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# Santa Monica Rent Control Board

**Annual Report  
1994/95  
and  
1995/96**

**Adopted August 1, 1996**

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## TABLE OF CONTENTS

<b><u>INTRODUCTION</u></b>	<b>2</b>
<b><u>SIGNIFICANT DEVELOPMENTS IN 1994/95 AND 1995/96</u></b>	
<b>Aftermath of the January 17, 1994 "Northridge" Earthquake</b>	<b>3</b>
Summary of Earthquake-Damaged Housing Stock	3
Status of Rent Control Recovery Activity on Uninhabitable Properties	4
The "Q-Petition" -- Getting Units Repaired	4
Status of Significant Properties with Controlled Rental Units	6
<b>The Impact of the Costa-Hawkins Act (AB1164)</b>	<b>7</b>
<b><u>CHANGES IN THE HOUSING STOCK</u></b>	<b>8</b>
Tracking Residential Development	8
The Ellis Act	10
Tenant Ownership Rights Charter Amendment	11
Removal Permits	11
Exemptions	12
Unit Summary	14
<b><u>PROGRAM, POLICIES AND ADMINISTRATION</u></b>	<b>15</b>
Significant Legal Decisions	15
Regulations	15
Threshold Rent Program	16
Incentive Housing Program	17
Annual General Adjustment	17
Individual Rent Adjustments	18
Fee Waivers	21
<b>THE WORK OF THE RENT CONTROL BOARD BY DEPARTMENT</b>	<b>22</b>



**Santa Monica Rent Control Board  
Annual Report**

**July 1994 Through June 1996**

**INTRODUCTION**

The Rent Control Charter Amendment provides that the Rent Control Board shall report to the City Council on the status of controlled rental housing.

During Fiscal Years 1994/95 and 1995/96 the Agency responded to two significant occurrences, the earthquake of January 17, 1994 and the passage of AB1164, the Costa-Hawkins Act.

- The earthquake continued to be the single most important fact that affected the housing stock during the 2-year period. Initial reports indicated that as many as 218 multi-family residential buildings containing 2,252 units may have been rendered uninhabitable. Most of the units have been repaired and are again occupied.

- In response to the earthquake, the Board established the Q-Petition (Increase for Earthquake-Related Damage). 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. By the filing deadline of June 30, 1995, 1,042 petitions were filed. Through June 30, 1996, 835 decisions have been issued for both completed and proposed repairs. The total cost of approved repairs through that date was \$23,889,501, affecting 7,737 units.

- The Costa-Hawkins Act, which was passed by the State Legislature and signed by the Governor, took effect on January 1, 1996. In most cases it allows rent increases of 15% upon voluntary vacancy of a unit. Units may be eligible for two increases prior to January 1, 1999. Through June 30, 1996, 3,028 vacancy registrations were filed. Costa-Hawkins is expected to have a substantial long-range effect on the affordability of rental housing in the coming years.

- During the two years, the amount of new development was small, reflecting a continuing slow market which has been in effect since the early 1990's not only in Santa Monica, but in Southern California generally. The development that has been completed indicates that there has been an intensification of land use -- more units built than removed.

- The provisions of the TORCA law ended on June 30, 1996. As of that date, TORCA conversions had been approved for 325 properties containing 3,215 units. Applications were pending for an additional six properties containing 176 units including 141 units located in a mobile home park.



## **SIGNIFICANT DEVELOPMENTS IN 1994/95 and 1995/96**

### **Aftermath of the January 17, 1994 "Northridge" Earthquake**

The "Northridge" earthquake of January 17, 1994 was the single most important event of the last two fiscal years.

This report includes information from July 1, 1994 through June 30, 1996 that reflects the wide range of impacts both to the housing stock and to the Agency as a result of the earthquake. These include:

- Summary of earthquake-damaged housing stock
- Status of Rent Control recovery activity on uninhabitable properties
- The Q-Petition Process
- Status of significant properties with controlled rental units damaged by the earthquake

#### **SUMMARY OF EARTHQUAKE-DAMAGED HOUSING STOCK**

The earliest data indicated that, as of February 10, 1994, approximately 218 multi-family residential buildings containing 2,252 units had at least some units which were uninhabitable, either red or yellow-tagged<sup>1</sup>. Many other properties sustained varying degrees of damage, particularly those in the northwestern part of the city.

Of the tagged properties, through June 30, 1996, 153 properties with 1,573 units have been repaired and are now habitable.

Twenty-six properties containing 336 units have been demolished as a direct consequence of earthquake damage. Included in this number are 178 units at the Sea Castle which was damaged in the earthquake. The demolition, however, was also the result of a subsequent fire which caused additional damage to the vacant building.

