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SANTA MONICA  
RENT CONTROL BOARD

**annual report**

**january 1988 - july 1989**

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**Santa Monica Rent Control Board  
Annual Report**

**January 1988 Through June 1989**

**INTRODUCTION**

First, a word of explanation: For the past several years, the Santa Monica Rent Control Board has presented its annual report based on the calendar year. However, the budget of the Agency as well as the performance indicators and projected program planning have been based on the fiscal year. For this reason, it was decided to shift the scope of the annual report to match the fiscal year. To accomplish the shift, this report covers 18-months in two periods -- January through June 1988 and July 1988 through June 1989 (Fiscal Year 88/89).

Both periods reflect that the work of the Board has provided a stability of services and continued maintenance of effort in spite of budget cuts during one period and staff shortages in another.

The most significant occurrences were:

- The Inclusionary Housing Program, after much public discussion and an additional report by the consultant, was passed by the Rent Control Board in February 1989. However, before the program actually went into full operation, members of the Board reopened meetings which led to substantial proposed modifications in the regulations.
- Increased numbers of Ellis Act withdrawals of units from the housing stock, backed by court decisions which validated those actions, present a continuing cause of concern.

## SIGNIFICANT DEVELOPMENTS IN 1988

### *Changes in the Housing Stock*

#### **The Ellis Act**

When the Ellis Act became law in July 1986, it allowed landlords to go out of the rental business, to evict tenants, and to withdraw units from the housing market. Subsequent litigation has so far upheld their right to take these actions without permits from the Rent Control Board.

Below are statistics on the impact of the Ellis Act. The numbers represent the properties and units affected by the filing of "Notices of Intent to Withdraw from the Rental Housing Market." Included in these numbers, however, are properties which may no longer be considered withdrawn or in the process of withdrawing. This includes properties which: 1) are condominiums and therefore ineligible for Ellis (see Significant Legal Decisions section), 2) have not completed the process of withdrawal, 3) the landlord has chosen to again offer for residential rental.

	<u>As of 12/30/87</u>	<u>Jan. 88 July 88</u>	<u>July 88 July 89</u>	<u>As of 6/30/89</u>
Notices of Intent to Withdraw	44	12	46	102
Number of Units Affected	320	84	146	550

Of the properties listed above, 18 or 18% have been demolished; this represents 94 units, or 17% of all units listed above.

Staff is closely monitoring withdrawals, and is developing profiles of Ellis properties.

## Tenant Ownership Rights Charter Amendment

*In 1984 Santa Monica voters approved the Tenant Ownership Rights Charter Amendment (TORCA). Under its provisions, an apartment building may be converted to condominiums if a sufficient number of current tenants approve the conversion and agree to purchase their units. Protections are built in for tenants who do not wish to purchase their units.*

Between January and July 1988, tract maps were approved for 18 properties, representing 109 units. In FY 88/89 tracts maps were approved for 18 properties, representing 218 units. The number of properties is approximately the same as calendar year 1987, but the number of units affected is double the previous number.

Total TORCA projects approved through July 1, 1989 include 58 properties with 519 units. Not all units are lost to rent control immediately. Current tenants may continue to occupy them. However, once a tenant moves and the unit is bought and owner-occupied, it is unlikely that it will again be available on the rental market.

### Removal Permits

*To protect the controlled rental housing stock the Rent Control Board applies the provisions of the Charter to decide whether or not to grant removal permits. There are several types of removals which the Board may grant:*

- *Category B -- if the Board finds that the Maximum Allowable Rent for the unit does not provide a fair return and that the landlord cannot rent the unit at the rent necessary to provide the landlord with a fair return.*
- *Category C -- if the Board finds that the controlled rental unit is uninhabitable and cannot be made habitable in an economically feasible manner.*
- *Category D -- if the permit is being sought so that the property may be developed with multifamily rental units, and the landlord agrees that the units will be controlled rental units, and that at least 15% of the controlled units to be built will be at rents affordable to low income people. Because units removed under Category D are replaced with other controlled rental units, they are not treated as units lost to the housing stock.*

In the period January 1988 through June 1989, the Board granted permits for the removal of 69 units (1 property) under Category B, 39 units (10 properties) under Category C, and 99 units (24 properties) under Category D.

Under Board Regulation §5017, the Board used to permit the removal of owner-occupied buildings of three units or less under certain conditions. Prior to revocation of regulation §5017 by the Board in May, 1988, six removals representing 13 units were granted under this provision.

