
Santa Monica
Rent Control Board

**Annual Report
1990-91**

Adopted 11/14/91

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Santa Monica Rent Control Board Annual Report

July 1990 Through June 1991

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 report also describes significant programs of the Agency and gives an overview of work performed by the Agency.

During Fiscal Year 1990/91 the most significant occurrences were:

- In November, 1990 a new Board was elected which began defining areas of concern. The Board identified community outreach as a priority and a series of community meetings were scheduled for 1991. Two of the off-site Board meetings were held in FY90/91, a March meeting at Virginia Park in the Pico neighborhood, and a May meeting at Lincoln Middle School in the Wilshire/Montana neighborhood. More than 50 citizens attended each of the meetings which were structured as informal open forums with no regular Board business conducted. English/Spanish translation and childcare were provided. A general information handout was produced and translated into Spanish.

- In response to the worst California drought in 60 years, the City required a 20% cutback in water usage and a water bill surcharge if this goal was not met. The Rent Control Board responded quickly to the City actions by approving regulations to allow a pass-through of 75% of the surcharge to tenants if the owner installed ultra-low flow fixtures in all units of the property. The Water Department records show that very few buildings that have ultra-low flow fixtures exceed the conservation goal.

- During this fiscal year, the Rent Control Board began concerted tracking of residential development. Staff compiled data from various City records and began analyzing completed and pending development on formerly rent-controlled properties as well as new residential development. The following section of this report, "Changes in the Housing Stock", details conclusions drawn and trends identified from this initial research.

- Demolition permits and building permits processed by Rent Control were down substantially from the previous two years. Demolition permits decreased 65% from last fiscal year and building permits fell by 34%.

- 28,726 people sought information either in person or by phone last year, an increase of 563 over the last year. The number seeking help in person decreased by approximately 800 while phone inquiries increased by almost 1,400.

- The number of hearings held by Hearing Examiners decreased by 22% from the prior fiscal year.

- Staff reports on appeal prepared by the Legal Department increased 20%, due primarily to the excess rent complaints that resulted from the lifting of the McHugh injunction.

SIGNIFICANT DEVELOPMENTS IN 1990/91

Changes in the Housing Stock

In 1990/91, in order to follow changes in the housing stock in different areas in the City, the Rent Board divided the City into seven sections. Removals, Ellis withdrawals, demolitions, development, TORCA statistics and other data were identified and analyzed by area. During the past year, the lines were slightly redrawn to conform to census tracts. This will allow further analysis of trends as census figures become available.

The revised City areas and the approximate percentage of rental units in each are shown below:

A.	South of Pico, west of Lincoln (Ocean Park)	18%
B.	South of Pico, east of Lincoln (Sunset Park)	11%
C.	Between Wilshire & Pico, west of Lincoln (Downtown)	4%
D.	Between Colorado & Pico, east of Lincoln	9%
E.	Between Wilshire & Colorado, east of Lincoln	18%
F.	North of Wilshire and west of Lincoln and North of Montana between Lincoln and 14th	18%
G.	North of Wilshire and east of Lincoln, except for North of Montana between Lincoln and 14th	22%

Tracking Residential Development

During Fiscal Year 1990-91, the Rent Control Board began tracking residential development in the City. Staff compiled information from Building Department records, Planning Commission agenda and Rent Control records from 1988 to the present, the years for which complete data was readily available.

In looking at only those properties which have *completed* new construction, during this period, 187 residential units were demolished and 1029 were built. Of these, 70 of the demolished units had been rent controlled and 96 of the replacement units were deed restricted for rental to low and moderate income people. This represented a net gain of affordable housing throughout the City from 1988-91, as well as a substantial net increase in the number of housing units built versus the number of units demolished. The other units built were market rate apartments (557) and condominiums (376).

Different areas in the City experienced widely varied amounts of development: Areas E and F experienced the most development (51% of the new construction); area E had the largest number of deed restricted replacement units; Area F led in condominium development; and areas F and G had more condominiums constructed than rental units.

[For further information see "Changes in the Housing Stock (1988-1991)", Staff Report to the Rent Control Board, July 25, 1991.]

Category D Removals

The key factor in a Category D removal is the landlord's agreement to replace demolished rent controlled units with the same number of rent controlled units, 15% of which must be at rents affordable to low income people. Through the tracking system we have been able to see the progress of projects resulting from thirty of the Category D removal agreements issued by the Rent Control Board--those with permit activity between 1987 and 1991. Sixteen Category D Removal projects completed construction between 1987 and 1991 and 14 have development activity, i.e., have begun the planning review/approval process or are under construction. Of the

completed projects, Area F had 22 units removed and all other areas lost between four and six units, a total of 46 rent controlled units demolished. A total of 247 replacement units were built, a net gain of 201 units. Forty-four of the replacements are rent controlled affordable units and three additional city-required replacement units are affordable to low or moderate income tenants. The remaining 159 are market rate rentals.

