

Regular Meeting of the Richmond Rent Board

June 19, 2019 | Regular Meeting of the Richmond Rent Board

Item G-1: Proposed Amendments to Chapter 8 of the Richmond Rent Board Regulations Concerning the Record on Hearing and the Appeals Process

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Item G-1: Statement of the Issue

In August 2018, the Rent Program officially began processing petitions for hearings. To date, the Rent Program has processed and heard 63 Landlord/Tenant petitions and seven appeals. In the course of their work, staff members have identified three areas in Chapter 8 that would benefit from additional clarification:

- Record of Hearing
- Standard of Review on Appeal
- Appeals that may be treated as request for reconsideration.

Item G-1: Record Background

Prior to a hearing, parties must submit documentary evidence that they intend to introduce during the hearing. Often times, parties bring additional evidence into the hearing and assuming procedural protections are satisfied, the evidence is admitted.

As is often the case with lay-persons, unrepresented parties forget to bring necessary evidence to establish their case or the hearing itself reveals a factual dispute integral to the case, which can only be resolved by additional evidence that is unavailable at the hearing. In those instances, the Hearing Examiner may exercise their discretion to allow for additional evidence to be submitted post-hearing into the Record.

Although this may be a proper exercise of power, there are currently no regulations setting the parameters of the exercise of said power.

Item G-1: Staff's proposal addressing parameters of the Record

To ensure that the exercise of keeping the record open is not arbitrary, but rather, consistent and fair, staff members are proposing an amendment to Regulation 835 that would:

- Explain the Record must be closed after the end of the hearing, but may remain open in certain circumstances.
- When the Hearing Examiner chooses to keep the Record open, the Hearing Examiner must explain in writing to the parties the basis for keeping the Record open, the length of time it will remain open, and the date on which it will be closed.
- To ensure administrative efficiency and the timely disposition of pending petitions, the Record cannot remain open longer than a total of sixty days.

Item G-1: Background: Standard of Review on Appeal

After the Hearing Examiner closes the Record and issues a Decision, the parties have thirty-five days to appeal an adverse decision. On appeal, the parties may challenge any aspect of the Decision, including any procedural defects that may have existed during the hearing. Additionally, an appellant may request that the Rent Board conduct an appeal De Novo.

Having observed several appeals, staff members have identified a need for the Regulations to articulate a standard of review on appeal that will help guide both the parties the Rent Board.

Item G-1: Staff's proposal addressing the Standard of Review

To address the need for an articulated Standard of Review, Staff is proposing the addition of Regulation 841.5 to Chapter 8, which would:

- Articulate the Standard of Review on Appeal where an appeal is conducted De Novo
- Articulate the Standard of Review on Appeal where an appeal is not De Novo
- Define the meaning of Substantial Evidence, Preponderance of the Evidence, and De Novo.

Item G-1: Background: Treating an Appeal as a Request for Reconsideration

Currently, when a party appeals a matter, it may take as much as several months before the matter is brought before the Rent Board. Where staff members have identified a problem with the Record in a matter on appeal, staff members cannot remedy the error, but rather must send the matter to the Rent Board for an Order of Remand to address the issue of the Record. The result is that the parties may end up waiting several months before the issue can be resolved by the Rent Board, whereas staff members could have administratively remedied the issue within thirty days.

Item G-1: Staff's proposal addressing treatment of appeals as a request for reconsideration

To address this issue and related issues, staff members are recommending amending Regulation 842 to allow the Executive Director or assigned Designee to send a matter back to the Hearing Examiner without the requirement of a Rent Board Order where:

- The issue involves a clear misapplication of the law, or
- There was a problem with the Record, or there was a change in the law or
- Any other matter appropriate for reconsideration.
- Requires that where an appeal is treated as a request for reconsideration, the Executive Director or assigned Designee must submit a written Order of Reconsideration with specific instructions identifying the good cause underlying the granting of reconsideration and the parameters of the hearing on reconsideration.