## Exemptions

*The Rent Control Law applies to all residential rental units in Santa Monica, except those the Charter exempts under a number of different criteria. There are two kinds of exemptions from rent control: 1) use exemptions; that is, the owner retains the exemption as long as the criteria for which the exemption is granted apply, and 2) permanent exemptions. Permanent exemptions are granted for single family dwellings not used as rentals (§1815) and for new construction (§1801).*

Between January and July 1988, 23 exemptions were granted for new construction, affecting 142 units. There were 609 declarations submitted for single family dwellings. Declarations permanently remove the dwellings from the Agency's database. They pertain to single family dwellings only and signify that the structure was not rented on July 1, 1984. Twenty other single family dwellings -- which had been formerly used as rentals but have since been owner-occupied for two years -- were also exempted under §1815.

During FY 88/89, 21 exemptions, affecting 266 units were granted for new construction. There were 423 single family dwelling declarations and 59 single family dwelling exemptions under §1815.

*Use exemptions are granted for units used as follows:*

- Rental units in buildings having up-to-three units, one of which is occupied by the owner;*
- Residential units which have never been rented or for which rent has never been collected since the beginning of rent control (called non-rentals);*
- Rental units in hotels, motels, rooming and boarding houses which are rented to transient guests for fewer than 14 days;*

Use exemptions were granted as follows:

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<u>type of exemption</u>	<u>number of units affected</u> <u>Jan.-July 1988</u>	<u>number of units affected</u> <u>July 1988-July 1989</u>
owner-occupied	152	234
non-rental	24	45
hotel	0	40
Total	176	319

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These exemptions do not all represent a loss from the housing stock of controlled rental units.

Since each new owner-occupier must reapply for an exemption, the property may already have operated under an exemption for the prior owner/occupier(s). In each of the two periods, only one property received a new owner-occupied exemption, representing a total of five new units.

## Unit Summary

During the period of this report, 756 units were lost from the stock of controlled rental units:

	<u>Jan 1988-July 1989</u>
Ellis removals	194
TORCA removals	327
Category B removals	69
Category C removals	39
§5017 removals	13
New use exemptions	<u>114</u>
Total Units	756

### *Inclusionary Housing Program*

In 1984, as part of a Charter Amendment, Santa Monica voters passed a provision [§1805(i)] which authorized the Board to "enact regulations to provide for increases of rents on units voluntarily vacated where the landlord has dedicated a percentage of units to be rented 'at affordable rates to low-income tenants.'"

This type of program was entirely new for a rent control agency. For this reason, the Board hired a consultant to advise them on the establishment of such a program, and held public workshops to receive advice from the public. In early 1988 the program was placed on temporary hiatus due to critical budget shortages.

In late 1988, when the financial picture of the Agency had improved, the program was revived, the consultant called in again, and staff began drafting regulations. On February 23, 1989 the Board passed Chapter 17, "Regulations for Inclusionary Housing Pilot Program."

During March and April, staff prepared to implement the program and accepted the first application at the end of March. Members of the Board were, however, having second thoughts about various provisions of the program, and expressed interest in reopening discussions with the landlord community in order to improve the rate of participation in the program. Talks commenced in late April and were continuing as of the end of the period of this report. Significant changes in the program had been discussed, but have not yet been adopted as revised regulations.

### *Significant Legal Decisions*

During this period of time, the Court of Appeal issued two decisions in cases interpreting the Ellis Act. In City of Santa Monica v. Yarmark, the constitutionality of the Ellis Act was upheld. It was found that the Act did not interfere with a subject reserved for local regulation ("just cause eviction" standards) and did not violate legislative standards by failing to replace our eviction restrictions with state guidelines (a practice known as "negative preemption"). In Javidzad v. Santa Monica Rent Control Board, it was held that properties which had been "withdrawn" under the Ellis Act could not be required to get a removal permit from the Board, because to do so would violate the Act's prohibition of laws compelling landlords to remain in the residential housing business.

The question of whether or not other local permit requirements likewise violate the Ellis Act was left open. Thus, the Yarmark and Javidzad decisions may dictate more reliance on the City's development restrictions as a means of controlling demolitions. A related development was the Superior Court's ruling in the case of Santa Monica Rent Control Board v. Valnes, in which it was held that condominium units are not eligible for withdrawal under the Ellis Act.

In two cases, Santa Monica Rent Control Board v. Bluvshstein and Santa Monica Rent Control Board v. Levitz, the legal staff continued to pursue the question of whether or not withdrawal under the Ellis Act can be used as a means of avoiding restriction on conversions to condominiums and cooperative apartments. After an adverse ruling in the Superior Court, the cases will now proceed to the Court of Appeal.

Other significant rulings arose out of the Board's decision to repeal Regulation 5017. In Quinn et al. v. Santa Monica Rent Control Board, the Superior Court held that the owner-occupied exemption under §1801(c)(4) does not lapse when the owner vacates the property, where it is done for purposes of demolition, construction and re-occupancy by the owner. This ruling may mean that most of such properties will be eligible for demolition permits without requiring any further rent control permit.

