City of Richmond
Rent Board Regulations for Richmond Municipal Code Chapter 11.100 Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance

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Note to the reader: These Regulations are intended to help clarify the meaning of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Richmond Municipal Code Chapter 11.100) and to explain how it will be implemented. However, a full understanding of the meaning of any individual regulation or set of regulations may require knowledge of both the Regulations and the Rent Ordinance and may also require knowledge of relevant aspects of State and Federal law. Rent Board staff will assist the public in understanding how to use and follow the regulations. Such assistance is not legal advice.

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Chapter 1: PURPOSE

100. Purpose of the Regulations of the Richmond Rent Board

The Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Richmond Municipal Code Chapter 11.100) ("Ordinance") governs the actions and regulations of the Richmond Rent Board. Section 11.100.060 (f) "Rules and Regulations" directs the Board to "issue and follow such rules and regulations, including those contained in this Chapter, as will further the purposes of the Chapter."

The Regulations of the Richmond Rent Board are intended to further the purposes of the Ordinance by establishing the standards and procedures the Board will follow in order to implement the Ordinance. The Regulations are intended to help clarify the meaning of the Ordinance and explain how it will be implemented. However, a full understanding of the meaning of any individual regulation or set of regulations may require knowledge of both the Regulations and the Ordinance and may also require knowledge of relevant aspects of State and Federal law.

Like all local ordinances, the Ordinance operates within the framework established by the laws of the State of California and the Constitution of the United States of America. Under Richmond Municipal Section 11.100.060 (r) "Conforming Regulations," should any part of the Ordinance be "declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by state or federal legislation," then the Board is empowered to "enact replacement regulations consistent with the intent and purpose of the invalidated provision and applicable law."

[Adopted February 21, 2018]

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Chapter 2: APPLICABILITY

200. Purpose

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

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

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

A. Rental Units in hotels, motels, inns, tourist homes and rooming and boarding houses that are rented primarily to transient guests for a period of fewer than 14 days;

B. Rental Units in any hospital, convent, monastery, extended medical care facility, asylum, or non-profit home for the aged, or dormitory owned and operated by an accredited institution of higher education;

C. Rental Units for which there is a Temporary Tenancy, as defined in R.M.C § 11.100.030(q);

D. Rental Units that are lawful and in compliance with the Small, Second Unit Ordinance of the City (R.M.C § 11.15.04) if the Primary Residence is occupied by the property owner; and

E. Rental Units where the Rental Unit is the Primary Residence of the property owner and the property owner shares with a Tenant(s) a bathroom or kitchen.

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

201.5 Rooming and Boarding Houses

A. For purposes of Regulation 201, Rooming and Boarding house(s) shall mean any building or portion thereof other than a hotel containing at least five (5) rooms individually offered for rent or rented to at least five tenants under separate Rental Housing Agreements.

B. Where any building, structure, or part thereof is considered a Rooming and Boarding house, each room shall be treated as an individual Rental Unit and must be individually registered with the Rent Program, in a manner consistent with Chapter 4 of these Regulations.

C. Use of a single Rental Housing Agreement shall not be dispositive in determining whether a building, structure, or part thereof is a Rooming and Boarding house. Rather, the following factors shall be considered by the Rent Program when determining whether a building, structure, or part thereof is a Rooming and Boarding house:

a. Whether the Landlord or Tenant maintains control over Tenant Replacement;

b. Whether there is a single or multiple Rental Housing Agreement(s);

c. The relationship between the Tenants of the Rooming and Boarding house;

d. How Rent is distributed, collected, and/or paid to the Landlord;

e. Access to common areas and/or housing services; and

f. The period of occupancy set forth in each single or multiple Rental Housing Agreement.

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

[Adopted July 18, 2018]

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

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

A. Rental units in which a tenant household holds a Section 8 Housing Choice Voucher and where the rent not does exceed the Payment Standard as published by the U.S. Department of Housing and Urban Development.

B. Rental units for which the rent is subsidized by the Project-Based Section 8 Program

C. Rental units that are "rent restricted" in a Low Income Housing Tax Credit Program Project. "Rent Restricted" means the rent charged for the unit is affordable for a qualifying Tenant pursuant to the Regulatory Agreement.

D. Rental units for which the rent is subsidized by the Section 202 Supportive Housing for the Elderly Program

E. Rental units that are "rent restricted" under a regulatory agreement between a governmental agency and a property owner. "Rent Restricted" means the rent charged for the unit is affordable for a qualifying Tenant pursuant to the Regulatory Agreement.

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

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

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

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

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

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

(1) Timely payment of all owing Residential Rental Housing Fee. For purposes of this provision, a payment shall be considered timely where a property owner remits payment of the Residential Rental Housing Fee within 30 calendar days from the date the Rent Program sends the invoice. Where there is a dispute in the amount owed, payment shall be considered timely where the owner remits payment of the Residential Rental Housing Fee within 30 calendar days from the date the Rent Program sends the amended invoice. However, where the dispute is wholly concerned with assessed late fees, payment shall be considered timely where the owner remits payment of the Residential Rental Housing Fee within 5 calendar days from the date the Rent Program sends the amended invoice or 30 calendar days from the date the Rent Program sent the initial invoice, whichever is later. If a dispute does not result in an amended invoice, payment shall be due within 30 calendar days from the date the Rent Program sent the initial invoice;

(2) Payment of the Business License Tax pursuant to Richmond Municipal Code Section 11.100.060(l)(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 agendize 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]

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Chapter 3: RENT BOARD

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Chapter 4: REGISTRATION AND FEES

400. Purpose

The Rent Board finds that in order to monitor compliance with Annual General Adjustments and provide for Individual Rent Adjustments as required under the Rent Ordinance it is essential that registration of Rental Units include information on Base Rents and notification of increases. The purpose of this Chapter 4 is to enable the Rent Board to monitor and control allowable rents as mandated by the Ordinance, and to charge and collect fees for the purposes of covering the cost of administering the Ordinance. All registration requirements are subject to California Civil Code Section 1947.7 et.seq, as may be amended.

[Adopted February 21, 2018]
[Amended June 20, 2018]

401. Establishment of Base Rent

A. The rent in effect on July 21, 2015 is the Base Rent. If there was no rent in effect on that date, the Base Rent is the rent charged on the first date that rent was charged after that date.

B. For tenancies that commenced after July 21, 2015, the Base Rent is the initial rental rate in effect on the date the tenancy begins. “Initial rental rate” is defined under Section 700(B).

[Adopted February 21, 2018]

402. Required Rent Registration

A. Only tenancies in Controlled Rental Unit(s) need to be Registered with the Richmond Rent Board. A Controlled Rental Unit is properly Registered in accordance with this Chapter if the Landlord or Landlord's representative has:

(1) Filed with the Board completed Tenancy Registration Forms provided by the Board for the Controlled Rental Unit and all the Controlled Rental Units on the same property that include:
   a. The addresses of all Controlled Rental Units on the same property;
   b. The name and address of the Landlord and/or property manager;
   c. The date the current tenancy began and, for all tenancies that began after December 30, 2016, an explanation of the circumstances of the termination of the previous tenancy sufficiently detailed to demonstrate whether the Controlled Rental Unit(s) qualifies for a vacancy rent increase or not, as described in Chapter 7 Vacancy Rent Increases;

d. The Base Rent currently in effect for each individual Controlled Rental Unit and the housing services included in the rent or the reason the Controlled Rental Unit(s) is exempt pursuant to Regulation 201, Regulation 202, and Regulation 203 and has no current Base Rent;
e. The number of Tenants occupying the Controlled Rental Unit(s) and Tenants names; and
f. Such other information reasonably requested by the Rent Program.

(2) Paid to the City of Richmond the Residential Rental Housing Fee, Business License Tax, and any other fees due for the Controlled Rental Unit and all the Controlled Rental Units in the same property; and

(3) Filed with the Board, for the Controlled Rental Unit and all the Controlled Rental Units in the same property, notification of all termination of tenancies, subsequent changes in the provision of Housing Services, and rent increases if required pursuant to Regulation 603 and Regulation 1001.

B. In designating a Controlled Rental Unit as properly Registered, the Board's intent is to facilitate the Rent Registration and individual adjustment of Maximum Allowable Rent processes and the dissemination of information regarding the Registration of Controlled Rental Unit. Such designation shall not be construed as the Board's certification of the lawful Base Rent, current Maximum Allowable Rent or any other information provided on the rent Registration Statement. Nothing in this Regulation shall preclude the Board nor any person from challenging the accuracy of any information provided in any Registration Statement or declaration in the context of any proceeding or action.

C. A Landlord shall be found in substantial compliance with Registration requirements when:
(1) The Landlord has made a good faith effort to comply with the Richmond Fair Rent, Just Cause For Eviction And Homeowner Protection Ordinance and Richmond Rent Board Regulations concerning Registration sufficient to reasonably carry out the intent and purpose of the Richmond Fair Rent, Just Cause For Eviction And Homeowner Protection Ordinance and Regulations; and
(2) The Landlord has cured any defect in compliance in a timely manner after receiving notice of a deficiency from the Board.

