

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: August 19, 2020

Final Decision Date Deadline: August 19, 2020

STATEMENT OF THE ISSUE: Between 2019 and 2020, owners of 1,087 dwelling units sought a determination of exemption or inapplicability of the Rent Ordinance because the dwelling units were owner occupied, offered "rent-free," or not available for rent. To date, such requests have been processed and granted administratively. Staff members are proposing amendments to Chapter 2 of the Rent Board's regulations to strengthen the policies and procedures by which claims of exemption or inapplicability from the Rent Ordinance are granted or denied to ensure a thorough and consistent process.

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> | |

ITEM

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

RECOMMENDED ACTION: ADOPT revised Chapter 2 Regulations, concerning the process whereby property owners may seek an exemption or determination of inapplicability of a dwelling unit from provisions of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance – Rent Program (Nicolas Traylor/Paige Roosa 620-6564).

AGENDA ITEM NO:

H-1.



AGENDA REPORT

DATE: August 19, 2020

TO: Chair Maddock and Members of the Rent Board

FROM: Nicolas Traylor, Executive Director
Paige Roosa, Deputy Director

SUBJECT: REVISED CHAPTER 2 RENT BOARD REGULATIONS

STATEMENT OF THE ISSUE:

Between 2019 and 2020, owners of 1,087 dwelling units sought a determination of exemption or inapplicability of the Rent Ordinance because the dwelling units were owner occupied, offered “rent-free,” or not available for rent. To date, such requests have been processed and granted administratively. Staff members are proposing amendments to Chapter 2 of the Rent Board’s regulations to strengthen the policies and procedures by which claims of exemption or inapplicability from the Rent Ordinance are granted or denied to ensure a thorough and consistent process.

RECOMMENDED ACTION:

ADOPT revised Chapter 2 Regulations, concerning the process whereby property owners may seek an exemption or determination of inapplicability of a dwelling unit from provisions of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance – Rent Program (Nicolas Traylor/Paige Roosa 620-6564).

FISCAL IMPACT:

While these regulations will require involvement from staff members in the Billing and Registration, Management, and Hearings Units, it is not anticipated that additional FTEs will be required to administer this process. The development of a more robust exemption process is anticipated to bolster compliance with payment of the Rental Housing Fee, which could create a positive fiscal impact on the Program.

DISCUSSION:

Background and Purpose of Revised Chapter 2 Regulations

Chapter 2 of the Rent Board’s adopted regulations, titled “Applicability” was initially adopted in late 2017 to clarify those types of dwelling units fully and partially exempt from the Rent Ordinance. Chapter 2 was later expanded in 2018 to define Rooming and Boarding houses and create a process whereby a property owner could request a determination of, and challenge, a unit’s exempt status.

Over 6,000 units in the Rent Program’s database of housing units are currently catalogued as conditionally fully exempt from the Rent Ordinance. As described on page 24 of the Board’s approved Fiscal Year 2020-21 Rental Housing Fee study, there are currently 5,463 units in the Rent Program’s database of housing units that are classified as “Owner Occupied,” 250 that are classified as “Rent-Free,” and 317 units that are classified as “Not Available for Rent.” Between 2019 and 2020, owners of 1,087 dwelling units sought such a determination on these grounds.

In its current form, Chapter 2 does not contemplate a procedure whereby an owner can request a determination of inapplicability because a dwelling unit is owner occupied or does not meet the requirements of a Rental Unit as defined by the Rent Ordinance because there is no Rent exchanged or the unit is not available for rent (and is, instead, for example, used for storage space.) As a result, staff members lack Board-approved policy guidance as it relates to enforcing requirements such as property enrollment, tenancy registration, and payment of the Rental Housing Fee. The proposed regulations would provide this necessary policy guidance, while also establishing exemption procedures for exempt categories of units, including but not limited to hotels, motels, medical care facilities, dormitories, and governmentally subsidized units.

Case Study Research

To understand how requests for exemption are handled in peer rent control jurisdictions, staff members consulted with staff in the City of Berkeley, City of West Hollywood, and City of Santa Monica to learn about their existing policies and procedures. While staff members in these jurisdictions provided valuable insight, Richmond’s Rent Program is unique in its regulation of single-unit properties, particularly in terms of the tiered Rental Housing Fee. To that end, the proposed Regulations glean best practices from the case study research where feasible and tailor policies to Richmond as appropriate.

Summary of Proposed Regulations

The proposed regulations would create a process and procedures whereby property owners can obtain a Rent Board ruling on the applicability of the Rent Ordinance on a dwelling unit. The following sections of this report describe the process and exemption standards for various types of dwelling units. The proposed regulations specify that the

Rent Board or Executive Director shall make a determination within 120 calendar days of the filing of the application.

Proposed Process and Partial Exemption Standards for Hotels, Motels, Inns, Tourist Homes, and Rooming and Boarding Houses (Just Cause for Eviction provisions may still apply)

To request a Rent Board ruling on the applicability of the rent control provisions of the Rent Ordinance to a hotel, motel, inn, tourist home, or rooming and boarding house, the Landlord would be required to fill out an application on an official Rent Program form and include in their application occupancy records for the past three years for every Rental Unit of the Property for which the applicant seeks an exemption. With the application, the Executive Director or their designee may conduct an investigation and:

- a. Issue a recommendation to the Rent Board regarding the application
- b. Direct a Hearing Examiner to hold a hearing for the purpose of reviewing evidence upon which to make a determination of exemption and issue a recommendation to the Rent Board
- c. Request the Rent Board hold a hearing on the matter and render a decision

In all cases, staff members may independently identify a characteristic that deems the units exempt, absent an application (e.g. the Marriott).

The proposed regulations specify that the Rent Board or Executive Director shall determine that the dwelling unit is exempt from the Rent Control provisions of the Rent Ordinance upon making the following findings:

- The property is a hotel, motel, inn, tourist home, or rooming and boarding house in which Rental Units at the Property are primarily for use by transient guests for period of fewer than 14 calendar days.
- The property owner pays a hotel tax and has approval to operate in the City of Richmond.