Thirty-nine properties with 343 units remain tagged as uninhabitable. This includes two large properties. One, the Sovereign, with 34 controlled units, is almost ready for re-occupancy. The other, 1221 Ocean Avenue, with 120 units, has only recently begun the process of repair.

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<sup>1</sup> 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 these numbers.

### STATUS OF RENT CONTROL RECOVERY ACTIVITY ON UNINHABITABLE PROPERTIES

Below is the status of the 39 uninhabitable properties discussed above. On most of the properties, the owners have taken steps to repair or replace the units. Depending on the circumstances of the property, this may involve a removal permit, a Q-petition, or other activity. The list below details recovery activities undertaken through the Rent Control office.

	<u>Properties</u>	<u>Units</u>
Total Uninhabitable	39	343
<i>Category C/CQ Removal Permit Granted</i>	12	51
<i>Category C/CQ Removal Permit Pending</i>	1	2
<i>Category D/DQ Removal Permit Granted</i>	2	37
<i>Category D/DQ Removal Permit Pending</i>	1	17
<i>Settlement Agreement Executed</i>	1	34
<i>Q-Petitions Filed</i>	6	39
<i>Withdrawn Under the Ellis Act</i>	<u>2</u>	<u>3</u>
Total Properties/Units with Rent Control Activity	<u>25</u>	<u>183</u>
<b>Total Controlled Uninhabitable with     No Rent Control Activity</b>	<b>14</b>	<b>160</b>

Because 1221 Ocean Avenue, with 120 units, has begun the repair process, only 40 units have had no recovery activity.

### 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 of the petitions. Q-petitions allowed the pass through to tenants of the owner's costs of repairing earthquake-related damage. Owners could apply for rent increases for completed repairs or for advanced authorization for proposed repairs. Once the repairs were actually completed, owners could file a request for addendum in order to implement the proposed increases.

The Q-petition was processed administratively in most cases, rather than having a formal evidentiary hearing. Copies of the petition were sent to tenants, who had an opportunity to respond to the claims. The case analyst assigned to the file reviewed the documents and tenant responses to determine if the claims were earthquake-related and the cost reasonable. On some occasions, the analyst conducted an on-site inspection of the property. The costs of repairs including financing costs were amortized over a period of either 5, 10 or 20 years, depending on the type of repair, and passed through as rent increases.

Once the decision was issued, it could be appealed to the Board by either the landlord or tenant.



The original Q-petition regulation expired on January 17, 1995, but was extended by the Board to June 30, 1995. The deadline inspired a last-minute flurry of petitions. Through June 30, 1995, 1,042 petitions were filed, 220 on the last day alone.

Shortly after the earthquake, the Santa Monica City Council mandated that buildings of certain construction types which are considered susceptible to earthquake damage be retrofitted, even if there was no earthquake damage. The most common residential construction impacted by this ordinance was properties which had residential units built over tuck-under parking, commonly referred to as "soft story." The costs of soft story retrofiting were allowable expenditures under the Q petition process.

**Administrative Decisions.** Eight hundred thirty-five administrative decisions were issued by June 30, 1996; 184 addenda were issued, most of them final addenda. Of the decisions issued, 803 (96%) were granted -- 409 for completed repairs, 66 for proposed repairs, and 328 for both completed and proposed repairs. Twenty-two petitions were withdrawn or dismissed. Ten were denied.

Five petitions were referred to the Hearings Department for an evidentiary hearing. Of these, three petitions were granted and two were denied.

The number of units affected by approved petitions was 7,737. Below is a cost summary of expenses (not including financing) of earthquake-related repairs approved. Costs which were authorized as proposed in the administrative decision, but have subsequently been allowed as completed through the addendum process, are listed as completed costs.

Completed Common Area	\$18,749,646
Completed Individual Units	<u>2,090,641</u>
Completed Total	\$20,840,287
Proposed Common Area	\$2,871,635
Proposed Individual Units	<u>177,579</u>
Proposed Total	\$3,049,214
<b>Total Approved Repairs</b>	<b>\$23,889,501</b>

Monthly increases per tenant ranged from \$1 to more than \$300, though typical increases were between \$10 - \$30. The overall impact on affordability of these increases has not yet been assessed because 237 decisions are pending and proposed costs are subject to change in the addendum process.

**Appeals of Administrative Decisions.** Two hundred eight of the decisions were appealed to the Rent Control Board by either the owner, a tenant, or both parties, an appeal rate of 25%. By June 30, 1996, the Board had heard 158 of the appeals, and 24 were withdrawn by the parties. The Board affirmed the decisions in 64 cases, modified the decision in 60 cases, denied three petitions, dismissed two, and remanded six cases to Hearings.

