

AMENDED NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

November 21, 2013

TITLE 21. PUBLIC WORKS

Division 2. Department of Transportation

Pursuant to Government Code section 11346.8(c) and section 44 of Title 1 of the California Code of Regulation, on November 6, 2013, the Department of Transportation (Caltrans) noticed proposed changes to the proposed regulations for Caltrans' Affordable Rent Program found in the California Code of Regulation, Title 21, sections 2653 through 2658. The proposed regulations were the subject of regulatory hearings held in Sacramento on July 1, 2013, San Diego on July 3, 2013, El Sereno on July 9, 2013 and in Pasadena on July 10, 2013. The changes, as proposed in the November 6, 2013 notice, were made in response to comments received regarding the proposed regulations

Since noticing the proposed changes on November 6, 2013, Caltrans has received comments that the proposed changes to section 2657 are ambiguous. Accordingly, Caltrans has modified its proposed changes to that section and is extending the time period for comment to its proposed Affordable Rent Program Regulations, in their entirety. The changes to the proposed Affordable Rent Regulations now proposed by Caltrans are indicated in Attachment 1 to this Amended Noticed.

WRITTEN COMMENTS MUST BE SUBMITTED TO CALTRANS NO LATER THAN 5:00 P.M. ON DECEMBER 6, 2013, AND ADDRESSED TO:

California Department of Transportation
Division of Right of Way and Land Surveys
Office Chief, Real Property Services
Attention: Michael Rodrigues
1120 N Street, MS 37
Sacramento, CA 95814
Fax: 916-654-4956
michael.rodrigues@dot.ca.gov

All written comments received no later than December 6, 2013, will be reviewed and responded to by Caltrans as part of the compilation of the rulemaking file. Personally delivered, mailed, e-mailed and faxed comments will be accepted. Comments submitted in response to the original notice will be considered and do not need to be resubmitted.

Attached hereto as "Attachment 1" are the proposed changes to Caltrans' Affordable Rent Program proposed regulations, as presented in this Amended Notice.

Attached hereto as "Attachment 2" is a copy of Caltrans' November 6, 2013 notice of proposed changes, including a copy of the changes to the proposed regulations originally noticed.

**TITLE 21 PUBLIC WORKS
DIVISION 2. DEPARTMENT OF TRANSPORTATION**

CHAPTER 24. RIGHT OF WAY

Article 1 Affordable Rent Program

§2653 Purpose and Scope

The California Legislature has declared the availability of affordable residential housing is of vital statewide importance and state agencies, including the Department of Transportation, 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, rents will be set at fair market rates.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2654 Definition of Terms

Affordable Rent Level means 25% of the gross monthly 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.

Annual Income means total income for the most recent past tax year, before adjustments, credits and taxes.

Fair Market Rent means the amount of rent a parcel would command in the open market if offered under the terms and conditions typical of the market for similar properties.

RAP refers to the Relocation Assistance Program as set forth in the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (URA), and Title 49 Code of Federal Regulations Part 24 (2005).

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2655 Tenant Affordability Standards

~~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 size of household, published pursuant to Health and Safety Code section 50093.~~

Tenants who are in occupancy as of December 31, 2012, who are not RAP eligible, and 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 size of household, published pursuant to Health and Safety Code Section 50093, may apply for the Affordable Rent Program.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2656 Income Standards

Affordability is based on Annual Income from all tenants age 18 years or older living in the household. Children up to the 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.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2657 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.~~

- (a) Rent charged to tenants who qualify for the Affordable Rent Program will be the Affordable Rent Level. Any rent increase made under the provisions of the Affordable Rent Program shall be limited as follows: if current rent is below the Affordable Rent Level, 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.

- (b) Tenants in the Affordable Rent Program who are paying rent above their Affordable Rent Level will have their rent reduced to their Affordable Rent Level. This rent reduction will begin the first full month following the effective date of these regulations and not before.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2658 Tenant Eligibility

Continued eligibility for the program will be reviewed annually by the Department.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

NOTICE OF PROPOSED RULEMAKING

**TITLE 21. PUBLIC WORKS
Division 2. Department of Transportation**

The Department of Transportation (Caltrans) proposes to make changes to the regulations after considering all comments, objections, and recommendations regarding the proposed action.

