

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: October 21, 2020

Final Decision Date Deadline: October 21, 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. At its Regular Meetings on July 15, 2020, and August 19, 2020, the Rent Board considered and discussed revised Chapter 2 Regulations. In response to feedback provided during the discussion, staff members have prepared proposed revisions 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

- | | | | | |
|---|---|--|--|---|
| <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

- Presentation/Proclamation/Commendation (3-Minute Time Limit)
- Public Hearing Regulation Other:
- Contract/Agreement Rent Board As Whole
- Grant Application/Acceptance Claims Filed Against City of Richmond
- Resolution 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:

I-1.

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AGENDA REPORT

DATE: October 21, 2020

TO: Chair Maddock and Members of the Rent Board

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

SUBJECT: ADOPTION OF 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. At its Regular Meetings on July 15, 2020, and August 19, 2020, the Rent Board considered and discussed revised Chapter 2 Regulations. In response to feedback provided during the discussion, staff members have prepared proposed revisions 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 amendments to Chapter 2 would provide this necessary policy guidance.

Summary of Proposed Revisions

Rather than creating new policies and procedures for categories of exempt or inapplicable Rental Units, the proposed amendments to Chapter 2 clarify that the Administrative Determination process described in Rent Board Regulations 205 and 206 also apply to circumstances where an owner claims that a rental unit does not fall under the Rent Ordinance because it is not offered for rent, owner-occupied, or offered "rent free." As currently written, Regulations 205 and 206 provide:

"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.

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.

The proposed process in the revised regulations would be administered as follows:

- (1) Landlord completes administrative determination request with supporting evidence
- (2) Within 30 days, the Executive Director or their designee issues an Administrative Determination
- (3) If the Landlord disagrees with the Administrative Determination, they may file a Petition to Determine Exempt Status within 15 calendar days from the date of the Administrative Determination
- (4) Either party may appeal the Hearing Examiner's decision

Proposed "Findings"

For those Administrative Determinations evaluating claims of the application of Richmond Municipal Code Chapter 11.100, the proposed revised regulations provide that 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.

Next Steps

Should the Rent Board adopt the proposed revisions to Chapter 2, such regulations will become effective 30 days from the date of adoption, allowing staff the requisite time to prepare administrative forms and processes.

DOCUMENTS ATTACHED:

Attachment 1 – Revised Chapter 2 Regulations (Red-Lined)

Attachment 2 – Revised Chapter 2 Regulations (Clean)

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 M.C. 11.100 et. seq (Fair Rent, Just Cause For Eviction, and Homeowner Protection Ordinance) on a Rental Unit or a claimed exemption pursuant to Richmond Municipal Code Section 11.100.030(d) property or unit owned or occupied by the requesting party. All requests for an Administrative Decision regarding applicability and/or exemption must be made on an approved-Official Rent Program form. The Landlord-applicant must complete the approved-Official Rent form and attach sufficient information and documentation as requested therein, demonstrating a claimed exemption. The Landlord-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 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.
2. All Administrative Determinations decisions 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 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.
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.

- 2.—All administrative decisions under this Regulation must be rendered within ~~90~~30 calendar days from the date of application. The Rent Program shall notify the applicant and impacted part ~~Landlord and all Tenants in the affected unit~~, of its ~~exemption~~ Administrative Determination.
- 3-6. If the ~~Landlord~~ applicant or impacted party disagrees with the Executive Director or assigned staff member's ~~A~~ Administrative Determination~~decision~~, the ~~Landlord~~ applicant or impacted party may, within 15 calendar days from the date of the ~~A~~ Administrative Determination~~decision~~ 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~~exemption status~~. 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]

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]