**Staffing.** Significant numbers of staff members were assigned full- or part-time to processing Q-petitions. Staff members reassigned on nearly a full-time basis included the Senior Operations Analyst, one Hearing Examiner, one Administrative

Analyst, and one Staff Assistant IV. In addition two Senior Administrative Analysts and three additional Hearing Examiners spent some time in processing petitions. Five as-needed Hearing Examiners and Senior Administrative Analysts were also hired. The process also required substantial time of the Administrator and department managers.

**S Petitions.** The Board also established a procedure (called the S-petition) by which owners could apply for pass through of the costs of soft story retrofitting alone. The S-petition went into effect on August 1, 1995. As of June 30, 1996, 17 S-petitions had been filed. Ten decisions had been issued, all granting increases, one for proposed costs and 9 for completed retrofitting. One decision was appealed; the Board affirmed the administrative decision.

#### **STATUS OF SIGNIFICANT PROPERTIES WITH CONTROLLED RENTAL UNITS**

Several large controlled properties of historical or architectural significance were damaged in the earthquake.

The Charmont - 320 and 330 California and 1114 4th Street - This 85-unit property was red-tagged after the earthquake. An administrative decision on a Q-petition granted proposed increases. In December 1995 all units were habitable again, and a final addendum was issued which implemented increases for completed repairs.

The Sea Castle - 1725 Ocean Front Walk - The property (178 units) was red-tagged after the earthquake and damaged by a subsequent fire. Finding that the property could not be economically repaired, in 1994 the Board granted a Category CQ removal permit. After the fire, the structure was demolished. Whether these units will be rebuilt or replaced is unknown at this time.

The Sovereign - 205 Washington Avenue - This 86-unit property contains both controlled and uncontrolled units. The property was red-tagged after the earthquake. In conjunction with the Multi-family Earthquake Recovery Loan (MERL) agreement with the City, a prior settlement agreement was modified. As a result, upon completion of repairs, 34 units will remain rent controlled, 22 of which are deed-restricted for low income households and 12 units deed-restricted for moderate income households. Pursuant to the MERL agreement, the uncontrolled units are deed-restricted for use as residential rental units for at least 10 years.

El Cortez - 850 2nd Street - This 48-unit property was red-tagged and received a Category DQ removal permit. The damage was repaired and the units are again occupied.

## **The Impact of the Costa-Hawkins Act (AB1164)**

*The State Legislature passed Assembly Bill 1164, known as the Costa-Hawkins Act, effective January 1, 1996. After a three year phase-in period, the new law will require vacancy decontrol/recontrol in apartments and complete decontrol of houses and condominiums. The Board adopted regulations implementing the new law affecting tenancies that occurred on or after October 1, 1995.*

During the period of this report, the law allowed owners to increase the rent on a voluntarily vacated unit by 15% of the previous rent or to 70% of a market level determined by HUD (Department of Housing and Urban Development), whichever was greater. Owners are eligible for up to two such increases upon voluntary vacancy prior to 1999.

Through June 30, 1996, 3,028 unit vacancy registrations (R's) had been filed. Twenty-nine were rejected as duplicate filings and for 21 cases the units were ineligible. Of the 2,732 which have been processed, 2,585 were for the first vacancy. Within this category, the 15% increase was applied to 2,378 units (92%) and 207 units were raised to 70% of fair market. One hundred forty-seven petitions were for the second vacancy, which applies the 15% increase in all cases. Two hundred forty-six R's were in progress.

***Vacancy Rent Increases for TORCA Units --*** In December, 1995, the Board created a new program allowing owners of eligible owner-occupied TORCA units to rent their units at market rate upon authorization by the Board. Regulation 3302 implementing the program became effective on January 1, 1996.

*The program, Vacancy Rent Increases for TORCA Units, was modeled after the Board's exemption which is granted to single family dwellings that are owner-occupied for two consecutive years (Charter Section 1815). An owner-occupant who has lived in a TORCA unit for two years may apply to the Rent Control Board for authorization to establish a new maximum allowable rent (MAR) for the unit. The authorization gives the owner pre-approval to set a new MAR when he or she leaves the unit and rents it to a tenant.*

*If the Board authorizes the vacancy rent increase and the unit is rented, the owner is required to re-register the unit and its new MAR and amenities.*

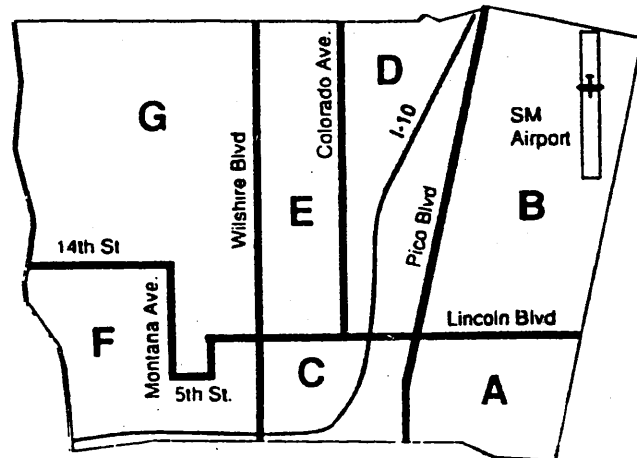
Between January 1 and June 30, 1996, 23 applications for Vacancy Increase for TORCA units had been filed. Of those, 18 were granted, one was denied and one was withdrawn. Of the 18 units with vacancy increase authorizations, six owners rented their units and re-registered the new MARs. The remaining three applications were pending.