Staff will continue to track the 14 pending projects.

Post-Ellis Pending Development

One property with a completed Ellis withdrawal has received a certificate of occupancy for the new development and a number have applied for building permits. According to permit applications, the proposed development calls for 403 condominium units and ten single-family dwellings, as well as office buildings and parking lots, to replace 340 units on 81 Ellised properties.

Category C Removals with Pending Development

If a unit is deemed to be uninhabitable and cannot be made habitable in an economically feasible manner, it can receive a Category C removal (if the deterioration was not primarily due to the owner's neglect). None of the 12 properties (35 units) that received Category C removals from April, 1987 through February, 1990 have completed development, i.e., received a certificate of occupancy. Pending development plans call for a total of 42 units to be built: 33 condominiums, two single family dwellings and seven market rate apartments. These removals were in areas A, C, D, and F with none in B or G.

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 more detailed analysis on the impact of the Ellis Act for Fiscal Year 1990/91 was issued in Fall, 1991.

During the 1990-91 fiscal year, 42 properties containing 178 units were withdrawn from the residential rental housing market under the Ellis Act. As of July 1, 1991, 183 properties comprised of 874 units had been withdrawn. Another four properties with 25 units had begun the process of withdrawal.

The last six months saw a decrease in the pace of Ellis activity. The decline may be the result of economic factors which have slowed development nationally. The passage of Propositions R and T in November 1990 may also have had an inhibiting effect.

The same areas of the City which had Ellis activity in the past continued, though at a slower pace. Until the economy picks up and the effect on Ellis activity is seen, it is not possible to predict future trends, other than to indicate that the area North of Wilshire will probably continue to be the most attractive to future condominium development and, therefore, further Ellis activity.

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 converted units are lost from the rent control housing stock 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 from the housing stock. The cumulative effect of a steady rate of TORCA applications and approvals since the program began is dramatic.

As of June 30, 1991, TORCA conversions had been approved for 100 properties containing 1,049 units. Of those, 25 properties with 379 units were approved for conversion during the past fiscal year.

As of June, 1991, applications are pending for 60 properties containing 767 units. If all of these units are approved for conversion, a total of 1,816 controlled rental units will have been converted to condominiums.

Indications are that the steady rate of TORCA will continue.

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, 1990 through June 30, 1991, the Board granted permits for the removal of 88 units on four properties under Category C. Eighty-one of those units were on one property, formerly a motel.

Under Category D, 12 units on four properties were authorized to be removed. These will be replaced by 70 units. Eleven of the replacement units will be deed restricted as affordable by low or very-low income tenants and two additional units will be rent controlled.

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, 1990 and June 30, 1991, 23 exemptions were granted for new construction, affecting 221 units. There were 91 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. Forty-eight 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;

The following use exemptions were granted:

<u>type of exemption</u>	<u>number of units affected July 1990-June 1991</u>	<u>number of properties affected July 1990-June 1991</u>
owner-occupied	102	42
non-rental	11	9
hotel/other	31	3
Total	<u>144</u>	<u>54</u>

These exemptions do not all represent a loss of controlled rental units from the housing stock. Eleven properties (27 units) received owner-occupied exemptions for the first time. The balance of the owner-occupied exempt 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	178
TORCA conversions*	379
Category C removals	83
New use exemptions	<u>69</u>
Total Units	709

*This figure indicates approved conversions; units may still be rented, not yet sold.

During this fiscal year, the Rent Control Board gathered data on the number of units withdrawn under the Ellis Act which have been re-rented and the rent controlled replacements units built as a result of a Category D removal during the past four years. Thirty-one Ellis units were re-rented and 64 rent controlled replacement units were built.

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." In 1989 the Board passed Chapter 17, "Regulations for Inclusionary Housing Pilot Program."

From July 1, 1990 through June 30, 1991, 62 applications were requested by owners. Of these, 24 were submitted for processing, as well as three that had been given out the previous year. Six applications were denied participation in the program and five were withdrawn by the owners after submitting.

The Board approved regulatory agreements for 12 properties containing 120 units this past year. For these properties, 21 sets (dedicated units linked with incentive units) are in place. Twelve of the 21 dedicated units also have HUD subsidies.

Five applications with 84 units on the properties are pending.