Item G-1: Recommended Action

AMEND Chapter 8 of the Rent Board Regulations to:

- (1) amend Regulation 835 to create parameters guiding both how the Record is to remain open and when the Record must be closed;
- (2) add Regulation 841.5 to articulate the Standard of Review on appeal; and
- (3) amend Regulation 842 to allow the Executive Director or assigned designee to treat appeals as requests for reconsideration where there is a clear misapplication of the law, the law has changed, there is a problem with the Record, or any other matter where reconsideration would be appropriate considering administrative efficacy. This amendment would also clarify that the Executive Director or assigned designee is the individual who grants a request for reconsideration and not the Hearing Examiner

Item G-2: Regulation Establishing the 2019 Annual General Adjustment

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Item G-2: Statement of the Issue

Section 11.100.070(b) of the Richmond Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance (Rent Ordinance) requires that no later than June 30 of each year, the Board announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year.

Item G-2: AGA Background

- As mentioned the Board is required to announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year.
- This rent percentage increase is referred to as the Annual General Adjustment or AGA for short
- The AGA reflects 100% of the Consumer Price Index for all urban consumers, measured in the San-Francisco-Oakland-San Jose region (“CPI”).
- The U.S. Department of Labor, Bureau of Labor Statics quarterly publishes the CPI change in a given 12 month period.
- For our purposes, according to the U.S. Department of Labor, Bureau of Labor Statics the CPI change for the annual period beginning in **February 2018 and ending in February 2019 was 3.5%**

Item G-2: Staff's proposal addressing 2019 AGA

To maintain compliance with the Rent Ordinance, staff members are proposing adoption of Regulation 607, which would:

- Announce to 2019 AGA at 3.5%
- Authorize Landlords who are in compliance with the Rent Ordinance and other applicable Regulations, to increase rents by no more than 3.5% for tenancies that began prior to September 1, 2017.
- Require a valid notice of rent increase be served on tenants prior to increasing the rents by the AGA
- It would also reaffirm the following noticing obligations:
 - Prior to increasing rents Landlords must serve tenants with a notice of rent increase in a manner consistent with Civil Code Section 827
 - Serve the Rent Board with a copy of the Rent increase notice
 - File a copy of proof of service of the Rent increase with the Rent Board

Item G-2: Recommended Action

ADOPT Regulation 607, establishing the 2019 Annual General Adjustment in the amount of 3.5% for tenancies commencing prior to September 1, 2018 – Rent Program (Nicolas Traylor/Charles Oshinuga 620-6564).

Item G-3: Amendment to Regulation 805(A)(4), Regarding Petition and Noticing Procedures