## CHANGES IN THE HOUSING STOCK

In order to follow changes in the housing stock in different areas in the City, several years ago 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

The Rent Control Board continues tracking residential development in the City using Planning and Building Department records and permits as well as Rent Control records<sup>2</sup>.

The small amount of development in the two years that are the subject of this report reflects a continuing trend which began several years earlier. Several conditions, some local and some national, resulted in a slow rate of development. The slowdown in development has been seen since the early 1990's not only in Santa Monica, but in Southern California generally.

Nevertheless, the development that has been completed indicates that there has been an intensification of use, that is, more units have been built than have been removed.

### COMPLETED CONSTRUCTION

#### **FY 1994/95**

All of the projects completed in 1994/95 began construction prior to the earthquake.

Eight projects comprising 112 residential units were completed in FY 94/95. These projects replaced 19 residential rental units on four properties. Other units were built on land that had been vacant or used for commercial purposes. Five of the units were reported as demolished in previous annual reports; 13 were demolished during the 1994/95 fiscal year.

<sup>2</sup> All information related to new construction comes from the City's PERMIT system.

Of the 112 completed residential units, 27 were condominiums on five of the properties; 85 were non-controlled rental units, 81 of them deed-restricted for low or moderate income households. Details of these projects include:

- Condominiums
- 2 properties containing 17 units that were previously withdrawn under the Ellis Act, were replaced by 13 condominiums. One developer paid fees in lieu of providing deed-restricted units. The other developer of 9 condominiums provided 2 units deed-restricted at a moderate level and one unit deed-restricted at a low income level.
  - A total of 11 condominiums were developed on two properties that each previously contained a non-controlled single family dwelling.
  - Three condominiums were built on formerly vacant land.

- Rentals
- A commercially-zoned property that contained no controlled units was replaced with 4 market rate rentals and one non-controlled deed-restricted low income rental unit.
  - Eighty low income rental units were built by non-profit developers on two properties. One property had been vacant land and the other was a parking lot.

The development detailed above took place in five of the seven areas in the City.

<u>City Area</u>	<u>Units completed in FY 94/95</u>	<u>Rental Units previously removed from these sites</u>
B	5	1
C	80	0
E	3	0
F	15	6
G	<u>9</u>	<u>12</u>
<b>Total</b>	<b>112</b>	<b>19</b>

**FY 1995/96**

Four projects which contain 61 units were completed. These projects replaced eight residential units. Forty-five units were built on land that had been vacant. Additionally, eleven units that had been withdrawn under the Ellis Act in 1994 were demolished and replaced with a parking lot.

Details of the 61 completed residential units are:

Condominiums

- One property (3 units), withdrawn under Ellis, received a certificate of occupancy for four condominiums. In lieu fees were paid to meet Proposition R requirements.
- One property (2 units) which had a permanent exemption (5017) from rent control was replaced with 5 condominiums.

Rentals

- One property with 3 units that received a Category D removal permit was replaced by 4 market rate rental units, 1 moderate-level unit and 2 units which are deed restricted to tenants of low income.
- A former parking lot was developed with 45 apartments that are not under rent control, but are deed restricted by the City for low income families.

Residential development was completed in four of the seven areas in the City. The table below indicates the units removed and units built in each City area.

<u>City Area</u>	<u>Units completed in FY 95/96</u>	<u>Rental Units previously removed from these sites</u>
B	45	0
C	0	11
D	7	3
E	5	2
G	<u>4</u>	<u>3</u>
<b>Total</b>	<b>61</b>	<b>19</b>

**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.*

**FY 1994/95**

During the 1994/95 fiscal year, eight properties containing 78 residential rental units were withdrawn from the residential rental housing market under the Ellis Act.

Owners of six properties which had previously been withdrawn rescinded the withdrawal and re-rented the units. The 22 units on these properties are again under Rent Control.

The net loss of 56 units was the first time in several years that more units were withdrawn than were returned to rent control and re-rented.

**FY 1995/96**

During the 1995/96 fiscal year, seven properties containing 36 units were withdrawn from the residential rental housing market under the Ellis Act.

In the same period, owners of three properties which had previously been withdrawn rescinded the withdrawal and re-rented the units. The 14 units on these properties are again under Rent Control.

