

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: November 17, 2021

Final Decision Date Deadline: November 17, 2021

STATEMENT OF THE ISSUE: At the September 15, 2021 Regular Meeting of the Richmond Rent Board, Rent Program staff presented an overview of the existing internal late fee waiver policy, seeking feedback from the Board regarding the creation of a Board approved late fee waiver Regulation. After receiving feedback from the Rent Board, staff members are now presenting Rent Board Regulation 425 to the Rent Board for adoption. Regulation 425 is aimed at clarifying and simplifying the current Late Fee waiver process, while simultaneously ensuring proper levels of Rent Board transparency and oversight.

INDICATE APPROPRIATE BODY

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|---|---|--|--|---|
| <input type="checkbox"/> City Council | <input type="checkbox"/> Redevelopment Agency | <input type="checkbox"/> Housing Authority | <input type="checkbox"/> Surplus Property Authority | <input type="checkbox"/> Joint Powers Financing Authority |
| <input type="checkbox"/> Finance Standing Committee | <input type="checkbox"/> Public Safety Public Services Standing Committee | <input type="checkbox"/> Local Reuse Authority | <input checked="" type="checkbox"/> Other: <u>Rent Board</u> | |

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|---|--|---------------------------------|
| <input type="checkbox"/> Presentation/Proclamation/Commendation (3-Minute Time Limit) | <input checked="" type="checkbox"/> Regulation | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Rent Board As Whole | |
| <input type="checkbox"/> Contract/Agreement | <input type="checkbox"/> Claims Filed Against City of Richmond | |
| <input type="checkbox"/> Grant Application/Acceptance | <input type="checkbox"/> Video/PowerPoint Presentation (contact KCRT @ 620.6759) | |
| <input type="checkbox"/> Resolution | | |

RECOMMENDED ACTION: (1) ADOPT proposed Rent Board Regulation 425, titled, "Waiver of Delinquent Residential Housing Fee Assessment"– Rent Program (Nicolas Traylor/510-620-6564).

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AGENDA REPORT

DATE: November 17, 2021

TO: Chair Finlay and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director

SUBJECT: PROPOSED RENT BOARD REGULATION 425 WAIVER OF DELINQUENT RESIDENTIAL HOUSING FEE ASSESSMENT

STATEMENT OF THE ISSUE:

At the September 15, 2021 Regular Meeting of the Richmond Rent Board, Rent Program staff presented an overview of the existing internal late fee waiver policy, seeking feedback from the Board regarding the creation of a Board approved late fee waiver Regulation. After receiving feedback from the Rent Board, staff members are now presenting Rent Board Regulation 425 to the Rent Board for adoption. Regulation 425 is aimed at clarifying and simplifying the current Late Fee waiver process, while simultaneously ensuring proper levels of Rent Board transparency and oversight.

RECOMMENDED ACTION:

(1) ADOPT proposed Rent Board Regulation 425, titled, "Waiver of Delinquent Residential Housing Fee Assessment" – Rent Program (Nicolas Traylor/510-620-6564).

FISCAL IMPACT:

There may be an impact related to staff time in adding an additional layered process to the waiver of Late Fees. Additionally, as Late Fee payments are reported in the Rent Board's overall revenue, waiver of any assessed Late Fee would necessarily have an impact on overall revenue.

DISCUSSION:

Background

Section 11.100.060(m) of the Rent Ordinance establishes both the integrity and autonomy of the Rent Board by mandating that the Rent Board "be an integral part of the government of the City [of Richmond]," and "exercise its powers and duties under [Chapter 11.100]

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independent from the City Council, City Manager, and City Attorney, except by request of the [Rent] Board.” The Rent Ordinance further vests the Rent Board with the sole power to oversee and adopt its own budget, while establishing that “the City Council and the City Manager shall have no authority to oversee, supervise, or approve this budget.” The Rent Program budget is comprised only of reasonable and necessary expenses to achieve the purpose of the Rent Ordinance and is currently funded in whole by the Rental Housing Fee charged to all Landlords in an amount deemed necessary and reasonable by the Rent Board and approved by the City Council.