[Adopted February 21, 2018]
[Amended September 19, 2018]

403. Changes in Exempt Status

A. Within sixty (60) calendar days of the date a Rental Unit formerly exempt from the rent control provisions of the Ordinance (Section 11.100.030(d) (1)-(6)) becomes a Controlled Rental Unit under the Ordinance, the Landlord shall file an initial registration statement, or an amended registration statement if an initial registration statement has been previously filed, for the Rental Unit.

B. Within sixty (60) calendar days of the date a Controlled Rental Unit becomes exempt from rent control under the Ordinance, the Landlord shall notify the Board in writing of the exempt status of the Rental Unit and the basis for the exemption.

C. Within thirty (30) calendar days after the filing of a new rent registration statement, the Board shall provide a true and correct copy of said statement to the occupant of the respective unit.

[Adopted February 21, 2018]

404. Notification of Changes of Name or Address of Landlord and/or Property Manager

A. Within sixty (60) calendar days of any change in the owner and/or property manager of a Rental Unit, the Landlord shall notify the Board in writing of the change.

B. Within sixty (60) calendar days of any change in the address of the owner and/or property manager of a Rental Unit, the Landlord shall notify the Board in writing of the change.

C. The Board shall send all notices to the Landlord at the most current address provided by the Landlord. Failure to receive a notice as a result of noncompliance with this section shall not be a good cause for purposes of waiving penalties owed to the Board.

[Adopted February 21, 2018]

405. Enrollment and Registration with the Richmond Rent Program

A. Prior to filing with the Board, or serving any Tenant, any notice of a rent increase, change in terms of tenancy or termination of tenancy, a Landlord must: (1) enroll with the Rent Board all of a Landlord's Rental Units, except for those that are fully exempted from the provisions of the Richmond Fair Rent, Just Cause For Eviction, and Homeowner Protection Ordinance pursuant to Regulation 201, and; (2) complete the Rent Registration requirements for tenancies in Controlled Rental Units pursuant to Regulation 402.

B. A Rental Property is enrolled in accordance with this Chapter if the Landlord or Landlord's representative has:

(1) Filed with the Rent Board completed enrollment forms using the form(s) provided by the Board for each property containing at least one Rental Unit. The form shall request information including:

a. Property ownership information;

b. Date of construction, date of property title change, number of units on the property, Business License number, and expiration date;
c. The type (e.g. single family home unit, Section 8 tenancy, newly constructed unit) and status (e.g. currently rented, not available for rent, owner occupied) of each dwelling unit on the property.
d. Such other information reasonably requested by the Rent Program.

C. In the event of property title transfer or other substantive change in information reasonably requested on the enrollment form, the Landlord shall file an amended enrollment form with the Board within 30 calendar days of the effective date of the change.

[Formerly Regulation 17-10; adopted September 20, 2017]
[Amended September 19, 2018]

406. Failure of a Landlord to Enroll, Register, and/or File

If a Landlord has failed to: (1) enroll a Rental Unit with the Rent Board as provided in Regulation 405; (2) register a tenancy in a Controlled Rental Unit with the Rent Board as provided in Regulation 402 and Regulation 405; and/or (3) file with the Board a notice of a rent increase, change in terms of tenancy, or termination of tenancy as provided in Regulation 603 and Regulation 1001 a Tenant in an unlawful detainer action may obtain from a Rent Program staff member a Certification stating that to the best of the knowledge of the Rent Board staff, the Rental Unit was not enrolled, the tenancy in a Controlled Rental Unit was not registered, and/or the required notice was not filed with the Rent Board in accordance with this Regulation, and assert the aforementioned noncompliance as an affirmative defense in an unlawful detainer action.

[Formerly Regulation 17-10; adopted September 20, 2017]
[Amended September 19, 2018]

407-415. (RESERVED)

416. Authorization of Petitions for Rent Withholding

A. Tenants seeking authorization to withhold rent pursuant to R.M.C §11.100.060(s), must file a petition provided by the Rent Program. If the petition to withhold rent is based on a Landlord's failure to pay the Residential Rental Housing Fee and such a petition implicates the exemption status of the challenged Rental Unit or property, the Tenant shall include a brief statement describing the basis of the petition and the evidence relied on to substantiate the assertion that there has been a failure to pay the Residential Rental Housing Fee.

B. A copy of any rent withholding petition based on a failure to pay the Residential Rental Housing Fee that implicates the exemption status of the challenged Rental Unit or property, shall be forwarded to the Executive Director and the Executive Director shall investigate or direct a Rent Program Staff member(s) to investigate the basis for the petition and prepare a report stating the findings of the investigation. Such investigation may include, but is not

limited to, inspection of the property, investigation of public's records, and any other reasonable means ascertaining the status of the property.

C. Submittal of petitions, conducting of hearings, and requesting appeals must be performed in a manner consistent with Chapter 8 of these Regulations.

[Adopted June 20, 2018]

417. Parties

Specific only to petitions brought under Regulation 416 or Regulation 206, the parties to a proceeding on a rent withholding petition shall be the petitioner, the Tenants of any affected unit, the Landlord, and the Rent Board as represented by the administrative staff member(s).

[Adopted June 20, 2018]

418. Board Action in lieu of Tenant Petition

Pursuant to R.M.C § 11.100.060(s) and this Regulation, in lieu of the a Tenant petition filed under Regulation 416, the Board is authorized to initiate the rent withholding process or may continue with a proceeding initiated by a Tenant even if the petitioner requests a dismissal, or fails to prosecute the petition.

[Adopted June 20, 2018]

419. Failure to Comply with Reporting Requirements Set Forth in Richmond Municipal Code Section 11.100.060(s)

In determining whether a Landlord has failed to comply with reporting requirements set out in Richmond Municipal Code Section 11.100.060(s), the Hearing Officer shall apply the criteria for substantial compliance consistent with Civil Code 1947.7, et.seq, as amended.

[Adopted June 20, 2018]

420. Compliance with Reporting Requirements Set Forth in Richmond Municipal Code Section 11.100.060(s), Prior to a Hearing

Prior to the hearing, if the Hearing Examiner determines that the Landlord has complied with the reporting requirements set out in Richmond Municipal Code Section 11.100.060(s), and as specifically alleged by the petition or the action, the petition shall be dismissed and all parties shall be notified of the dismissal.

[Adopted June 20, 2018]

421. Decisions on Tenant Petitions for Rent Withholding

A. At the conclusion of the hearing, the Hearing Examiner shall issue a written decision in a manner consistent with Chapter 8 of these Regulations.

B. The Hearing Examiner's written decision shall contain findings of fact and legal conclusions. If the Hearing Examiner determines that the Landlord has willfully and knowingly failed to

meet the reporting obligations set forth in Richmond Municipal Code Section 11.100.060(s), and/or specified in the Petition, the Hearing Examiner shall issue an order directing the Landlord to comply with said reporting obligations, including payment of the Residential Rental Housing Fee, and authorize the petitioning Tenant(s) to withhold payment of rent beginning with the next regularly scheduled rent payment after the effective date of the order, until such time as all affected units on the property are brought into compliance. Any rent withheld pursuant to this section may be paid into escrow pursuant to Regulation 424.

C. Rent withholding orders shall become effective 30 days following the date on which the decision is mailed to the parties unless, within that time, the Landlord complies with the reporting requirements alleged to have been violated or asserts a timely appeal. Where a Landlord files an appeal, the rent withholding order will be stayed pending appeal.

D. Notwithstanding the appeals process set forth in Chapter 8 of these Regulations, in the event that the Rent Board initiates a hearing pursuant to Regulation 849 or is a party to a hearing based on a petition relating to reporting requirements set forth in Richmond Municipal Code Section 11.100.060(s), a Hearing Examiner's decision on the issues presented shall be considered final and the parties administrative remedies deemed exhausted.

[Adopted June 20, 2018]

418-423. (RESERVED)

424. Escrow Account for Rent Withholdings

A. Consistent with Regulations 852 through 857, where a Hearing Examiner issues an order to withhold rent, the Hearing Examiner may also order that all withheld rent be paid into an escrow account maintained by the Board to be collected and held until such a time the Landlord complies with the Hearing Examiner's decision. When the Hearing Examiner has received sufficient proof that the Landlord has complied with the Hearing Examiner's order, the Hearing Examiner shall determine what, if any, portion of the withheld rent is owed to the Landlord and shall have the monies distributed from the escrow account accordingly.

B. In no event shall the amount of rent ordered to be withheld and deposited into escrow be construed as a determination of the lawfulness of the amount of rent being demanded or charged by the Landlord.