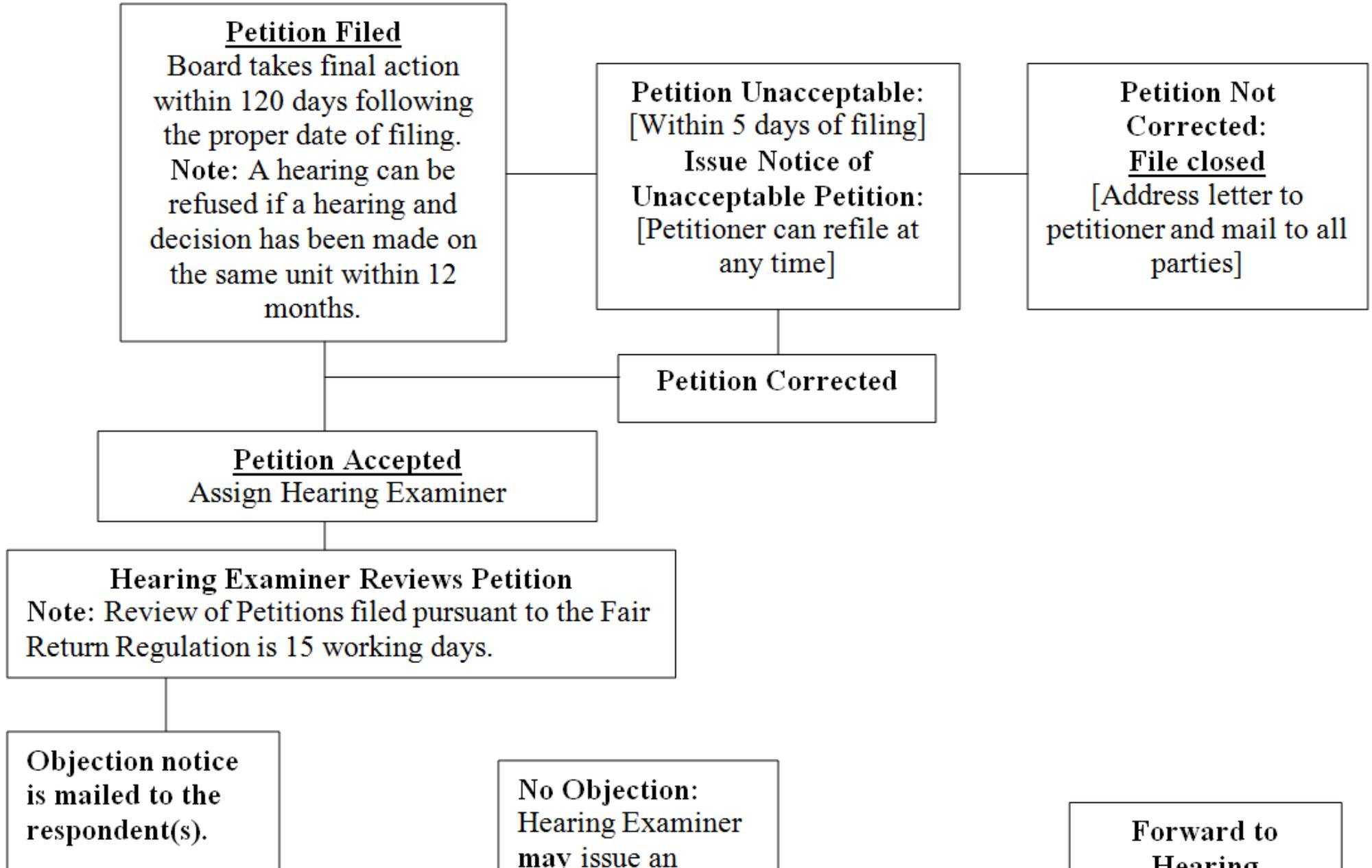
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Item G-3: Statement of the Issue

- Regulation 805 A (4) provides that staff members shall review a petition and accompanying documentation to deem the petition complete or incomplete within five business days.
- Staff members are proposing an amendment to Regulation 805 A (4) to extend the review period for petitions, with the exception of MNOI petitions, from five to ten business days, to allow adequate time for a thorough review.

Current Petition Process (excerpt – not entire process)

Proposed Extension from 5 to 10 business days for rent increase petitions (does not affect Fair Return or Tenant petitions)



Item G-3: Background (continued)

- In August 2018, the Hearings Unit began processing petitions and since then, the number of petitions received for processing has steadily increased.
- For each petition submitted, staff members conduct a thorough review.
 - This review typically requires the gathering of reports or documents from other City departments, including the Fire Department, Planning Department, Residential Rental Inspection Program, Business License Division, and Code Enforcement Unit, and correspondence with the parties..
- Given the thorough nature of each review, staff members have encountered a need for additional time.

Item G-1: Proposed Amendment

To ensure that adequate time is spent reviewing each petition, staff members recommend amending Regulation 805 A (4), Petition and Noticing Procedures, to extend the staff review period from five to ten business days.

Item G-3: Recommended Action

**ADOPT an amendment to Regulation 805 A (4),
Petition and Noticing Procedures, to extend
the staff review period from five to ten
business days – Rent Program (Nicolas
Traylor/Paul Cohen 620-6564).**

**ITEM G-4:
RESCISSION OF
REGULATION 605 (C):
PAYMENT OF EXCESS RENT**

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STATEMENT OF THE ISSUE

- Rent Board Regulation 605 (C) requires Landlords who have charged Excess Rent after December 30, 2016, to refund any overcharges via a cashier check, within 10 days of receipt of notification from the Rent Board or Rent Program staff.
- The requirement to refund Excess Rent within 10 days in the form of a cashier's check does not provide the flexibility for Landlords and Tenants to effectively remedy this violation of the Rent Ordinance.