Proposed Process and Full Exemption Standards for Hospital, Convent, Monastery, Extended Medical Care Facility, Asylum, Non-Profit Home for the Aged or Dormitories Owned and Operated by an Accredited Institution of Higher Education

To request a Rent Board ruling on the applicability of the Rent Ordinance to a hospital, convent, monastery, extended medical care facility, asylum, non-profit home for the aged, or dormitory owned and operated by an accredited institution of higher education, the property owner would be required to fill out an application on an official Rent Program form. With the application, the Executive Director or their designee may conduct an investigation and:

- a. Issue a recommendation to the Rent Board regarding the application

- b. Direct a Hearing Examiner to hold a hearing for the purpose of reviewing evidence upon which to make a determination of exemption and issue a recommendation to the Rent Board
- c. Request the Rent Board hold a hearing on the matter and render a decision

In all cases, staff members may independently identify a characteristic that deems the units exempt, absent an application (e.g. Kaiser Hospital).

The proposed regulations specify that the Rent Board or Executive Director shall determine that the dwelling unit is exempt from all provisions of the Rent Ordinance upon making the following findings:

- The applicant must be an organization exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code provided that the gross income derived from the subject Property does not constitute unrelated business income as defined in Section 512 of the Internal Revenue Code.
- Housing Services are or will be a necessary part of the social service program at the subject Program, and the Rental Units for which an exemption is sought shall be used for residential housing purposes as part of the social service program.
- The applicant is proceeding and at all relevant times has proceeded in good faith to effectuate the purposes for which the applicant seeks exemption.

Proposed Process and Partial Exemption Standards for Governmentally Subsidized Rental Units (Just Cause for Eviction requirements still apply)

To request a Rent Board ruling on the applicability of the rent control provisions of the Rent Ordinance to a governmentally subsidized rental unit, the Landlord would be required to fill out an application on an official Rent Program form. The applicant would be required to include in their application documentation that shows that an agreement exists between the applicant and a government entity during the periods in which exemption is sought. In addition, within five business days of filing of an application, the applicant must serve a copy of the submitted application, along with a Rent Board response form, on the occupant(s) for every Rental Unit for which the applicant seeks an exemption. With the application, the Executive Director or their designee may conduct an investigation and:

- a. Issue a recommendation to the Rent Board regarding the application
- b. Direct a Hearing Examiner to hold a hearing for the purpose of reviewing evidence upon which to make a determination of exemption and issue a recommendation to the Rent Board
- c. Request the Rent Board hold a hearing on the matter and render a decision

In all cases, staff members may independently identify a characteristic that deems the units exempt from rent control, absent an application (e.g. Richmond Housing Authority units).

The proposed regulations specify that the Rent Board or Executive Director shall determine that the dwelling unit is exempt from the Rent Control provisions of the Rent Ordinance upon making the following findings:

- The Owner has a written regulatory agreement with a government entity whereby the Owner has agreed to restrict their Rents; or
- A government unit, agency, or authority owns, operates, or manages the Rental Unit; or
- The owner has contracted with a government entity to enter into the Section 8 Housing Choice Voucher program, and the Rental Unit's rents do not exceed the Payment Standard as published by HUD.

Proposed Process and Exemption Standards for Rental Units Fully or Partially exempt from the Rent Ordinance Under the Costa-Hawkins Rental Housing Act, units where the Landlord shares a kitchen and/or bath with the Tenant, and units permitted as Accessory Dwelling Units, as well as Temporary Tenancies described in RMC 11.100.040(a)(1)

To request a Rent Board ruling on the applicability of the Rent Ordinance to Rental Units exempt from Rent Control under the Costa-Hawkins Rental Housing Act, Rental Units where the Landlord shares a kitchen and/or bath with the Tenant, Rental Units permitted as Accessory Dwelling Units, and units that meet the criteria of a Temporary Tenancy under RMC 11.100.040(a)(1), the Landlord would be required to fill out an application on an official Rent Program form. Within 45 calendar days of the submission of the application, the Executive Director or their designee would be required to make an administrative determination of exempt status of the property. The determination may be appealed to the Hearing Examiner through the petition process (*this process reflects the current Administrative Determination of Exempt Status procedure currently codified in Regulations 205-207*).

Proposed Process and Exemption Standards for Determining the Applicability of the Rent Ordinance on a Dwelling Unit

To request a Rent Board ruling on the applicability of the Rent Ordinance to a dwelling unit that the property owner claims does not meet the definition of a Rental Unit in the Ordinance, the Landlord would be required to fill out an application on an official Rent Program form. For all claims of inapplicability, the applicant must demonstrate that they have at least 50% recorded interest in the property. In addition, for claims of owner occupancy, the applicant must demonstrate by a preponderance of evidence that they have resided on the property as their primary residence for a minimum of 120 consecutive days prior to the date of the application.

Within five business days of a completed application, the Rent Program shall mail a copy of the application for exemption to each unit at the Property along with an Official Rent Program notice of filing and Tenant response form.

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Prior to the Rent Board making a final determination, the Executive Director or their designee may:

- Where the facts are not in dispute, issue a recommendation to the Rent Board regarding the application. The recommendation shall be placed on the Consent Calendar, without a hearing, to be approved by the Rent Board.
- Direct a Hearing Examiner to hold a hearing for the purpose of reviewing evidence upon which to make a determination of applicability and issue a recommendation to the Rent Board of affirmation or denial of applicability status.