Since its inception the Rent Program has waived \$142,644.40 in late fees through its administrative waiver process. \$25,682 in late fees were waived prior to the pandemic and \$116,962 in late fees were waived during the COVID-19 pandemic. In light of the fact that the Rent Board has full authority over the Rent Program budget/spending (fees collected and/or waived), and in the interest of public transparency, staff recommend that all late waive approvals and/or denials be subject to Rent Board approval.

Since 2017, the Rent Program has sent out Rental Housing Fee invoices to all Richmond Landlords on an annual basis. In its efforts to collect the fees, staff members have encountered various issues concerning Landlords’ nonpayment of the fees. For instance, while in the continuous process of refining Richmond’s rental housing database, the Rent Program regularly discovers Rental Units that have not been enrolled since the inception of the Program or that have changed status from non-rented to rented over the years, without informing the Rent Program. In other cases, some Landlords claim to not have received an invoice because of a billing, mailing or clerical error. In those cases, late fees were either waved in full or in part. Finally, some owners assert a financial hardship, health issues, or other reasonable basis for not paying the Rental Housing Fee on time. There have only been a few circumstances where Landlords were late for more than one fiscal year and requested a late fee waiver.

Given these various circumstances surrounding nonpayment of the fees, the Rent Program adopted an internal policy regarding assessing late fees. Under the current internal policy, the Executive Director or his/her designee may waive all or some of the late fees based on the criteria described above and listed in Request for Late Fee Waiver form (Attachment 1).

To be clear, every Landlord who has requested a late fee waiver has either received a partial or full granting of their request. However, the current Rent Program internal policy lacks a requirement of Rent Board approval, and/or Rent Board oversight. To ensure the appropriate level of Rent Board oversight and public accountability, staff members are seeking direction and feedback from the Rent Board with regard to drafting a proposed Rent Board late fee waiver regulation that would achieve the proper degree of oversight and accountability. Upon direction from the Rent Board, Rent Program staff would draft a proposed regulation that not only sets forth the Rent Board approved criteria for granting a waiver, but also standards for when fees should be approved in full or in part.

Overview of Proposed Regulation 425

Proposed Regulation 425 formalizes the Rent Program's internal policy and practices related to Late Fees and establish a Rent Board presence that is needed to provide oversight and transparency. It would keep in place the Official Rent Program form needed to request a late fee waiver (Attachment 1), while at the same time limit the Executive Director's discretion to waive late fees. Moreover, Regulation 425 creates a requirement that the Executive Director find Good Cause prior to waiving any Fees, and any finding of Good Cause must consider a set of factors as described in the Regulation. Finally, Regulation 425, requires that the Executive Director provide the Rent Board with a written recommendation and a summary spreadsheet that describes the date of request, the reason for the request, a recommendation to either approve or deny the request, and the total amount waived.

Rent Program Form and Executive Director Discretion

Under Regulation 425, any Landlord requesting the waiver of late fees must make said request on an Official Rent Program Form. The Form, attached herein, has been presented at the two prior Rent Board meetings and has garnered Rent Board approval. Additionally, the Form is the same Form used in the prior fiscal years when the Executive Director was considering Landlord request to waive late fees. Finally, the Form has been shown to be a simple and effective way of evaluating Landlord request for late fee waivers.

As it relates to Executive Director discretion, Regulation 425 limits it in two ways: 1) it transfers the final approval or denial of most late fee waiver request from the Executive Director to the Rent Board and 2) it requires that where a Landlord demonstrates a Rent Program billing error, their assessed late fees be waived in its entirety. Such limitation on the Executive Director's discretion is warranted as it would help to improve transparency in the late fee waiver process, while simultaneously provide Rent Board oversight.

