

Regular Meeting of the Richmond Rent Board

August 15, 2018 | City Council Chambers

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

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Item G-1: Chapter 7 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”.

Item G-1: Chapter 7 Background, Cont'd

- Generally, 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 Occupants 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.

Item G-1: Chapter 7 Background Cont'd

Chapter 7 describes Original Occupants and proscribes requirements that Original Occupants must adhere to in order to maintain their “Original Occupant” status:

- Original Occupants include 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.
- To maintain an Original Occupant status, an Original Occupant must maintain the unit as his or her principle residence.

Item G-1: The Issue

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.

Item G-1: The Issue Cont'd

Additionally, after careful review of Chapter 7, staff members have identified minor conflicts between the Regulations and the Richmond Rent Ordinance

Item G-1: Staff's proposal regarding petitions based on qualifying events of vacancy decontrol

Staff members are proposing two Regulations that do the following:

- 1) Create a petition process whereby a Landlord may challenge whether the Rental Unit is the original occupant's Primary Residence; and
- 2) Create a petition process allowing both Landlords and Tenants to challenge the resetting of the initial rental rate based on an event of vacancy decontrol.

**Item G-1:
Staff's
proposal
regarding
potential
definitional
conflicts**

Staff members are proposing a series of amendments to Chapter 7 that would bring Chapter 7 Regulations in line with the Rent Ordinance and conform with its purpose therein, and make it consistent with any other applicable law.

Item G-1: Potential conflicts and technical Issues

Staff has identified the following phrases used throughout Chapter 7 of the Regulations that present a potential conflict or create a technical issue:

- Principle Residence
- Agreement
- Lease
- Requirement of “written notice”

**Item G-1:
Richmond
Municipal Code
Section
111.100.030(h):
Primary
Residence**

"Primary Residence": Occupancy of a primary residence does not require that the individual be physically present in the unit at all times or continuously, but the unit must be the individual's usual place of return. Indicia of primary residence include:

- (1) The individual carries on basic living activities at the subject premises for extended periods;
- (2) The subject premises are listed with other public agencies, including Federal, State and local taxing authorities as their primary residence;
- (3) Utilities are billed to and paid by the individual at the subject premises;
- (4) Homeowner's tax exemption for the individual has not been filed for a different property;
- (5) The occupant is not registered to vote at any other location;
- (6) Ownership must be held in the name of the individual claiming primary residence and not held by a limited liability corporation or other corporate structure;
- (7) Other relevant factors illustrating primary residence

Item G-1: Staff's proposal to address principle residence through amendment

- 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.

**Item G-1:
Richmond
Municipal Code
Section
111.100.030(k):
Rental Housing
Agreement**

Rental Housing Agreement is an agreement, oral, written or implied, between a Landlord and Tenant for use or occupancy of a Rental Unit and for Housing Services.

**Item G-1:
Staff's
proposal to
address the
phrases
"agreement"
and "lease",
through
amendment.**

- 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.

Item G-1: Excerpts of Regulation 706(C)

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)*

**Item G-1:
Staff's proposal
to address
concerns with
the phrase
"written notice",
through
amendment.**

Staff is proposing to resolve the issue by amending the phrase "written notice" to simply "notice."

Item G-1: Proposed Regulation 703.5

Proposed Regulation 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.

Item G-1: Proposed Regulation 703.5 cont'd

Proposed Regulation 703.5: Challenging a Tenant's Occupancy Status

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.

Item G-1: Proposed Regulation 703.5 cont'd

Proposed Regulation 703.5: Challenging a Tenant's Occupancy Status

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.

Item G-1: Proposed Regulation 706.5

- **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.

Item G-1: 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).

**AMENDMENT TO REGULATION
905(A)(6)(b)(viii) TO REFLECT THE
DEFINITION OF “CAPITAL
IMPROVEMENT” PROVIDED IN THE RENT
ORDINANCE**

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Item G-2: Excerpts of Regulation 905(A)(6)(b)(viii)

For purposes of this section a capital improvement shall be any improvement to a unit or property which materially adds to the value of the property, appreciably prolongs its useful life or adapts it to new use and has a useful life of more than one year and a direct cost of \$250.00 or more per unit affected. Allowances for capital improvements shall be subject to the following conditions:

The costs are amortized over the period set forth in Section (A)(6)(b)(viii) of this regulation and in no event over a period of less than thirty-six (36) months.