The City did not join the Board in its appeal of the Quinn judgment. The City Attorney advised the City staff to begin processing demolition permit applications for properties which have owner-occupied exemptions, without further requiring that they have removal permits. This necessitated two other actions filed by the Legal Department. In Santa Monica Rent Control Board v. Luo & Dicus, we asked for a court order preventing owners from demolishing their structures while the Quinn appeal is pending. In Santa Monica Rent Control Board v. City of Santa Monica, we asked for an order compelling the City to continue to enforce the removal permit requirement (i.e., to refuse to issue demolition and other development permits in the absence of a removal permit) pending a decision on the Quinn appeal. In both cases, the requested relief was denied by the Superior Court.

A protracted struggle over interpretation of the Rent Control Law has led to a victory for the law in Seacastle v. Santa Monica Rent Control Board. In February the Superior Court held that when HUD financing ceased, the preemption of rent control also lapsed, so that the owners had to base their rents not upon the schedule established by HUD, but upon the rents which had been earlier established by the Board.

Board decisions or interpretations have also been upheld by the Superior Court in Moe v. Santa Monica Rent Control Board and Hull v. Santa Monica Rent Control Board (the Board's method of setting base rents when units were occupied by Section 8 tenants on the base rent date is correct), and Jones v. Santa Monica Rent Control Board (damages and declaratory and injunctive relief denied to plaintiff based on the Board's application of its increase formula). The Court of Appeal has also upheld a Board decision in Roussos v. Santa Monica Rent Control Board (decrease properly imposed due to reduction of services).

In one case, Santa Monica Rent Control Board v. Stallone, the Board sought a temporary restraining order in a situation involving harassment aimed at forcing a tenant to move. An agreement was reached in which the owner was to stop harassing the tenant and repair a hole he had made in the wall between the tenant's unit and his own.

## *General Adjustment*

The annual General Adjustment is a determination made yearly by the Board which allows all landlords to raise rents by a specified amount to keep pace with the increase in operating expenses. Over the years the Board has used different methods to arrive at the General Adjustment.

For the 1988 General Adjustment, the Board expressed its unhappiness with the formulation that had been used in the most recent period. That formula allowed for an adjustment equal to 66% of the annual increase in the Consumers Price Index for Urban Consumers in Los Angeles-Anaheim-Riverside areas. Members of the Board believed that this methodology was over-broad and did not sufficiently take into account local fluctuations.

The Board decided to return to a previous methodology (called the "pie" method) in which the rent dollar was analyzed by its components, such as utilities, property taxes, and maintenance. The past year's increase (or decrease) in costs of each of these components was then multiplied by the percentage of the rent dollar it made up. When all increases were added up, they produced a general adjustment of 3%.

For the 1989 General Adjustment, the Board hired a consultant to study the general adjustment methodology and make recommendations. The analysis included bringing the breakdown of the rent dollar components up to date, reviewing the adjustment from 1985 to the present for errors, and looking at other methodology options.

After the report from the consultant the Board adopted a 3% general adjustment.

## *Individual Rent Adjustments*

*Individual rent adjustments include rent increases, rent decreases and corrections to the registered base rent and amenities of units. Property owners may petition the Rent Control Board for individual rent adjustments. In evaluating a petition for rent increase, a hearing examiner analyzes the property's income and expenses to determine the net operating income. If the present net operating income is insufficient to provide a fair return, rent increases may be authorized.*

*Rent increases are often granted to property owners who plan to make major capital improvements to their properties. A landlord who wants to re-roof a building, for example, applies in advance for an individual rent increase. If it is granted, the owner then makes the improvements, and upon proving completion, is allowed to increase rents by an amount specified by the hearing examiner.*

In the period from January through June 1988, the Hearings Department approved 17 out of 23 increase petitions, which is a rate of 74%. In FY 88/89 23 out of 31 petitions were approved, again an approval rate of 74%.

*Tenants may apply for rent decreases when their landlords have discontinued 1) maintaining the property and/or 2) providing a service or amenity which used to be provided. If the toilet stops up, the stove doesn't work, or the landlord wants a tenant's parking space back, the tenant's first step is to request that the landlord repair the problem or restore the parking space. If the landlord ignores this request, then the tenant may petition for a rent decrease. When the landlord repairs or restores all services for which the decrease was granted, upon verification by Board staff, the decreased amount will be reinstated in the Maximum Allowable Rent.*

From January through June 1988, 26 out of 31 decrease decisions were approved. This is an approval rate of 81%. Tenants were granted approximately \$3,600 in decreases during this time period. During the same period, \$2,250 of the decreases were reinstated.

In FY 88/89, the Department granted 66 of 71 decrease petitions, an approval rate of 93%. These actions resulted in \$12,400 in decreases. During the same period \$7,000 were reinstated.