Hearings concerning the applicability status of a dwelling unit would proceed in a manner consistent with Chapter 8 of the Rent Board Regulations, except for the following instances:

- No “objection form” shall be sent to the parties. Rather, the responding party has 10 business days to return the response form, which Billing and Registration staff members mailed within five business days of receipt of the application.
- A hearing shall be scheduled within 21 calendar days from the date the applicant submitted the application
- At the discretion of the Executive Director, a Rent Program staff member may conduct an inspection of the Property, subject to the consent of the owner or occupant of the property. If an inspection is conducted, staff shall prepare a report detailing their findings and submit the report to the Hearing Examiner. The individual must avail themselves to questions at the hearing from the Hearing Examiner and parties.
- The Hearing Examiner may request a staff members’ presence at the hearing to secure relevant testimony. The Rent Program shall, within 5 business days from the scheduled hearing, notify all parties of the name and title of the Rent Program witness and send a copy of all documentation the witness intends to rely on during the hearing.

Within 30 calendar days from the date of the hearing on an application of Richmond Municipal Code Chapter 11.100, applicability, the Hearing Examiner shall issue a recommendation to the Rent Board to either grant or deny the application. This deadline may be extended by written waiver executed by the applicant.

The Hearing Examiner’s recommendation shall include proposed factual findings and conclusions of law regarding the following:

- The number of units at the subject property, including units on any contiguous lots or parcels in which applicant has at least a fifty percent (50%) interest
- The percentage of ownership interest in the property held by the applicant
- Evidence of the applicant’s occupancy at another address, and the dates of such occupancy

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- Whether the applicant has continuously resided at the property as their Primary Residence beginning at least one hundred twenty (120) calendar days prior to the date of the filing of the exemption application
- Whether the applicant is entitled to receive Rent or has received Rent
- Whether the property has been enrolled or registered within twelve (12) months from the date the applicant submitted their application
- Whether the applicant holds a current business license and/or has registered their Property with the Richmond Rental Inspection Program.

Upon completion by the Hearing Examiner of the recommendation to the Board, the Hearings Unit shall send the applicant and all occupants of the property a copy of the recommendation, and staff shall agendaize the matter for the Rent Board meeting held in the following month. The applicant, any occupant of the property, any authorized representative of the owner or occupant, or any other interested person may file a written response to the recommendation. The response must be received by the Board at least 14 calendar days prior to the date set for Board hearing on the recommendation. Upon a showing of good cause, the Board may accept a later filing of the response/request.

The parties shall present their matter before the Rent Board as follows:

- Oral arguments and presentations by the parties shall not exceed seven minutes per party. The Rent Board Chair may extend the time.
- If any party claims there is new evidence available at the time of the Rent Board hearing which was undiscoverable at the time of the hearing before the Hearing Examiner, that party must make an offer of proof to the Board regarding the evidence and why it was undiscoverable previously. If a majority of Rent Board members find that the offer of proof is sufficient, they may agree to receive the new evidence at the time of the Rent Board hearing, but may limit the time for presenting such evidence.
- If the Rent Board agrees to receive new evidence, and the applicant agrees to waive time deadlines, the Rent Board may refer the matter back to a Hearing Examiner for presentation of the evidence and preparation of a new Recommendation.

The proposed regulations specify that the Rent Board shall determine that the dwelling unit is exempt from the Rent Control provisions of the Rent Ordinance upon making the following findings:

- 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
- The unit is a not Rental Unit pursuant to Richmond Municipal Code Section 11.100.030(m)
- There does not exist a Rental Housing Agreement as defined by Richmond Municipal Code Section 11.100.030(k)

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- There is not 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.
- If the applicant claims the unit is owner-occupied, the owner has resided at the property as their Primary Residence beginning at least one hundred twenty (120) calendar days prior to filing of the application for exemption.

Where the dwelling unit for which the determination is sought has been rented or offered for rent in the same fiscal year in which the applicant filed for a determination of inapplicability, the Rent Board shall find that the provisions of RMC 11.100 apply, and shall only consider the full or partial exempt status of the unit.

Rent Board determinations that the Rent Ordinance does not apply to the dwelling unit are proposed to remain in effect so long as the grounds the Rent Board relied on to make that determination hold true. If the unit becomes a Rental Unit, under the proposed regulations, the Landlord is required to submit a Property Enrollment form listing all Rental Units and complete a Tenancy Registration form for all tenancies in Controlled Rental Units within 30 calendar days of the change in circumstances.

The proposed regulations also reserve the right of Rent Program staff members to perform routine exemption verification activities which may require the property owner to re-submit documentation to substantiate that the determination of inapplicability of RMC 11.100 should be maintained. If staff members are unable to secure the requested documentation to maintain such determination, the property owner may be required to re-apply for such determination consistent with the procedures outlined in this regulation.

Next Steps

Should the Rent Board elect to adopt the proposed regulations, staff members anticipate completion of the following next steps prior to the regulations becoming effective 30 calendar days following the date of adoption, consistent with Regulation 323:

- Application forms will be developed, translated, and converted to fillable PDFs
- The Rent Program website will be updated to reflect adopted policies and procedures
- Rent Program staff members will be trained on adopted policies and procedures

DOCUMENTS ATTACHED:

Attachment 1 – Proposed Revised Chapter 2 Regulations
Attachment 2 – Existing Chapter 2 Regulations

Chapter 2: APPLICABILITY

200. Purpose

The purpose of this Chapter 2 is to describe those categories of properties which are exempt from the provisions of Richmond Municipal Code Section 11.100 et. Seq., and to provide process and procedures whereby Landlords and Tenants can obtain a Rent Board ruling on the applicability of the provisions Richmond Municipal Code Section 11.100 et. Seq., to a Rental Unit.

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

200.5. Exemption Procedures

A Rental Unit shall not be considered exempt from the provisions of Richmond Municipal Code Section 11.100 et. Seq., until the Landlord of said Rental Unit has applied for, and received, a determination by the Richmond Rent Board that such Rental Unit is exempt.