[Adopted June 20, 2018]

Chapter 5: ELLIS: REGARDING THE WITHDRAWAL OF RENTAL UNITS FROM THE RENTAL MARKET

500. Purpose and Scope

A. The Rent Board of the City of Richmond hereby acts pursuant to Government Code Chapter 12.75 (commencing with Section 7060 et seq.) to establish certain requirements, procedures, restrictions and mitigations concerning the withdrawal of residential Rental Units from rent or lease in accordance with Government Code Section 7060. The Rent Board also acts to protect the health, welfare and safety of its citizens. In adopting these provisions, it is the intent of the Rent Board to accord Tenants the maximum protections which are available pursuant to Government Code Section 7060 and to provide certain additional rights and protections necessary to deal with the housing shortage in the City of Richmond.

B. Nothing in this Regulation shall otherwise diminish any power which currently exists or which may hereafter exist in the City to grant or deny any entitlement to the use of, or physical modifications to, real property, including, but not limited to, building, planning, zoning and subdivision map approvals. Nothing in this Regulation shall entitle an owner of property which has been withdrawn from rent or lease to any special consideration in the granting of any entitlement to the use of said property, nor shall the fact that the property may be vacant be considered as a basis for granting any requested change in use.

[Formerly Regulation 17-07; Adopted September 20, 2017]

501. Definitions

For the purposes of this Chapter 5, the following words and phrases shall have the meanings set forth below.

A. "Owner" means only the holder of record title having the entire legal and equitable title to the property, or the successor in interest thereto. It shall not include the lessor, sublessor, agent or representative of the Landlord. It is the intention of this Regulation to permit only the "owner" as defined herein to have and exercise the privileges and responsibilities set forth in this Regulation.

B. "Tenant" means any renter, Tenant, subtenant, lessee, or sublessee of a Rental Unit, or successor to a Tenant’s interest, or any group of Tenants, subtenants, lessees, or sublessees of any Rental Unit, or any other person entitled to the use or occupancy of such Rental Unit and includes a former Tenant displaced by the withdrawal of an accommodation from rent or lease.

C. "Accommodations" means either of the following:

(1) The Rental Units in any detached physical structure containing four or more residential units.

(2) With respect to a detached physical structure containing three or fewer residential Rental Units, the residential Rental Units in that structure and in any other structure located on the same parcel of land, including any detached physical structure specified in subparagraph (1).

D. "Rent control" means the system of controls on residential rents and evictions established pursuant to the City of Richmond's Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance, including all amendments thereto, and any successor ordinance or charter provision regulating residential rents in Richmond ("Fair Rent Ordinance.")

E. "Withdrawal" means the eviction of all Tenants from all Rental Units on a particular property through compliance with the requirements of this Regulation. Such withdrawal results in a removal of Rental Units from the housing market under the terms and conditions set forth in this Regulation, and as such is a limited form of removal by means other than conversion or demolition. To the extent that owners of withdrawn units desire to convert such units to other uses, including but not limited to condominiums, community apartments, stock cooperatives, other forms of owner-occupancy, or other change in use, or to permanently remove them from the rental housing market by demolition, or otherwise remove them by means other than withdrawal, such owners must obtain all required permits and approvals from the City in addition to complying with the provisions of this Regulation.

[Formerly Regulation 17-07; Adopted September 20, 2017]

502. Restrictions and Responsibilities Concerning Withdrawn Accommodations

Any accommodations which have been withdrawn from rent or lease and which were subject to rent control at the time of withdrawal shall be subject to the following conditions and restrictions if said accommodation is again offered for rent or lease:

A. For all tenancies created after December 31, 2002, and commenced during either of the time periods described in subsections (1) and (2) below, the accommodations shall be offered and rented or leased at the lawful rent in effect at the time any notice of intent to withdraw the accommodations was filed with the Rent Board plus annual general adjustments available under the rent control system.

(1) The five-year period after any notice of intent to withdraw the accommodations is filed with the Rent Board, whether or not the notice of intent is rescinded or the withdrawal of the accommodations is completed pursuant to the notice of intent.

(2) The five-year period after the accommodations are withdrawn.

(3) This section shall prevail over any conflicting provision of law authorizing the Landlord to establish the rental rate upon the initial hiring of the accommodations.

B. If the accommodations are offered again for rent or lease for residential purposes within two years of the date the accommodations were withdrawn from rent or lease, the following provisions shall apply:

(1) The owner of the accommodations shall be liable to any Tenant who was displaced from the property by said withdrawal for actual and punitive damages. Any action by a Tenant pursuant to this paragraph shall be brought within three years of the Tenant's displacement. However, nothing in this paragraph shall preclude a Tenant from pursuing any additional or alternative remedy available under law, including, but not limited to, general damages. Nothing in this paragraph shall limit or otherwise affect any relocation benefits to which the Tenant is entitled under any other law or ordinance.

(2) The Board may institute a civil proceeding against any owner who has again offered accommodations for rent or lease subject to this section for exemplary damages for displacement of Tenants. Any action brought by the Board shall be brought within three years of the withdrawal of the accommodations. Nothing in this section shall be construed to limit any other powers of the Board to pursue litigation in any way involving the subject property.

(3) Any owner who offers accommodations again for rent or lease shall first offer the unit for rent or lease to the Tenant displaced from that unit by the withdrawal, if the Tenant has advised the owner in writing within 30 days of the displacement of his or her desire to consider an offer to renew the tenancy and has furnished the owner with an address to which that offer is to be directed. That Tenant or former Tenant may advise the owner at any time during the period of eligibility for renewed tenancy of any change in address to which the offer is to be directed. The owner shall also notify the Board of the owner's intent to again offer the accommodations for rent or lease at the time the Tenant is notified. In addition to the notice required to be given to the Tenant, the Board shall be deemed to be an agent of the Tenant and may request that an offer to renew the tenancy be extended to the Tenant. However, nothing in this section shall be construed to relieve the owner of the obligation to directly contact the Tenant or former Tenant and to advise the Tenant that said accommodations are again offered for rent or lease. Notice shall be on a Rent Program form.

(4) If the owner offers the accommodations for rent or lease pursuant to this Section 502(B), and the Tenant has advised the owner of a desire to consider an offer to renew the tenancy, then the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced Tenant. The terms shall be substantially equivalent to those formerly existing during the tenancy. This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced Tenant at the address furnished to the owner as provided in this subsection, and shall describe the terms of the offer. A copy of the notice with proof that it has been mailed to the displaced Tenant shall be filed with the Board at the time notice is mailed to the Tenant. The displaced Tenant shall have 30 days from the deposit of the offer in the mail to accept by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid. The Board upon learning of the owner's intent to again offer the accommodation for rent or lease shall also attempt to notify each Tenant by mail and may further publish notices or

advertisements in newspapers or use other reasonable means to attempt to notify the Tenants of the availability of the accommodations.

C. An owner who offers accommodations again for rent or lease within ten years of the date on which they are withdrawn shall notify the Board of an intention to offer the accommodations again for residential rent or lease. A copy of the notice served on the Board shall also be mailed by the owner to each Tenant at that Tenant's last known address. The Board may also attempt to notify each Tenant by mail and may further publish notices or advertisements in newspapers or use other reasonable means to attempt to notify the Tenants of the availability of the accommodations. If the displaced Tenant so requests in writing within 30 days after the owner has notified the Board of the intent to again offer the premises for rent or lease, the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced Tenant. In the event that the owner fails to comply with this subsection, the owner shall be liable to any affected Tenant for general damages and punitive damages in an amount which does not exceed the contract rent for six months.

If the accommodations are demolished, and new accommodations are constructed on the same property, and offered for rent or lease within five years of the date the accommodations were withdrawn from rent or lease, the newly constructed accommodations shall be subject to rent control notwithstanding any provision of law which otherwise exempts newly constructed units. The Board shall have the power to set rents which will provide a fair return and the Landlord shall have the burden of establishing by competent evidence that the rent schedule proposed by the Landlord is necessary to provide a fair return.

[Formerly Regulation 17-07; Adopted September 20, 2017]

503. Notice Requirements

A. An owner who intends to withdraw an accommodation from rent or lease shall provide the following notices. None of the notices permitted or required by this Section 503 shall be valid if served or filed prior to December 30, 2016.

(1) Not less than 120 days prior to the date upon which the accommodations are to be withdrawn, the owner or owner's designated agent shall notify the Board of the intention to withdraw those accommodations from rent or lease. The notice shall be on a Rent Program form, and shall contain statements, under penalty of perjury, providing information on the number of accommodations, the address or location of those accommodations, the name(s) of the Tenant(s) of the accommodations and the Rent applicable to each Rental Unit. The notice required to be filed by this subsection shall be maintained by the Board in files other than those maintained pursuant to the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance. The information contained in the notice required by this Section 503(A)(1) respecting the name(s) of the Tenant(s), the rent applicable to any unit, or the total number of units, is confidential and shall be treated as confidential information for the purposes of the Information Practices Act of 1977, as contained in Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code. The

Board shall, to the extent required by the preceding sentence, be considered an "agency" as defined by subdivision (b) of Section 1798.3 of the Civil Code.

