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SANTA MONICA  
RENT CONTROL BOARD

**annual report**  
**1989/90**

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**Santa Monica Rent Control Board  
Annual Report**

**July 1989 Through June 1990**

**INTRODUCTION**

The Rent Control Charter Amendment provides that the Rent Control Board shall report annually to the City Council on the status of controlled rental housing. This Annual Report in addition describes significant programs of the Agency and changes that impact Agency policy, and gives an overview of work performed by the Agency.

During Fiscal Year 1989/90 the most significant occurrences were:

- The Incentive Housing Program was revised by the Board in September 1989 after discussions with representatives of the landlord community and input from the tenant community. The program began operation under the new regulations, and some units are now functioning under the program. Applications continue to be submitted.
- There was increased Ellis activity in the first nine months of the fiscal year.
- The conversion of apartment units to condominiums through TORCA has continued to escalate.
- For seven years the Board was prevented from hearing excess rent cases because of an injunction issued in the case of *McHugh vs. Santa Monica Rent Control Board*. In November 1989, the California Supreme Court finally issued a decision upholding the Board's authority to make such determinations. As a result, the Agency revised its regulations to be in conformity with the Court's decision, and implemented new procedures to resolve excess rent complaints.

## SIGNIFICANT DEVELOPMENTS IN 1989/90

### *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, evict tenants, and 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. A full report on the impact of the Ellis Act for Fiscal Year 1989/90 was issued on September 18, 1990.*

On July 1, 1989, sixty-nine properties comprised of 362 units had been withdrawn from the residential rental housing market under the Ellis Act. Another eight properties with 43 units had begun the process of withdrawal.

The following twelve months saw an escalation of Ellis activity which peaked in early 1990 and declined in April, May and June. The decline may be the result of owners waiting to see the outcome of several ballot propositions in November 1990.

During the year 72 properties were withdrawn comprised of 334 units. Therefore, by July 1, 1990, 141 properties with 696 units had been withdrawn. Forty-two additional properties with 157 units were in the process of withdrawal.

The prior year's analysis indicated that very low rents were a major factor in determining which properties would be Ellised. This year's more detailed analysis, on the other hand, indicated that the major factor in Ellis withdrawals is probably the development potential of the property, based on the location and specific zoning.

#### **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.*

*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.*

TORCA conversions represent a major loss of residential rental units to the housing stock. The rate of TORCA applications and approvals has escalated dramatically in the last year.

As of July 16, 1990, TORCA conversions had been approved for 75 properties containing 670 units. Of those, 17 properties with 151 units were converted during the past fiscal year.

The tremendous growth of TORCA conversions is reflected in the large increase of pending applications. The number of units in the TORCA pipeline increased by 367 during the last fiscal year. In June 1989, 24 properties with 199 units were pending for TORCA conversion. In June 1990, 39 properties containing 566 units are pending.

### **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 can be developed with multifamily rental units, and the landlord agrees that the demolished rent controlled units will be replaced with the same number of rent controlled 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 July 1, 1989 through June 30, 1990, the Board granted permits for the removal of 104 units (7 properties) under Category C.

Under Category D, 3 units were authorized to be removed. These will be replaced by nine units of which three will be rent controlled. Two of the controlled units will be deed-restricted as affordable by low-income tenants.

### **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 remain in effect and 2) permanent exemptions. Permanent exemptions are granted for single family dwellings not used as rentals (§1815) and for new construction (§1801).*

Between July 1, 1989 and June 30, 1990, 13 exemptions were granted for new construction, affecting 121 units. There were 116 declarations submitted for single family dwellings stating that the structure was not rented on July 1, 1984. The law provides that these units are permanently exempt from rent control. Fifty-nine other single family dwellings -- which may have been used as rentals but have since been owner-occupied for two years -- were also exempted under §1815.