201. Exemption Procedures for Rental Units in Hotels, Motels, Inns, Tourist Homes and Rooming and Boarding Houses (Exemption from Rent Control Only, Just Cause Still Applies)

- A. Scope of Section. Hotels, motels, inns, tourists homes and rooming and boarding houses shall not be considered exempt from the provisions of Richmond Municipal Code 11.100.et.seq., unless and until the Landlord of the Property has applied for, and received, a determination that such units are exempt or a Rent Program staff member has independently identified a characteristic for the exemption of the aforementioned Rental Unit(s).
- B. Filing of Application and Notice Thereof. Any person seeking an exemption determination under this section must make application on an Official Rent Program form. The applicant must append to their application occupancy records for the past three years for every Rental Unit of the Property for which the applicant seeks an exemption. Failure to provide such records may result in dismissal of the application and any outstanding invoiced Residential Housing Fee shall be due.
- C. Determination. As soon as practicable after the filing of an application, and in no event later than one hundred and twenty (120) days from the date of filing, the Rent Board or Executive Director shall make a determination as to the exempt or non-exempt status of the Rental Unit. Prior to the Rent Board making its final determination, the Executive Director of the Rent Program or their designee may do any of the following:
 - 1. Issue a recommendation to the Rent Board related to the application, for their final determination of affirmation or denial of exempt status.
 - 2. Direct a Hearing Examiner to hold a hearing for the purpose of receiving evidence upon which to make the determination of exemption. In the event that the Hearing Examiner conducts a hearing, the hearing shall be held no later than forty-five (45) days from the filing of the application. At the conclusion of the hearing, the Hearing Examiner shall issue a

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recommendation to the Rent Board for their final determination of affirmation or denial of exempt status.

3. Request the Rent Board hold a hearing on the matter and render a final determination as to the exempt status of the Rental Unit(s) contained in the application.

D. Standards for Exemption. The Rent Board or Executive Director shall determine that the Rental Unit is exempt from only the Rent Control provisions of Richmond Municipal Code Section 11.100.et.seq., upon making the following findings and subject to the provisions set forth in subsection (E):

1. The Property is a hotel, motel, inn, tourist home, or rooming and boarding house in which Rental Units at the Property are primarily for use by transient guests for a period of fewer than fourteen (14) days.
2. The property owner pays a hotel tax and has approval to operate a hotel, motel, etc., within the City limits of Richmond.

E. Exemption Exceptions. A determination of exemption shall not apply to Rental units occupied by an individual in any of the following circumstances:

1. The current occupant has continuously resided on the Property, whether in the Rental Unit currently occupied or in another unit, for at least fourteen (14) days as of the date of the Landlord's filed application; or
2. The current occupant has an oral or written agreement entered into with the Landlord or Landlord's agent to reside in the Rental Unit for a period of fourteen (14) days or more.

F. Burden of Proof. An applicant shall have the burden of proving entitlement to an exemption under this section. The applicant may produce as evidence, the records of occupancy required to be kept and documentation of transient occupancy taxes paid to the City of Richmond under Richmond Municipal Code Chapter 7.88.

G. Effective Date of Exemption. Upon determination by the Rent Board or Executive Director that a Rental Unit is exempt from the Rent Control provisions of Richmond Municipal Code Section 11.100.et.seq., the Landlord shall not be responsible for the Residential Housing Fees application to Fully Covered Units that fall within the exemption period. The Landlord shall still be responsible for the Just-Cause portion of the Residential Housing Fee, if applicable.

H. Expiration of Exemption. If the use of a hotel, motel, inn, tourist home, rooming house or boarding house which has been granted an exemption under this section changes such that the Rental Units on the Property are no longer rented primarily for use by transient guests, or the Rental Unit is being rented to the same occupant for a period of fourteen (14) or more days, the exemption shall automatically expire, and the Landlord shall be invoiced the full Residential Housing Fee for the fiscal year in which the exemption expired. At all times, the Landlord shall adhere to Regulation 403, where applicable. Where an exempt status change has occurred, the Landlord may be required to submit a

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new or revised enrollment and tenancy registration form prior to being considered compliant with the edicts of the Richmond Fair Rent, Just Cause, and Homeowner Protection Ordinance.

- I. Scope of Exemption. The granting of an exemption shall not in any way deprive the then current occupants of the effected property of any of the protections they may have under the Just Cause provisions of Richmond Municipal Code Section 11.100.050. The exemption set forth in this Regulation shall only apply to the Rent Control provisions of Richmond Municipal Code Section 11.100.et.seq.

202. Rooming and Board Houses

- A. Definition. 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. Registration and Fee. 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, and pay a fully covered Residential Housing Fee for the fiscal year.
- C. Indica of Rooming and Boarding House. 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:
 1. Whether the Landlord or Tenant maintains control over Tenant Replacement;
 2. Whether there is a single or multiple Rental Housing Agreement(s);
 3. The relationship between the Tenants of the Rooming and Boarding house;
 4. How Rent is distributed, collected, and/or paid to the Landlord;
 5. Access to common areas and/or housing services; and
 6. 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]

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203. Exemption procedures for 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

- A. Scope of Section. Hospitals, convents, monasteries, extended medical care facilities asylums, non-profit homes for the aged, and dormitory owned and operated by an accredited institution of higher education shall not be considered exempt from the provisions of Richmond Municipal Code 11.100.et.seq., unless and until either Landlord of the Property has applied for, and received, a determination that such units are exempt or a Rent Program staff member has independently identified a characteristic for the exemption of the aforementioned Rental Unit(s).
- B. Definition. For purposes of this Regulation 203, “non-profit homes for the aged,” shall mean any extended medical care facility, residential care facility, or skilled nursing facility which is currently licensed as a health care facility under California Administrative Code, Title 22, Division 5, Chapter 3, as amended. A skilled nursing facility means a health facility or a distinct part of a hospital which provides basic services, skilled nursing care, and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour in-patient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and activity program.

Extended medical care facilities and Residential care facilities shall not include community care facilities or alcoholic or drug rehabilitation or detoxification centers. A community care facility means a facility which is maintained and operated to provide non-medical residential care. Alcohol and drug rehabilitation or detoxification centers mean recovery houses or other similar facilities providing living arrangements for persons recovering from alcoholism or drug addiction.

