

R/W MANUAL CHANGE

RWMC- 256

PROCEDURAL HANDBOOK
 (1984 Edition)

RWPH-____-____-____
 TRANSMITTAL#____

TITLE:

PROPERTY MANAGEMENT

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SUBJECT AREA:

CHAPTER 11 – PROPERTY MANAGEMENT

ISSUING UNIT:

OFFICE OF REAL PROPERTY SERVICES

SUMMARY OF CHANGES: Revises Section 11.04.00.00 and Exhibit 11-EX-3.

PURPOSE

This manual change reflects the 2013 regulation change to the Affordable Rent Program.

Where applicable, general typographical errors were corrected.

PROCEDURES

Section 11.04.01.00 Revises language in the Affordable Rent Program.

Exhibit 11-EX-3 Revises Affordable Rent Tenants.

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
11 - Sections	11.04.00.00 (REV 2/2013)	11.04.00.00 (REV 5/2016)
11 – Exhibits	11-EX-3 (REV 12/2001)	11-EX-3 (REV 5/2016)

11.04.00.00 - RENTAL RATES

11.04.01.00 General

Our policy is to charge fair market rent and to rent only to tenants willing and able to pay fair market rent. For definition of Fair Market Rent, see Section 11.04.02.00. Exceptions are made for:

- 1) Tenants whose rental rates are established by Right of Way Contract.
- 2) Residential tenants who qualify for the Affordable Rent Program. (See Exhibit 11-EX-3, Affordable Rent Tenants.)
- 3) Local rent control (see Section 11.04.05.00).
- 4) Social, environmental, or economic purposes or nonproprietary government use with FHWA's prior written approval.

The district shall set up all state-owned properties that are suitable for renting and are proposed for occupancy as rental accounts and shall charge rent as follows:

- **Property Improved with an Owner-Occupied Residential Unit** - Grantor's rental shall commence on the 16th day after the close of escrow or the day after the Order of Possession becomes effective.
- **Property Occupied by a Business** - A rental grace period (maximum of 60 days) may be granted to the tenant (former owner, inherited tenant) if circumstances warrant. The grace period may commence on the day after the close of escrow, or the day after the Order of Possession becomes effective, or at some other time during the lease term, depending on whether or not the business has a commitment to pay rent on a replacement site. See Relocation Assistance Chapter, Section 10.05.24.00, for further details.
- **All Other Classes of Property, Including Property Partially Tenant-Occupied** - Rentals shall commence on the day following close of escrow or the day after the Order of Possession becomes effective.
- **Exceptional Cases** - Adherence to rental rates established by executed R/W Contracts is required. Lease purchase sale of excess land to a tenant-buyer will provide for a lease at above market rate. See Excess Land Chapter, Section 16.05.14.00, for further details.

These provisions do not preclude longer free occupancy periods where necessary or desirable with the DDC-R/W's approval. The terms of either the R/W Contract or the transmittal memorandum must indicate, however, that the state is receiving a consideration for the extended rent-free occupancy.

The initial rental rate for all improved properties and rented unimproved properties is in the appraisal report.

- **Tenant-Occupied Properties** - The actual existing rental rate and the estimated fair market rental rate are shown.
- **Owner-Occupied Properties** - Only the fair market rental rate is shown. The rentals of similar properties shall be the basis for estimating the fair market rental rate.

11.04.01.01 Rental Rate Increase Policy

Department policy is to review rental rates annually and make the appropriate adjustments keeping in mind that a 60-day notice is required prior to raising rents. This applies to residential and nonresidential properties.

11.04.02.00 Rent Determinations

Property Management is responsible for establishing fair market rent determinations on residential properties. Property Management may request assistance from Appraisals, but must provide Appraisals with detailed information about the subject properties. For information and responsibilities for rent determinations on nonresidential properties, see Section 11.05.01.00 for guidance.

A fair market rent determination is an estimate of the amount of rent, which a parcel would command in the open market, if offered under the terms and conditions typical of the market for similar properties.

