

# Key Concepts in Appeal Recommendation

ITEM- G-1

October 25, 2023

Charles Oshinuga-General Counsel

Richmond Rent Program

# Standard of Review

- Substantial Evidence
  - Board does not reweigh the evidence nor does it second guess the factual findings of the Hearing Examiner, even if there was contrary evidence.
  - Resolution of issues of credibility of witnesses and evidence belong to the trier of fact, and under the standard of Substantial Evidence, the reviewing body lacks the authority to substitute its judgment for that of the trier of fact.

## Rent Board as an Appellate Body

- The Board reviews the Hearing Examiner's Decision and is limited in the actions it may take:
  - Remand
  - Reverse
  - Affirm
  - Dismiss

## Maximum Allowable Rent (MAR)

- Maximum Rent that may be charged on a rent-controlled unit.
  - The MAR is automatically adjusted year over year by the Annual General Adjustment (AGA). However, a Landlord may only realize the adjustment after having properly noticed the rent increase and compliance with Regulation 601.

## Base Rent and Initial Rent

- The Base Rent is the initial rental rate in effect on the date the tenancy commenced. *Richmond Municipal Code 11.100.070(a)*
- The initial rental rate means “the amount of Rent actually paid by the Tenant for the initial term of the tenancy.
- After the Base Rent is determined by the Hearing Examiner, the Hearing Examiner applies all applicable Annual General Adjustments (hereinafter, “AGA”) to the Base Rent and the resulting amount is the MAR.

# Rent

- The Rent Ordinance defines Rent in both broad and specific terms. Rent is all periodic payments paid under the Rental Housing Agreement, such as parking or utilities. Rent also includes those payments that are not always periodic such as pets, furniture, subletting, and security deposits. Rent is also payment for Housing Services. Finally, Rent includes any payments that concern the use or occupancy of a Rental Unit.
- Fees, echarges, etc., cannot be decoupled from Rent and are evaluated against the MAR.

## Excess Rent

- A Landlord who demands, accepts, receives, or retains any payment of Rent in excess of the Maximum Allowable Rent shall be liable for damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the Maximum Allowable Rent. *Richmond Municipal Code Section 11.100.100(b)(2)*

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# Revised Chapter 2 Rent Board Regulations

ITEM- H-1

October 25, 2023

Nicolas Traylor-Executive Director

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Richmond Rent Program

## Statement of the Issue

- Chapter 2 of the Rent Board Regulation permits owners of Rental Units are permitted to seek a determination of exemption from the Rent Ordinance. In years past, some owners have sought exemption from the Rent Ordinance under the theory that they were nonprofit homes for the aged. Rent Program staff have consistently interpreted this phrase to mean those owners who operate a licensed residential care facility for the elderly. Staff members are proposing an amendment to Chapter 2 of the Rent Board's regulations to codify its historical interpretation of the phrase "nonprofit homes for the aged", to give both owners and staff members more guidance when applying and evaluating claims exemption or inapplicability from the Rent Ordinance.

## Fiscal Impact

- **There is no fiscal impact related to this item.**

## 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. In 2020, the Rent Board adopted a procedure whereby Landlords could request an exemption from the Rent Ordinance. The basis for exemption is listed in the Ordinance, and consequently, to qualify for an exemption, a landlord would have to demonstrate that they qualified for one of the enumerated basis for exemption. One of these enumerated bases for exemption is nonprofit homes for the aged.
- In the past, staff have informed owners that the meaning of nonprofit for the aged is a Rental Unit that is operated as a licensed residential care facility for the elderly. To ensure consistency and efficiency when evaluating applications for exemption from the Rent Ordinance, staff is recommending that the Board amend Chapter 2 of the Regulations to define nonprofit homes for the aged, as a residential care facility for the elderly.

# Amended Regulation 201

## Chapter 2: APPLICABILITY

### 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;

—1. For purposes of this Regulation 201(B), “non-profit homes for the aged”, shall mean any residential care facility for the elderly, or skilled nursing facility for the elderly, 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 for the elderly means a health facility or a distinct part of a hospital which provides the following 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 for the elderly 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.~~ — Rental Units for which there is a Temporary Tenancy, as defined in R.M.C § 11.100.030(e);

~~D.C.~~ Rental Units that are lawful and in full compliance with Richmond Municipal Code Chapter 15.04.610.020, as amended, (formerly known as the “Small, Second Unit Ordinance of the City” (R.M.C § 11.15.04)), if the owner is the Primary Resident of the first, larger single family home; and

~~E.D.~~ 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; Amended December 15, 2021]*

# Amended Regulation 201

- **Temporary Tenancy was also removed from this section because Temporary Tenancies are not fully exempt from the Rent Ordinance per Richmond Municipal Code Section 11.100.040(a)(1)**

## Recommended Action

- AMEND Chapter 2 Regulations as indicated by staff's proposed amendments to Regulation 201.

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