As of June 30, 1996, 208 properties comprised of 999 units had been withdrawn. Two contiguous properties with a total of five units had begun the process of withdrawal.

### **TENANT OWNERSHIP RIGHTS CHARTER AMENDMENT (TORCA)**

*In 1984 Santa Monica voters approved the Tenant Ownership Rights Charter Amendment (TORCA) through which an apartment building could be converted to condominiums if a sufficient number of current tenants approved the conversion and agreed to purchase their units. Protections were built in for tenants who did 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.*

The provisions of the TORCA law ended on June 30, 1996. Applications filed prior to the deadline may still be processed, but no further applications are accepted by the City.

As of June 30, 1996, TORCA conversions had been approved for 325 properties containing 3,214 units. Of those, 1,348 units had been sold on 201 properties; 672 units on the same properties had not been sold. On 124 of the projects, none of the 1,194 units had been sold.

An additional six properties containing 176 units were pending conversion at the end of the fiscal year. This includes one mobile home park (Mountain View - 1930 Stewart Street) with 141 units.

### **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 (no longer in effect)-- 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 (called CQ and DQ removals).*

#### FY 1994/95

In the period July 1, 1994 through June 30, 1995, the Board granted a Category A permit for one property with 3 units and Category C permits for the removal of five properties, a total of 19 units (four of the properties were damaged in the earthquake, but were not yellow- or red-tagged).

Utilizing the new regulations for properties damaged by the earthquake, the Board granted Category CQ removals for 13 properties with 295 units and Category DQ removals for seven properties with 83 units.

Toward the end of the fiscal year, properties which had received Category DQ removals began to be completed. Fifty-six controlled replacement units on three properties were returned to the housing stock.

#### FY 1995/96

In the period July 1, 1995 through June 30, 1996, the Board granted a Category B permit for one property with 16 units and Category C permits for the removal of five properties, a total of 25 units (four of the properties were damaged in the earthquake). One Category C removal permit was pending at the end of the year and one was denied.

In addition the Board granted Category CQ removals for four properties with five units and Category DQ removals for three properties with 39 units. At the end of the year there were two Category CQ removals pending.

Eighteen units on two properties removed under Category DQ were returned to the housing stock. One property which had received a Category D removal in 1988 returned three controlled 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).

#### FY 1994/95

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.



**FY 1995/96**

In this fiscal year, there were 23 declarations submitted for single family dwellings stating that the structures were not rented on July 1, 1984. Four other single family dwellings were also exempted under §1815.

*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.

**FY 1994/95**

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 <sup>3</sup>	3
residential social service	<u>1</u>	<u>1</u>
<b>Total</b>	<b>89</b>	<b>36</b>

These exemptions do not all represent a loss of controlled rental units from the housing stock in 1994/95. Of the owner-occupied exemptions, 10 properties (25 units) received owner-occupied exemptions for the first time; the balance had previous exemptions.

**FY 1995/96**

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	55	55
non-rental	0	0
residential social service	<u>0</u>	<u>0</u>
<b>Total</b>	<b>55</b>	<b>55</b>

These exemptions do not all represent a loss of controlled rental units from the housing stock in 1995/96. Five properties (13 units) received owner-occupied exemptions for the first time. The balance of the owner-occupied properties had previous exemptions.

<sup>3</sup> 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.

## UNIT SUMMARY

**FY 1994/95**

<u>Activity</u>	<u>Reduction in controlled units</u>	<u>Increase in controlled units</u>	<u>Net change in controlled units</u>
Ellis activity	-78	+22	-56
Category A Removals	-3		-3
Category C Removals	-19		-19
Category CQ Removals	-295		-295
Category DQ Removals	-83	+56	-27
New use exemptions	<u>-29</u>	<u>      </u>	<u>-29</u>
<b>Total</b>	<b>-507</b>	<b>+78</b>	<b>-429</b>

**FY 1995/96**

<u>Activity</u>	<u>Reduction in controlled units</u>	<u>Increase in controlled units</u>	<u>Net change in controlled units</u>
Ellis activity	-36	+14	-22
Category B Removals	-16		-16
Category C Removals	-25		-25
Category D Removals		+3	+3
Category CQ Removals	-5		-5
Category DQ Removals	-39	+18	-21
New use exemptions	<u>-13</u>	<u>      </u>	<u>-13</u>
<b>Total</b>	<b>-134</b>	<b>+35</b>	<b>-99</b>

## PROGRAM, POLICIES AND ADMINISTRATION

### Significant Legal Decisions

A significant legal issue confronting not only rent control, but all land use and regulatory agencies is the development of "takings" law. Over the past decade, there has been a developing trend in the courts to enlarge property owners' constitutional rights to compensation when a government acts to: deprive owners of all economic use of their property, to require a dedication of property to public use, or where the regulation "goes too far."