BACKGROUND AND DISCUSSION

- The Rent Ordinance became effective December 30, 2016, and, in part, required Landlords to roll back their rents to levels either charged on July 21, 2015, or the amount of rent paid at the inception of a tenancy that began after July 21, 2015.
- This new (rolled back) rent is considered the Base Rent. The Rent Ordinance further explained that collection and/or retention of rents above the Base Rent is an excessive rent violation and requires the Landlord return to the Tenant the total amount of rent either collected or retained in excess of the Base Rent.
- The immediate result of these provisions was that many Landlords found themselves owing their Tenants some amount of money; however, Tenants had no means of enforcing this right as the Rent Board had yet to be formed.

BACKGROUND AND DISCUSSION

- Recognizing the absence of a petition process that would enable Tenants to enforce excess rent damages, the City Manager acting in his capacity as the interim Executive Director sought to create strict rules to compel Landlords to meet their obligations under the Rent Ordinance and pay the amount that was collected in excess of the Base Rent. Subsequently, the Rent Board added Subsection C of Regulation 605 to establish the rule that Landlords must refund rent overcharges within 10 days and in the form of a cashier's check.
- By limiting the method of payment to a cashier's check, the Rent Program could guarantee the propriety of the funds and more readily monitor those who had paid. By requiring payment be made within 10 business days, the regulation sought to achieve expeditious return of any rents collected in excess of the Base Rent.
- Today, circumstances have changed. The Rent Program's petition process is fully operational, allowing for Tenants to enforce their rights regarding excessive rent. Additionally, Landlords' circumstances have changed, as many of them are now educated on the requirements of the Rent Ordinance and often come into the Rent Program to address potential excessive rent issues.

PROPOSED RESCISSION OF REGULATION 605(C)

- Many Landlords have visited the Rent Program and admitted they have collected rents in excess of the Maximum Allowable Rent. Often times the excessive rent owed exceeds \$5,000. Many Landlords do not have \$5,000 on hand nor can they readily refund that amount within 10 days; however, this requirement is the only remedy offered under Regulation 605(C).
- To be able to adequately address the issue of excess rents, Landlords have expressed that they need alternative ways to return the monies owed through other methods, such as a repayment agreement, a reduction of Tenant's rent going forward until the amount owed is satisfied, partial payment of the amount owed combined with the reduction of rent, etc. These methods would achieve the purpose of Rent Ordinance, as the Tenant would still be receiving the total amount of excessive rent collected and/or retained.

RECOMMENDED ACTION

- **RESCIND Regulation 605(C), and allow for the Rent Program to establish policies to enhance Landlords' ability to bring themselves into compliance with the Rent Ordinance's prohibition on retention of rents in excess of the Maximum Allowable Rent.**

Item H-1: Proposed Collection Services Agency Contract

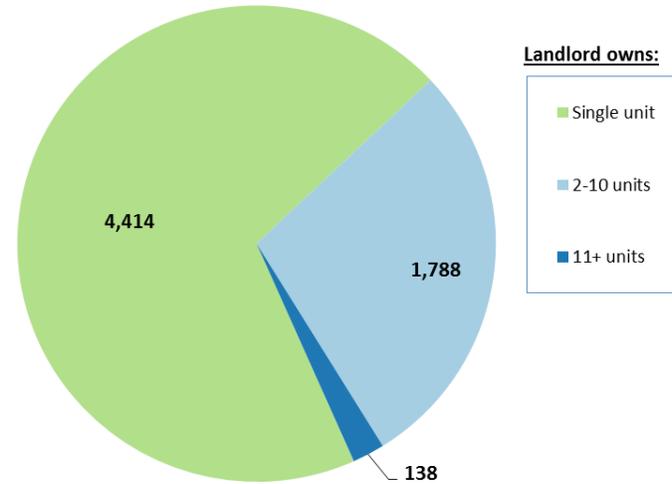
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Item H-1: Background