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**Item G-2:
Excerpts of
Regulation
905(A)(6)(b)(viii)
Background
cont'd**

The costs do not include costs incurred to bring the Rental Unit into compliance with a provision of the Richmond Municipal Code or state law where the original installation of the improvement was not in compliance with code requirements.

At the end of the amortization period, the allowable monthly rent shall be decreased by any amount it has increased due to the application of this provision.

Item G-2: The Issue

The definition and limitations provided by Regulation 905(A)(6)(b)(viii) does not include the Richmond Rent Ordinance's proscribed limitation/parameters on Capital Improvements.

Namely, the Regulation fails to limit Capital Improvement to those which are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and distinguish these Capital Improvements from ordinary repair, replacement and maintenance.

Item G-2: Staff's proposal policy amendment

- Staff members are proposing the Rent Board amend Regulation 905(A)(6)(b)(viii) to reflect the definition of Capital Improvements provided in the Rent Ordinance.

Item G-2: Richmond Municipal Code Section 11.100.070(g): Capital Improvement Limitation

The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement.

Item G-2: Proposed Amendment to Regulation 905(A)(6)(b)(viii)

Add the following language to the Capital Improvement parameters found in Regulation 905(A)(6)(b)(viii):

The improvement is not an ordinary repair, replacement, and/or maintenance, and is necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety in accordance with Richmond Municipal Code Section 11.100.070(g).

Item G-2: Recommended Action

AMEND Regulation 905(a)(6)(b)(viii) to reflect the definition of “Capital Improvement” provided in Section 11.100.070 of the Fair rent, Just cause for Eviction, and Homeowner Protection Ordinance – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

Item H-1: Background

- According to the Association of Bay Area Governments (ABAG), in a major earthquake on the Hayward or San Andreas faults, it is estimated that five percent of the Bay Area's housing stock—approximately 150,000 units— will be immediately and permanently damaged, causing approximately \$85-90 billion in direct residential building-related economic losses.
- This loss of housing could have dramatic negative effects on Tenants and Landlords in the City of Richmond.
- The Rent Board has an opportunity to potentially mitigate such negative effects by establishing policy and programs to encourage seismic safety improvements in residential structures.



Item H-1: Contributing Factors

Why Focus on Seismic Safety?

1. The relatively high probability of the Hayward Fault rupturing and the anticipated damage it would cause to residential structures in the City of Richmond
 - According to ABAG, there is a 31% chance of an earthquake along the Hayward Fault, with a magnitude of 6.7 (the 1989 Loma Prieta earthquake was magnitude 6.9, by comparison.)
 - Should this earthquake occur, an estimated 7,200 residential buildings in Contra Costa County would be uninhabitable (approximately 2% of total residential buildings in the County.)
 - Multifamily structures are expected to sustain greater damage compared to single family homes.
2. Richmond's aging housing stock may make the damage caused by an earthquake to be even more pronounced.
 - According to the 2015-2023 Housing Element, 47.6 percent of Richmond's housing units are over 50 years in age, suggesting that many buildings may require structural improvements.

Item H-1: Nexus with the Rent Ordinance

How does seismic safety affect the Rent Ordinance?

- The stated purpose of the Rent Ordinance is to “promote neighborhood and community stability, healthy housing, and affordability for Richmond renters by controlling excessive rent increases and arbitrary evictions to the greatest extent under California law [...]”
- The high probability of a major earthquake in the Bay Area within the next 30 years, and the projected damage associated with such an event, poses a significant threat to homeowners and affordability for renters in the City of Richmond.
- The Rent Board may find it prudent to examine the frequency with which property owners are investing in seismic improvements and devise Rent Board policy and/or program options for both encouraging such improvements and educating community members about how to prepare for earthquakes.

Item H-1: Existing Local Policy Framework

What policies and programs related to seismic safety already exist in the City of Richmond?