The rent determination shall be based on current rents being paid in the area for comparable property. An analysis of the comparable rental and other market data such as size, location, condition of property (exterior and interior), etc., will be completed. The subject properties and comparable data shall be viewed in the field and the comparable property will be inspected if available. Exhibit 11-EX-46, Documentation of Residential Fair Market Rental Rate, will be used for all rent determinations. The rent determination includes a signed statement that the agent has personally viewed and inspected the parcel. The rent determination shall also be signed by a Property Management Senior and placed in the rental file.

At minimum, a 48-hour notice will be given to the tenants prior to inspecting the property for rent determinations.

11.04.02.01 Changing the Rental Rate Shown in the Appraisal

Although Property Management will normally use the rental rate shown in the appraisal, it has the right to revise the rate if justified by more recent market data. If a change in the rental rate for residential properties is proposed, the Agent shall complete Exhibit 11-EX-46, Documentation of Residential Fair Market Rental Rate, and submit to the Property Manager or designee for approval. For nonresidential properties, the agent will complete Exhibit 11-EX-53, Nominal Value Nonresidential Rental Appraisal, and submit to the Property Manager or designee for approval. (See Section 11.05.04.00 for additional information in regard to nonresidential properties.) All documentation shall be filed in the rental folder.

11.04.03.00 Lease Term

At its discretion, the district may set the length of lease terms up to five years, provided rate adjustments are incorporated and 90-day (or less) cancellation clauses are included. Suggested guidelines are as follows:

- **The Property Is in an Active Market, Subject to Recent or Anticipated Property Value Increases** - Consideration should be given to keeping the term short (e.g., one year). The advantage is that the rent can be reappraised and adjusted with market changes; the disadvantage is that a yearly reappraisal and renewal are required.
- **Properties Are of Relatively Low Value (e.g., Agricultural and Nominal Leases) and the Market Is Stable** - Consideration should be given to a longer-term lease (e.g., 3-5 years). This reduces the need for annual reappraisal and lease renewal where little or no rental change is likely. In such a case, a rental adjustment lease clause may be omitted.
- **Other Leases (e.g., Commercial and Industrial) in a Stable Market** - Consideration should be given to a longer-term lease (e.g., 3-5 years). To keep up with the rental market, the lease should contain a provision for annual rental escalation. Examples include level or graduated rental step raises (based on projected market trends) and raises tied to a Consumer Price Index. (See page 9 of Exhibit 11-EX-B, Lease Agreement, for standard rent escalation clauses.)
Use of a flat rate must be justified and documented in the file or preapproved in writing by the DD or authorized delegate.

Where possible, all leases should be written with a short termination time (e.g., 90 days or less) to provide maximum flexibility. Leases with terminations longer than 90 days should be written on an exception basis only and must not conflict with project certification schedules. Similarly, multiyear leases must be written to avoid such conflict.

11.04.04.00 Escalation Clauses

The assigned Agent shall annually review each lease agreement containing a rental escalation clause. The Agent shall adjust the lease rate according to the terms of the agreement and notify the lessee. The rental file and the RWPS shall be appropriately documented. The Property Manager shall be responsible for reviewing the rental files and the RWPS to ensure compliance.

11.04.05.00 Local Rent Control

Occasionally, the rental rate policy that calls for rental increases under certain situations may be in conflict with local rental control. If the existing rental rate is substantially below the market rate and the proposed rate of increase exceeds the limits provided in a local rent control ordinance, the district should contact the local agency:

- To explain the need for bringing rents to market rate.
- To explain that once rents are at market rate, the limitations prescribed in the rent control ordinance will be observed.
- To attempt to get the local agency's concurrence.

If the local agency does not concur, the district shall comply with the local ordinance.