Good Cause Standard

Regulation 425 would require a showing of Good Cause prior to waiving any late fee assessment. Good Cause is defined as the taking of reasonable efforts, while acting with due diligence to remit timely payment of the Residential Rental Housing Fee. In other words, it is an evaluation of whether the Landlord took reasonable efforts and acted with due diligence in their attempt to pay the Residential Rental Housing Fee. Regulation 425 would guide this inquiry by requiring the Executive Director evaluate applicable enumerated factors prior to making a determination of whether there exist Good Cause to grant the request. Finally, Regulation 425 would establish that a Rent Program billing error would always constitute Good Cause to waive the late fee assessment.

Process and Procedure

Regulation 425 would create process and procedure consistent with the one outlined in the prior two presentations on this item. The proposed process includes the following:

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- 1) Rent Program staff receives a request for a late fee waiver from Landlord.
- 2) The Executive Director or his or her designee reviews the late fee waiver requests and issue a recommendation for Rent Board to approve the waiver, in full or in part, or deny the waiver, based on the Landlords reason for requesting the waiver and their payment history.
- 3) Rent Program staff compiles the late fee waiver requests for each month and places that list on the consent calendar for the following month's Rent Board meeting.
- 4) Rent Board members review a spreadsheet with details on each request (date of request, the reason(s) for request, a recommendation to the Board to approve or deny the request, and total amount waived). Each Late Fee Waiver Request form would be included as attachments for the Board's review.
- 5) Rent Board members vote to approve recommended waivers or may pull individual Request from the consent calendar for further discussion.

Staff anticipates that the majority of the Late Fee waiver request will be solely the subject of the consent calendar. Where there is a dispute regarding the Executive Director's written recommendation, the Rent Board may pull the item for further discussion. Additionally, where the requestor has received two separate Late Fee waiver grants in the prior three fiscal years, the request cannot go on the consent calendar, but rather must be agendized as a "Rent Board as a whole" agenda item.

Late Fee Waiver Amounts

Finally, the Regulation 425 clarifies that the Rent Board may waive the late fees in any amount except where certain factors are present. Where the late fee assessment was due to a billing error, 100 percent of the late fee must be waived. Likewise, where the Landlord has made timely payments in the two prior fiscal years, all of their late fee assessment must be waived. Conversely, where the Board or the Rent Program has granted Late Fee waiver requests in the prior three fiscal years, the Board's discretion of waived amounts is limited to a tier scaled as described in Rent Board Regulation(G).

Conclusion

As directed by the Rent Board, staff members have prepared for the Board's consideration proposed Regulation 425.

Recommendation

Staff recommend that the Rent Board Upon direction provided by the Rent Board ADOPT proposed Rent Board Regulation 425, titled, "Waiver of Delinquent Residential Housing Fee Assessment

ATTACHMENT(S):

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Attachment 1 – Late Fee Waiver Form

Attachment 2 – Proposed Regulation 425

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**November 17, 2021
RENT BOARD MEETING**

ATTACHMENT 1

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Request to Remove Late Fees

Property Owner Name: _____

FRJC #: _____

Property Owner Phone Number or Email: _____

The Property Owner has requested the removal of late fees on their account totaling \$ _____ for the following reason:

- New Owner, did not receive invoice
- Wrong Mailing Address
- Owner believed property was exempt from the Rent Ordinance
- Financial hardship, caused by circumstances beyond the Landlord’s control, such as natural disaster, destruction or major damage to the Rental Property not due to the Landlords actions, bankruptcies and disputes over ownership of the property.
- Hospitalizations or medical treatments of the Landlord or Landlord’s family during the fee billing period, or a death in the family within the fee billing period
- The landlord was billed for a fewer number of units because of errors in property records maintained by the Rent Program where the error was not attributable to information supplied by the Landlord. The penalties are waived only for unbilled units; the billed units should be paid on time.
- A previously enrolled property was not billed as a result of staff error.
- An invalid or erroneous account number was assigned, which resulted in billing errors or improper crediting of payments by the landlord.
- The determination of whether or not the property was subject to the Ordinance required an analysis through the existing Administrative Determination of Exempt Status process. Penalties will be waived only while the determinations pending. If the Landlord raised the issue requiring administrative determination, penalties will be waived only from the date of the first written contact with the Board in which the issue was raised. Waiver of penalties will not be granted if the staff determines that the issue raised is already settled and/or has no substantial merit. If the issue was raised by Rent Board staff, the waiver period commences on the date on which the administrative determination was requested by the staff. In all situations in which a determination was requested, the waiver period terminates when the Landlord is notified of the determination regarding the status of his/her property.
- The property owner was unable to collect some or all of the rent due to the COVID-19 pandemic and the resulting hardship led to non-payment of the Rental Housing Fee. In this case, the property owner must declare under penalty of perjury, in detail, how COVID-19 has impacted their business (i.e. how many month’s tenants didn’t pay rent, illness in the family or self, etc.)
- Other: _____

This request has been conditionally granted by the Rent Program, provided the owner pays the Rental Housing Fee before _____.
(10 business days unless new owner or incorrect mailing address - then 30 days)

Executive/Deputy Director Signature / Staff Initials

Date

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425. Waiver of Delinquent Residential Housing Fee Assessment

A. Purpose of Regulation.

Pursuant to Richmond City Council Ordinance NO. 16-17 N.S., Section 3, “any Landlord as defined in Section 11.100.030(f) of the Municipal Code of the City of Richmond who fails to file any required statement and pay the amount of the Residential Rental Housing Fee prescribed by City Council resolution within thirty (30) days after it becomes due shall be deemed delinquent and shall be assessed the following late payment fee:

- (1) Ten percent of the Residential Housing Fee if the payment is made within one to thirty days after it became delinquent;
- (2) Twenty-five percent of the Residential Rental Housing Fee if the payment is made within thirty-one to sixty days after it became delinquent; and
- (3) Fifty percent of the Residential Rental Housing Fee if the payment is made more than sixty days after it became delinquent.”

The purpose of Regulation 425 is to both clarify and simplify the Late Fee waiver process, while simultaneously providing for adequate Rent Board transparency and oversight.

B. Scope and Applicability.

Any Landlord that is subject to an imposition of Late Fees assessed in a manner consistent with Richmond City Council Ordinance 16-17 N.S., as amended, may request the waiver of such Late Fees assessments. However, Regulation 425 does not apply to the waiver of the Residential Rental Housing Fee as the Residential Rental Housing Fee must be assessed in accordance with Richmond Municipal Code Section 11.100.060(l) and shall not be waived.

C. Required Forms.

The Rent Program shall make available on its website and at its office, a Late Fee waiver form. All Late Fee waiver requests shall be made on this Official Rent Program form. At a minimum, the form shall contain the requestors name, contact information, amount sought to be waived, and stated basis for the waiver.

D. Process and Procedures of Late Fee Waiver Request.

1. Where a Landlord has submitted a completed Official Rent Program form for a Late Fee waiver, the Executive Director shall, within thirty (30) calendar days, review the request in a manner consistent with Regulation 425(E). After making the necessary findings, the Executive Director shall, except where otherwise specified, prepare a written recommendation to the Rent Board to either grant or deny the Late Fee waiver request. The written recommendation must contain a

brief statement either granting or denying, in part or in whole, the Late Fee Waiver request, and a stated basis for the decision.

2. At the end of each month, Rent Program staff members shall compile the Late Fee waiver requests and accompanying written recommendations into a spreadsheet to be agendaized for the following Regular Rent Board meeting. At a minimum, the spreadsheet shall contain sections describing the date of request, the reason for the request, a recommendation to either approve or deny the request, and the total amount waived. Landlord's personal information shall be redacted from the spreadsheet and any other attached documents that are presented to the Rent Board.
3. Rent Program staff members shall ensure that the Executive Director's written recommendation and accompanying spreadsheet is placed on the Consent Calendar of the Rent Board agenda. Upon a majority vote, Rent Boardmembers may pull the item from the Consent Calendar for further discussion related to the Executive Director's written recommendation.