(2) At the time notice is given to the Board as required in Section 503(A)(1), the owner or owner's designated agent shall provide written notice to any Tenant to be displaced that the Board has been notified pursuant to Section 503(A)(1), that the notice specified the name of the Tenant and the amount of Rent paid by the Tenant as an occupant of the accommodation and the amount of rent the owner specified in the notice to the Board. The notice shall also contain a statement of the Tenant's rights to regain possession and to damages, in the event the accommodation is again offered for rent or lease, under Section 502 of this Chapter. A copy of the notice shall be filed with the Board with proof of service upon each Tenant.

(3) At the time the notice specified in Section 503(A)(1) is filed with the Board, the owner or in the case of a corporation, an individual designated to sign on behalf of the corporation, shall sign and notarize a memorandum of the notice required by Section 503(A)(1) summarizing its provisions, other than the confidential provisions, on a Rent Program form. The owner or the owner's designated agent shall record with the County Recorder the aforementioned memorandum, and file a copy with the Rent Program. The owner or owner's designated agent shall also file with the Rent Program, a certificate, on a Rent Program form, that actions have been initiated as required by this Chapter 5 and other applicable law to terminate any existing tenancies. If the owner and/or the owner's designated agent has satisfied the requirements of Section 503(A)(1), 503(A)(2), and this Section 503(A)(3), the date upon which the accommodations are withdrawn from rent or lease for the purposes of this Regulation is 120 days from the last date the owner and/or the owner's designated agent has provided the Rent Program with all of the required documents described in Section 503(A)(1), 503(A)(2), and this Section 503(A)(3).

(4) No less than 120 days prior to the date upon which the accommodation is to be withdrawn, the owner or owner's designated agent shall provide written notice to each Tenant on the property of the owner's intent to withdraw said accommodation. Said notice shall contain a statement that the accommodation is withdrawn, that all of the accommodations on the parcel are being withdrawn, the date upon which the accommodation is to be withdrawn, that the owner has paid all fees due the City or the Board, and a statement that all Tenants are entitled to a Relocation Payment and the amount thereof pursuant to the City's Ordinance concerning Relocation Requirements for Tenants of Residential Rental Units (Chapter 11.102, Richmond Municipal Code) and implementing resolution ("Relocation Ordinance/Resolution"). The owner or owner's designated agent shall determine whether a member of the household of each unit can speak English and seek appropriate assistance in communicating the importance of the contents of the notice to any household whose members cannot speak English. The notice shall be served on each Tenant by either personal service or certified mail, return receipt requested. The notice shall advise the Tenant of the Tenant's rights to regain possession of the premises and to damages as set forth in Section 502 of this Chapter. A copy of this notice shall be filed with the Board. The notice shall be on a Rent Program form. A notice stating the owner's intent to withdraw the accommodation from rent or lease shall not be valid unless the Tenants of all of the units on the property are also served with notice that each of their units is to be withdrawn from rent or lease and unless all fees due the City or the Board pursuant to Section 506 of this Regulation have been paid.

(5) A notice of termination of tenancy having an effective date no earlier than 120 days after the date of service shall also be served on each Tenant at the same time the notice stating the intent to withdraw the premises from rent or lease is served on the Tenant pursuant to Regulation 503(A)(4).

(6) Not less than 120 days prior to the date upon which the accommodations are to be withdrawn, the owner or owner's designated agent shall provide two copies of a notice containing language substantially identical to the following: "I assert that I have lived in this unit at least one year prior to having been notified that I am to be evicted from this unit under the City of Richmond's Ellis Act Policy. I further assert that I am a disabled person under the meaning of California Government Code Section 12955.3. It is my understanding that I am entitled to one year's notice prior to surrendering this unit to its owner." With this notice, the Tenant shall be enabled by the owner to assert to both the owner and the Board that he/she/they are disabled.

(7) Not less than 120 days prior to the date upon which the accommodations are to be withdrawn, the owner or owner's designated agent shall provide two copies of a notice containing language substantially identical to the following: "I assert that I have lived in this unit at least one year prior to having been notified that I am to be evicted from this unit under the City of Richmond's Ellis Act Policy. I further assert that I am 62 years or older. It is my understanding that I am entitled to one year's notice prior to surrendering this unit to its owner." With this notice, the Tenant shall be enabled by the owner to assert to both the owner and the Board that he/she/they are 62 years or older.

(8) Not less than 120 days prior to the date upon which the accommodations are to be withdrawn, the owner or owner's designated agent shall provide two copies of a notice containing language substantially identical to the following: "I assert that I have lived in this unit at least one year prior to having been notified that I am to be evicted from this unit under the City of Richmond's Ellis Act Policy. I further assert that I have minor children residing in the household. It is my understanding that I am entitled to one year's notice prior to surrendering this unit to its owner." With this notice, the Tenant shall be enabled by the owner to assert to both the owner and the Board that he/she/they have minor children residing in the household.

(9) Not less than 120 days prior to the date upon which the accommodations are to be withdrawn, the owner or owner's designated agent shall provide two copies of a notice containing language substantially identical to the following: "I assert that I have lived in this unit at least one year prior to having been notified that I am to be evicted from this unit under the City of Richmond's Ellis Act Policy. I further assert that my household is a lower income household as that term is defined in California Health and Safety Code, section 50079.5. It is my understanding that I am entitled to one year's notice prior to surrendering this unit to its owner." With this notice, the Tenant shall be enabled by the owner to assert to both the owner and the Board that he/she/resides in a lower income household.

(10) If the Tenant is i) disabled, at least 62 years of age, has minor children residing in the household and/or the Tenant's household is a lower income household and (ii) has lived in his/her/their accommodations for at least one year prior to the date of delivery of the notice of intent to withdraw to the Board, then the date of withdrawal of the accommodations of that Tenant shall be extended to one year after the Tenant has delivered the notice specified in Regulation 503(A)(6), 503(A)(7), 503(A)(8), and 503(A)(9), to the owner or owner's designated agent and filed a copy with the Rent Board, provided that the Tenant gives written notice of his, her, or their entitlement to an extension to the owner or owner's designated agent within 60 days of the date of delivery to the Board of the notice of termination of tenancy pursuant to Richmond Municipal Code Section 11.100.050(a)(7).

(11) For those owners who have utilized a designated agent prior to September 19, 2018, in order to comply with provisions of Regulation 503, such use of a designated agent shall be sufficient to comply with the applicable provision of Regulation 503.

[Formerly Regulation 17-07; Adopted September 20, 2017]
[Amended September 19, 2018]

504. Financial Mitigation of Adverse Impact on Displaced Persons

A. The Tenants of any residential Rental Unit who are required to move as a result of the Landlord's withdrawal of the accommodation from rent or lease shall be entitled to Permanent Relocation Payment as provided in the Richmond Relocation Ordinance (RMC 11.102.)

B. The Landlord may rescind the notice of intent to withdraw the accommodation from rent or lease and the notice of termination of tenancy prior to any release of Permanent Relocation Payment to Eligible Tenants (as those terms are defined in Chapter 11.102, Richmond Municipal Code) by serving written notice stating such rescission on the Tenants. Subsequent to the release of any portion of the Permanent Relocation Payment to an Eligible Tenant, the Landlord may rescind the notice of intent to withdraw the accommodation from rent or lease and the notice of termination of tenancy only upon the written agreement of the Tenants to remain in possession of the Rental Unit. If the Eligible Tenants remain in possession of the Rental Units after service of a Landlord's written notice of rescission of the eviction, the Tenants shall provide an accounting to the Landlord of the amount of the Permanent Relocation Payment expended, return to the Landlord that portion of the Permanent Relocation Payment not expended, and assign to the Landlord all rights to recover the amount of Permanent Relocation Payment paid to third parties.

Failure of the owner to make any payment specified herein shall be a defense to any action to recover possession of a Rental Unit based upon the owner's intent to withdraw the accommodation from rent or lease. In addition, if Tenants of a Rental Unit who qualify for relocation assistance have vacated the unit as a result of a notice of intent to withdraw the accommodation from rent or lease, and the owner fails to make any payment specified herein, the owner shall be liable to the Tenants for three times the amount of the payment as well as reasonable attorneys fees.