- **2015-2023 Housing Element**
 1. Program H-2.5.6 - Soft Story Building Inventory
 - Planning staff completed a preliminary Soft Story Inventory for multi-family properties in the City and identified at least 280 potential soft story structures.
 2. Program H-2.5.7 – Soft Story Building Ordinance
 - The City initiated a Zoning Ordinance Update and considered a Soft Story Building Ordinance as part of that effort; however, a Soft Story Ordinance was ultimately not included in the final version.
- **Standard Plan Set A**
 - Provides a low-cost method to improve an older home’s chances of sustaining an earthquake. When approved by the Building Official, the plan set may be used to strengthen older single family homes and duplexes without the need for an engineer to develop costly site-specific plans and design calculations.

Item H-1: Existing Local Policy Framework (continued)

What policies and programs related to seismic safety already exist in the City of Richmond?

- **Rent Board Regulations**

- Capital improvement policies within the context of rent control laws are varied in terms of scope and approach.
- The memo from Ken Baar provides an overview of approaches and considerations in other California jurisdictions with rent control.
- Dr. Baar's memo also discusses incentives rent control jurisdictions have employed to support compliance with municipal requirements for seismic upgrades.
- Regulation 905, adopted by the Board on March 21, 2018, permits the costs of retrofitting to be included in the calculation of Net Operating Income.
- The costs of seismic retrofitting are amortized over a period of ten to 20 years, depending on the specific improvement.

Item H-1: Seismic Safety in the Context of Rent Control

- Dr. Kenneth Baar's memorandum provides an overview of capital improvement policies in various rent control jurisdictions.
- Dr. Baar's memorandum reveals four major avenues for how capital improvement expenses can be passed on to Tenants:
 1. Capital improvement increases that are calculated using an MNOI or Fair Return analysis. Santa Monica, Richmond and West Hollywood utilize this process.
 2. Capital improvement increases that are calculated via examining rent history or vacancy rent increases. Berkeley uses this model.
 3. Capital improvement increases that are calculated without considering fair return or rent history. San Francisco and Los Angeles utilize this model.
 4. A limited pass through increase for only specified types of improvements, such as seismic and sustainability. San Jose uses this model and limits any capital improvement increase to no more than 3%.

Item H-1: Proposed Next Steps

Staff members propose the following next steps over the next 12 months:

1. Develop a strategy with the Planning and Building Services Department to monitor and document the frequency with which property owners are investing in seismic safety improvements
 - *This could help staff identify possible avenues for incentivizing such improvements*
2. Conduct case study research to understand the landscape of policies and programs in other cities in the Bay Area, such as Berkeley and Oakland, with respect to seismic safety and improvements, and the extent of Rent Board and Rent Program involvement in the implementation of such policies and programs
3. Identify and evaluate the feasibility of potential policies and programs to incentivize investment and educate community members about seismic safety
4. Consider including a workshop pertaining to seismic safety in the 2019 Richmond Rent Program Community Workshop Calendar

Item H-1: Recommended Action

RECEIVE a memorandum from Dr. Kenneth Baar concerning a Capital Improvement policy options and issues around capital improvement regulations and DIRECT staff to collaborate with the Planning and Building Services Department to monitor the frequency with which property owners are investing in seismic safety improvements and devise Rent Board policy and/or program options for encouraging such improvements and educating community members about how to prepare for earthquakes – Rent Program (Nicolas Traylor 620-6564).



https://www.google.com/search?q=seismic+retrofitting&source=lnms&tbn=isch&sa=X&ved=0ahUKEwj0qL6nu7cAhUSLnwKHR_kBloQ_AUICigB&biw=1270&bih=681&dpr=2#imgrc=29_qZC8kIY_CM



https://www.google.com/search?q=seismic+retrofitting&source=lnms&tbn=isch&sa=X&ved=0ahUKEwj0qL6nu7cAhUSLnwKHR_kBloQ_AUICigB&biw=1270&bih=681&dpr=2#imgrc=GF-AcY28F34ILM

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Short-Term Rentals

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Item H-2: Background

Short-term rentals of residences and its related platforms such as Air B&B and VRBO have had a significant impact on cities in the Bay Area.