## **Fee Waivers**

*The Rent Control Board provides waivers of payments of Rent Control registration fees for certain categories of occupants. These waivers are available to units occupied by their owners, to units subsidized by H.U.D.(Section 8) and to units occupied by low-income tenants who are over 62 or disabled. Owners apply for waivers in the cases of owner-occupied and Section 8 units. Tenants apply for senior and disabled low-income waivers. Owners whose units are granted fee waivers do not have to pay rent control registration fees on those qualifying units. Therefore, in the case of senior and disabled fee waivers, there is no registration fee to pass on to the tenant.*

As of June 30, 1989, the Board had granted 3,498 fee waivers:

<u>Type of Fee Waiver</u>	<u>Number</u>	<u>Change from 12/87</u>
low-income senior	1,011	-1%
low-income disabled	91	+122%
owner-occupied	1,751	+26%
HUD subsidized (Section 8)	<u>645</u>	<u>+13%</u>
Total fee waivers	3,498	+12%

## THE WORK OF THE RENT CONTROL BOARD BY DEPARTMENT

	<u>Jan. thru July 1988</u>	<u>July 1988- July 1989</u>
<b>Administration Department</b>		
• Regular Board meetings convened and staffed	27	55
• Special Board meetings convened and staffed	7	10
• Street lighting assessments processed		
Number of properties affected		392
Number of units affected		617
• Demolitions permits processed	79	142
• Utility adjustment applications processed	4	5
• On-site investigations conducted	26	34
<b>Hearings Department</b>		
• Petitions received	129	479
• Hearings held of rent increases	35	54
• Hearings held on decreases	47	110
• Hearings held on base rents and amenities	97	116
• Hearings on complaints	5	14
• Written decisions issued	129	230
• Addenda issued	82	121
• On-site investigations conducted	63	138

<b>Information Systems Department</b>	<u>Jan. thru July 1988</u>	<u>July 1988- July 1989</u>
• Completion of Microfiche Project		
Site files transferred to fiche	4,246	
pages copied	154,652	
updates copied	14,074	
•Number of people helped seeking information	13,009	26,667
Number at counter (27%)		7,147
Number by phone (73%)		19,520
•Number of questions answered	31,796	54,120
•MAR reports generated		286
•Certifications processed		302
•Petitions processed on in-take		312
•Registrations processed		535
•Payments processed		4,438
•Fee waivers processed		246

**Legal Department**

	<u>Jan. 1988- July 1989</u>
• Staff reports on appeal prepared	239
base rent cases	48
decrease cases	35
increase cases	42
objection petition cases (Petris Project)	114
•Staff reports prepared in removal cases	65
•Withdrawals of properties filed under Ellis processed	58
•New or amended regulations prepared (including Inclusionary Housing Program and newly revised set of eviction regulations)	12
•Suits brought to enforce Rent Control Law	10
•Lawsuits defended	31
•Officer of the Day requests responded to	1,950

**Legal Department (continued)**

Jan. 1988-  
July 1989

•Complex exemption cases prepared/presented	14
•Staff informational meetings conducted	120
•Inquiries from staff answered	150
•Opinions provided for Rent Control Board	75
•Reports of excess rent investigated	126
•Collected over \$62,200 including:	
registration fee lawsuits	16
pre-litigation settlements of registration fee cases	11
other lawsuits	3

## OUTLOOK FOR 1989/90

Three major areas will be the focus of the coming year -- Excess Rent, Incentive Housing Program and Ellis Removals.

### Excess Rent

Shortly after the closing date of the period of this report (June 30, 1989), the California Supreme Court ruled on the case of McHugh v. Santa Monica Rent Control Board. This case had been pending before the Supreme Court since 1985, and during that time the Board has been enjoined from hearing cases of excess rent. By ruling in the Board's favor, the Court restored the Board's right to hear such cases.

At the time of the injunction, about one-third of the agency's resources were being used in excess rent cases. It is anticipated that when the Board begins to hear excess rent cases again (approximately January 1990), the processing of these claims will require a refocussing of staff time and resources as well as additions to the staff.

### Incentive Housing Program

In October 1989 the Board greatly modified the Incentive Housing Program (formerly called the Inclusionary Housing Program) to encourage greater landlord participation, to enhance the possibilities for low income tenants not currently in affordable housing to be able to obtain it, and to make the option of Ellis removals less attractive. One staff member will be committed to the program on a full-time basis, and will draw on other resources of the agency whenever possible. The program will be closely monitored to assure that tenants are not harrassed into vacating their units, and to identify and correct problems as they arise.

Ellis Removals

The Board will continue to monitor developments in the area of removals under the Ellis Act. It is anticipated that the Board will modify the regulations to conform more explicitly with the Act, and to provide a consistent procedure for processing and monitoring activity in this area. The loss of affordable housing is of great concern to the Rent Control Board. The Board and staff are committed to maintaining the stock of affordable housing in Santa Monica.