- **At the May 15, 2019, Rent Board Meeting, Compliance Officer Philip Verma reported to the Rent Board on compliance efforts during Fiscal Year 2018-19, specifically with respect to payment of the Rental Housing Fee.**
 - **The report indicated that over \$732,730 in potential Rental Housing Fee revenue owed from an estimated 1,942 Richmond Landlords is outstanding.**
 - **The majority of this outstanding revenue (\$432,396) is owed from 1,630 Landlord who own Rental Unit in the City of Richmond.**
- **Given the tremendous amount of staff time necessary to follow up with over 1,500 Landlords of one Rental Unit, staff members are proposing a contract with a Collection Services Agency to conduct this work.**

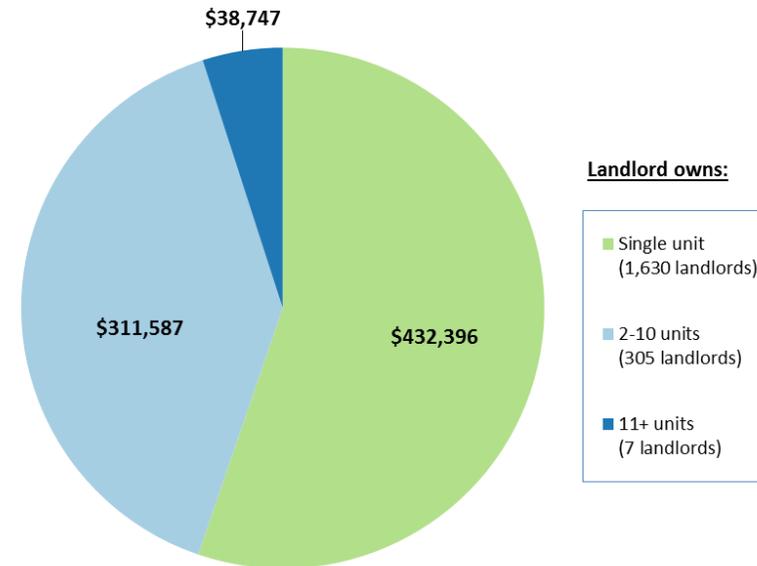
Item H-1: Background

Richmond Landlords by Number of Units Owned



← Indicates total number of units owned in the city, not property type

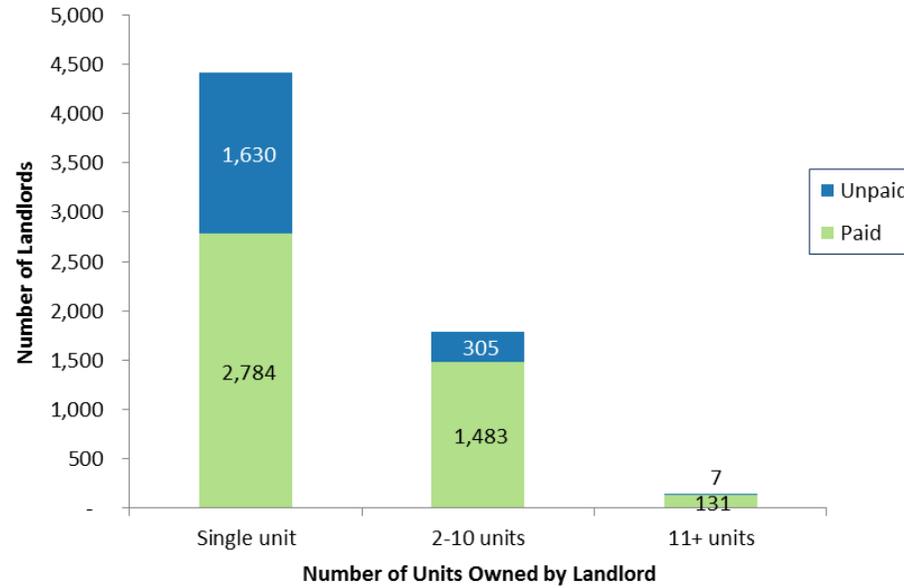
Landlords Who Have Not Paid Any Rental Housing Fees