11.04.06.00 Owners Retain Improvements

If the R/W Contract requires the owner to remove retained improvements within a short time period (e.g., 90 days), a rental rate providing a current market return on the acquired property is charged. The rental rate shall not include a return on retained improvements. If the acquired land is of such size and irregular shape (e.g., narrow strips) that the market rental rate cannot be readily determined, the monthly rental rate may be set at one percent (1%) of the payment for the acquired property.

After the close of escrow, if any structural improvement retained by the grantor remains on the acquired property past the term agreed to, the district shall charge fair market rent for the use of the property purchased from the grantor. The agent should also check the Right of Way Contract for clauses pertaining to provisions agreed upon if such issue occurred. (For example, the right of the Department to sell or demolish the improvements remaining on State property.)

NOTES:

AFFORDABLE RENT TENANTS

(Form #)

AFFORDABLE RENT TENANTS

The California Legislature has declared the availability of affordable residential housing is of vital statewide importance and state agencies, including the Department of Transportation (Department), have a responsibility to use the power vested in them to meet the housing needs of all economic segments of the community. Accordingly, the Department sets forth herein the Affordable Rent Program by which the Department can consider affordability when adjusting rents for current residential tenants who are economically disadvantaged. The Affordable Rent Program is intended to protect existing low-income tenants from large rental rate increases, which may otherwise result in their current rental unit becoming unaffordable. For new tenants, rent will be set at fair market rates.

Eligible Tenants

In order to qualify for the Affordable Rent Program, tenants must:

1. Be in occupancy as of December 31, 2012;
2. Not be eligible for RAP; and
3. Have an Annual Income not exceeding 120% of the county median household income as identified in accordance with the Department of Housing and Community Development's annual publication of Official State Income Limits, adjusted for the size of household, published pursuant to Health and Safety Code section 50093.

Rental Rate

The rental rate charged to qualifying affordable tenants is 25% of the gross monthly household income for tenants who began renting the unit on or before March 3, 1981, or 30% of the gross monthly income for tenants who began renting the unit after March 3, 1981. In no case shall the rent in the Affordable Rental Program exceed the fair market rent.

Annual Review

The district will review the income of tenants qualifying for affordable rent annually. Eligibility for affordable rent will be lost if tenant fails to provide complete and accurate income information. Once eligibility for affordable rent is lost, it can never be regained. Appropriate rental rate increases will be made if tenant's income has increased since the previous Income Certification, including an increase to fair market if tenant's income exceeds 120% of median income.

The district will use Form RW 11-24, Income Certification, to document household income in accordance with Income Guidelines below. The combined income of all occupants will be considered. Income should be verified using W-2 forms, income tax returns, letters, or discussions with employers and others. Income documentation obtained for RAP purposes may be substituted if current and complete. All income information is personal and controlled by the California Information Practices Act.

When the district requests income information, it should fully inform tenants of the department's rental rate policy and procedure and the possibility that rent may be increased. Tenants shall receive, by personal service, a 60-day notice of increased rent justified by changes in income.

AFFORDABLE RENT TENANTS (Cont.)

(Form #)

Annual Review (Continued)

When an affordable rent tenancy is based on more than one income-producing tenant, eligibility for affordable rent will be terminated if any one of the income-producing tenants vacates and is replaced by a new member. Rent for the entire household will then be scheduled to fair market rent.

If tenants refuse to supply requested income information, the district will increase rent to fair market with no right of appeal. Documentation of refusal will be kept in the file.

If a tenant provides questionable income information:

1. The district shall inform tenant in writing by certified mail or personal delivery of the affordable rent policy; why information is believed to be incorrect; what if anything, tenant can provide to prove the information is correct; and that rent will be raised to fair market if tenant fails to respond by a certain date (two weeks).
2. If tenant is not responsive within specified time, the district shall personally serve tenant with 60-day written notice that rent will be increased to fair market.
3. The district shall review and verify tenant-provided information.

Median Income Determination

The State Department of Housing and Community Development publishes income limits annually and posts them on the Internet at <http://www.hcd.ca.gov>.

