
Santa Monica
Rent Control Board

**Annual Report
1993/94**

Adopted May 25, 1995

Table of Contents

Introduction	2
Significant Developments in 1993/94	3
<i>Changes in the Housing Stock</i>	4
Tracking Residential Development	4
Completed Construction	5
Pending Development	6
The Ellis Act	6
Tenant Ownership Rights Charter Amendment	7
Removal Permits	7
Exemptions	8
Unit Summary	8
<i>Programs, Policies and Administration</i>	
Significant Legal Decisions	9
Regulations	9
Annual General Adjustment	10
Outlook for 1994/95	10

**Santa Monica Rent Control Board
Annual Report**

July 1993 Through June 1994

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.

During Fiscal Year 1993/94 the most significant occurrence was the January 17, 1994 earthquake. Initial reports indicated that as many as 220 multi-family residential buildings containing 2,257 units may have been rendered uninhabitable. The earthquake had some of the following direct and indirect consequences:

- In response to the earthquake, the Board inaugurated the Q-Petition (Increase for Earthquake-Related Damage) process on February 16, 1994. The major purpose of the regulation was to encourage owners to quickly repair their properties and minimize the loss of residential rental housing units and displacement of tenants.
- The Rent Control Board modified its regulations, expanding the opportunity for earthquake victims to locate temporary housing in Santa Monica with other tenants or in vacant TORCA units.
- Only 5 projects were issued non-earthquake-related multi-family residential building permits during the fiscal year. Four of the properties had previously been withdrawn under the Ellis Act.
- The number of development projects completed was approximately half that of the prior year (10 projects with 95 units down from 24 projects with 186 units). Condominiums comprised 91 (96%) of the units completed.
- The rate of application for TORCA conversion continues the slowdown begun last fiscal year. The Rent Control Agency issued clearance forms for 15 properties for TORCA conversion this fiscal year compared to 34 clearance forms last fiscal year and 147 in 1991/92.

Usually this report also describes significant programs of the Agency and gives an overview of work performed by the Agency. However, the earthquake work so overwhelmed the Agency and staff that the additional reports are not provided this year.

SIGNIFICANT DEVELOPMENTS IN 1993/94

The January 17, 1994 "Northridge" Earthquake

The "Northridge" earthquake of January 17, 1994 was the single most important event of this fiscal year. Immediately following the earthquake, the City's Building and Safety Department (assisted by representatives from cities across the state and federal agencies such as the Army Corps of Engineers) inspected more than 3,300 commercial facilities, multi-family residential buildings, single family residences and public facilities in the City.

Rent Control staff members assisted the City in the days immediately following the earthquake by, among other activities, performing building inspections and answering telephones in the emergency operations center. The Rent Control office was staffed during the two weekends following the earthquake.

The earliest composite data, which contained some inaccuracies and duplications, indicated that as of February 10, 1994 approximately 220 multi-family residential buildings containing 2,257 units had at least some units which were deemed uninhabitable (either red or yellow-tagged). (Buildings that were red or yellow-tagged immediately following the earthquake but had already been upgraded to green status by February 10, 1994 are not included in those numbers.) In addition to the uninhabitable units, many properties sustained varying degrees of damage, particularly in the northwestern part of the city.

The Board responded to the earthquake by passing emergency regulations to encourage the prompt repair of the buildings, the "Q-Petition" (Increase for Earthquake-Related Damage). For the buildings so severely damaged that they could not be repaired, an expedited removal process was established. Regulations were also passed which protected tenants in red- or yellow-tagged properties from eviction, and expanded opportunities for earthquake victim households to find temporary residence.

The "Q-Petition" -- Getting Units Repaired

Because the intent of the Board was to assist owners to rapidly repair units damaged by the earthquake, streamlined procedures were developed to expedite processing the petitions.

Owners or their representatives scheduled appointments with staff before filing petitions. The staff members reviewed all documentation at the conference and either informed the owner of additional material necessary before the petition could be filed, or accepted the petition. The intake conference greatly facilitated the processing by giving staff an opportunity to review documentation and to inform the owner of exactly what was needed.

The assigned case analyst worked informally with the owner and any tenants who filed responses objecting to the petition to resolve differences in order to avoid the necessity of hearings.

Through June 30, 1994, 70 petitions were received. The first petitions were received on February 9. Nine petitions were filed in February, 19 in March, 12 in April, 14 in May and 16 in June.