There have been two recent rent control cases which highlight this issue, *Kavanau v. SMRCB* and *Santa Monica Beach v. SMRCB*. Both cases involve claims that the Board's fair return formula, as applied to the individual properties, deprives the owners of their constitutional right to a fair return. The petitioners claim entitlement not only to the requested rent increase, but to damages from the Board for loss of income they claim they should have earned in the period between the Board's decision and the court decision.

In *Kavanau*, one appellate court opinion found that the Board's decision limiting the increases to no more than 12% per year was confiscatory, requiring immediate implementation of the full increases. A second Court of Appeal opinion found that there is no right to monetary damages under current takings law because Mr. Kavanau continued to receive rent and retained other economic uses of his property during the relevant period for which he was claiming damages. Conversely, in *Santa Monica Beach*, the Court of Appeal found that when a owner claims that the law in question no longer meets its stated purpose, the owner can pursue a claim for damages.

Significantly, both cases have been granted review by the California Supreme Court, and decisions could be rendered within the next year which should clarify this particular area of the law. Its ramifications spread far beyond rent control.

Of lesser significance, but of importance to the Agency, the Board's fair return formula, especially as it relates to the treatment of expenses for TORCA units, has been generally upheld in the trial courts in cases such as *Gitlen v. SMRCB* and *Downing v. SMRCB*.

### REGULATIONS

#### **FY 1994/95**

In the 1994/95, the Board adopted or amended sixteen regulations, including the 1995/96 annual general adjustment (Reg. 3017) and registration fee (Reg. 11016).

Most of the activity centered on the Board's earthquake programs. The Board amended its Q-petition pass through program (Reg. 4113) involving the scheduling out of increases for tenant hardship and the adoption of special regulations for properties granted MERL loans by the City (Reg. 4113A), and the soft story pass through (Reg. 4113B). Additionally, the Board amended its Category DQ process to increase the percentage of deed restricted units from 15% to 25%.

The Board also amended Reg. 3105, the School District Bond Tax Surcharge and the Santa Monica Community College District Special Bond Surcharge, to reflect changes brought about by the implementation of the tax surcharges called for by the passage of Propositions ES and T.

**FY 1995/96**

In the 1995/96, the Board adopted, amended or repealed ten regulations, including the 1996/97 annual general adjustment (Reg. 3018) and registration fee (Reg. 11017).

The most significant activity resulted from the passage of the Costa-Hawkins Rental Housing Act, which mandated limited vacancy decontrol in Santa Monica. The Board adopted Regulation 3301, implementing the Board's procedures for the processing of the rent increases called for by the state law. The Board also repealed its Threshold Program (Reg. 3300) as the Costa-Hawkins Act essentially replaced that program.

The Board adopted a vacancy increase program (Reg. 3302) allowing owners of owner-occupied TORCA units to seek authorization from the Board to increase the rent to market, provided the owner resided in the unit for at least two years before filing the application.

The Board adopted Regulation 3106 the Stormwater Management User Fee Surcharge to reflect the increase in stormwater fees mandated by the city in Ordinance 1811 (CCS).

**THRESHOLD RENT PROGRAM**

*On January 1, 1992, the Board inaugurated the Threshold Rent Program which allowed rent increases on many voluntarily vacant units. The program was an administrative process which authorized individual rent increases. A "threshold" or minimum rent level was set for all units, according to the neighborhood in which a unit is located and the number of bedrooms. If the Maximum Allowable Rent of a rental unit was below the threshold rent level when a unit was voluntarily vacated, the owner applied to raise the rent to the threshold level for the new tenant. The program was repealed in December 1995 because the Costa-Hawkins Act had essentially replaced it.*

During its four years of operation, the program received 4,322 petitions. Increases were granted in 3,968 cases. The overall average increase was \$100 per month.

The following table outlines threshold rent petition activity for the life of the program:

<b>Outcome</b>	<b>Total Number</b>	<b>Percentage of Total</b>
Granted	3,968	92%
Denied	185	4
Withdrawn/Dismissed	<u>169</u>	4
<b>Total Filed</b>	<b>4,322</b>	

The increases granted were distributed throughout the City. The average increase overall was \$100. The table below lists number of increases and average increase by area.

City Area	No. of Increases	Average Increase
A	712	\$106
B	534	97
C	166	89
D	322	97
E	779	92
F	566	112
G	<u>889</u>	100
<b>Total</b>	<b>3,968</b>	

### **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."*

During the six years the program has been in effect, 43 contracts have been approved by the Rent Control Board. Four of the contracts were subsequently withdrawn. Thirty-nine properties with 225 units remain active. As of June 30, 1996 there are 111 inclusionary sets in place.

There are 114 dedicated units. Eighty-one of these are rented to households qualifying as "very low income" (90% have HUD subsidies); the remaining 33 units are rented to households qualifying as "low income."