[Formerly Regulation 17-07; Adopted September 20, 2017]

505. Recordation of Notice Regarding Continued Applicability of Controls Within 20 days of receipt of a notice issued by an owner pursuant to Section 503(A) of this Chapter, the Board may cause to be recorded with the County Recorder a notice which shall recite the fact that the Richmond Rent Board has determined to apply the constraints adopted pursuant to Government Code Section 7060.2 to successors in interest to the subject property. The notice shall specifically describe the real property where the accommodations are located, the date upon which the owner will withdraw the accommodations from rent or lease and the dates during which the constraints adopted pursuant to Government Code Section 7060.2 shall apply. If the date upon which the accommodations are to be withdrawn is subsequently altered or modified, the Board may record an amended notice. The filing of the notice described in this section shall not be construed as a finding by the Board that the actual or proposed withdrawal of the accommodations has been approved by the Board.

[Formerly Regulation 17-07; Adopted September 20, 2017]

506. Fees Payable to the City of Richmond or Richmond Rent Board The City or the Board may establish fees which shall be paid by any owner who exercises the privilege to withdraw accommodations from rent or lease. The City or the Board may set the fee so as to recover all costs of administering this Chapter. The fees shall be paid prior to the service of the notice set forth in Section 503 of this Chapter. In addition, prior to the service of the notice set forth in Section 503 of this Chapter, the owner shall have paid all business license taxes, Rental Inspection Fees, and Fire Prevention Services Fees, and all fees connected to the Fair Rent Ordinance, such as the Rental Housing Fee and any inspection fees. Failure to pay the fees prior to service of the notice shall invalidate the notice.

[Formerly Regulation 17-07; Adopted September 20, 2017]

507. Eviction Requirements In any action to recover possession of an accommodation subject to the terms of this Regulation, it shall be a defense if the owner has not fully satisfied all of the requirements of this Regulation including, but not limited to, compliance with all notice requirements, payment of fees to the City or the Board, and payment of the Relocation Payment to displaced Tenants.

[Formerly Regulation 17-07; Adopted September 20, 2017]

508. Severability If any provision of this Regulation is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Regulation which can be given effect without the invalid provision and therefore the provisions of this Regulation are severable.

[Formerly Regulation 17-07; Adopted September 20, 2017]

Chapter 6: ANNUAL GENERAL ADJUSTMENTS OF MAXIMUM ALLOWABLE RENTS

600. Purpose

The Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that no later than June 30 of each year the Board shall announce the percentage by which Rent for eligible Rental Units will be generally adjusted effective September 1 of that year. It further provides that the Annual General Adjustment shall equal one-hundred (100%) percent of the percentage increase in the Consumer Price Index (All Urban Consumers, San Francisco-Oakland-San Jose region, or any other successor designation of that index that may later be adopted by the U.S. Bureau of Labor Statistics)(CPI) as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the 12-month period ending as of March of the current year.

[Formerly Regulation 17-05; adopted June 21, 2017]

601. Conditions for taking Annual General Adjustment

A. A Landlord may increase Rent by the Annual General Adjustment for, only if the Landlord:

(1) Files a copy of the notice of the rent increase with the Board before serving the Tenant with such notice;

(2) Serves the Tenant with a legally required notice of a rent increase under State law;

(3) Files with the Board a copy of the proof of service of such notice to the Tenant. Richmond Municipal Code Section 11.100.060(s)(1); and

(4) The landlord is otherwise entitled to the adjustment pursuant to the provisions of the Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance, and any other applicable Regulation.

[Formerly Regulation 17-05; adopted June 21, 2017]

602. Banking

A. A Landlord may, but is not required to, increase Rent by the Annual General Adjustment as provided by Chapter 6 of these Regulations.

B. To the extent a Landlord has not increased Rent up to the Maximum Lawful Rent level, the Landlord shall have the ability to apply deferred Annual General Adjustment rent increases; however, if the proposed rent increase for the Tenant household exceeds the current year Annual General Adjustment plus five percent (5.0%) of the rental amount charged to the Tenant household at any time during the 12 months prior to the effective date of the proposed increase, either in and of itself or when combined with any other rent increases for the 12 months prior to the effective date of the increase, the proposed rent increase shall be void.

C. In the event that a current year's Annual General Adjustment exceeds five percent (5.0%), a Landlord may not apply any deferred Annual General Adjustment increases until the next Annual General Adjustment increase less than five percent (5.0%) is effective.

D. "Banking" of Annual General Adjustment Increases shall be calculated based on compound addition. For example, an increase of three percent (3.0%) plus three point four percent (3.4%) is equal to a combined increase of six point five six percent (6.56%), not six point four percent (6.4%).

E. Nothing in this Regulation shall preclude a Landlord from petitioning for a Rent Increase in excess of the Annual General Adjustment.

F. This Regulation shall become effective September 1, 2018.

[Formerly Regulation 17-09; adopted December 20, 2017; Amended November 14, 2018]

603. Notices of Rent Increase

A. Controlled Rental Units.

Landlords of Controlled Rental Units, as defined in the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code, Section 11.100. 030 (d), except those Rental Units that are "exempt" pursuant to Rent Board regulation, or are described in 603(B) of this Regulation, shall file with the Board within ten (10) business days *after* the Landlord has served a Tenant with a notice of a rent increase, a copy of such notice with a proof of service, including time and date of service, using, absent extraordinary circumstances, the appropriate online form on the Rent Program website. If a Landlord does not file with the Board the notice and proof of service as provided in this Section, the rent increase shall be deemed null and void.

B. Rental Units Exempt from the Rent Control Provisions of the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance.

Landlords of Rental Units (a) which a government unit, agency, or authority owns, operates or manages, (b) in which governmentally subsidized Tenants reside if applicable federal or state law or administrative regulation specifically exempts such Units from rent control, (c) exempt from rent control pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code, section 1954.52) or (d) that are permitted, small second housing units built in compliance with the Small, Second Unit Ordinance of the City of Richmond (Section 15.04.810, RMC) [Section 11.100.030 (d) (3)(4) and (5)] are **not** required to file with the Board a copy of a notice of rent increase.

[Formerly Regulation 17-10; adopted September 20, 2017]
[Amended September 19, 2018]

604. (RESERVED)

605. Annual General Adjustment Order for 2017

The percentage increase in the CPI from 2016-2017 is 3.4%, and thus the following Annual General Adjustment applies:

A. The 2017 Annual General Adjustment is not to exceed 3.4%.

B. The cumulative increase in the Maximum Allowable Rent as defined in Section 11.100.030(g), RMC, for tenancies in effect prior to September 1, 2015, is 6.56%.

C. A Landlord may increase Rent by the 2017 Annual General Adjustment for tenancies in effect prior to September 1, 2016, only if the Landlord is in compliance with Regulation 601.

[Formally Regulation 17-05; Adopted June 21, 2017]
[Amended June 19, 2019]

606. Annual General Adjustment Order for 2018

The percentage increase in the CPI from 2017-2018, is 3.6% and thus the following Annual General Adjustment shall apply:

A. The 2018 Annual General Adjustment is not to exceed 3.6%.

B. The Annual General Adjustment granted by this Regulation shall become effective on September 1, 2018, provided that the landlord is otherwise entitled to the adjustment pursuant to the provisions of the Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance, and any other applicable Regulation.

C. Where the landlord is entitled to the adjustment pursuant to the provisions of the Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance, and any other applicable Regulation, the Annual General Adjustment granted by this Regulation does not automatically provide for a rent increase. A Landlord may increase Rent by the 2018 Annual General Adjustment for tenancies in effect prior to September 1, 2017, only if the Landlord is in compliance with Regulation 601.

[Formerly Regulation 17-11; adopted June 20, 2018]

607. Annual General Adjustment Order for 2019

The percentage increase in the CPI from 2018-2019, is 3.5% and thus the following Annual General Adjustment shall apply:

A. The 2019 Annual General Adjustment is not to exceed 3.5%.

B. The Annual General Adjustment granted by this Regulation shall become effective on September 1, 2019, provided that the Landlord is otherwise entitled to the adjustment

pursuant to the provisions of the Richmond Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance, and any other applicable Regulation.

C. Where the Landlord is entitled to the adjustment pursuant to the provisions of the Richmond Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance, and any other applicable Regulation, the Annual General Adjustment granted by this Regulation does not automatically provide for a rent increase. A Landlord may increase Rent by the 2019 Annual General Adjustment for tenancies in effect prior to September 1, 2018, only if the Landlord is in compliance with Regulation 601.

[Adopted June 19, 2019]

Chapter 7: Vacancy Rent Increases

700. New Maximum Allowable Rent

Pursuant to Civil Code Section 1954.50, et seq. as amended,, the Landlord may establish the lawful Maximum Allowable Rent for any Controlled Rental Unit consistent with this Regulation. The new rent level shall thereafter be the new Maximum Allowable Rent for the unit for all purposes including, but not limited to, the computation of all future rent adjustments. The unit shall otherwise remain controlled by the Ordinance and all other regulations of the Rent Board.

