

AGENDA ITEM REQUEST FORM

Department: Rent Program

Department Head: Nicolas Traylor

Phone: 620-6564

Meeting Date: July 19, 2023

Final Decision Date Deadline: July 19, 2023

STATEMENT OF THE ISSUE: During the State and Local emergency due to COVID-19, the Rent Board passed an emergency regulation that allowed for the following: (1) permitted the conducting of hearing and appeals through telecommunication and/or videoconferencing; (2) permitted the service of documents be performed via email; and (3) required that both parties agree to a hearing by telecommunication and/or videoconferencing prior to such a hearing being conducted. The emergency regulation appeared to be well received and seamlessly worked its way into the Hearing Unit's processes and procedures. At the request of the Hearings Unit and some members of the public, staff members are requesting that the emergency regulation be officially incorporated into Chapter 8 of the Rent Board Regulations.

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> | |

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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 Regulation 842.25 to continue to: (1) Permit the conducting of hearing and appeals through telecommunications and/or videoconferencing; (2) Allow for service via email of any document tied to hearings and appeals; and (3) require that both parties agree in writing to a hearing by telecommunication and/or videoconferencing prior to such a hearing being conducted – Rent Program (Nicolas Traylor 620-6564).

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AGENDA REPORT

DATE: July 19, 2023

TO: Chair Cantor and Members of the Rent Board

FROM: Charles Oshinuga, General Counsel &
Nicolas Traylor, Executive Director

SUBJECT: PROPOSED REGULATION 842.25 CODIFYING EXISTING
EMERGENCY REGULATION THAT MODIFIED HEARING AND
APPEALS PROCEDURES DURING DECLARED STATEWIDE AND
LOCAL EMERGENCIES

STATEMENT OF THE ISSUE:

During the State and Local emergency due to COVID-19, the Rent Board passed an emergency regulation that allowed for the following: (1) permitted the conducting of hearing and appeals through telecommunication and/or videoconferencing; (2) permitted the service of documents be performed via email; and (3) required that both parties agree to a hearing by telecommunication and/or videoconferencing prior to such a hearing being conducted. The emergency regulation appeared to be well received and seamlessly worked its way into the Hearing Unit's processes and procedures. At the request of the Hearings Unit and some members of the public, staff members are requesting that the emergency regulation be officially incorporated into Chapter 8 of the Rent Board Regulations.

RECOMMENDED ACTION:

ADOPT Regulation 842.25 to continue to: (1) Permit the conducting of hearing and appeals through telecommunications and/or videoconferencing; (2) Allow for service via email of any document tied to hearings and appeals; and (3) require that both parties agree in writing to a hearing by telecommunication and/or videoconferencing prior to such a hearing being conducted – Rent Program (Nicolas Traylor 620-6564).

FISCAL IMPACT:

There is no fiscal impact related to this item.

DISCUSSION:

Background

Given the spread of the novel coronavirus (“COVID-19”), on March 4, 2020, the Governor declared a state of emergency to strengthen California’s response to the virus. On March 10, 2020, Contra Costa County declared a local emergency to aid the regional healthcare and governmental community in responding to COVID-19. On March 13, 2020, the President of the United States declared a national emergency and made emergency funding available to assist states and local governments in preventing the spread of COVID-19. On that same day, the Contra Costa County Superior Court closed all its locations to the general public. On March 16, 2020, Contra Costa County issued a shelter in place order, prohibiting residence from leaving their homes except as to engage in certain essential activities, or receive certain essential services. On March 17, 2020, the City of Richmond City Manager declared a local emergency and issued an Order prohibiting certain types of evictions.

To comply with these various orders, many businesses had closed or allowed for their employees to work from home. All Richmond residents had been impacted by this shelter in place Order and many were in the “high risk” category if they were to contract COVID-19; however, despite the Order, many Richmond Residents were still facing issues that impacted their home. Some Landlords were seeking Fair Return increases, while some Tenants were seeking habitability-related rent decreases.

To assist the public in properly engaging their rights and obligations, in May 2020, the Richmond Rent Board adopted an emergency regulation that did the following: (1) permitted the conducting of hearing and appeals through telecommunication and/or videoconferencing; (2) permitted the service of documents be performed via email; and (3) required that both parties agree to a hearing by telecommunication and/or videoconferencing prior to such a hearing being conducted.

Despite its success, the emergency regulation lapsed at the end of the local emergency. The lack of telecommunication and/or videoconferencing, and other aspects of the emergency regulation, has impacted staff members’ ability to manage their hearings and has decreased public access in participating in the hearings. At the request of the Hearing Unit and some members of the public, staff members recommend the Rent Board officially codify the emergency regulations as regulation 842.25

Proposed Regulation 842.25 Would Permit the Service of Documents by Email and Allow the Conducting of Hearings and Appeals through Telecommunications and/or Videoconferencing.