- C. Determination. As soon as practicable after the filing of an application, and in no event later than one hundred and twenty (120) days from the date of filing, the Rent Board or Executive Director shall make a determination as to the exempt or non-exempt status of the Rental Unit. Prior to the Rent Board making its final determination, the Executive Director of the Rent Program or their designee may do any of the following:
- a. Issue a recommendation to the Rent Board related to the application, for their final determination of affirmation or denial of exempt status.
 - b. Direct a Hearing Examiner to hold a hearing for the purpose of receiving evidence upon which to make the determination of exemption. In the event that the Hearing Examiner conducts a hearing, the hearing shall be held no later than forty-five (45) days from the filing of the application. At the conclusion of the hearing, the Hearing Examiner shall issue a recommendation to the Rent Board for their final determination of affirmation or denial of exempt status.
 - c. Request the Rent Board hold a hearing on the matter and render a final determination as to the exempt status of the Rental Unit(s) contained in the application.

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- D. Standard of Exemption. To qualify for an exemption under this Regulation, an applicant must meet the following requirements:
- i. The applicant must be an organization exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code provided that the gross income derived from the subject Property does not constitute unrelated business income as defined in Section 512 of the Internal Revenue Code.
 - ii. Housing Services are or will be a necessary part of the social service program at the subject Program, and the Rental Units for which an exemption is sought shall be used for residential housing purposes as part of the social service program.
 - iii. The applicant is proceeding and at all relevant times has proceeded in good faith to effectuate the purposes for which the applicant seeks exemption.
- E. Duration of Exemption. The exemption shall last only so long as the applicant either uses the Rental Unit as a hospital, convent, monastery, extended medical care facility, asylum, non-profit home for the aged, or dormitory owned and operated by an accredited institution of higher education, or the applicant gives up the exemption, whichever is sooner. The Rent Board may, after notice and hearing, revoke any exemption upon a showing that any of the conditions upon which the exemption was based no longer exists.
- F. Scope of Exemption. The granting of an exemption shall not in any way deprive the then current occupants of the effected property of any of the protections they may have under the Just Cause provisions of Richmond Municipal Code Section 11.100.050. The exemption set forth in this Regulation shall only apply to the Rent Control provisions of Richmond Municipal Code Section 11.100.et.seq.

204. Exemption Procedures for Governmentally Subsidized Rental Units.

- A. Scope of Section. The following Rental Units shall not be considered exempt from the provisions of Richmond Municipal Code 11.100.et.seq., unless and until the Landlord of the Property has applied for, and received, a determination that such units are exempt or a Rent Program staff member has independently identified a characteristic for the exemption of the aforementioned Rental Unit(s):
1. 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 United States Department of Housing and Urban Development.
 2. Rental Units for which the Rent is subsidized by the Project-Based Section 8 Program
 3. Rental Units that are “rent restricted” in a Low-Income Housing Tax Credit Program Project. “Rent Restricted” means the rent charged for the Rental Unit is affordable for a qualifying Tenant pursuant to the Regulatory Agreement.

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4. Rental Units for which the Rent is subsidized by the Section 202 Supportive Housing for the Elderly Program
5. 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.
6. Rental Units which a governmental unit, agency, or authority, owns, operates or manages.

B. Filing of Application and Notice Thereof. Any person seeking an exemption determination under this section must make application on the Official Rent Program form. The applicant must appendage to their application documentation evidencing an agreement between the applicant and a government entity during the periods in which exemption is sought. Failure to provide such records may result in dismissal of the application and any outstanding invoiced Residential Housing Fee shall be due. Additionally, within **five** business days of filing of an application, the applicant must serve a copy of the submitted application, along with a Rent Board response form, on the occupant(s) for every Rental Unit for which the applicant seeks an exemption.

C. Determination. As soon as practicable after the filing of an application, and in no event later than one hundred and twenty (120) days from the date of filing, the Rent Board or Executive Director shall make a determination as to the exempt or non-exempt status of the Rental Unit. Prior to the Rent Board making its final determination, the Executive Director of the Rent Program or their designee may do any of the following:

1. Issue a recommendation to the Rent Board related to the application, for their final determination of affirmation or denial of exempt status.
2. Direct a Hearing Examiner to hold a hearing for the purpose of receiving evidence upon which to make the determination of exemption. In the event that the Hearing Examiner conducts a hearing, the hearing shall be held no later than forty-five (45) days from the filing of the application. At the conclusion of the hearing, the Hearing Examiner shall issue a recommendation to the Rent Board for their final determination of affirmation or denial of exempt status.
3. Request the Rent Board hold a hearing on the matter and render a final determination as to the exempt status of the Rental Unit(s) contained in the application.

D. Standards for Exemption. The Rent Board or Executive Director shall determine that the Rental Unit is exempt from only the Rent Control provisions of Richmond Municipal Code Section 11.100.et.seq., upon making the following findings and subject to the provisions set forth in subsection (E):

1. The Owner has a written regulatory agreement with a government entity whereby the Owner has agreed to restrict their Rents; or

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2. A governmental unit, agency, or authority owns, operates, or manages the Rental Unit; or
 3. The Owner has contracted with a government entity to enter into the Section 8 Housing Choice Voucher program, and the Rental Units' Rents do not exceed the Payment Standard as Published by the United States Department of Housing and Urban Development.
- E. Exemption Exceptions. A determination of exemption shall not apply to any Rental units under this section that fail to comply with the full provisions of Regulation 205.
- F. Burden of Proof. An applicant shall have the burden of proving entitlement to an exemption under this section. To make a prima facie showing of an exemption, the applicant must demonstrate either a regulatory agreement whereby the applicant's Rents are restricted, the applicant is a government entity that owns or manages the Rental Unit or the applicant is enrolled in the Section 8 Housing Choice Voucher Program. Failure to make a prima facie showing shall constitute insufficient evidence in meeting the burden of proof.
- G. Effective Date of Exemption. Upon determination by the Rent Board that a Rental Unit is exempt from the Rent Control provisions of Richmond Municipal Code Section 11.100.et.seq., the Landlord shall only be responsible for the partially-covered invoiced Residential Housing Fees that fall within the exemption period.
- H. Duration of Exemption. The Rental Rent shall automatically lose its exemption if there is no longer in effect a Tenant with a Section 8 Housing Choice Voucher in the Rental Unit, the Rental Unit is no longer in a Project-Based Section 8 Program, and/or the Rental Unit is no longer rent restricted under a regulatory agreement and/or declaration of restrictive covenants. Landlords remain obligated under Regulation 403 to notify the Richmond Rent Program of a change of circumstance impacting their exempt status.
- I. Scope of Exemption. The granting of an exemption shall not in any way deprive the then current occupants of the affected property of any of the protections they may have under the Just Cause provisions of Richmond Municipal Code Section 11.100.050. The exemption set forth in this Regulation shall only apply to the Rent Control provisions of Richmond Municipal Code Section 11.100.et.seq.