A. In these Regulations the terms "new Maximum Allowable Rent" and “initial rental rate” shall have a meaning consistent with Richmond Municipal Code Section 11.100.070 et seq, as amended, and shall refer to the rent established by the Landlord for a Tenant whose tenancy becomes effective after July 21, 2015. For tenancies commencing on or after July 21, 2015, the "initial rent" for a Rental Unit shall be the monthly rent established by the parties at the commencement of the most recent tenancy. Where the rental agreement includes periods for which the Tenant pays reduced, discounted or "free" rent, the Maximum Allowable Rent is calculated as the average of the monthly payments made during the initial term of the agreement or, in the case of a month-to-month tenancy, during the first twelve months of the tenancy.

[Adopted February 21, 2018]
[Amended August 15, 2018]

701. Vacancy Rent Levels

A. Commencing July 21, 2015, a Landlord may establish the initial rent rate for all new tenancies consistent with Civil Code Section 1954.50, et seq. as amended, and any Board regulations enacted consistent therewith, except where any of the following applies:

(1)

a. The previous tenancy has been terminated by the Landlord pursuant to Civil Code Section 1946, or;

b. The previous tenancy has been terminated upon a change in terms of tenancy noticed pursuant to Civil Code Section 827, except a change permitted by law in the amount of rent or fees or resulting from the owner's termination of or failure to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified Tenant of the unit. A tenancy shall be presumed to have terminated upon a change in terms of tenancy if the Tenant(s) vacate(s) the Rental Unit within twelve months of the Landlord's unilateral change in the terms of the rental agreement. Absent a showing by the Landlord that the Tenant(s) vacated for reasons other than the change in the terms of the rental agreement, the initial rental rate for the new tenancy shall be no greater than the most recent Maximum Allowable Rent (prior to the new tenancy).

(2) A new tenancy begun within three years of the date that the owner terminated or failed to renew a contract or recorded agreement with a Housing Authority or any other governmental agency that provided for a rent limitation to a qualified Tenant of the unit unless the new tenancy is exempted from this limitation pursuant to· Civil Code Section 1954.53(a)(l)(B). During the three year period, the rental rate for any new tenancy established in that vacated unit shall be at the same rate as under the terminated or non-renewed contract or recorded agreement, increased by any subsequently authorized Annual General Adjustments.

(3) The Landlord has otherwise agreed by contract with a public entity to limit or otherwise restrict rent levels in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of title 7 of the Government Code.

(4) The dwelling or unit has been cited in an inspection report by the appropriate government agency as containing serious health, safety, fire or building code violations as defined by Health and Safety Code Section 17920.3 excluding those caused by disasters or damages incurred by the Tenant or associated occupants, guests, or pets, the citation was issued at least sixty (60) calendar days prior to the date of the vacancy, and the cited violation had not been abated when the prior Tenant vacated and has remained unabated for at least sixty (60) calendar days, unless the time for correction was extended by the agency that issued the citation.

(5) The prior Tenant was the spouse, registered domestic partner, child, parent or grandparent of a Landlord who recovered possession of the unit pursuant to RMC 11.100.050(a)(6).

(6) The prior Tenant vacated the property as a proximate result of the conduct by the Landlord such that the vacancy is non-voluntary, except for evictions for just cause as provided under RMC 11.100.050.

[Adopted February 21, 2018]

702. Voluntary and Non-Voluntary Vacancies

A. For the purposes of this Chapter, a "voluntary" vacancy shall mean a vacancy that results from the independent choice of the Tenant, without intimidation, pressure, or harassment. For purposes of this section “abandonment" is defined as the Tenant's independent choice, without intimidation, pressure, or harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the Landlord terminates the tenancy pursuant to Civil Code Section 1951.3. Abandonment is considered voluntary.

B. Non-Voluntary Vacancy means a vacancy resulting from conduct by the Landlord which constitutes:

(1) Acts prohibited by law;

(2) Constructive eviction;

(3) A breach of the covenant of quiet enjoyment of the property;

(4) Harassment;

(5) Threats to withdraw the property from the rental market pursuant to the Government Code Section 7060-7060.7 (Ellis Act) and Rent Board Regulation 17-07; and,

(6) Notices of any kind that negligently or intentionally misrepresent to a Tenant that the Tenant is required to vacate the Rental Unit.

C. "Harassment" shall be defined as a knowing and willful act or course of conduct directed at a specific Tenant or Tenants which:

(1) Would cause a reasonable person to fear the loss of use or occupancy of a Rental Unit or part thereof, or of any service, privilege or facility connected with such use or occupancy, without legitimate reason or legal justification; or

(2) Materially interferes with a Tenant's peaceful enjoyment of the use and/or occupancy of a Rental Unit; or

(3) A single act may constitute harassment for purposes of determining whether a vacancy was voluntary. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

(4) Acts constituting harassment include, but are not limited to the following:

a. Eviction on the grounds of an Owner Move-In pursuant to Ordinance section 11.100.050(a)(6) which was not in good faith.

b. The threat or repeated threat to evict a Tenant in bad faith, under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a Rental Unit.

c. Reduction in housing services under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a Rental Unit;

d. Reduction in maintenance or failure to perform necessary repairs or maintenance under circumstances evidencing the Landlord's purpose to cause the Tenant to vacate a controlled Rental Unit;

e. Abuse of the Landlord's right of access into a residential unit within the meaning of California Civil Code §1954; or

f. Verbal or physical abuse or intimidation.

(5) A vacancy occurring as result of the filing of a Notice of Intent to Withdraw under Government Code Section 7060-7060.7 (the Ellis Act and Rent Board Regulation 17-07) shall not be considered voluntary.

(6) A tenancy and subsequent vacancy created as a sham shall not be considered voluntary. A sham tenancy may be presumed where the occupant did not have a bona fide Landlord-Tenant relationship with the Landlord, or occupied the property for less than four (4) months and principally for the purpose of vacating the property to establish eligibility for vacancy-related increase.

[Adopted February 21, 2018]

703. No Vacancy Rent Increase for Original Occupants

A. The Maximum Allowable Rent for a Controlled Rental Unit occupied by an Original Occupant shall not be increased under the provisions of this Regulation while the existing Tenant occupies the unit as their Primary Residence as defined in Richmond Municipal Code Section 11.100.030(h). For purposes of this Regulation, the term “original occupant" as used herein includes any Tenant in the Rental Unit, with the Landlord's knowledge, was residing in the unit on or before July 21, 2015, or when the Landlord last established an initial rent for the unit.

No existing Tenant shall be required to vacate a Rental Unit as a result of a covenant or condition in a rental agreement requiring the Tenant to surrender possession except as permitted under Richmond Municipal Code Section 11.100.050(8).

[Adopted February 21, 2018]
[Amended August 15, 2018]

703.5. Challenging a Tenant’s Occupancy Status

A. A Landlord may file a petition contesting whether an original occupant maintains a Primary Residency within the Rental Unit. All petitions and hearings must be filed and conducted in accordance with Chapter 8 of these Regulations.

B. Where a Landlord files a petition pursuant to Regulation 703.5(A), the Landlord shall bear the burden of proof of establishing by a prima facie showing that the Tenant does not occupy the Rental Unit as a Primary Residence. Primary Residence shall have the meaning defined in Richmond Municipal Code Section 11.100.030(h). Where the Landlord has met the prima facie threshold of evidence demonstrating that the Tenant does not occupy the Rental Unit as a Primary Residence, the burden of proof shall shift to the Tenant, and the Tenant must demonstrate by a preponderance of the evidence that the Rental Unit has been used as a Primary Residence. The Hearing Examiner shall weigh the relevant evidence submitted by both the petitioner and the respondent in making a determination as to whether the Tenant has not maintained the Rental Unit as a Primary Residence. For purposes of this provision, prima facie shall mean sufficient evidence to establish a fact or raise a presumption unless disproved.

C. If the Hearing Examiner determines that the Tenant did not maintain the Rental Unit as a Primary Residence, then any rent increase properly noticed by the Landlord shall become effective on the specified date contained within a proper notice of rent increase or on the date rent is next due following the Hearing Examiner's decision, whichever is later.

[Adopted August 15, 2018]

704. Increase and Decrease Petitions

Nothing in this Chapter prohibits Tenants or Landlords from filing rent adjustment petitions pursuant the Board's regulations.

[Adopted February 21, 2018]

705. Fraud or Intentional Misrepresentation

Any increase in the Maximum Allowable Rent authorized pursuant to this Regulation that is obtained by fraud or misrepresentation by the Landlord or the Landlord's agent or employee shall be void.

[Adopted February 21, 2018]

706. Subletting

A. An owner may increase the rent by any amount allowed by Civil Code section 1954.50 et seq., as amended, and Section 706(B) of this Regulation, to a sub-lessee or assignee when the original occupant or occupants who took possession of the Rental Unit pursuant to a rental agreement with the owner no longer permanently resides in the Rental Unit. The term "original occupant" as used herein includes any Tenant in the Rental Unit, with the Landlord's knowledge, was residing in the unit on or before July 21, 2015, or when the Landlord last established an initial rent for the unit.