### **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.*

#### **FY 1994/95**

For the 1994 Annual General Adjustment, the Board used the "pie method" to analyze the increases in operating costs by the various components of the rent dollar.

The Board adopted a general adjustment in maximum rent levels of 1.5 percent or \$8, whichever was greater. The \$8 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 \$8 assured owners of the minimum necessary to cover their actual costs.

#### **FY 1995/96**

For the 1995/96 Annual General Adjustment, the Board adopted a general adjustment in maximum rent levels of 1.6% or \$9, whichever is greater.

## **INDIVIDUAL RENT ADJUSTMENTS**

**Increase Petitions** -- 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.

### **FY 1994/95**

In FY 94/95, 36 increase petitions were received by the Hearings Department. Eleven of these contained "Vega issues." (The Simonson/Vega court decision allowed a petitioner to receive rent increases based on the claim that the 1978 rents for the subject building did not reflect general market conditions.) The remaining 25 petitions dealt with increase issues other than Vega claims.

Hearing examiners issued decisions in 36 cases. Twenty-seven increases (75%) were granted and nine cases were denied. Four of the denials included Vega claims. One petition, which was filed in FY 93/94 was dismissed.

### **FY 1995/96**

In FY 95/96, 19 increase petitions were received by the Hearings Department. Two contained "Vega issues"; 17 petitions dealt with increase issues other than Vega claims.

Hearing examiners issued decisions in 21 cases (including two filed the prior year). Fourteen increases (74%) were granted and seven cases were denied. Three of the denials included Vega claims. One petition was withdrawn.

**Professional Expenses Addenda** -- Professional expenses addenda are issued by hearing examiners in response to requests from owners and tenants in relation to the owner's pursuit of Constitutional rights with regard to the Rent Control Law. The professional expenses category was added in 1994/95 in response to the State law which required it.

In 1994/95, 17 addenda were issued, all approving fees. In 1995/96, eleven addenda were issued. Seven of the eight requested by landlords were approved, one was denied. The three requested by tenants were approved.

**Hardship Addenda** -- Low income tenants may apply for hardship addenda when increases granted exceed 12% of the MAR or \$50, whichever is greater. The addenda schedules out the increase over a period of time, not exceeding 60 months.

In 1994/95 15 addenda were issued. Twelve approved 17 qualifying tenants; three were denied, affecting four tenants. One additional tenant was placed on a hardship schedule because a senior low income fee waiver was in place.

In 1995/96 three addenda were issued, qualifying four tenants. Four additional tenants were placed on a hardship schedule because senior low income fee waivers were in place.

**Decrease Petitions** -- 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. When a decrease petition is filed, a settlement conference is scheduled to resolve the issues without a hearing, if possible.

	<u>FY 1994/95</u>	<u>FY 1995/96</u>
Received for Mediation	153	148
Successful Resolutions:		
Fully Resolved	51	32
Partially Resolved	25	7
In process of fulfilling agreements	2	1
No resolution-referred to hearing	57	41
Withdrawn or Dismissed	10	3
In process	8	64 <sup>4</sup>
<hr/>		
Received for Hearing from Mediation	107	61
Decreases granted	49	37
Decreases denied	3	3
Dismissed	6	2
Withdrawn	17	9
In process	32	10

**Reinstatement of Decreases** -- Reinstatement of decreases occurs upon receipt of a Request for Proposed Addendum and verification that the conditions were corrected.

**FY 1994/95**

In FY 94/95 the decreases in 18 of the 49 approved petitions were fully reinstated and partially reinstated in another 17. Additionally, decreases awarded in decisions made in prior fiscal years were fully reinstated in eleven cases and partially reinstated in four.

**FY 1995/96**

In FY 95/96 the decreases in eight of the 37 approved petitions were fully reinstated and partially reinstated in another nine. Decreases awarded in decisions made in prior fiscal years were fully reinstated in 43 cases and partially reinstated in 25.

<sup>4</sup> 35 are consolidated.

**Administrative Petitions** -- 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. 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.

**FY 1994/95**

In FY 94/95 three administrative common area decrease decisions were issued in conjunction with individual decrease petitions. Decreases were awarded in all three of these petitions, affecting 23 units. After repairs, the common area decreases were fully reinstated in two of the three petitions. Three other petitions were withdrawn.

**FY 1995/96**

In FY 95/96 three administrative common area decrease decisions were issued in conjunction with individual decrease petitions; one petition was denied. Decreases awarded affected 49 units. After repairs, common area decreases were fully reinstated in one of the three petitions.

**Base Rent Petitions** -- Any owner, former owner, tenant or former tenant of a property, or any Board Commissioner or the Board's Administrator may petition for a hearing to establish a correct rent or apartment/building amenities .