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

- *Rental units in buildings having two or 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;*

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The following use exemptions were granted:

<u>type of exemption</u>	<u>number of units affected</u> <u>July 1989-July 1990</u>
owner-occupied	201
non-rental	21
hotel	20
Total	<u>242</u>

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These exemptions do not all represent a loss of controlled rental units from the housing stock. Twenty-two properties (50 units) received owner-occupied exemptions for the first time. The balance of the properties had previous exemptions.

### **Unit Summary**

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

Ellis withdrawals	334
TORCA conversions	152
Category C removals	104
New use exemptions	<u>91</u>
Total Units	681

## **Programs and Policies**

### **Incentive 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.'"*

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, however, had second thoughts about various provisions of the program, and reopened discussions with the landlord community in order to improve the rate of participation in the program. Talks commenced in late April and after input from the tenant community, the Board adopted revised regulations on November 16, 1989.

Among the revised regulations were provisions which:

- increased the amount of rent permissible on incentive units;
- increased the number of units eligible for inclusion in the program in some buildings;
- eliminated the requirement of a thirty-year recordation of the agreement;
- modified property quality standards and requirements for on-site inspections;
- applied the general adjustment to dedicated units on the same basis as all other units;
- added a requirement that the property owner pay registration fees for dedicated units as well as a surcharge for the incentive unit;
- added some requirements for bringing in new dedicated tenants.

From the date of the adoption of the new regulations through June 30, 1990, 55 applications were requested by owners, and 23 were submitted for processing. The number of units represented in these applications was 306.

Owners of twelve properties containing 193 units have entered into regulatory agreements to participate in the program. For these properties, 16 sets (dedicated units linked with incentive units) are in place. Fourteen of the 16 dedicated units also have HUD subsidies.

The other eleven applications are in various stages of processing.

Forty-one tenant eligibility applications were handed out. Of the 26 returned, 22 were certified as eligible. Of those, 20 were already HUD recipients.



## **Excess Rent Complaints**

As a result of the October, 1989, California Supreme Court decision in *McHugh v. Santa Monica Rent Control Board*, the injunction which had prevented the Agency from hearing excess rent complaints for six years was lifted. The Board enacted new regulations (Chapter 8) in April 1990. Forms and procedures were developed and staff was trained and ready to process tenant complaints in May. In an attempt to provide an easier and less intimidating process than a hearing, the Board created a settlement process. The purpose was to offer a voluntary and informal forum for tenants and landlords to resolve their disputes.

ADMINISTRATIVE PROCESS. Once a complaint is submitted to the Agency, staff review all supporting documents submitted to determine whether the complaint appears to support the claim that excess rent has been paid. If a positive determination is made, a notice of filing is sent to the property owner along with a request for full repayment .

If there is no compliance within 10 days, the matter goes to the Settlement Conference Facilitator to assist the tenant and owner in an attempt to resolve the matter prior to a hearing. If no resolution results from the settlement process, a hearing is scheduled to resolve the matter before a Hearing Examiner.

Prior to the opening of a hearing, the tenant may choose to withdraw the complaint and pursue a civil action in court.

PENDING COMPLAINTS. When the McHugh injunction went into effect, 101 complaint petitions from 1983 were pending in the Hearings Department and 33 were on appeal to the Board. The Agency notified all petitioners by mail of the procedures for pursuing their original complaints.

Eighty-two of the 101 complaints were dismissed when no response was received from the complainants; 12 petitions for which there was no longer a remedy, such as

unlawful evictions and posting of rents, were dismissed; and five complainants were advised to resubmit their petitions and to provide necessary documentation. Hearings were scheduled for the remaining two petitions.

Four of the 33 complaints on appeal to the Board were heard by June 30, 1990.

NEW COMPLAINTS. The first new complaint was submitted to the Rent Control Board on May 30, 1990; a total of ten were submitted by the end of June. Two had been referred to the Settlement Conference Facilitator, two were dismissed and the remaining six were pending prima facie case review.

PUBLIC INFORMATION. In addition to notifying tenants with pending complaints, the Agency sent letters describing the new administrative process to 92 tenants who had filed excess rent reports with the Board during the period of the injunction. Also, the Annual General Adjustment mailing in late June to all tenants in the City included an Excess Rent Complaint Information sheet.