Income Guidelines

Affordability is based on Annual Income from all tenants age 18 years or older living in the household. Children up to age of 23, who are enrolled in school full-time including college, will not be included in determining income. Income will be verified using W-2 forms, state and federal income tax returns, pay stubs, and any other financial documentation relevant to income. When current tenants do not submit complete and accurate supporting financial documentation, they will be charged fair market rent.

Included as Income:

Annual family income shall include all payments from all sources received by the family head (even if temporarily absent) and each additional member of the family household who is not a minor, except for items specifically excluded as income below. Income shall include, but not be limited to:

1. Gross amount, before payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses.
 2. Net income from operation of a business or profession or from rental or real or personal property. (For this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine net income from a business.)
 3. Interest and dividends.
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AFFORDABLE RENT TENANTS (Cont.)

(Form #)

EXHIBIT

11-EX-3 (REV 5/2016)

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4. Full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.
5. Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation, and severance pay.*
6. Public assistance payments. If the payment includes an amount specifically designated for shelter and utilities that the public assistance agency can adjust according to actual cost of shelter and utilities, the amount of public assistance income to be included as income shall consist of:
 - Amount of allowance or grant excluding amount specifically designated for shelter and utilities, **plus**
 - Maximum amount the public assistance agency could, in fact, allow the family for shelter and utilities.
7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling.
8. All regular pay, special pay, and allowances of a member of the armed forces (whether or not living in the dwelling) who is head of the family, or their spouse.*
9. If a family has net family assets in excess of \$5,000, income shall include actual amount of income, if any, derived from all net family assets, or 10% of the value of all such assets, whichever is greater. For purposes of this section, net family assets mean value of equity in real property, savings, stocks, bonds, and other forms of capital investments. Value of necessary items such as furniture and automobiles shall be excluded.

*See exclusions below.

Excluded as Income:

1. Casual, sporadic, or irregular gifts.
 2. Amounts that are specifically for or in reimbursement of medical expenses.
 3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains, and settlements for personal or property losses.
 4. Amount of educational scholarships paid directly to the student or the educational institution and amount the government pays to a veteran for use in meeting costs of tuition, fees, books, and equipment. Any portion of such scholarships or payments to veterans not used for these purposes that are available for subsistence are included in income.
 5. Special pay to head-of-family service personnel who are away from home and exposed to hostile fire.
 6. Relocation payments made pursuant to federal, state, or local relocation law.
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AFFORDABLE RENT TENANTS (Cont.)

(Form #)

7. Foster child care payments.
8. Value of coupon allotments for purchase of food pursuant to the Food Stamp Act of 1964 that is in excess of amount actually charged the eligible household.
9. Payments received pursuant to participation in the following volunteer programs under the ACTION Agency:
 - National volunteer antipoverty programs, which include VISTA, service learning programs, and special volunteer programs.
 - National older-American volunteer programs for persons aged 60 and over, which includes retired senior volunteer programs, Foster Grandparent Program, and Older American Community Services Program; National Volunteer Program to Assist Small Business Experience; Service Corps of Retired Executives (SCORE); and Active Corps of Executives (ACE).

Rent Standards

Rent charged to tenants who qualify for the Affordable Rent Program will be the higher of either: (1) the current rent; or (2) the Affordable Rent Level. Any rent increase made under the provisions of the Affordable Rent Program shall be limited as follows: (1) if current rent is 25% or less below the Affordable Rent Level, there will be annual 10% rent increases until actual rent equals the Affordable Rent Level, or (2) if current rent is more than 25% below the Affordable Rent Level, there will be 10% rent increases every six months until actual rent is 25% or less below the Affordable Rent Level and then there will be annual 10% rent increases until actual rent equals the affordable rent level. In no case shall the rent in the affordable rent program exceed the fair market rent.

If a tenant qualifies for the Affordable Rent Program, and then moves into a different Caltrans property (after December 31, 2012), they will no longer qualify for the Affordable Rent Program. Tenants need to be in occupancy as of December 31, 2012.