   Within fifteen (15) calendar days of any rent increase pursuant to this subsection, a Tenancy Registration form(s) described in Section 402(A)(1) shall be filed with the Board.

B. Where one or more of the occupants of the Rental Unit pursuant to the Rental Housing Agreement with the owner, remain an occupant in lawful possession of the Rental Unit, this Chapter shall not apply to partial changes in occupancy of the Rental Unit made with the consent of the owner. Nothing contained in this Chapter shall establish or create any obligation of an owner to permit or consent to a sublease or assignment.

C. New roommates are considered subtenants of the original occupants as long as they do not have a Rental Housing Agreement with the Landlord, and the Landlord may increase the rent when the unit is occupied only by subtenants who are not Original Occupants. Thus, a Landlord may set a new initial rent by giving proper written notice if: (1) there has been a

complete turnover of original occupants; (2) none of the remaining occupants has a Rental Housing Agreement with the landlord; and (3) the Landlord has not accepted rent after receiving notice from the last original occupant that they have moved out or will be moving out permanently. If the subtenants hide the fact that the last original occupant has moved out permanently, the Landlord's acceptance of rent does not preclude the Landlord from implementing a vacancy increase. The Landlord can defer a vacancy rent increase for up to six months after receiving written notice of the last original occupant's departure, by agreeing in writing with the remaining tenants to do so.

D. Where the Landlord initially rents a Rental Unit to a Tenant and authorizes more than one Tenant to occupy the unit, but fails to place the name of more than one Tenant on the Rental Housing Agreement, all Tenants who occupy the unit within one month, with permission of the Landlord, express or implied, shall be considered original occupants.

[Adopted February 21, 2018]
[Amended August 15, 2018]

706.5. Challenging a new initial rent based on Tenant status.

a. A Landlord or Tenant may file a petition for a determination as to whether the provisions of Regulation 706, et seq., or other applicable Regulations of this Chapter have been met warranting the setting of a new initial rent. Where a Landlord or Tenant files a petition pursuant to this Regulation, the petition must conform to the procedural requirements set forth in Chapter 8 of these Regulations. In addition, the Petition shall contain a statement of the issue, the relief being sought, and shall include supporting evidence.

b. The Petitioner shall bear the burden of proof of establishing by a preponderance of the evidence that which is asserted by the Petition. The Hearing Examiner may only address issues raised in both the petition and objections, and where appropriate, the Hearing Examiner may consider issues of Rent overcharges and make orders of relief premised on Rent overcharges.

[Adopted August 15, 2018]

707. Rent Level following an Owner Move-In Notice or Eviction

A. A written request from a Landlord for a Tenant to vacate a unit so the Landlord or a qualifying relative of the Landlord may occupy the unit as a principle residence shall be treated as a Notice to Terminate Tenancy pursuant to Civil Code Section 1946 for the purpose of determining the rent level when the unit is subsequently rented.

B. A Landlord who serves a 30 or 60-Day Notice of Termination of Tenancy pursuant to Richmond Municipal Code section 11.100.050(A)(6) for the purpose of recovering possession of the unit for their own use or occupancy as a principle residence or the principle residence of a qualifying relative may rescind the notice or stop eviction proceedings but, if

the Tenant vacates within one year of the date of service of the notice, the tenancy is presumed to have been terminated by the Landlord as a result of the notice. The rental rate for the next tenancy established in the vacated unit shall be no more than the Maximum Allowable Rent under the Ordinance for the Tenant who vacated, plus any subsequent increases authorized by the Rent Board.

C. This presumption applies even though the Tenant vacates the unit after the notice has been rescinded. A written statement from the Tenant that the Tenant is leaving of their own volition signed as part of a settlement whereby the Tenant is required to vacate the unit is insufficient to rebut this presumption.

D. A Landlord may rebut the presumption at a hearing based on a preponderance of the evidence. Such a hearing shall follow the process established for an Individual Rent Adjustment.

[Adopted February 21, 2018]

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CHAPTER 8: PETITION PROCESS & HEARING PROCEDURES

800. (RESERVED)

801. Petitions

A. Any Landlord or Tenant seeking an individual adjustment of the maximum allowable rent under Section 11.100.070 of the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance must file a petition in accordance with the procedures set forth in this Chapter.

B. The petitioner must attach to the petition documentation that is adequate to establish eligibility for the rent adjustment that is requested. The necessary documentation will vary according to the petition and is specified in the appropriate regulation and in the petition form. If the necessary documentation is unavailable, the petitioner's verification of the petition or declaration under penalty of perjury may substitute for the unavailable documentation. It is the policy of the Rent Board that each party submits all supporting evidence as early as possible prior to the hearing. The hearing examiner may refuse to accept documentary evidence at the hearing unless there is good cause for petitioner's failure to submit it prior to the hearing.

C. The petitioner, whether a Landlord or Tenant, has the burden of proof concerning an individual adjustment of the maximum allowable rent; provided, however, the hearing examiner or Board, in making a decision under this Chapter, retains the discretion to review records, files and order inspections.

[Adopted January 24, 2018]

802. Previous Recent Hearing

Notwithstanding any other provision of this Chapter, the Board or the Executive Director (or designee) may refuse to hold a hearing and/or grant an individual Maximum Allowable Rent adjustment for a rental unit if an individual hearing has been held and decision made with regard to the recent ceiling for such unit within the previous twelve months.

[Adopted January 24, 2018]

803. No Petition Filing Fee

There shall be no fee for filing a petition for individual adjustment of the maximum allowable rent. The Board may institute such a fee at a future date, with any waivers and reductions that it deems appropriate.

[Adopted January 24, 2018]

804. Proper Filing of the Petition

A. Proper filing of the petition is the responsibility of the petitioner. Provided that the requirements of Regulations 804 (Proper Filing of the Petition) and 805 (Acceptance of

Petitions) are satisfied, a petition is deemed properly filed on the date it is received by the Board if it is acceptable. Board staff will make a preliminary review of each petition after it has been submitted. Petitions that are not signed by the petitioner, illegible, incomprehensible, erroneously completed, incomplete, lack a proof of service on the opposing party or for which the required fees have not been paid will not be considered acceptable.

B. No Landlord petition for an individual rent adjustment will be accepted for filing unless the unit for which the adjustment is requested has been properly registered and all notices of rent increases, termination of tenancy, or changes in terms of tenancy filed with the Rent Board for at least 30 days. A unit is considered properly registered only if the completed registration statement has been filed with the Board, and the Rental Housing fee, Business License Tax, (plus any late fees) has been paid in full.

C. A petition by a former Tenant pursuant to these Regulations shall be commenced within three years from the date the Tenant vacated the unit in question.

D. No individual rent adjustment proceedings will take place for petitions that are not properly filed. The procedures for determining proper filing and allowing an unacceptable petition to be corrected are set out in Regulation 805(A)(4) and 805(B)(4).

[Adopted January 24, 2018]

805. Petition and Noticing Procedures

A. For rent increase petitions, the following procedure applies:

(1) Rent increase petitions may be filed under the following regulations: Chapter 9, Sections 903 (Changes in Number of Tenants), 904 (Change in Space or Services/Code Violations), 905 (Maintenance of Net Operating Income), 9XX (Capital Improvements), 912 (Restoration of Annual General Adjustment), and 9XX (Historically Low Rent).

(2) A copy of the rent increase petition and, except as provided in Regulation 9XX (Capital Improvements), supporting documentation must be served on the Tenants of all units affected by the petition.

(3) The Landlord shall file with the Board the original petition, two copies of the documentation required by Regulation 801 and by the Regulation pursuant to which the Petition is filed, and a proof of service by first-class mail or in person of the petition and documentation on each affected Tenant. The Landlord may also file an Agreement of Parties and/or Waiver of Right to Hearing.

(4) Board staff shall review the petition and supporting documentation to determine whether they conform with Board regulations and within ten (10) business days shall either mail notice to the Landlord that the petition is not acceptable in its current form, with an explanation of its defects (pursuant to Regulation 806 Acceptance of Petitions) or mail a Notice to Opposing Parties to the Tenants and Landlord, as provided in Regulation 809 (Notice to Opposing Parties and Board). For petitions filed pursuant to Regulations 9XX

(Maintenance of Net Operating Income), the review period shall be fifteen (15) business days. If a petition is found unacceptable, the Landlord may refile at any time. Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor. A Landlord may, at any time prior to submission of the matter for an administrative decision, request that a hearing be held.

(5) The notice to the Tenant shall include a notice that the Tenant has a right to object to the petition, and that if the Tenant does not object within twenty-one (21) calendar days of the mailing of the notice, or if the Tenant's objection does not specify one or more grounds listed in the notice, the rent for the Tenant's unit may be increased by the applicable amount, based on the information in the Landlord's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition.

