comcast.net>]

Sent: Tuesday, February 20, 2018 8:01 AM

To: rentprogram20@gmail.com

Subject: Attention Board Members

To: Members of the Richmond Rent Board

To: Nicolas Traylor

My name is Sherry Zalabak and I bought a triplex in Richmond Annex in 2012. At that time one unit was rented for \$1,100 pr. month. It was in need of renovation but it was occupied. The other two units were uninhabitable. Sections of roof were missing and both apts. were flooded with rainwater, windows were broken, and appliances had been stolen.

I immediately put on a new roof, new gutters and downspouts. I built two new porches, deck and stairs. I replaced 18 windows with new double pain windows with matching shades. I replaced the kitchen appliances and replaced the kitchen floors. I upgraded plumbing, remodeled two bathrooms, painted the inside of both units and painted the building's exterior. I replaced the exterior doors, replaced all wood supports for the two-story stairs, installed an exterior drainage system, added a sump-pump. I replaced 3 water heaters and I refinished all hardwood floors. I landscaped the backyard and installed an irrigation system, bought lawn furniture, picnic table, hammock and lounge chairs. I rehabbed the washer and dryer in the laundry room. And finally, I added exterior lighting. I am proud of what I did and so are my tenants.

When the original tenant decided to move in 2013, I did the same renovations to his unit. I had not raised the rent the entire time he was there. In 2014, after the renovations were completed, I rented it to a single mother for \$1,400. The unit should have rented for \$1,650, but, like the previous tenant (and my mother), she was a single parent and going through a rough patch financially. Once she got back on her feet (she actually managed to buy rental property of her own), I raised the rent to \$1650 in order to start paying for the repairs and improvements I had made.

The Rent Board requires me to roll back the rent to \$1,400. Please explain to me why? I am a great landlord. I have spent these last several years devoting my time (what's left of it) and using my own labor and spending my rental income to create a pleasing home for three households. What have I done to deserve a roll back? Should I have taken advantage of folks when I could? What satisfaction would that give me? I can only guess that this Rent Ordinance is geared to corporate entities whose mission is only the financial bottom line.

I was relieved to read that Housing Providers can petition for rent increases. Yet upon studying the conditions and requirements I am sorry to say that this appears to be an empty claim. The "Home Owner Protection" as claimed by the drafters is replete with prohibitive requirements, restrictions and exclusions. I see only a mountain of obstacles and bureaucratic road blocks to the granting of a rent increase. Do I have all of the records and receipts required...probably not! Do I qualify within the arbitrary time limits and rigid restrictions regarding capital expenses, repairs and improvements. Probably not! Does the time period for capital expense include mine (2012 and 2013)? Is there any flexibility or a provision for "reasonableness"? Probably not!

ITEM F-2
ATTACHMENT 1

Please consider that many of us must repair and improve our properties piece-meal: when we have the money, when interest rates are low or when a tenant moves. We have no control over some of these events. All of these apply to me and to most other small-time Housing Providers. Should we be penalized for falling just outside the boundaries or are we allowed the opportunity of "reasonableness" ?

Respectfully Submitted,
Sherry Zalabak—Member AURHP