

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: November 14, 2018

Final Decision Date Deadline: November 14, 2018

STATEMENT OF THE ISSUE: On January 24, 2018, the Rent Board adopted Regulation 842, which describes the process whereby a party to a Rent Adjustment Petition may appeal the Hearing Examiner's decision. Regulation 842(F) provides that if the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied. At the request of the Rent Board Chair, staff explored possible amendments to this provision to clarify the process whereby an appeal could automatically be denied by the Board due to non-action. Staff members are recommending deletion of this provision.

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> | |

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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 an amendment to Regulation 842(F), removing the provision that if the Board has not acted on an appeal at two consecutive Board meetings, the appeal is deemed denied – Rent Program (Nicolas Traylor 620-6564).

AGENDA ITEM NO:

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AGENDA REPORT

DATE: November 14, 2018

TO: Chair Gray and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director

SUBJECT: PROPOSED REVISION TO REGULATION 842, CONCERNING THE APPEALS PROCESS

STATEMENT OF THE ISSUE:

On January 24, 2018, the Rent Board adopted Regulation 842, which describes the process whereby a party to a Rent Adjustment Petition may appeal the Hearing Examiner's decision. Regulation 842(F) provides that if the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied. At the request of the Rent Board Chair, staff explored possible amendments to this provision to clarify the process whereby an appeal could automatically be denied by the Board due to non-action. Staff members are recommending deletion of this provision.

RECOMMENDED ACTION:

ADOPT an amendment to Regulation 842(F), removing the provision that if the Board has not acted on an appeal at two consecutive Board meetings, the appeal is deemed denied – Rent Program (Nicolas Traylor 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item at this time.

DISCUSSION:

Background

In accordance with Regulation 841, any party may appeal a hearing examiner's decision to the Board. On appeal, the Board may affirm, reverse, remand or modify the decision of the hearing examiner.

Appeals are filed on a form provided by the Board no later than thirty (30) calendar days after receipt of the notice of the hearing examiner's decision. Once an appeal has been

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received, staff members will review the appeal, and, if complete, agendaize the appeal for Board action at the next Regular Meeting.

At least fourteen (14) calendar days prior to the date set for Board action on the appeal, staff members will prepare a Rent Board Agenda Report, recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the hearing examiner for further hearing.

Proposed Amendment to Regulation 842

Section F of Regulation 842 states that if the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied. Staff members are recommending deletion of this provision, and instead, developing an internal policy where staff will make every possible effort to ensure appeals are agendaized within a reasonable amount of time from the date of receipt of the appeal. This policy shall allow adequate time for the Staff Attorney to review the appeal and issue a recommendation to the Board.

DOCUMENTS ATTACHED:

Attachment 1 – Redlined version of revised Regulation 842

Attachment 2 – Amended Regulation 842

842. Appeal Process

- A. Any appeal shall be filed on a form provided by the Board no later than thirty (30) calendar days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) business days after it is mailed. The appeal must contain a statement of the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state any facts or arguments in support of the grounds alleged in the appeal. Except as provided in Section 842(E), no other documents in support of the appeal will be accepted after the appeal deadline unless specifically requested by the Board. The appeal shall be sent to the Board and opposing parties and their representative. Additionally, appellants shall send a copy of the appeal to the hearing examiner whose decision is being appealed. The Board or staff may order that appeals relating to the same building or property, or different properties of the same Landlord, be consolidated. The opposing party shall file any response to the appeal within fifteen (15) calendar days from the date the appeal is filed.
- B. The hearing examiner's decision shall be stayed pending appeal. In its decision, the Board shall order the appropriate party to make retroactive payments over a reasonably appropriate period to restore the parties to the positions they would have occupied had the hearing examiner's decision been the same as that of the Board or had not been stayed.
- C. At least fourteen (14) calendar days prior to the date set for Board action on the appeal, a Board Staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the hearing examiner for further hearing. Board Staff may supplement the record by including matters of which the Board may take official notice, provided that the parties are notified of such matters at least fourteen (14) days prior to the date set for Board action. Any objection to a staff request for official notice of such matters shall be filed no later than seven (7) calendar days prior to the date set for Board action.
- D. At least fourteen (14) calendar days prior to the date set for Board action, all parties shall be notified by mail of the date, time and place set for Board action on the appeal. Copies of the Board Staff recommendation shall be mailed to all parties and their representatives at least 14 days prior to the Board action. Copies of the official record and the staff recommendation shall be available for public review at the Board office at least fourteen (14) days prior to the date set for Board action. Parties may submit written comments to the Board up to seven (7) days prior to the Board action.
- E. At the Board meeting at which action on the appeal is scheduled, each party or the party's representative will be allowed seven (7) minutes to address the Board at the beginning of the hearing in the following order: appellant for five (5) minutes, respondent for seven (7) minutes, appellant for two (2) minutes. For any party addressing the Board who requires translation the allowable times shall be doubled. The Board has the discretion to allow more time.
- F. Unless the Board determines that a de novo hearing is required, the Board's decision will be based exclusively on the record before the hearing examiner. Parties shall be instructed not to discuss or comment upon factual matters or evidence that were not presented to the hearing examiner or officially noticed. Parties may discuss or comment upon the legal matters in question and any other pertinent issues raised by the appeal. The Board shall disregard any discussion or comment regarding factual matters that were not

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in the record before the hearing examiner or officially noticed. The vote of three (3) Board members is required to affirm, modify, remand or reverse the decision of the hearing examiner. ~~If the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied.~~

- G. The Board's decision to affirm, modify, remand or reverse the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. When the Board votes to adopt the staff recommendation unchanged, the parties to the appeal will be notified only of the Board's decision. When the Board does not adopt the staff recommendation as written, a written decision of the Board shall be mailed to the parties or their representative of record.
- H. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Executive Director only for good cause shown. A written request and the reasons for it must be received by the Board at least two (2) business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.

I. Reconsideration.

- 1) At the discretion of the Executive Director or their designee, an appeal may be treated as a request for reconsideration and referred back to the hearing examiner for such reconsideration only if it is claimed by the appellant that:
 - a) There was good cause for a failure to respond to a petition; or
 - b) There was good cause for a failure to appear at a settlement conference or hearing; or
 - c) The appellant wishes to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.
- 2) In the event that reconsideration under subsection (K) (1) is ordered, the parties will be so notified within 15 days of the filing of the appeal and, thereafter, all correspondence shall be directed to the hearing examiner. The threshold issue on reconsideration shall be whether a preponderance of the evidence supports the assertion that good cause existed for the failure to respond to a petition or to appear at a hearing or that the newly offered evidence could not, with reasonable diligence, have been discovered and produced at the hearing. Only if good cause for the failure is found may the hearing examiner reconsider the merits of the petition.

[Adopted January 24, 2018; Amended November 14, 2018]

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