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

- A. Maintenance of Exemption. Notwithstanding Regulation 204, Rental Units described in Regulation 204 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:

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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 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 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 business days from the date the Rent Program sends the amended invoice or 30 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 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, as amended; 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 an Owner has failed to comply with any of the obligations set forth in Regulation 205(A), Rent Program Staff members shall immediately notify the Owner in writing of the obligation(s) the Owner has failed to satisfy. The written notification must identify the specific obligation(s) the Owner has failed to satisfy and provide the Owner up to 60 days from the date of mailing of the notification to bring itself into compliance with the identified obligation(s). If an 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 204 as it relates to the noncompliant Property, and any other information Rent Program staff member(s) deems relevant.
- C. In addition to Regulation 205(A), Rental Units described in Regulation 204 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 205(A) and/or Regulation 205(B) shall preclude Tenants residing in Rental Units described in Regulation 204 from seeking advice or assistance from the Rent

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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, and accompanying Rent Board Regulations, to the extent permitted by Federal, State, and local law.

206. Exemption Procedures for Temporary Tenancies, Rental Units that are Alleged to fall within the Costa-Hawkins Rental Housing Act, Rental Units where Landlord Shares a Kitchen and/or Bathroom with Tenant, and Rental Units that are permitted as Accessory Dwelling Units.

- A. Scope of Section. Rental Units that either contain a Temporary Tenancy pursuant to Richmond Municipal Code section 11.100.030(q) and 11.100.040(a), are alleged to fall within the provisions of the Costa-Hawkins Rental Housing Act, are permitted as Accessory Dwelling Units, and/or Landlord is alleged to share a kitchen or bathroom with the Tenant, shall not be considered exempt from the provisions of Richmond Municipal Code 11.100.et.seq., unless and until the Landlord of the Property has applied for, and received, a determination that such Rental Units are exempt.
- B. Filing of Application and Notice Thereof. Any person seeking an exemption determination under this section must submit an application for an administrative determination of exemption qualification.
- C. Application for Exemption Determination. A Landlord may request that an administrative decision be rendered regarding the applicability of R.M.C. 11.100 et. seq (Fair Rent, Just Cause For Eviction, and Homeowner Protection Ordinance) on a property or unit owned or occupied by the requesting party. All requests for an administrative decision regarding exemption must be made on an Official Rent Program form. The Landlord must complete the approved form and attach sufficient information and documentation demonstrating a claimed exemption. The Landlord shall have the burden of proof of demonstrating a claimed exemption.
- D. Issuing an Administrative Decision on Exemption Status. The Executive Director or their designee shall make an administrative determination of exempt status of the property within forty-five (45) days from the date the Rent Program received the application for exempt status. In rendering an administrative decision, the Executive Director or assigned staff member may conduct an independent investigation into the underlying facts and rely on information and documentation obtained thereof. All administrative decisions rendered under this section shall adhere to the following:
1. All administrative decisions must be made in writing, provide an explanation of the basis for the decision with citations to R.M.C. 11.100 et.seq (Fair Rent, Just Cause For Eviction, and Homeowner Protection Ordinance), and adequately describe the evidence relied on in reaching the decision.

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2. All administrative decisions must be rendered within 30 days from the date of application. The Rent Program shall notify the Landlord and all Tenants in the affected unit, of its exemption determination.
- E. Request for a Hearing. If the applicant disagrees with the Executive Director or assigned staff member's administrative decision, the applicant may, within 15 days from the date of the administrative decision plus any additional time permitted under California Code of Civil Procedure Section 1013(a), as amended, file a request for hearing on exemption status. The hearing and any subsequent appeal shall be conducted in accordance with the rules and procedures set forth in Chapter 8 of these Regulations. In the event the matter goes to a hearing and the adjudicator grants an exemption, the adjudicator's decision shall specify the conditions necessary to maintain the exemption.
- F. Scope of Exemption. The scope of exemptions granted under this Regulation shall be the following:
1. Temporary Tenancy: Exemptions granted on the grounds of Temporary Tenancy, shall only apply to the Rent Control provisions of Richmond Municipal Code Section 11.100.et.seq.
 2. Rental Units lawfully permitted as Accessory Dwelling Units: Rental Units found to be exempt as lawfully permitted Accessory Dwelling Units shall be exempt from the entire Chapter of Richmond Municipal Code. 11.100.
 3. Rental Unit where property owner shares a bathroom or kitchen with Tenant: Rental Units found to be exempt on the basis that Landlord shares a kitchen and/or bathroom with the Tenant(s) shall be exempt from the entire Chapter of Richmond Municipal Code. 11.100.
 4. Rental Units exempt under the Costa Hawkins Rental Housing Act: Rental Units found to be exempt on the basis of the Costa Hawkins Rental Housing Act, shall only be exempt from the Rent Control provisions of Richmond Municipal Code Section 11.100.et.seq.
- G. Final Decision of the Rent Board. All administrative decisions rendered under this Regulation which are not proceeded by a filing of a request for hearing on exemption status in accordance with Regulation 206(E), shall be the final decision of the Rent Board.