← Includes fees for FYs 2016-17, 2017-18, and 2018-19

Item H-1: Background

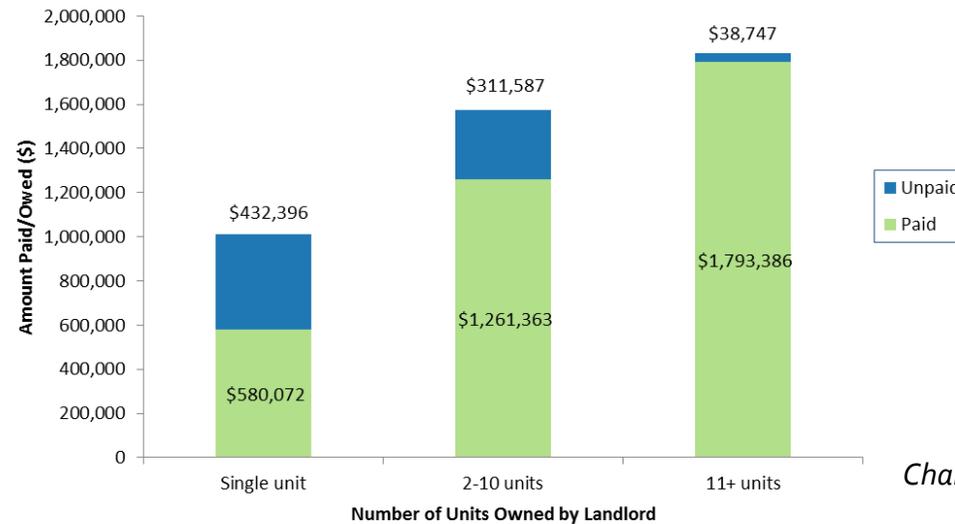
Rental Housing Fee Payments (by number of landlords)



Unpaid = has not paid any rental housing fees

Paid = has paid fees for one or more fiscal years

Rental Housing Fee Payments (by amount of \$)



Charts represent outstanding revenue as of May 2019

Item H-1: Why a Collection Agency?

- **Working with a Collection Agency Service may be faster and more effective than other methods.**
 - **Suing over 1,900 Landlords in Small Claims Court is infeasible.**
 - **Targeted: Rent Program will only send accounts that have been non-responsive to collections after exhausting all possible measures.**
 - **The process to place a lien on a property is arduous and requires significant work of City staff.**
 - **Lien process requires that the Director of Finance conduct a hearing to determine whether an assessment should be imposed on the owner's property.**
 - **It could take months before the Rent Program would ever see payment.**
- **There must be strong incentives for payment of outstanding fees.**
 - **Over 1,600 Landlords have never paid a single year's Rental Housing Fee.**
 - **In some cases, invoices may be outstanding for over a year.**
 - **The potential for unpaid fees to have an impact on one's credit report could be a strong enough incentive to compel prompt payment.**
- **Many Collection Agencies operate on a contingency-based payment, incentivizing maximum collection of outstanding revenue.**

Item H-1: Request for Proposals – Scope of Services

- The draft Request for Proposals describes the following scope of services (*not an exhaustive list*):
 - Collection Agency shall designate a manager for the Rent Board's account who will be the Rent Board's primary point of contact with the Agency
 - Collection Agency shall make a minimum of three written or telephone contacts for each account (unless the account clears sooner) within forty-five days of receipt of account
 - Collection Agency to provide specific tools used to conduct "skip tracing"
 - Collection Agency shall provide the Rent Board with a monthly report on the status of each account and shall notify the Board immediately of any account that is paid in full or deemed uncollectible

Item H-1: Request for Proposals – Scope of Services (continued)

- The draft Request for Proposals describes the following scope of services (*not an exhaustive list*):
 - Collection Agency shall provide to the Board quarterly financial summary reports and an annual financial summary report at the close of the fiscal year, including totals for receipts, net accounts receivable, total accounts receivable, and collection percentage.
 - Collection Agency shall guarantee the confidentiality, security, and safety of all files, documents and information provided by the Board, except as to disclosure required by federal and state laws and regulations
 - Collection Agency shall report all uncollectible accounts to the major credit bureaus in accordance with federal, state, and local laws
 - Collection Agency shall make contacts with delinquent accounts under the name of the agency and not the Rent Board