## Significant Legal Decisions

The *McHugh v. Santa Monica Rent Control Board* case dominated the legal arena during this period of time. In a significant decision, the California Supreme Court upheld the Board's authority to grant relief to tenants who have been charged excess rent pursuant to Section 1809(b) of the Charter and Chapter 8 of the regulations.

At the 1983 trial of the *McHugh* case, the Superior Court held that the Board was without jurisdiction to administratively award compensation for excess rent and enjoined the Board from hearing any similar cases. The case then spent over seven years in the appeals process until the Board ultimately prevailed in the Supreme Court, affirming the Board's jurisdiction and resulting in the lifting of the injunction.

Other significant rulings came out of the Board's interpretation of the Ellis Act, Government Code Section 7060, *et seq.*, as it related to condominiums. In *Valnes v. Santa Monica Rent Control Board*, the Court of Appeal upheld the Board's position that the owner of a condominium unit could not withdraw the unit from the rental market under the Ellis Act. The Appellate Division of the Los Angeles Superior Court reached a similar result in *Crossley v. Poleskin*. The Board filed an amicus brief on behalf of the tenant in the case.

The Board's method of setting base rents when units were occupied by Section 8 tenants on the base rent date was upheld by the Court of Appeal in *Moe v. Santa Monica Rent Control Board*.

Board decisions or interpretations have also been upheld by the Superior Court in *Baker v. Santa Monica Rent Control Board* (the Board's method of determining base rents for manager-occupied units pursuant to Regulation 7001) and *301 Ocean Avenue Corporation v. Santa Monica Rent Control Board* (parking provided to individual tenants at the discretion of the landlord on the base rent date is an amenity as defined by the Rent Control Law).

In one case, *Santa Monica Rent Control Board v. Boktor*, the Board was successful in obtaining an order enjoining the landlord from the continued practice of charging and receiving excess rent.

### **Annual 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 various methods to arrive at the General Adjustment.*

For the 1990 Annual General Adjustment, the Board utilized the "pie method" of analyzing the increases in operating cost by the various components of the rent dollar. A more in-depth examination of the Net Operating Income portion of the rent dollar was included.

The Board adopted a general adjustment of six percent. In addition, for the first time, the Board approved a "floor" or minimum increase of \$25.

## 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 are 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 the amount specified by the hearing examiner.*

In the period from July 1989 through June 1990, the Hearings Department approved 35 of 41 increase petitions, a rate of 85%.

*Tenants may apply for rent decreases when their landlords have discontinued maintaining the property and/or providing a service or amenity which used to be provided. If the roof leaks, 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 service. If the landlord does not meet this request, then the tenant may petition for a rent decrease. When the landlord repairs or restores all services for which a decrease was granted, upon verification by Board staff, the decreased amount will be reinstated in the Maximum Allowable Rent.*

In FY 89/90, the Department granted 59 of 64 decrease petitions, an approval rate of 93%. These actions resulted in \$9,998 in rent decreases. During the same period \$7,924 in rent decreases was reinstated upon compliance. Additionally, 23 of the 89 decrease petitions received were withdrawn because the conditions were corrected prior to hearings or issuance of decisions.

*Administrative petitions may be filed when an individual decrease petition cites a common area problem such as a leaky roof, dangerous stairs, loss of laundry room, etc. The administrative petitions are filed on behalf of all tenants not covered by the individual decrease petition. If a decrease is warranted for the common area problem, all affected units may then be authorized to take such a decrease.*

Ten administrative decrease petitions were filed in FY 89/90 in conjunction with individual decrease petitions. Three were withdrawn upon correction of the cited problem. Decreases were awarded in all seven remaining cases, affecting 53 units for a total of \$2,170. By the end of the fiscal year, \$845 had been reinstated.