The Proposed Regulation would be a continuation of rights and obligations that the public adjusted itself to during the local emergency. Specifically, the regulation would expand the method of service of any document related to hearings and appeals, by allowing for those documents to be delivered via email.

Additionally, the proposed regulation offers a continuation of a popular community engagement tool, namely remote hearings. Specifically, the proposed regulation would permit the use of telecommunication and/or videoconferencing to conduct hearings and appeals. To ensure fairness in the process and respect rights conferred under existing regulations, the proposed regulation would require both parties' written consent to a telecommunicated and/or videoconference hearing prior to the hearing being conducted. Such a requirement would not attach to appeal sessions as such sessions do not regard the submission of evidence but rather are concerned with only argument.

Conclusion

Staff members recommend the Rent Board adopt Proposed Regulation 842.25 for the aforementioned reasons.

DOCUMENTS ATTACHED:

Attachment 1 – Resolution 20-01 with Attachment A Emergency Regulation

Attachment 2- Proposed Regulation 842.25

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**ITEM I-1
ATTACHMENT 1**

CITY OF RICHMOND RENT BOARD RESOLUTION NO. 20-01

ADOPTING REGULATIONS FOR HEARING AND APPEALS PROCESSES AND PROCEDURES DURING BOTH THE STATE OF CALIFORNIA'S DECLARED EMERGENCY AND THE CITY OF RICHMOND'S LOCAL EMERGENCY DUE TO THE IMPACTS OF THE NOVEL CORONAVIRUS (COVID-19) OUTBREAK IN THE CITY OF RICHMOND

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 10, 2020, the Contra Costa County Board of Supervisors and Contra Costa Health Services declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, on March 13, 2020, to respond to the unique and continuing public health and safety challenges presented by COVID-19, the Contra Costa County Superior Court closed all locations beginning Monday, March 16, 2020; and

WHEREAS, on March 16, 2020, the Health Officer of Contra Costa County issued an Order through April 7, 2020 that directed all individuals living in the county to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and governmental services; and

WHEREAS, on March 17, 2020, the City Manager, in her role as the Director of Emergency Services, proclaimed the existence of a local emergency pursuant to Chapter 2.20 of the Richmond Municipal Code to ensure the availability of mutual aid and to effectuate the City's response to COVID-19; and

WHEREAS, the Centers for Disease Control and Prevention, the California Department of Health, and the Contra Costa County Department of Public Health have all issued recommendations including but not limited to social distancing, staying home if sick, canceling

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or postponing large group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus; and

WHEREAS, during this local emergency, and in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary housing displacement, to protect the City's affordable housing stock, and to prevent housed individuals from falling into homelessness; and

WHEREAS, Richmond Municipal Code Section 11.100, et seq., requires that the Richmond Rent Program hold Hearings on matters concerning rent increases and decreases; and

WHEREAS, to comply with the edicts of Richmond Municipal Code Section 11.100, et seq., the Rent Board adopted a network of Regulations that created a Hearing and Appeals Process to ensure that Richmond Residents are able to engage their rights and understand their obligations under Richmond Municipal Code Section 11.100, et seq; and

WHEREAS, the Hearings and Appeals Process requires parties to submit various documents via mail and make in-person appearances before the Hearing Examiner, and if applicable, the Rent Board; and

WHEREAS, in complying with the Governor's stay-at-home order many Richmond Residents may fail to meet the Hearing and Appeals requirements enumerated in Richmond Rent Board Regulations Chapter 8; and

WHEREAS, to ensure Richmond Residents are able to adequately engage in the Richmond Rent Board's Hearing and Appeals Process, Richmond Rent Program Staff members are requesting that Richmond Rent Board adopt Regulation 20-01, which among other things would allow documents to be served via email, and permit Hearings and Appeals through videoconferencing and/or teleconferencing.

NOW, THEREFORE, BE IT RESOLVED THAT:

The City of Richmond Rent Board adopts the Regulations contained in Attachment A which will do the following:

- 1) Modify Richmond Rent Board Regulation Chapter 8 to permit the conducting of Hearings and Appeals via telecommunications and videoconferencing during the period of the declared statewide and local emergency due to Covid-19; and
- 2) Permits the service of documents to be performed via email; and
- 3) Requires that both parties agree to a hearing by telecommunication and/or videoconferencing prior to such a hearing being conducted;

Attachment A

Emergency Regulation No. 20-01
Hearing and Appeals Procedures During Declared Emergency

1. **Applicability.** Notwithstanding any Rent Board Regulation to the contrary, the entirety of these Regulations shall apply during the duration of the declared Shelter-in-place Order, and both the Contra-Costa and Richmond local emergencies declarations, whichever is the longest in duration, unless amended to state otherwise.