E. Standard for Consideration and Approval of Late Fee Waiver.

No Late Fee waiver request shall be granted unless there is a sufficient demonstration of Good Cause. The Executive Director shall be responsible for evaluating whether a properly submitted Late Fee waiver request contains enough facts to establish that Good Cause exist to grant the waiver request. For the purposes of this Regulation, Good Cause shall mean the taking of reasonable efforts and acting with due diligence to remit timely payment of the Residential Rental Housing Fee. In their consideration, the Executive Director must evaluate the following factors, whenever present, when making a determination of Good Cause:

1. Whether the failure to remit timely payment was due to a Rent Program billing error, such as an incorrect address, an incomplete invoice, or an invoice sent to the wrong owner;
2. Whether the requestor is a successor in interest who has not received an invoice.
3. Whether the requestor is experiencing a financial hardship that is caused by circumstances beyond the Landlord's control;
4. Whether the requestor experienced a medical emergency, medical treatment, hospitalization, or death in the family within the billing period;
5. Whether the requestor had submitted a request for an Administrative Determination of Exempt/Applicability Status within the billing period;
6. Whether the requestor's Tenant(s) have experienced a COVID-19 related financial hardship that has impacted the Tenant's ability to pay Rent;
7. Late payment History
8. Any other circumstances relevant to the inquiry of Good Cause.

Where the Executive Director determines that failure to remit timely Residential Rental Housing Fee payment was due in part to a Rent Program billing error as described in Regulation 425(E)(1) & Regulation 425(E)(2), such a determination shall constitute Good Cause and the requestor's Late Fees assessment must be waived. Late Fee waivers granted on the basis of a Rent Program billing error shall not be subjected to the provisions of Regulation 425(D).

F. Good Cause and Late Payment History.

Notwithstanding Regulation 425(D) and Regulation 425(E), where a requestor has made timely payments in the prior two (2) fiscal years, their request shall be ministerially granted. Such requests do not require a showing of Good Cause and shall not be subjected to the provisions of Regulation 425(D) and Regulation 425(E). Conversely, requestors who have received at least two (2) Late Fee waiver request grants in the prior three (3) fiscal years, shall have their current fiscal year Late Fee waiver request and accompanying Executive Director's written recommendation reviewed by the Rent Board, under the "Rent Board as a Whole" agenda item.

G. Late Fee Waiver Amounts.

In the event that the Late Fee waiver request is granted, the Late Fee shall be waived in a discretionary amount that is subject to the following:

1. Rent Program billing error- 100% of the assessed Late Fee shall be waived.
2. Timely payments in the two (2) prior fiscal years- 100% of the assessed Late Fee shall be waived.
3. One (1) Late Fee waiver request granted in the prior three (3) fiscal years- Late Fee assessment shall be reduced to at least a 10% percent assessment as described in Richmond City Council Ordinance NO. 16-17 N.S., Section 3, paragraph (1).
4. Two (2) Late Fee waiver requests granted in the prior three (3) fiscal years- Late Fee assessment shall be reduced to at least a 25% percent assessment as described in Richmond City Council Ordinance NO. 16-17 N.S., Section 3, paragraph (2).
5. Three (3) Late Fee waiver requests granted in the prior three (3) fiscal years- Late Fee assessment shall not be reduced.

For purposes of this section, a grant of a Late Fee waiver request based on a Rent Program billing error shall not count towards a "Late Fee waiver request grant" as described in Regulation 425(G)(1), (G)(2) & (G)(3).

H. Construction.

Regulation 425 shall be liberally construed as to achieve its stated purpose. Rent Program staff members may take reasonable steps to expedite a Landlord's Late Fee waiver request where appropriate. In no event shall a Landlord's Late Fee waiver request be

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granted until they have remitted full payment of the underlying Residential Rental Housing Fee.