**FY 1994/95**

In 1994/95 fifteen base rent decisions were issued by the Hearings Department. An additional six were dismissed and three were withdrawn. Of the decisions issued, eleven concerned base amenity issues while four concerned base rents. Thirteen of the 15 petitions dealing with base rent issues were approved and two were denied.

**FY 1995/96**

In 1995/96 seven base rent decisions were issued by the Hearings Department, six were dismissed and three were withdrawn. Of those issued, four concerned base amenity issues while three concerned base rents. Six of the seven petitions dealing with base rent issues were approved and one was denied. Six cases were pending at the end of the year.



## **FEE WAIVERS**

The Rent Control Board provides waivers of Rent Control registration fees to units: occupied by their owners, subsidized by HUD (Section 8), or occupied by low-income tenants who are over 62 or disabled. There are also fee waivers in mobile home parks for units where tenants have signed long-term leases.

<u>Type of Fee Waiver</u>	<u>As of FY 1994/95</u>	<u>As of FY 1995/96</u>
low-income senior	810	808
low-income disabled	141	143
owner-occupied	2,544	2,644
HUD subsidized (Section 8)	748	755
administrative	263	273
mobile home	42	47
seismic safety	5	0
<b>Total fee waivers</b>	<b>4,553</b>	<b>4,670</b>

# THE WORK OF THE RENT CONTROL BOARD BY DEPARTMENT

## Administration and Public Information Departments

*During the two years covered in this report, many of the responsibilities of the Administration Department, and the staff who carried out the assignments, were transferred to the Public Information Department.*

	<u>FY 1994/95</u>	<u>FY 1995/96</u>
• Rent Board meetings convened and staffed	42	43
<i>regular meetings</i>	38	36
<i>special meetings</i>	4	7
• Special mailings produced and distributed		1
• Clearance forms to submit TORCA applications	6	9
• Clearance forms to submit development applications	194	118
• Demolition Permits processed	41	35
• Building Permits processed	136	109
• Utility adjustment applications processed	8	1
• Number of people helped seeking information	31,668	29,790
<i>Number at counter (22%)</i>	6,849	6,575
<i>Number by phone (78%)</i>	24,819	23,215
• Excess rent complaints processed	54	49
• Excess rent mediations conducted	35	34
• Threshold rent petitions processed	974	284
• MAR reports generated	103	161
• Petitions processed on in-take (does not include Q's or Threshold Rent)	276	249
• Registrations processed	1,608	541
• Registration fees processed	4,307	4,174
• Fee waivers processed	607	962
• Small Claims litigation fees collected	\$62,481	\$42,857
collection actions taken	28	30
settlements entered	29	18
registration fee suits filed	24	19

	<u>FY 1994/95</u>	<u>FY 1995/96</u>
<b><u>Hearings Department</u></b>		
• Hearings held on rent increases	60	40
• Hearings held on decreases	76	73
• Hearings held on base rents and amenities	26	22
• Hearings on complaints	7	9
• Hearings held on threshold petitions	13	4
• Hearings held on earthquake petitions	7	0
• Written decisions issued	128	89
• Addenda issued	182	173
• On-site investigations conducted	222	193
<i>upon scheduling decrease petitions</i>	84	59
<i>in response to compliance requests</i>	78	85
<i>regarding unit identification conflicts</i>	4	8
<i>Ellis investigations</i>	3	5
<i>Threshold Rent investigations</i>	27	0
<i>research and measuring</i>	18	11
<i>other, i.e., occupancy, unit use, etc.</i>	8	25
• MARs updated due to decisions/addenda	7,549	7,504
• Site file pages copied to fiche by contractor	63,597	68,503
• Interpreter services provided	8	14
<i>Spanish</i>	2	9
<i>Persian</i>	4	5
<i>Mandarin Chinese</i>	1	0
<i>Polish</i>	1	0
<b><u>Legal Department</u></b>		
• Staff reports on appeal prepared	121	99
<i>base rent cases</i>	7	1
<i>decrease cases</i>	19	10
<i>threshold rent</i>	0	4
<i>increase cases</i>	36	19
<i>earthquake increase cases</i>	55	64
<i>excess rent complaints</i>	4	1
• Withdrawals of properties filed under Ellis processed	9	8
• Withdrawals of Excess Rent processed	1	1
• Miscellaneous staff reports	7	13
• New or amended regulations prepared	16	10

	<u>FY 1994/95</u>	<u>FY 1995/96</u>
• Litigation total	22	16
<i>affirmative litigation</i>	1	2
<i>lawsuits defended</i>	21	14
• Officer of the Day requests responded to	780	780
• Exemption cases written or reviewed	48	34
• Incentive Housing cases reviewed	2	1
• Prima facie case review of excess rent complaints	54	49
• Administrative Records prepared	9	14