Thirty-one decisions were issued by June 30, 1994; one request for addendum was filed. Twelve decisions were appealed to the Rent Control Board, 7 by tenants and 5 by owners. On appeal, 5 of the decisions were affirmed, 5 modified, one dismissed and one withdrawn.

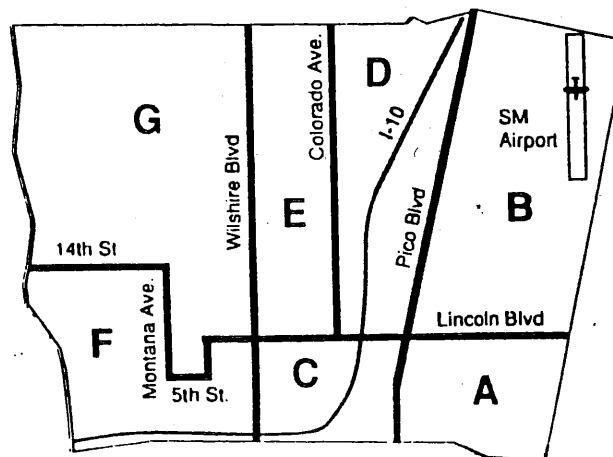
The Q-petition process consumed the operations of the Agency, requiring the involvement of more and more staff.

Changes in the Housing Stock

In order to follow changes in the housing stock in different areas in the City, the Rent Board divided the City into seven areas, which parallel neighborhoods and census tracts. Removals, Ellis withdrawals, demolitions, development, TORCA statistics and other data are identified and analyzed by area.

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

Area A	17%
Area B	12%
Area C	5%
Area D	10%
Area E	18%
Area F	17%
Area G	21%



Map courtesy of *The Outlook*

Tracking Residential Development

During Fiscal Year 93/94, the Rent Control Board continued tracking residential development in the City using Planning and Building Department records and permits as well as Rent Control records¹.

Construction completed during the first half of FY 94/95 was only slightly off the pace of the preceding 12 months. However, virtually no non-earthquake-related residential development permits were issued in the six months immediately following the earthquake. Most activities in those months involved earthquake recovery permits.

¹ All information related to new construction (both completed and pending) comes from the City's PERMIT system. While the information is generally reliable, City staff is currently investigating and correcting minor inaccuracies that have been identified.

Completed Construction

Ten projects comprising 95 residential units and two hotels were completed in FY 93/94. These projects replaced 69 residential rental units and 30 hotel rooms (the Auto Motel) which were demolished to make way for this new construction. The 69 units were reported as demolished in previous annual reports. Of the 95 completed residential units, condominiums comprised 96% (91 units), three were rent controlled low income replacement units, and one was a non-controlled market rate unit in the City's inclusionary program.

Details of the projects listed above include:

- 9 properties (62 units), withdrawn under the Ellis Act, received certificates of occupancy for 81 condominiums.
- A total of ten condominiums were developed on two properties that each previously contained a non-controlled single family dwelling.
- A commercially-zoned property that contained 3 controlled units and a manager's unit received a Category D removal permit and was replaced with a 68-room hotel, 3 replacement units and a manager's unit.
- One 2-unit owner-occupied property was converted to a single family dwelling.

Only three of the seven areas in the City experienced completed residential development this fiscal year. Twenty-five percent of the new construction was in area E, 41% in area F, and 34% in area G. The table below indicates the units removed and units built in each City area.

<u>City Area</u>	<u># of units completed in FY 93/94</u>	<u># of rental units previously removed from these sites</u>
A	0	1
B	0	0
C	Hotel	{30 hotel rooms}
D	0	0
E	24	8
F	39	22
G	<u>32</u>	<u>38</u>
Total	95	69

Pending Development

The January 1994 earthquake had an effect on the development climate. City records show only five projects were issued normal (non-earthquake-related) multi-family residential building permits during the fiscal year. The majority of permits issued in the six months following January 17, 1994 were earthquake-recovery permits, not standard building permits. Nevertheless, if the development projects for which the permits were issued are completed, 32 units will have been removed from these sites (31 rent-controlled and 1 non-rent controlled unit) and replaced by 37 condominiums with the following breakdown:

- 31 market rate,
- 2 affordable to persons of low income, and
- 4 affordable to persons of moderate income.