The Incentive Housing Program has been in effect under the current regulations for twenty months. In that period a total of 24 contracts have been approved by the Rent Control Board with 17 owners. (Three owners have committed more than one property to the program.) Of the 57 inclusionary sets in place, 15 are linked to low income households and 42 are linked to very low income households.

Excess Rent Complaints

As a result of the 1989 California Supreme Court decision in McHugh v. Santa Monica Rent Control Board, the injunction that prevented the Agency from hearing excess rent complaints for six years was lifted. The Board enacted new Chapter 8 regulations in April, 1990 and began processing excess rent complaints on May 30, 1990.

The settlement conference is a step of the administrative process set up to provide the tenant and owner a chance to voluntarily resolve an excess rent complaint prior to a hearing. From the filing of the first complaint in May, 1990, it became apparent that

the establishment of this alternative method of resolution was well-received and successful. By the end of the fiscal year, fifty-eight percent of the complaints filed were resolved through the settlement process.

In the period from July 1, 1990 through June 30, 1991, forty-three complaints alleging excess rent were filed as were two complaints for non-registration. Of the 45 complaints, 26 cases were resolved through settlement, nine cases were heard by a hearing examiner and six cases were withdrawn. At the end of the fiscal year, three cases were in the midst of the settlement process and one case was scheduled for a hearing.

Of the nine cases that went to hearing, four were appealed to the Rent Control Board. Of the five withdrawn complaints, three were in order to pursue a remedy in Court, two were resolved through a base rent petition and one was due to a witness being out of the country.

When the McHugh injunction went into effect, a number of complaints were pending on appeal to the Board. Thirty-six were heard in FY 1990-91 and there has been a final disposition on all pending appeals.

Significant Legal Decisions

The most important decision was rendered by the U.S. Court of Appeals for the 9th Circuit in Schnuck v. The City of Santa Monica, in which the court rejected the landlord's challenge to the Rent Control Law. The court found the Rent Control Law to be a valid exercise of police power and not a violation of due process.

In Baker v. Santa Monica Rent Control Board, the Court of Appeal upheld the Board's method of determining base rents for manager-occupied units pursuant to Regulation 7001.

The Board's authority to regulate rent levels was also challenged in Sea Castle, Inc. v. Santa Monica Rent Control Board. The Court of Appeal upheld the Board's position that the MAR is the legal rent when HUD pre-emption no longer exists.

The Board's fair return formula, including the 12% ECI limitation contained in Chapter 4, was upheld in the Superior Court in Schmidt v. Santa Monica Rent Control Board and Lu v. Santa Monica Rent Control Board.

On the other hand, the Court of Appeal rendered two decisions adverse to the Board in 301 Ocean Ave., Inc. v. Santa Monica Rent Control Board and Santa Monica Rent Control Board v. Bluvshstein. In 301 Ocean, the court ruled that the Board's decision that parking provided to individual tenants at the discretion of the landlord on the base rent date was a base amenity, was a transfer of control of property from the landlord to the tenant without the trial court's independent review of the evidence. The case was remanded back to the trial court for further hearing. To date, that hearing has not been scheduled.

The Board had sought in Bluvshstein to establish that persons who buy Ellised properties as tenants-in-common and then occupy individual units by mutual agreement had in fact re-entered the residential rental business. The court rejected that position on the grounds that the Board failed to establish a landlord-tenant relationship. The City's occupancy permit ordinance (City Ordinance 1466) now limits those types of post-Ellis uses.

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 1991 Annual General Adjustment, the Board utilized the "pie method" of analyzing the increases in operating costs by the various components of the rent dollar.

The Board adopted a general adjustment of three and one-half percent and an additional special utility adjustment. The utility increase was a flat sum for certain units: \$7 for those units for which the owner pays all electricity or \$11 if the owner pays all gas and electricity within the unit.

Individual Rent Adjustments

Property owners may petition the Rent Control Board for rent increases above the yearly general adjustment due to completed or planned capital improvements, lack of a fair return or increased operating expenses not covered by the general adjustments.

In the period from July 1990 through June 1991, the Hearings Department approved 9 of 13 increase petitions. Of those approved, all petitioners were granted increases for completed capital improvements; four received increases for proposed capital improvements; and four received approval for NOI (Net Operating Income) increases.

Tenants whose rental units need repairs or maintenance, or whose housing services have been reduced, may petition to have their monthly rent decreased. The tenant's first step is to request that the owner repair the problem or restore the service. If the owner does not meet this request, the tenant may petition for a rent decrease. When the owner makes required repairs or restores services for which a decrease was granted, the decreased amount is reinstated to the rent.

