

SANTA MONICA RENT CONTROL BOARD MEMORANDUM

TO: Santa Monica Rent Control Board

FROM: J. Stephen Lewis, General Counsel

FOR MEETING OF: April 23, 2020

RE: Administrative Item: Proposed new Regulation 15020, which will constitute a new Subchapter B of Chapter 15 of Board Regulations, respecting the temporary suspension or alteration of regulations governing administrative decision processes and procedures in the event of a declared emergency.

Subject Matter

The Board will consider whether to adopt a new Regulation 15020, which will constitute Subchapter B of Chapter 15 of Board Regulations, respecting the temporary suspension or alteration of regulations governing administrative decision processes and procedures in the event of a declared emergency.

How this Item was Initiated

This item was initiated by the Board's General Counsel.

Discussion

When the Governor and City Manager, respectively, declared state and local states of emergency last month and issued orders to address the emergency, those orders included directives that public gatherings cease, that public buildings close, and that persons not in the same household strictly limit in-person contact with one another. When those declarations and orders were issued, the Board was preparing for a public meeting of its members, and its staff had scheduled a number of in-person administrative hearings. The Board meeting was immediately canceled. Because it seemed imprudent to create new occasions for persons to meet in contravention of social-distancing orders, the Board's executive staff also made the decision not to take applications for new

hearings until a way could be found to proceed in a manner that would not endanger the lives or health of their participants.

Because some administrative-decision processes had already begun, and because those processes had Charter-imposed deadlines with Charter-imposed consequences if those deadlines were not met, staff set about finding a way to conduct remotely, with the aid of teleconferencing and videoconferencing, the hearings necessary for those administrative decisions to be timely made. Staff has now held a number of such remote hearings, and is preparing to end the pause on the acceptance of applications so that the Board may resume its full functionality.

We have learned, from the sudden onset and worsening of the current emergency that it is sometimes necessary to take immediate action to adapt to a declared emergency. And we have learned that it will sometimes fall to the Administrator to make urgent decisions to protect staff and the public before the Board itself can assemble to take action on its own. Staff has long prepared for a declared emergency resulting from a major earthquake, but had not prepared for the different kinds of changes that must be made when the emergency arises from a contagion. And so we have also learned that there is no one set of regulations that could set out procedures for how the Board's administrative-decision processes and procedures will work in every type of emergency. Finally, we have learned that there are some emergencies, like the current one, that evolve and for that reason require a constantly-evolving response.

At the same time, we recognize that it is less than optimal for the Administrator alone to take measures that may include suspending activities specifically provided for by the Board's duly-enacted regulations, or proceeding with those activities in ways that the regulations do not provide for. To strike a balance between, on the one hand, giving the Administrator the authority to act with the swiftness necessary to ensure that the Board is in compliance with state or local emergency orders and, on the other, ensuring that ultimate control remains with the Board and that the Board has the benefit of hearing from the public before making a final decision, the General Counsel proposes this new Regulation 15020. The regulation, appended to this report, would do the following things:

- Permit the Administrator to temporarily suspend or alter any aspect of the administrative decision process, including but not limited to the

- acceptance for filing of complaints, applications, or petitions, but only to the extent necessitated by the emergency;
- Require the Administrator to promptly inform all interested parties of the temporary suspension or alteration, and to do so in the manner most likely to reach them in view of the particular emergency;
 - Require the administrator to put before the Board, at the first meeting after the suspension or alteration was announced, an Administrative Item detailing the suspensions or alterations, together with a proposed resolution by which the Board may, at that meeting, ratify, reject, or modify the suspension or alteration.
 - Forbid any suspension or alteration that would violate the Charter under which the Board gets its authority or any provision of rights under the state or federal constitutions; and
 - Provide that the suspensions or alterations would last no longer than the declared emergency unless, before the declared emergency ends, the Board extends them in an action supported by appropriate findings.

Recommendation

Staff recommends that the Board enact proposed new Regulation 15020, which will constitute a new Subchapter B of Chapter 15 of Board Regulations, respecting the temporary suspension or alteration of regulations governing administrative decision processes and procedures in the event of a declared emergency.

SUBCHAPTER B

Administrative Decision Procedures During Declared Emergency

15020. Suspension of complaints, applications, and petitions, and suspension or alteration of procedures.

- (a) Authority of Administrator. In the event of a national, statewide, or local emergency declared by a government official with statutory authority to issue such a declaration, the Administrator may, to the extent necessitated by the emergency and notwithstanding any Board regulation, temporarily suspend or alter any aspect of the administrative decision process, including but not limited to the acceptance for filing of complaints, applications, or petitions. Any such suspension or alteration must be communicated to owners and tenants of controlled properties in the manner most likely to reach them, and as promptly as possible, consistent with the nature of the emergency itself.
- (b) Ratification by the Board. The Administrator must place on the agenda of the first meeting of the Board occurring after he or she has suspended or altered any administrative decision process or procedure an Administrative Item setting forth, in writing, which processes, procedures, or regulations have been altered or suspended. The Board must adopt a resolution accepting, rejecting, or accepting with modifications the suspensions or alterations that the Administrator had imposed.
- (c) Prohibition on certain types of suspensions or alterations. In no event may the Administrator or the Board, in the exercise of the authority granted under this section, suspend or alter any regulation respecting quantum of proof, who bears the burden of proof, or the availability of review by the Board. Nor may the Administrator or the Board suspend or alter any process, procedure, or regulation if doing so will violate any provision of the Charter or result in the deprivation of any person's rights under the Constitutions of the United States or State of California.
- (d) Duration of suspensions or alterations.
 - (1) When imposed by the Administrator. Any suspension or alteration of processes, procedures, or regulations by the Administrator under the authority of this section shall remain in effect until ratified, rejected, or modified by the Board as provided for in subdivision (b) of this section.
 - (2) When imposed by resolution adopted by the Board. Any suspension or alteration of processes, procedures, or regulations adopted by resolution of the Board as provided for in subdivision (b) of this section shall remain

in effect until the date specified in the resolution. If no date is specified, the suspension or alteration terminates automatically at the end of the last day of the declared emergency. Any suspension or alteration remaining in place after the end of the declared emergency must be justified by a separate resolution adopted by the Board, which resolution must include legislative findings showing that it is impossible or impracticable to immediately terminate the suspension or alteration, a statement of steps that the Board will take to terminate the suspension or alteration at the earliest possible date, and a reasonable estimation of what that date will be. A resolution continuing the suspension or alteration must be adopted after a public hearing occurring before the declared emergency has ended.

- (e) Effective date. This regulation will be effective immediately on the date when it is adopted by the Board.