

Chapter 2: APPLICABILITY

200. Purpose

The purpose of this Chapter 2 is to describe those categories of properties which are exempt from the Ordinance and to provide a process and procedure for those Controlled Rental Units seeking to establish an exemption from this Ordinance.

[Formerly Regulation 17-01; Adopted November 15, 2017]

201. Rental Units Exempt from both the Rent Control (R.M.C § 11.100.070) and Just Cause for Eviction (R.M.C § 11.100.050) Provisions of the Ordinance

- A. Rental Units in hotels, motels, inns, tourist homes and rooming and boarding houses that are rented primarily to transient guests for a period of fewer than 14 days;
- B. Rental Units in any hospital, convent, monastery, extended medical care facility, asylum, or non-profit home for the aged, or dormitory owned and operated by an accredited institution of higher education;
- C. Rental Units for which there is a Temporary Tenancy, as defined in R.M.C § 11.100.030(q);
- D. Rental Units that are lawful and in compliance with the Small, Second Unit Ordinance of the City (R.M.C § 11.15.04) if the Primary Residence is occupied by the property owner; and
- E. Rental Units where the Rental Unit is the Primary Residence of the property owner and the property owner shares with a Tenant(s) a bathroom or kitchen.

[Formerly Regulation 17-03; Adopted July 19, 2017]

201.5 Rooming and Boarding Houses

- A. For purposes of Regulation 201, Rooming and Boarding house(s) shall mean any building or portion thereof other than a hotel containing at least five (5) rooms individually offered for rent or rented to at least five tenants under separate Rental Housing Agreements.
- B. Where any building, structure, or part thereof is considered a Rooming and Boarding house, each room shall be treated as an individual Rental Unit and must be individually registered with the Rent Program, in a manner consistent with Chapter 4 of these Regulations.
- C. Use of a single Rental Housing Agreement shall not be dispositive in determining whether a building, structure, or part thereof is a Rooming and Boarding house. Rather, the following factors shall be considered by the Rent Program when determining whether a building, structure, or part thereof is a Rooming and Boarding house:

- a. Whether the Landlord or Tenant maintains control over Tenant Replacement;
- b. Whether there is a single or multiple Rental Housing Agreement(s);
- c. The relationship between the Tenants of the Rooming and Boarding house;
- d. How Rent is distributed, collected, and/or paid to the Landlord;
- e. Access to common areas and/or housing services; and
- f. The period of occupancy set forth in each single or multiple Rental Housing Agreement.

This is not an exhaustive list and the Rent Program may consider other evidence that has a tendency to prove or disprove that a particular building, structure, or part thereof is a Rooming and Boarding house.

[Adopted July 18, 2018]

202. Governmentally Subsidized Rental Units Exempt from the Rent Control Provisions of the Ordinance

The following rental units are exempt from the rent control (RMC 11.100.070), but not the just cause for eviction (RMC 11.100.050) provisions of the Ordinance.

- A. Rental units in which a tenant household holds a Section 8 Housing Choice Voucher and where the rent not does exceed the Payment Standard as published by the U.S. Department of Housing and Urban Development.
- B. Rental units for which the rent is subsidized by the Project-Based Section 8 Program
- C. Rental units that are “rent restricted” in a Low Income Housing Tax Credit Program Project. “Rent Restricted” means the rent charged for the unit is affordable for a qualifying Tenant pursuant to the Regulatory Agreement.
- D. Rental units for which the rent is subsidized by the Section 202 Supportive Housing for the Elderly Program
- E. Rental units that are “rent restricted” under a regulatory agreement between a governmental agency and a property owner. “Rent Restricted” means the rent charged for the unit is affordable for a qualifying Tenant pursuant to the Regulatory Agreement.

[Formerly Regulation 17-01; Adopted November 15, 2017]

203. Other Rental Units Exempt from the Rent Control Provisions of the Ordinance

In addition to rental units that are exempt from rent control under R.M.C § 11.100.100.030 (d)(1)(2)(4) (5) and (6), rental units which a governmental unit, agency or authority owns, operates or manages are exempt from the rent control provisions of the Ordinance. Section 11.100.030 (d)(3), Richmond Municipal Code.