Of the 31 rent-controlled units with multi-family residential development activity, 29 had been withdrawn in prior years under the Ellis Act.

Permits were also issued for conversion of a 2-unit owner-occupied property to a single family home and of a three unit owner-occupied property to a 2-unit property.

Non-earthquake-related multi-family residential development projects were begun only in areas A, B, E and G. The following table details new pending development.

<u>City Area</u>	<u>Units Removed</u>	<u>Units to Be Built</u>	<u>Net Change</u>
A	11	11	0
B	2	11	+9
E	5	6	+1
G	<u>12</u>	<u>9</u>	<u>-3</u>
Total	30	37	+7

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.

During the 1993/94 fiscal year, 3 properties containing 10 units were withdrawn from the residential rental housing market under the Ellis Act.

Owners of three properties which had been withdrawn rescinded the withdrawal and re-rented the units. The 15 units on these properties are again under Rent Control.

The net gain of 5 units returned to the residential rental market continues a trend reversing the net loss of units in earlier years. As of June 30, 1994, 203 properties comprised of 925 units had been withdrawn.

Tenant Ownership Rights Charter Amendment (TORCA)

In 1984 Santa Monica voters approved the Tenant Ownership Rights Charter Amendment (TORCA) through which 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.

As of June 30, 1994, TORCA conversions had been approved for 288 properties containing 2,950 units. Of those, 28 properties with 284 units were approved by the Planning Commission for conversion during the past fiscal year.

An additional 27 properties containing 260 units were pending conversion at the end of the fiscal year. If all are approved for conversion, a total of 3,210 controlled rental units will have been converted to condominiums, though the present tenants may continue to rent them.

The rate of application for conversion continues the slowdown begun last fiscal year. The Rent Control Agency issued clearance forms for TORCA conversion of only 15 properties this fiscal year compared to 34 clearance forms last fiscal year and 147 the year before. Not all owners who request clearance forms actually file an application for conversion.

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 A -- if the Board finds that the owner was unable to collect the Maximum Allowable Rents.*
- Category B -- if the Board finds that the Maximum Allowable Rent 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 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, the demolished rent controlled units will be replaced with the same number of rent controlled units, and 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.*

The Board also adopted special regulations for the removal of earthquake-damaged properties, but none were granted during the fiscal year.

In the period July 1, 1993 through June 30, 1994, the Board granted Category A permits for two properties totalling 8 units; Category C permits for the removal of two properties, a total of 15 units; and one Category D removal for two units.

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: 1) use exemptions which the owner retains as long as the criteria for which the exemption is granted remain in effect; and 2) permanent exemptions.

Permanent Exemptions --Permanent exemptions are granted for single family dwellings not used as rentals (§1815) and for new construction (§1801).

In this fiscal year, there were 41 declarations submitted for single family dwellings stating that the structures were not rented on July 1, 1984. The law provides that these units are permanently exempt from rent control. Thirty-one other single family dwellings -- which may have been used as rentals but have since been owner-occupied for two consecutive years -- were also exempted under §1815.

Exemptions were also granted for new construction on 7 properties consisting of 34 units.

Use Exemptions --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 (non-rentals);
- Residential units used for housing as a necessary part of a social service program on a non-profit basis.

The following use exemptions were granted:

<u>Type of exemption</u>	<u>Number of units affected</u>	<u>Number of properties affected</u>
owner-occupied	80	32
non-rental	8 ²	3
residential social service	<u>1</u>	<u>1</u>
Total	89	36

These exemptions do not all represent a loss of controlled rental units from the housing stock. Of the owner-occupied exemptions, 10 properties (25 units) received owner-occupied exemptions for the first time; the balance had previous exemptions.

Unit Summary

During FY 93/94 the following changes occurred in the stock of controlled rental units:

<u>Activity</u>	<u>Reduction in controlled units</u>	<u>Increase in controlled units</u>	<u>Net change in controlled units</u>
Ellis activity	-10	+15	+5
Category A Removals	-8		-8
Category C Removals	-15		-15
New use exemptions	<u>-34</u>	<u> </u>	<u>-34</u>
Total	-67	+15	-52

² Forty-nine additional units on two properties that had been used as residential care facilities since the advent of rent control were also granted non-rental exemptions pursuant to a settlement agreement.