2. **Hearing Procedures.** In addition to the Petition Process and Hearings Procedures codified in Rent Board Regulation Chapter 8, the following shall apply:
 - A. **Submittal of Petitions and Objections.** Parties may submit Petitions, Objections and/or Responses via email to the Rent Board Clerk. All applicable deadlines remain unchanged.

 - B. **Service.** Service of all documents, either by the Richmond Rent Program Staff or Parties of a Petition, required by Rent Board Regulation Chapter 8, may be made via email. All applicable deadlines for service remain unchanged.

 - C. **Additional Evidence and Documentations.** Additional Evidence obtained prior to the Hearing, may be submitted to the opposing party and Rent Program Staff members via email. The deadline to submit such documentation and/or evidence remains unchanged.

 - D. **Continuance.** The grounds for a Continuance enumerated in Regulation 826, which is not an exhaustive list, shall be construed liberally and in all instances shall take into account the impact COVID-19 has had on City of Richmond Residents. Additionally, issues with technology and accessing appropriate mediums to engage fully in the hearing process shall be a substantial probative factor in determining the existence of good cause. If such a technological issue arises during the Hearing, with or without the request of the party impacted by the technical difficulties, the Hearing Examiner shall consider on the Record whether to continue the Hearing to a later date. Within that same Hearing, the Hearing Examiner shall state on the Record whether the matter will or will not be continued and the basis supporting their decision. All applicable deadlines to submit a Request for a Continuance remain unchanged, except where the Request for a Continuance is based on technical issues. Such a request may be made at the time of the Hearing. Finally, a Request for Continuance may be submitted via email to the Rent Board Clerk.

 - E. **Videoconference and Teleconferencing.** Hearings and Settlement Conferences may be held through methods of videoconferencing and teleconferencing; however, to protect and ensure the fairness of the hearings process, both parties must agree in writing to a Hearing conducted through videoconference and/or teleconference prior to such a Hearing being conducted.

Written agreement may be obtained through email correspondence confirming the parties' willingness to participate in a Hearing by videoconference and/or teleconference.

Additionally, at the outset of both a settlement conference and/or Hearing, the Hearing Examiner shall reiterate that the parties agreed in writing to have a Hearing conducted through teleconference and/or videoconference and the Hearing Examiner shall obtain verbal confirmation of such written agreement.

3. **Appeals Procedures.** In addition to the Appeals Process Procedures codified in Rent Board Regulation Chapter 8, the following shall apply:

A. Submittal of Appeals and Response. Parties may submit Appeals and Responses to Appeals by email to the Rent Board Clerk. The deadline to submit an Appeal is thirty (30) calendar days after the receipt of the notice of the Hearing Examiner's Decision. Where Rent Program Staff members have emailed the Hearing Examiner's Decision to the parties, the parties are deemed to have received the Hearing Examiner's Decision on the same date the Rent Program Staff members emailed the parties. In such instances, the Appellant(s) shall not be afforded an additional five (5) days to submit their Appeal, but instead shall have thirty (30) calendar days from the date the Rent Program Staff members emailed the Hearing Examiner's Decision to the parties. All other applicable deadlines shall remain unchanged.

B. Staff Attorney's Recommendation and Written Comments. The Staff Attorney's Recommendation to adopt, reverse, remand, or modify the Hearing Examiner's Decision may be sent via email to the parties and Rent Boardmembers. Additionally, the parties' written comments to the Staff Attorney's recommendation may be submitted via email to the Rent Board Clerk. All applicable deadlines remain unchanged.

C. Continuance. The procedures for a Continuance enumerated in Regulation 842, shall be construed liberally and in all instances shall take into account the impact COVID-19 has had on City of Richmond Residents. Issues with technology and accessing appropriate mediums to engage fully in the appeals process shall be a substantial probative factor in determining the existence of good cause. If such a technological issue arises during the appeal session, with or without the request of the party impacted by the technical difficulties, the Rent Board Members shall consider on the Record whether to continue the Appeal Hearing to a later date. All applicable deadlines to submit a Request for Continuance remain unchanged, except where the Request for Continuance is based on technical issues. Such a request may be made at the time of the Appeal Hearing. Finally, a Request for Continuance may be submitted via email to the Rent Board Clerk.

D. Videoconference and Teleconferencing. At the discretion of the Richmond Rent Board, Appeals may be held through methods of videoconferencing and teleconferencing. Prior consent of the parties is not required as an Appeal Hearing is only concerned with argument and not evidence.

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- 4. Effective Date.** This Regulation will be effective immediately on the date when it is adopted by the Richmond Rent Board.