In FY 90/91, 48 of 52 decrease decisions issued by the Hearings Department granted rent decreases. Additionally, 17 of the 83 decrease petitions filed during FY 90/91 were withdrawn because the conditions were corrected prior to hearings or issuance of decisions. The discrepancy between the number of petitions filed and those cases heard and withdrawn is because cases on the same property are often consolidated and others have not yet had a hearing at the end of the fiscal year.

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.

Fourteen administrative decrease petitions were filed in FY 90/91 in conjunction with individual decrease petitions. Decreases were awarded for twelve of these petitions, affecting 269 units.

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.

As of June 30, 1991, the Board had granted 3,924 fee waivers:

<u>Type of Fee Waiver</u>	<u>Number</u>	<u>Change from 6/90</u>
low-income senior	925	-3%
low-income disabled	103	-4%
owner-occupied	2232	+10%
HUD subsidized (Section 8)	<u>664</u>	+3%
Total fee waivers	3,924	+5%

THE WORK OF THE RENT CONTROL BOARD BY DEPARTMENT

July 1990-
July 1991

Administration Department

• Rent Board meetings convened and staffed	36
• Rent Board community meetings convened and staffed	2
• Demolition permits processed	58
• Building Permits processed	305
• Utility adjustment applications processed	6
• On-site investigations conducted	53
• Street lighting assessments processed (# of properties)	46

Hearings Department

• Hearings held on rent increases	29
• Hearings held on decreases	74
• Hearings held on base rents and amenities	47
• Hearings on complaints	14
• Hearings on objection petitions	22
• Written decisions issued	127
• Addenda issued	113
• On-site investigations conducted	224
71 upon scheduling decrease petitions	
67 in response to compliance requests	
31 regarding unit identification conflicts	
55 Ellis investigations	
• MARs updated due to decisions/addenda	2,786

July 1990-
July 1991

Information Systems Department

•Number of people helped seeking information		28,726
Number at counter (20%)	5,811	
Number by phone (80%)	22,915	
•Site file pages copied to fiche		65,624
•MAR reports generated		328
•Certifications processed		103
•Petitions processed on in-take		228
•Registrations processed		330
•Payments processed		4,363
•Fee waivers processed		880

Legal Department

• Staff reports on appeal prepared		110
base rent cases	16	
decrease cases	26	
common area decrease cases	7	
increase cases	16	
objection petition cases (Petris Project)	6	
complaints (McHugh)	36	
excess rent complaints	3	
•Staff reports prepared in removal cases		10
•Withdrawals of properties filed under Ellis processed		38
•New or amended regulations prepared		10
•Suits brought to enforce Rent Control Law		1

Legal Department (continued)July 1990-
July 1991

•Lawsuits defended	18
•Lawsuits resolved	37
•Officer of the Day requests responded to	1,650
•Exemption cases written or reviewed	125
•Incentive Housing cases reviewed	21
•Staff informational meetings conducted	100
•Inquiries from staff answered	100
•Opinions provided for Rent Control Board	7
•Prima facie case review of excess rent complaints	51
•Collected over \$38,480 including:	
registration fee lawsuits	3
other lawsuits	1
registration fee pre-litigation	1
•Administrative Records prepared	24
Collected \$15,628 in transcription and preparation fees	

OUTLOOK FOR 1991/92

COMMUNITY OUTREACH

The renewed emphasis on community outreach will continue in 1991-92 when the Board once again publishes a newsletter which will be sent to all owners and tenants in the City. The newsletter will inform owners and tenants of new programs and help explain rights and obligations under the rent control law. In addition, the community meetings begun last fiscal year will continue in different neighborhoods of the city.

SCHOOL BOND TAX

Because of the school bond tax measure passed by City voters as Proposition ES in November, 1990, the Board will enact regulations and procedures authorizing a pass through of the school bond tax surcharge to tenants in controlled rental units. This program is due to go into effect approximately January, 1992.

NEW PROGRAMS

During the next fiscal year the Rent Control Board will consider a new threshold rent increase program which would allow rent increases after a voluntary vacancy for those units with rents below area-wide median rents. If this program is adopted, it will have the substantial long term effect of increasing most of the very low rent units in the city.

The Board is also considering a new program to address the passthrough of capital improvement costs for security which are requested by both the owners and the tenants. It is envisioned that this program would address such improvements as security gates for garages where the residents of the property are concerned about the increase in criminal activity.

INCENTIVE HOUSING PROGRAM

The Rent Control Board intends to evaluate the incentive housing program and consider, based on approximately a year and a half of experience with the program, whether changes should be made.