[Formerly Regulation 17-01; Adopted November 15, 2017]

204. Maintaining an Exemption Pursuant to Regulation 202: Compliance with Applicable Laws and Regulations

A. Notwithstanding Regulation 202, Rental Units described in Regulation 202 shall not be exempt from Section 11.100.070 of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance where the property owner has failed to substantially comply with all of the applicable provisions of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance, Rent Board Orders, Regulations, and/or Resolutions, as well as the Implied Warranty of Habitability as described in Civil Code 1941.1, and Richmond Municipal Code Section 6.40.040. This includes, but is not limited to, a property owners obligation to comply with the following:

- (1) Timely payment of all owing Residential Rental Housing Fee. For purposes of this provision, a payment shall be considered timely where a property owner remits payment of the Residential Rental Housing Fee within 30 calendar days from the date the Rent Program sends the invoice. Where there is a dispute in the amount owed, payment shall be considered timely where the owner remits payment of the Residential Rental Housing Fee within 30 calendar days from the date the Rent Program sends the amended invoice. However, where the dispute is wholly concerned with assessed late fees, payment shall be considered timely where the owner remits payment of the Residential Rental Housing Fee within 5 calendar days from the date the Rent Program sends the amended invoice or 30 calendar days from the date the Rent Program sent the initial invoice, whichever is later. If a dispute does not result in an amended invoice, payment shall be due within 30 calendar days from the date the Rent Program sent the initial invoice;
- (2) Payment of the Business License Tax pursuant to Richmond Municipal Code Section 11.100.060(1)(1);
- (3) Enrollment of all applicable Rental Units pursuant to Regulation 405(B);
- (4) All of the applicable provisions set forth in Resolution 19-01; and
- (5) Any and all requirements set forth in any regulatory agreement executed between a developer and/or property owner and a Federal, State, or government entity.

- B. Where Rent Program Staff members have determined a property owner has failed to comply with any of the obligations set forth in Regulation 204(A), Rent Program Staff members shall immediately notify the property owner in writing of the obligation(s) the property owner has failed to satisfy. The written notification must identify the specific obligation(s) the property owner has failed to satisfy and provide the property owner up to 60 calendar days from the date of mailing of the notification to bring itself into compliance with the identified obligation(s). If a property owner fails to timely comply with the obligation(s) identified in the Rent Program Staff member's written notification, Rent Program Staff members may agendaize an item of noncompliance for the next regularly scheduled Rent Board meeting. The agenda item shall include an identification of the specific property that has failed to comply, specific findings of noncompliance, a recommendation of the removal of the exemption contained in Regulation 202 as it relates to the noncompliant property, and any other information Rent Program staff member(s) deems relevant.
- C. In addition to Regulation 204(A), Rental Units described in Regulation 202 shall not be exempt from Section 11.100.070 of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance where there is no longer in effect (a) a tenant with a Section 8 Housing Choice Voucher in the Rental Unit, (b) the Rental Unit is no longer in a Project-Based Section 8 Program, and/or (c) the Rental Unit is no longer rent restricted under a regulatory agreement and/or declaration of restrictive covenants.
- D. Nothing in Regulation 204(A) and/or Regulation 204(B) shall preclude tenants residing in Rental Units described in Regulation 202 from seeking advice or assistance from the Rent Program concerning applicable provisions of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance and utilizing the remedies provided in the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance to the extent permitted by Federal, State, and local law.