Positive impacts include:

- Opportunity to provide ancillary income to city residents
- Expanding city tourism
- Enhancing commercial industries.

Negative impacts include:

- Disruptive to communities
- Another mode of displacement of renters
- Threat to the existing rental housing stock.

Item H-2: Background Cont'd

Cities that have ban Short-Term Rentals:

- Tiburon
- Danville
- Monterey
- Pacific Grove

Cities that have regulated Short-Term Rentals:

- San Francisco
- Marin
- San Jose
- Berkeley

Item H-2: Background Cont'd

Richmond regulates Short-Term Rentals for the purposes of taxes.

Richmond Municipal Code Section 7.88.020(2) for the purpose of taxes, defines hotels as:

Any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse, roominghouse, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof.

Item H-2: The Issue

At their Regular Meeting on July 18, 2018, Board members directed staff to explore the Rent Program's possible role in regulating short-term rentals, specifically after a Rental Unit has been Withdrawn from the Rental Market pursuant to the Ellis Act.

**Item H-2:
The City of
Richmond has
sole jurisdiction
over regulating
the use of Short-
Term Rentals,
such as Air B&B,
VRBO, etc.**

- The City of Richmond has sole Land Use powers over lands and properties that fall within its jurisdictions.
 - Land use is a broad term referring to how the property or land may be used.
- Short-term Rentals is a particular use of land or property.
- The Planning and Building Services Department are responsible for managing and regulating the issuance of permits controlling use of land or property.

Item H-2: Cities with Rent Stabilization Programs collaborate with their respective Building and Planning Departments

- Many Cities have collaborated with their rent control programs to pass Conversion and Demolition Ordinances to address short-term rentals and other circumstances that may impact the housing stock.
- The City of San Francisco provides a good example of this collaboration. (See next slide)

Item H-2: Excerpts of San Francisco's Conversion and Demolition Ordinance

- **Short-Term Residential Rental.** A Tourist or Transient Use where all of the following conditions are met:

(d) the Residential Unit: is not subject to the Inclusionary Affordable Housing Program set forth in Planning Code Section [415](#) *et seq.*; is not a residential hotel unit subject to the provisions of [Chapter 41](#), unless such unit has been issued a Permit to Convert under Section [41.12](#); is not otherwise designated as a below market rate or income-restricted Residential Unit under City, state, or federal law; **has not been the subject of an eviction pursuant to the Ellis Act and Administrative Code Section [37.9\(a\)\(13\)](#) within the five year period prior to applying for the Registry if such eviction occurred after November 1, 2014;** and no other requirement of federal or state law, this Municipal Code, or any other applicable law or regulation prohibits the permanent resident from subleasing, renting, or otherwise allowing Short-Term Residential Rental of the Residential Unit.

Item H-2: Excerpts of San Jose's Short- term Rental Ordinance

- Incidental transient occupancy is only a permitted use in a dwelling that is subject to Parts 1—6 of [Chapter 17.23](#) of this Code, if the host is a person who occupies the unit that is being used for incidental transient occupancy for at least 60 consecutive days, with the intent to establish that dwelling as the host's primary residence.

Item H-2: The Rent Ordinance incidentally addresses short- term rentals

Richmond Municipal Code Section 11.100.030(d)(2) exempts, “Rental units in hotels, motels, inns, tourists homes and rooming and boarding houses which are rented *primarily to transient guests* for a period of fewer than fourteen (14) days.”

Item H-2: Findings

The regulation of rents and evictions can only go so far in achieving the overall goal of the Rent Ordinance.

If the Rent Board seeks to address the potential loss of housing stock due to short-term rentals or other changes of use of property, collaboration with the Planning and Building Services Department would be necessary to formulate potential policy solutions.

Item H-2: Staff's recommended action

DIRECT staff members to study the issue of the Short-Term Rental housing market as it relates to withdrawn accommodations and propose policy solutions that the Board could recommend to the City Council for consideration to mitigate possible adverse effects of Short-Term Rentals on the City's rental housing supply – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).