Item H-1: Proposed Timeline

PROPOSED DATE	ACTION
Monday, June 24, 2019	Release of RFP
Friday, July 12, 2019, 5:00 PM	Last day to submit questions regarding the RFP; responses to questions received by this date will be posted at http://www.ci.richmond.ca.us/3540/Contracts-and-RFPs
Friday, July 19, 2019, 12:00 PM	Responses to RFP due
Week of July 22, 2019	Panel reviews proposals and submits recommendation(s) to Executive Director; Executive Director selects desired agency
Week of July 22, 2019	Selected agency is notified
Week of July 29, 2019	Agreement is negotiated and executed

Item H-1: Recommended Action

DIRECT staff to negotiate and execute a contract with a Collection Services Agency, utilizing a contingency-based payment plan – Rent Program (Nicolas Traylor 620-6564).

**ITEM H-2:
STAFF EVALUATIONS AND
THE EVALUATION OF THE
EXECUTIVE DIRECTOR**

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STATEMENT OF THE ISSUE

- As a new governmental agency, it is important to put in place evaluations policy and practices for all Rent Program staff, including the Executive Director.
- In particular, the salary of the Executive Director can only be raised by order of the Rent Board, and as such, the Rent Board needs a mechanism to evaluate any proposed salary adjustment.

GENERAL PLAN

- Despite the fact that the Rent Program is an independent agency, there is no need to reinvent the wheel when it comes to staff evaluations. Therefore, the Rent Program plans on modeling its evaluation process and template on the City's, except for the Executive Director's evaluation.
- The evaluation plan for the Executive Director is to use an online evaluation tool known as a "360-Degree Evaluation."
- The 360-Degree Evaluation would be provided to all Rent Program staff members, Boardmembers, and contractors.
- Staff members would be evaluated annually on their employment anniversary date. The Executive Director will be evaluated annually each May. For the 2018-19 fiscal year, it is proposed that the evaluation of the Executive Director take place in August 2019.

STAFF EVALUATIONS

- The staff evaluation forms and process will be modeled after the City's standard evaluation template.
- Rent Program staff members will be evaluated by their direct supervisor.
- The Executive Director shall sign off on all evaluations and append any comments offered by the direct supervisor.

360 DEGREE EVALUATION OF THE EXECUTIVE DIRECTOR

- By the end of May each year, the Rent Board and all employees and contractors shall receive an online 360-Degree Evaluation.
- The evaluation submissions would be anonymous, so that participants feel free to express their views candidly.

Wikipedia defines a 360-Degree Evaluation as follows: A 360-degree feedback (also known as multi-rater feedback, multi-source feedback, or multi source assessment) is a process through which feedback from an employee's subordinates, colleagues, and supervisor(s), as well as a self-evaluation by the employee themselves is gathered. Such feedback can also include, when relevant, feedback from external sources who interact with the employee, such as customers and suppliers or other interested stakeholders. 360-degree feedback is so named because it solicits feedback regarding an employee's behavior from a variety of points of view (subordinate, lateral, and supervisory).

WHO WOULD EVALUATE THE EXECUTIVE DIRECTOR AND HOW WOULD THIS EVALUATION BE TIED TO ANY PROPOSED SALARY ADJUSTMENT?

- Each May, the Rent Board, Rent Program staff members and contractors that work directly with the Executive Director, will be given the opportunity to perform the online evaluation.
- Rent Board members will be able to distinguish between reviews provided by Rent Program staff members, Rent Board members and contractors.
- The results of the evaluation would be sent directly to individual Rent Board members and the Executive Director at the same time.
- Only Rent Board members and the Executive Director would have access to the evaluation in accordance with personnel rules.
- At the first Rent Board meeting after the evaluation is completed and compiled, Rent Board members shall decide if a salary adjustment to the budgeted amount is appropriate.

RECOMMENDED ACTION

- **APPROVE** the proposed staff evaluation plan for the Rent Program and **DIRECT** staff to begin implementing the evaluation plan beginning in Fiscal Year 2019-20.