*Formerly Regulation 17-01; Adopted November 15, 2017]
[Amended February 20, 2019]*

205. Application for Applicability or Exemption Determination

Notwithstanding Regulation 403, both a Landlord and a Tenant may request that an Administrative Decision be rendered regarding the applicability of Richmond Municipal Code Chapter 11.100 on a Rental Unit or a claimed exemption pursuant to Richmond Municipal Code Section 11.100.030(d). All requests for an Administrative Decision regarding applicability and/or exemption must be made on an Official Rent Program form. The applicant must complete the Official Rent form and attach sufficient information and documentation as requested therein. The applicant shall have the burden of proof of demonstrating a claimed exemption or inapplicability of Richmond Municipal Code Chapter 11.00.

[Adopted June 20, 2018]

206. Issuing an Administrative Decision on Applicability or Exemption Status

1. In rendering an Administrative Determination, the Executive Director or assigned staff member may conduct an independent investigation into the underlying facts and rely on information and documentation obtained thereof.
2. All Administrative Determinations rendered under this Regulation must be made in writing, provide an explanation of the basis for the decision with citations to Richmond Municipal Code Chapter 11.100, and adequately describe the evidence relied on in reaching the decision.
3. All Administrative Determinations rendered under this Regulation shall consider the purpose of the Rent Ordinance, any relevant evidence tending to prove or disprove material facts, previous compliance with Richmond Municipal Code Chapter 11.100, paid Business License Tax, if any, and the rental history of the subject Rental Unit.
4. For those Administrative Determinations evaluating claims of the application of Richmond Municipal Code Chapter 11.100, the Executive Director or assigned staff member must make the following evidentiary findings prior to reaching an ultimate conclusion of applicability:
 1. Whether the applicant owns at least a fifty percent (50%) interest in the Property for which the determination is being sought and has owned fifty percent (50) interest since the date of filing the application;
 2. Whether the unit is a Rental Unit pursuant to Richmond Municipal Code Section 11.100.030(m)
 3. Whether there exist a Rental Housing Agreement as defined by Richmond Municipal Code Section 11.100.030(k)
 4. Whether there is a person referenced in the application who either receives or who would otherwise be entitled to receive Rent as defined by Richmond Municipal Code Section 11.100.030(j). For purposes of this section, a person who is “entitled to receive” need not actually receive Rent. Rather, they need only to be the one who would receive Rent if Rent was actually paid.
 5. If the applicant claims the unit is owner-occupied, whether the owner has resided at the property as their Primary Residence beginning at least one hundred twenty (120) days prior to filing of the application for exemption.

5. Where the challenged Rental Unit has been rented or offered for rent in the same fiscal year in which the applicant has filed an application for determination of Richmond Municipal Code Chapter 11.100 applicability or exemption, the Executive Director or assigned staff member shall find that the provisions of Richmond Municipal Code Chapter 11.100 apply and shall only consider whether the Just Cause provisions apply or both the Rent Control and Just Cause provisions apply.
6. All administrative decisions under this Regulation must be rendered within 90 calendar days from the date of application. The Rent Program shall notify the applicant and impacted party of its Administrative Determination. If the applicant or impacted party disagrees with the Executive Director or assigned staff member's Administrative Determination, the applicant or impacted party may, within 15 calendar days from the date of the Administrative Determination plus any additional time permitted under California Code of Civil Procedure Section 1013(a), as amended, file a request for hearing on the issues raised in the application. The hearing and any potential appeal shall be conducted in accordance with the rules and procedures set forth in Chapter 8 of these Regulations. For purpose of this section, impacted party shall include those persons who are either the Landlord or occupant of the subject Rental Unit.

[Adopted June 20, 2018; Amended October 21, 2020]

207. Challenging a Rental Unit's Exempt Status

- A. Where a Rental Unit has been determined to be or treated as an exempt Rental Unit, a Tenant occupying said Rental Unit or his or her designee, may challenge the Rental Unit's exemption status by filing a Tenant petition for rent withholding, pursuant to Chapter 4 of these Regulations. Such a petition shall not be granted if the challenged Rental Unit has been determined exempt pursuant to Regulation 206, unless the Tenant can demonstrate that there has been a material change in facts, or that the information supplied by the Landlord in support of the exemption was misleading and/or false.

[Adopted June 20, 2018]