Program, Policies and Administration

Significant Legal Decisions

There were two significant legal decisions issued during the period covered by this report, *Kavanau v. SMRCB* and *Apartment Owners Association of Greater Los Angeles (AAGLA) v. SMRCB*. Both cases dealt with specific aspects of the Board's fair return rent increase process.

The issue in *Kavanau* involved the annual limitation of rent increases to no more than 12% of the current rent as set forth in Regulation 4107. The owner of a property was granted substantial increases by the Board, which were then scheduled-out according to the regulation in order to lessen the immediate impact on existing tenants. The trial court upheld the regulation but the Court of Appeal reversed. Although the Court found that the regulation was constitutional on its face, it determined that, as applied to the circumstances of this particular case, the imposition of increase limitations denied the owner a fair return.

As a result of the Court of Appeal decision, the Board amended Regulation 4107 to tie phased-in rent increases to those tenants for whom the entire increase would be an economic hardship, and allowed interest to be added to any rent increase scheduled-out as a result of a tenant's hardship request. These amendments are consistent with the U.S. Supreme Court decision in *Pennell v. City of San Jose* which allows a rent control agency to consider the economic hardship to the tenant in determining fair return rent increases.

In the *AAGLA* case, the Court of Appeal rejected the owner's argument that all below market units are constitutionally entitled to an adjustment, upholding the Board's position that an owner must establish special and unique circumstances to be entitled to an increase. The Court did find that the Board's blanket prohibition against Vega-style rent increase petitions for post-1979 purchasers was overbroad.

As a result of the *AAGLA* decision, the Board was able to favorably dispose of a number of pending lawsuits before the trial and appellate courts.

Regulations

The Board adopted a number of regulations in response to the effects of the January 17, 1994 earthquake. Regulation 4113 set up an administrative program designed to encourage rapid reconstruction of the damaged housing stock through capital expenditure rent increases tied to the actual cost of repair.

Regulation 4113 provides dollar-for-dollar pass-throughs of earthquake-related repair expenses through an administrative process without the necessity of a fair return analysis.

For those structures that were tagged as uninhabitable as a result of the earthquake, the Board adopted streamlined removal programs. Category "CQ" and "DQ" removal permits set forth in Regulations 5015 and 5017 were designed to work in conjunction with the City's reconstruction ordinances to allow for the removal of units, while guaranteeing that a percentage of the rebuilt units would be deed restricted as

affordable to persons of very low, low and moderate income. The Board also repealed Regulation 5014(a), Category A removal permits.

The Board adopted or amended a number of regulations related to protecting the rights of tenants who were temporarily displaced as a result of the earthquake, including eviction protections, and creation of temporary housing for those displaced tenants (Regulations 3201(g), 2006 and 9009).

Additionally, the Board adopted and amended a number of its regulations contained in Chapter 4 relating to the fair return analysis. Most of these changes were made in response to the enactment of Civil Code §1947.15, which took effect on January 1, 1994. This code section mandated the inclusion of professional fees and expenses incurred in successfully pursuing or defending rights in the Board's administrative processes as operating costs in a fair return analysis. One stated intent of the legislation was to encourage Rent Control jurisdictions to streamline their administrative procedures. Thus, the Board amended a number of regulations contained in Chapter 4 to expedite the rent increase process. The Board also enacted Regulation 4114, which set forth the procedures for the determination of an award of professional fees and expenses.

As noted previously, the Board also amended Regulation 4107, the 12% limitation on annual rent increases, in response to the Court of Appeal decision in *Kavanau*.

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 1993 Annual General Adjustment, the Board used the "pie method" of analyzing the increases in operating costs by the various components of the rent dollar.

The Board adopted a general adjustment in maximum rent levels of three percent or \$16, whichever is greater. The \$16 was set to provide a minimum increase to apartments with the lowest rents. Since these units have many of the same expenses, such as trash collection increases, as the higher rent units, the \$16 assured owners of the minimum necessary to cover their actual costs.

OUTLOOK FOR 1994/95

- The Agency will continue to devote major resources to the processing of earthquake-related Q petitions. Filing of petitions is expected to continue until June 30, 1995 and submission of requests for addenda until June 30, 1996.
- The agency will continue its emphasis on mediation including rent decrease petitions, claims of excess rent collection and other administrative petitions.