207. Procedures for Determining the Applicability of Richmond Municipal Code Chapter 11.100.

- A. Scope of Section. The full provisions of Richmond Municipal Code Chapter 11.100, shall apply to all buildings, structure, or part thereof, or land appurtenant thereto, or any other rental property rented or offered for rent for residential purposes, unless and until the Landlord of the Property has applied for, and received, a determination that Richmond Municipal Code Chapter 11.100, does not apply to the Property because either the applicant is not a Landlord as defined by Richmond Municipal Code Section 11.100.030(f) and/or the unit is solely occupied by the Property Owner.

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- B. Filing of Application. Determination of the applicability of Richmond Municipal Code Chapter 11.100, shall be made on a fiscal year basis. Once a unit has been rented or offered for rent in a given fiscal year, the provisions of Richmond Municipal Code Chapter 11.100, shall apply for the entire fiscal year, regardless of whether the Landlord has failed to rent the unit, no longer rents the unit, or has become the sole occupant of the unit. Additionally, any person may seek a determination as to the applicability of Richmond Municipal Code Chapter 11.100, to an inhabited dwelling unit. To seek a determination under this section, the applicant must make application on an Official Rent Program form. The applicant must fully complete the form, attaching any and all Rent Program requested documentation. Failure to provide requested documentation, as indicated on the Official Rent Program form, may result in the application being deemed incomplete or dismissed and any outstanding invoiced Residential Housing Fee shall be immediately due. If the application is deemed dismissed, or withdrawn, the applicant may refile one hundred twenty (120) days or more after the dismissal and/or withdrawal.
- C. Notice. Within five business days of a completed application, the Rent Program shall mail a copy of the application for exemption to each unit at the Property along with an Official Rent Program notice of filing and Tenant response form.
- D. Determination. As soon as practicable after the filing of an application, and in no event later than one hundred and twenty (120) days from the date of filing, the Rent Board shall make a final determination as to application of Richmond Municipal Code Chapter 11.100, on the challenged unit. Prior to the Rent Board making its final determination, the Executive Director of the Rent Program or their designee may do any of the following:
1. Where the facts are not in dispute, the Executive Director or their designee may prepare a recommendation to the Rent Board recommending that the application be granted without a hearing. The recommendation shall be for the Rent Board's final determination of application of Richmond Municipal Code Chapter 11.100, without a hearing, and may be placed on the consent calendar.
 2. If upon review of the application, the Executive Director or their designee determines that there are disputed facts or issues of law which are relevant to resolve application of Richmond Municipal Code Chapter 11.100, the Executive Director or their designee shall not prepare a recommendation to the Rent Board but shall instead refer the matter to a Hearing Examiner. Where the matter is referred to the Hearing Examiner, the hearing shall proceed in a manner consistent with Chapter 8 of the Richmond Rent Board Regulations, except for the following instances:
 - i. No "Objection" shall be sent to the parties. Rather, the responding party has ten (10) business days to return the response form, which Rent Program staff members mailed in a manner consistent with Regulation 207(C), of this Chapter.
 - ii. A Hearing shall be scheduled within twenty-one (21) days from the date the applicant submitted their application.

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- iii. At the discretion of the Executive Director, a Rent Program staff member may conduct an inspection of the Property, subject to the consent of the Landlord or lawful occupant on the Property. If an on-site inspection is conducted, that individual shall prepare a staff report detailing the results of the inspection and submit the report to the Hearing Examiner and all parties named in the submitted application. Additionally, that individual must make themselves available at the hearing for questioning by the parties and Hearing Examiner.
- iv. The Hearing Examiner may require Rent Program staff member's presence at the hearing to secure relevant testimony. If such a requirement is deemed necessary, the Rent Program must, within five business days (5) from the scheduled hearing, notify all parties of the name and title of the Rent Program witness, and send a copy of all documentation the witness intends to rely on during the hearing.
- v. Within thirty (30) days from the date of the hearing on an application of Richmond Municipal Code Chapter 11.100, applicability, the Hearing Examiner shall issue a recommendation to the Rent Board to either grant or deny the application. This deadline may be extended by written waiver executed by the applicant. The Hearing Examiner's recommendation shall include proposed findings of facts and conclusions of law that refer to the following specific subjects:
 - a) the number of units at the subject property, including units on any contiguous lots or parcels in which applicant has at least a fifty percent (50%) interest;
 - b) The percentage of ownership interest in the property held by the applicant;
 - c) Evidence of the applicant's occupancy at another address, and the dates of such occupancy;
 - d) Whether the applicant has continuously resided at the property as their Primary Residence beginning at least one hundred twenty (120) days prior to the date of the filing of the exemption application;
 - e) Whether the applicant is entitled to receive Rent or has received Rent;
 - f) Whether the property has been enrolled or registered within twelve (12) months from the date the applicant submitted their application; and
 - g) Whether the applicant holds a current business license and/or has registered their Property with the Richmond Rental Inspection Program.

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- vi. Upon completion by the Hearing Examiner of the recommendation to the Board, the Hearings Unit shall send the applicant and all occupants at the Property a copy of the recommendation, and the Rent Program shall agendaize the matter for the Rent Board meeting held in the following month.
- E. Rent Board Consideration. Matters to be adjudicated by the Rent Board under this Regulation shall be adjudicated in a manner consistent with Rent Board Regulation Chapter 8 except in the following instances:
1. Notice. Rent Program staff members shall set the matter for consideration as soon as is practicable, so long as the date for consideration is within the one hundred and twenty (120) days deadline set forth above. At least ten business days prior to the date set for Board consideration, the Board shall give notice to the applicant and all occupants of the property of the date, time and place for Board meeting.
 2. Response to Recommendation. The applicant, any occupant of the Property, any authorized representative of either Landlord or occupant, or any other interested person may file a written response to the recommendation. The response must be received by the Board at least seventy-two hours prior to the date set for Board hearing on the recommendation. Upon a showing of good cause, the Board may accept a later filing of the response/request.
 3. Continuances. Continuance requests will be considered by the Board where the requesting party has complied with the requirements of Richmond Rent Board Regulation 826 and the Rent Board has sufficient time within the one hundred and twenty (120) day deadline to decide the case, unless the time is waived by the applicant.
 4. Presentation by Parties. The parties shall present their matter before the Rent Board as follows:
 - i. The applicant and any occupant of the Property are parties.
 - ii. The parties may offer oral argument and the presentation shall not exceed five minutes per person. The Rent Board's Chair may extend the time.
 - iii. If any party claims that there is new evidence available at the time of the Rent Board hearing which was undiscoverable at the time of the hearing before the Hearing Examiner, that party must make an offer of proof to the Board regarding the evidence and why it was undiscoverable previously. If a majority of Rent Board members find that the offer of proof is sufficient, they may agree to receive the new evidence at the time of the Rent Board hearing, but may limit the time for presenting such evidence.
 - iv. If the Rent Board agrees to receive new evidence, and the applicant agrees to waive time deadlines, the Rent Board may refer the matter