15 DAY WRITTEN COMMENT PERIOD:

Any interested persons, or his/her authorized representative, may submit written comments relevant to the proposed changes only. The written comment period will commence on November 6, 2013 and close on November 21, 2013. Caltrans will only consider comments received during that time period and will only consider comments made exclusively to the proposed changes. Please submit comments to:

Michael J. Rodrigues
Office Chief, Real Property Services
Division of Right of Way and Land Surveys
California Department of Transportation
1120 N. Street, MS 37
Sacramento, CA 95814
916-654-3536 (office)
209-481-4602 (cell)
michael.rodrigues@dot.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

This notice of proposed action and the proposed revisions to the text of the regulations in underline and strikeout can be accessed through Caltrans' website at:
<http://www.dot.ca.gov/regulations.htm>

PROPOSED CHANGES:

**CHAPTER 24. RIGHT OF WAY,
Article 1 Affordable Rent Program
Sections 2653 through 2658**

§ 2653

No changes were made to this Section.

§ 2654

No changes were made to this Section.

§ 2655

The meaning of the Section did not change, it was reworded for clarity.

§ 2656

No changes were made to this Section.

§ 2657

Many of the comments from the Public Hearings and the written comments received stated concerns over rent increases that would be too high for tenants under the Affordable Rent Program to maintain. It has been decided that it is the best interest of the affordable tenants that their rental rate be adjusted (lowered) to their affordable rent level rather than a continuance of paying rent at a rate higher than their affordable rent level even though they are currently paying the higher rate. Having the affordable tenants pay a rate higher than their affordable level is not consistent with the purpose of the Affordable Rent Program.

Many of the comments from the Public Hearings and the written comments received stated concerns over two rent increases in a single year. Many felt that this policy would force them to move from their existing rentals. In an effort to be consistent with an Affordable Rent Program, it has been decided that one 10% rent increase per year for the affordable tenants is appropriate. Multiple rent increases in a one year span would most likely result in a financial hardship for most affordable tenants negating the intent of the Affordable Rent Program.

§ 2658

No change was made to this section.

**TITLE 21 PUBLIC WORKS
DIVISION 2. DEPARTMENT OF TRANSPORTATION**

CHAPTER 24. RIGHT OF WAY

Article 1 Affordable Rent Program

§2653 Purpose and Scope

The California Legislature has declared the availability of affordable residential housing is of vital statewide importance and state agencies, including the Department of Transportation, 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, rents will be set at fair market rates.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2654 Definition of Terms

Affordable Rent Level means 25% of the gross monthly 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.

Annual Income means total income for the most recent past tax year, before adjustments, credits and taxes.

Fair Market Rent means the amount of rent a parcel would command in the open market if offered under the terms and conditions typical of the market for similar properties.

RAP refers to the Relocation Assistance Program as set forth in the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (URA), and Title 49 Code of Federal Regulations Part 24 (2005).

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2655 Tenant Affordability Standards

~~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 size of household, published pursuant to Health and Safety Code section 50093.~~

Tenants who are in occupancy as of December 31, 2012, who are not RAP eligible, and 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 size of household, published pursuant to Health and Safety Code Section 5009, may apply for the Affordable Rent Program.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2656 Income Standards

Affordability is based on Annual Income from all tenants age 18 years or older living in the household. Children up to the 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.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2657 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.~~

- (a) Rent charged to tenants who qualify for the Affordable Rent Program will be the Affordable Rent Level. Any rent increase made under the provisions of the Affordable Rent Program shall be limited as follows: if current rent is below the Affordable Rent Level, 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.
- (b) Tenants who qualify for and are current participants in the Affordable Rent Program who are paying rent above their Affordable Rent Level shall be entitled to an immediate reduction of their current rent level to their Affordable Rent Level, effective the month following the effective date of these regulations. This provision shall have no retroactive application and shall apply prospectively from the date that these regulations become effective.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code

§2658 Tenant Eligibility

Continued eligibility for the program will be reviewed annually by the Department.

Authority cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code
Reference cited: Section 65580, Government Code; Section 104.6, Streets and Highways Code