## Fee Waivers

*The Rent Control Board provides for waivers 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, 1990, the Board had granted 3,742 fee waivers:

<u>Type of Fee Waiver</u>	<u>Number</u>	<u>Change from 6/89</u>
low-income senior	957	-5%
low-income disabled	107	+18%
owner-occupied	2,031	+16%
HUD subsidized (Section 8)	<u>647</u>	+0%
Total fee waivers	3,742	+7%

## Training

This year a priority was placed on formalized training of staff. Partly as the result of an influx of new employees, and partly due to changes brought on by the McHugh decision, a series of training sessions were developed to be attended by all staff.

The first three-hour session focused on a general overview of the Rent Control Board's current operation as well as its 11-year history and interaction with other City departments. The second session detailed legal challenges and state legislation and their effect on the law. More detailed training followed regarding specific policies and procedures within each Rent Control department and mapped out the interrelationships in the work of the Agency's departments.

A separate Agency-wide training session was conducted by the Legal Department to familiarize staff with the revised regulations and new procedures for processing excess rent cases.

## THE WORK OF THE RENT CONTROL BOARD BY DEPARTMENT

July 1989-  
July 1990

### **Administration Department**

• Rent Board meetings convened and staffed	47
• Demolitions permits processed	170
• Building Permits processed	467
• Utility adjustment applications processed	4
• On-site investigations conducted	50

### **Hearings Department**

• Hearings held on rent increases	58
• Hearings held on decreases	93
• Hearings held on base rents and amenities	55
• Hearings on complaints	14
• Hearings on objection petitions	19
• Written decisions issued	177
• Addenda issued	153
• On-site investigations conducted	139
• MARs updated due to decisions/addenda	2,756

July 1989-  
July 1990

### Information Systems Department

• Completion of Microfiche Project	
Site file pages copied to fiche	65,722
• Number of people helped seeking information	28,163
Number at counter (23%)	6,601
Number by phone (77%)	21,562
• MAR reports generated	464
• Certifications processed	696
• Petitions processed on in-take	264
• Registrations processed	600
• Payments processed	4,196
• Fee waivers processed	246

### Legal Department

• Staff reports on appeal prepared	92
base rent cases	20
decrease cases	31
common area decrease cases	4
increase cases	26
objection petition cases (Petris Project)	7
complaints	4
• Staff reports prepared in removal cases	13
• Withdrawals of properties filed under Ellis processed	106
• New or amended regulations prepared (including Inclusionary Housing Program and revision of excess rent regulations)	9
• Suits brought to enforce Rent Control Law	12



**Legal Department (continued)****July 1989-  
July 1990**

•Lawsuits defended	17
•Lawsuits resolved	37
•Officer of the Day requests responded to	1,650
•Exemption cases written or reviewed	120
•Incentive Housing cases reviewed	22
•Staff informational meetings conducted	100
•Inquiries from staff answered	100
•Opinions provided for Rent Control Board	45
•Reports of excess rent investigated	57
•Collected over \$43,000 including:	
registration fee lawsuits	13
other lawsuits	2
•Administrative Records prepared	23
Collected \$12,910 in transcription and preparation fees	

## OUTLOOK FOR 1990/91

### TORCA

More than 500 units were pending conversion at the close of the fiscal year. It is expected that the escalation of TORCA conversions will continue, particularly in light of slow-growth pressures expected in other residential development within the City.

### ELLIS REMOVALS

Shortly after the closing period of this report, the Board modified Chapter 16 to conform more closely to the Ellis Act. The Board will continue to monitor trends and rates in the area of removals under the Ellis Act, anticipating a continuation of removals but seeing no reliable way to predict that rate.

### INCENTIVE HOUSING PROGRAM

It is expected that participation in the Incentive Housing Program will increase as more landlords observe the benefits to those currently participating.

### EXCESS RENT

The most dramatic development in the excess rent complaint program has been the positive response of landlord and tenants to resolving formal complaints through informal negotiations, assisted by a settlement facilitator. This resolution model is being evaluated for possible application in other programs.