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back to a Hearing Examiner for presentation of the evidence and preparation of a new Recommendation.

- v. Decision. The Rent Board's decision shall be based upon the hearing record and Recommendation prepared by the hearing examiner, the responses to the Recommendation and any oral argument presented to the Rent Board. The Board may adopt, reverse, reverse and remand or modify the Hearing Examiner's recommendation. Remand of the matter may only be ordered if there remains sufficient time to permit such a procedure, or if the applicant executes a waiver of time deadlines sufficient to permit an additional hearing before the hearing examiner. The Rent Board's decision must be supported by findings of fact and conclusions of law.
- F. Standards for Determining the Application of Richmond Municipal Code Chapter 11.100. In determining the application of Richmond Municipal Code Chapter 11.100, the Rent Board shall consider the purpose of the Rent Ordinance, any relevant evidence tending to prove or disprove a materially disputed facts, previous compliance with Richmond Municipal Code Chapter 11.100, and the rental history of the challenged unit. Additionally, to make a determination that the Richmond Municipal Code Chapter 11.100, does not apply to the unit, the Rent Board must find the following:
- i. 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;
 - ii. The unit is a not Rental Unit pursuant to Richmond Municipal Code Section 11.100.030(m)
 - iii. There does not exist a Rental Housing Agreement as defined by Richmond Municipal Code Section 11.100.030(k)
 - iv. There is not 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.
 - v. If the applicant claims the unit is owner-occupied, 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.
- G. Exceptions to Application Determination. Where the challenged 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, the Rent Board shall find that provisions of Richmond Municipal Code

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Chapter 11.100 apply and shall only consider whether the Just Cause provisions apply or both the Rent Control and Just Cause provisions apply.

- H. Burden of Proof. An applicant shall have the burden of demonstrating the provisions of Richmond Municipal Code Chapter 11.100, do not apply to the unit. The applicant may produce as evidence, sworn testimony, Schedule E tax records of the Property, photographs, video, or any other forms of tangible or intangible evidence that is found to be relevant.
- I. Effective Date of Rent Board's Determination of Richmond Municipal Code Chapter 11.100 Application. The Rent Board's applicability determination of the provisions of Richmond Municipal Code Chapter 11.100, shall be effective thirty (30) days from the date of the Rent Board meeting where the Rent Board made said determination. Such determination shall be the final determination of the Rent Board and subject only to judicial review as codified in Code of Civil Procedure Section 1084 et.seq, as amended, and/or Code of Civil Procedure Section 1094.5. .
- J. Expiration of Determination. Rent Board determinations that Richmond Municipal Code Chapter 11.100 does not apply to the unit shall remain in effect so long as the grounds the Rent Board relied on to make a determination that Richmond Municipal Code Chapter 11.100 does not apply to the unit still hold true. If the unit becomes a Rental Unit, the Landlord shall complete a Property Enrollment form listing all Rental Units and complete a Tenancy Registration form for any tenancies in Controlled Rental Units within 30 days of the change in circumstances. Rent Program staff reserve the right to perform routine exemption verification activities which may require the property owner to re-submit documentation to substantiate that the determination of inapplicability of Richmond Municipal Code Chapter 11.100 should be maintained. If Rent Program staff are unable to secure the requested documentation to maintain such determination, the property owner may be required to re-apply for such determination consistent with the procedures outlined in this regulation.

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]

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:

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- 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 Exemption Determination

Notwithstanding Regulation 403, a Landlord may request that an administrative decision be rendered regarding the applicability of R.M.C. 11.100 et. seq (Fair Rent, Just Cause For Eviction, and Homeowner Protection Ordinance) on a property or unit owned or occupied by the requesting party. All requests for an administrative decision regarding exemption must be made on an approved Rent Program form. The Landlord must complete the approved form and attach sufficient information and documentation demonstrating a claimed exemption. The Landlord shall have the burden of proof of demonstrating a claimed exemption.

[Adopted June 20, 2018]

206. Issuing an Administrative Decision on Exemption Status

- A. In rendering an administrative decision, the Executive Director or assigned staff member may conduct an independent investigation into the underlying facts and rely on information and documentation obtained thereof.
- B. All administrative decisions under this Regulation must be made in writing, provide an explanation of the basis for the decision with citations to R.M.C. 11.100 et.seq (Fair Rent, Just Cause For Eviction, and Homeowner Protection Ordinance), and adequately describe the evidence relied on in reaching the decision.
- C. All administrative decisions under this Regulation must be rendered within 30 calendar days from the date of application. The Rent Program shall notify the Landlord and all Tenants in the affected unit, of its exemption determination.
- D. If the Landlord disagrees with the Executive Director or assigned staff member's administrative decision, the Landlord may, within 15 calendar days from the date of the administrative decision plus any additional time permitted under California Code of Civil Procedure Section 1013(a), as amended, file a request for hearing on exemption status. The hearing shall be conducted in accordance with the rules and procedures set forth in Chapter 8 of these Regulations.

[Adopted June 20, 2018]

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]