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Regulation 842.25: Modification of Hearing and Appeals Procedures

842.25

1. **Applicability.** Notwithstanding any Rent Board Regulation to the contrary, the entirety of these Regulations shall modify any existing Chapter 8 Regulation where applicable.
2. **Hearing Procedures.** In addition to the Petition Process and Hearings Procedures codified in Rent Board Regulation Chapter 8, the following shall apply:
 - A. **Submittal of Petitions and Objections.** Parties may submit Petitions, Objections and/or Responses via email to the Rent Board Clerk. All applicable deadlines remain unchanged.
 - B. **Service.** Service of all documents, either by the Richmond Rent Program Staff or Parties of a Petition, required by Rent Board Regulation Chapter 8, may be made via email. All applicable deadlines for service remain unchanged.
 - C. **Additional Evidence and Documentations.** Additional Evidence obtained prior to the Hearing, may be submitted to the opposing party and Rent Program Staff members via email. The deadline to submit such documentation and/or evidence remains unchanged.
 - D. **Continuance.** The grounds for a Continuance enumerated in Regulation 826, which is not an exhaustive list, shall be construed liberally and in all instances shall take into account the impact COVID-19 has had on City of Richmond Residents. Additionally, issues with technology and accessing appropriate mediums to engage fully in the hearing process shall be a substantial probative factor in determining the existence of good cause. If such a technological issue arises during the Hearing, with or without the request of the party impacted by the technical difficulties, the Hearing Examiner shall consider on the Record whether to continue the Hearing to a later date. Within that same Hearing, the Hearing Examiner shall state on the Record whether the matter will or will not be continued and the basis supporting their decision. All applicable deadlines to submit a Request for a Continuance remain unchanged, except where the Request for a Continuance is based on technical issues. Such a request may be made at the time of the Hearing. Finally, a Request for Continuance may be submitted via email to the Rent Board Clerk.
 - E. **Videoconference and Teleconferencing.** Regulation 834 establishes a party's right to engage in-person hearings and that right shall not be disturbed except as stated herein. Hearings and Settlement Conferences may be held through methods of videoconferencing and teleconferencing; however, to protect and ensure the fairness of the hearings process and the parties' rights under Regulation 834, both parties must agree in writing to a Hearing conducted through videoconference and/or teleconference prior to such a Hearing being conducted. Written agreement may be obtained through email correspondence confirming the parties' willingness to participate in a Hearing by videoconference and/or teleconference, or other

reasonable methods. Once the parties agree in writing to a videoconference and/or teleconference hearing, such agreement cannot be rescinded and the hearing must take place on videoconference and/or teleconference, unless the Hearing Examiner deems otherwise.

Where there are more than two party members to a case, a videoconference and/or teleconference hearing may take place where at least one member from each party agrees in writing to have the proceedings conducted via videoconference and/or teleconference. In those instances, the party members who agreed in writing to have the hearing conducted via videoconference and/or teleconference shall be permitted to appear via videoconference and/or teleconference. The remaining members shall appear in person. Where appropriate, the Hearing Examiner may permit witnesses to appear via videoconference and/or teleconference.

3. Appeals Procedures. In addition to the Appeals Process Procedures codified in Rent Board Regulation Chapter 8, the following shall apply:

A. Submittal of Appeals and Response. Parties may submit Appeals and Responses to Appeals by email to the Rent Board Clerk. The deadline to submit an Appeal is thirty (30) calendar days after the receipt of the notice of the Hearing Examiner’s Decision. Where Rent Program Staff members have emailed the Hearing Examiner’s Decision to the parties, the parties are deemed to have received the Hearing Examiner’s Decision on the same date the Rent Program Staff members emailed the parties. In such instances, the Appellant(s) shall not be afforded an additional five (5) days to submit their Appeal, but instead shall have thirty (30) calendar days from the date the Rent Program Staff members emailed the Hearing Examiner’s Decision to the parties. All other applicable deadlines shall remain unchanged.

B. Staff Attorney’s Recommendation and Written Comments. The Staff Attorney’s Recommendation to adopt, reverse, remand, or modify the Hearing Examiner’s Decision may be sent via email to the parties and Rent Boardmembers. Additionally, the parties’ written comments to the Staff Attorney’s recommendation may be submitted via email to the Rent Board Clerk. All applicable deadlines remain unchanged.

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D. Videoconference and Teleconferencing. At the discretion of the Richmond Rent Board, Appeals may be held through methods of videoconferencing and teleconferencing. Prior consent of the parties is not required as an Appeal Hearing is only concerned with argument and not evidence.

4. Effective Date. This Regulation will be effective immediately on the date when it is adopted by the Richmond Rent Board.

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