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 821 (Hearing), unless no Tenant files an objection within the time allowed, the Landlord has not requested a hearing and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

B. For Tenant petitions, the following procedure applies:

(1) Tenant petitions may be filed pursuant to Chapter 9 (Individual Rent Adjustments), Sections 903 (Changes in Number of Tenants), 904 (Change in Space or Services/Code Violations), 911 (Overcharges) and Rent Withholding Petitions pursuant to Chapter 4.

(2) A copy of the Tenant petition and supporting documentation must be served on the petitioner's Landlord.

(3) The Tenant shall file with the Board the original petition, two copies of the documentation required by Regulation 801 and by the Regulation pursuant to which the petition is filed, and proof of service by first-class mail or in person of the petition and documentation.

(4) Board staff shall review the petition and supporting documentation to determine whether they conform to Board Regulations and within five (5) business days shall either mail notice that the petition is not acceptable in its current form, with an explanation of its defects (pursuant to Regulation 805 Petition and Noticing Procedure) or mail a Notice to Opposing Parties to the Landlord and Tenants, as provided in Regulation 808 (Notice to Opposing Parties and Board). If a petition is unacceptable, the Tenant may refile at any time. Acceptance of a petition by Board staff does not mean that the petitioner has submitted adequate documentation to support a decision in petitioner's favor.

(5) The notice to the Landlord shall include a notice that the Landlord has a right to object to the petition, and that if the Landlord does not object within twenty-one (21) calendar days

of the mailing of the notice, or the Landlord's objection does not specify one or more grounds listed in the notice, the rent for the Tenant's unit may be decreased by the applicable amount, based on the information in the Tenant's petition and the Board's files. Failure to file an objection may constitute a waiver of the right to a hearing on objections to the petition.

(6) A hearing shall be held on the petition and objections thereto, in accordance with Regulation 821 (Hearing), unless neither the Landlord nor the Tenant requests a hearing within the time allowed and the hearing examiner determines that a decision may be rendered on the petition without hearing live testimony. Notwithstanding any other provision of these regulations, Board staff may, upon notice to all parties, request further documentation and/or schedule a hearing on the petition.

C. The time limits set forth in this section will prevail over any other time limits set out elsewhere in these regulations.

[Adopted January 24, 2018; Amended June 19, 2019]

806. Supplemental Information

A. The petitioner shall notify the Board and each opposing party of any material change in the information set forth in the petition, especially a change in the identity of any opposing party, as soon as possible prior to the hearing. When there is a change in the opposing party, the petitioner shall serve the new party in accordance with Sections 805 (Petition and Noticing Procedures). Notice and proof of service shall be in accordance with Section 809 (Notices to Opposing Parties and Board). The new party shall thereafter be provided by the Rent Board with notice of the right to object to the petition.

B. Changes in or additions to the information set forth on the petition may be grounds for a continuance, and may constitute good cause for delaying final Board action under Section 844 (Time for Decision) of these regulations.

C. The party responding to the petition shall notify the Board and each opposing party of any material change in the information set forth in the response to the petition, including any additional objections, as soon as possible prior to the hearing.

[Adopted January 24, 2018]

807. Parties

Parties are the Landlord of the affected property, the Tenants in each affected rental unit (with all the Tenants in one unit constituting one party), and any representatives designated pursuant to Section 834 (Rights of Parties). The person listed as the Landlord in a Tenant petition for rent adjustment shall be the Landlord party, unless the Board is notified to the contrary.

[Adopted January 24, 2018]

808. Notices to Opposing Parties and Board

A. Manner of Notice: Notice(s) to opposing parties shall be served by first-class or certified mail, or by personal service on the party or the party's representative of record. Personal service shall be performed according to state law. Notices to the Board shall include a proof of service that proper notice was given to the opposing parties, by means of a written declaration by the server under penalty of perjury, stating the names and addresses of parties served and the date and manner of such service.

B. Notice after Petition Filed: The Board shall notify the opposing parties of the filing of a petition and send each opposing party a response form that includes notice that the party has a right to object to the petition, a statement of possible objections, notice that the party's failure to object within the time specified may constitute a waiver of the right to have a hearing on objections to the petition, and a brief description of the hearing process.

C. Other Notices: The Board shall send a copy of all notices, to each party, and parties shall send to other parties, a copy of all documents or communications filed with the Board after the filing of the initial petition, except for documents or communications which are filed during the hearing or are confidential.

[Adopted January 24, 2018]

809. Response to Petition

A. A party wishing to object to the petition may do so on the form provided within twenty-one (21) calendar days of the mailing of the notice required under Section 808(B). Failure to respond may constitute a waiver of the respondent's right to object to the petition. Notwithstanding a party's failure to respond, no petition for an individual rent adjustment shall be granted unless the adjustment is authorized by these regulations and supported by a preponderance of the evidence.

B. Response to Petitions Filed for Violations of Maximum Allowable Rent. In response to a petition filed solely on the basis of violations of the Maximum Allowable Rent, the Landlord may defend as to the issue of such violations of the Maximum Allowable Rent, but may not counterclaim for an increase of the lawful Maximum Allowable Rent. To make such counter-claims, the Landlord must file a separate petition in accordance with Chapter 8, and Section 802 shall not prevent such a petition from being accepted.

[Adopted January 24, 2018]

810. (RESERVED)

811. Consolidation

A. All Landlord petitions pertaining to Tenants in the same building and all petitions filed by Tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

B. In its discretion, the Board or the hearing examiner may consolidate petitions pertaining to different buildings on the same property or different properties of the same Landlord.

[Adopted January 24, 2018]

812. Confidentiality

A. Documents filed in connection with an individual rent adjustment proceeding shall be public records unless a party receives a determination by the hearing examiner that a particular document shall be confidential. For any such determination of confidentiality to be made it must be demonstrated that the document in question is exempt under the California Public Records Act (Government Code Section 6250 et seq) or that the public interest served by not making the document public clearly outweighs the public interest served by disclosure of the document. Unless otherwise specified by the hearing examiner, documents determined to be confidential will be available for inspection by the opposing party but not by the general public.

B. A party seeking a determination that a particular document shall be treated as confidential shall make such a request in writing. The request shall be made at the time that the document in question is offered as evidence or is otherwise required to be produced. The hearing examiner may determine that only a portion of the document is to be treated as confidential, and may make such rulings regarding disclosure to both the opposing party and the general public as are consistent with this Section. The request and the ruling thereon shall be included in the record.

[Adopted January 24, 2018]

813. Expedited Hearings

A. The Rent Board recognizes that consistency in rulings by the Rent Board and the courts is desirable. Therefore, in order to provide consistency of decisions in cases where both a Rent Board petition and an unlawful detainer action have been filed, the purpose of this Regulation is to ensure that the Rent Board rules on issues which are involved in petitions before it and in unlawful detainer cases prior to the Court ruling on the same issue.

B. Priority in the scheduling of hearings and in the issuance of decisions shall be given to pending petitions and appeals involving rental units on which eviction proceedings have commenced. An eviction is deemed to commence when either a three (3) or thirty (30) day or less notice to quit has been served. A party may request that a petition or an appeal be given priority by filing a request to expedite, accompanied by a copy of either the notice to quit or the unlawful detainer complaint with the Rent Board and serving a copy of the same on the opposing party.

[Adopted January 24, 2018]

814 – 820. (RESERVED)

821. Hearing

It is the policy of the Rent Board that all petitions and objections be decided on their merits, consistent with due process of law and orderly administrative procedures. The regulations of this Chapter are intended to ensure that each party is given notice of the grounds for a petition and all objections thereto in advance of the hearing so that all parties will be prepared to present their case at the hearing. Accordingly, the hearing shall be limited to the issues raised by the petition and the objections filed thereto, unless the hearing examiner determines that, in the interest of fairness, additional issues or objections should be considered and thereafter takes all necessary steps to ensure that all parties have a full and fair opportunity to respond to new issues, objections or evidence.

[Adopted January 24, 2018]

822. Hearing Examiner

A. A hearing examiner shall conduct a hearing to determine whether the individual adjustment petition should be granted. The hearing examiners shall have the following powers with respect to cases assigned to them:

(1) To administer oaths and affirmations;
(2) To grant requests for subpoenas and to order the production of evidence;

(3) To rule upon offers of proof and receive evidence;

(4) To regulate the course of the hearing and rule upon requests for continuances;

(5) To call, examine, and cross-examine witnesses, and to introduce evidence into the record;

(6) To decide the petition administratively without a hearing if no hearing is requested by the petitioner, the responding party fails to timely file objections, and the record is sufficient to render a decision on the petition without hearing live testimony;

(7) To make and file decisions on petitions in accordance with this Chapter;

(8) To take any other action that is authorized by this Chapter or other Board Regulation.

[Adopted January 24, 2018]

823. Evidence and Standard of Proof

A. The hearing examiner may require either party to a rent adjustment hearing to provide any books, records and papers deemed pertinent. All required documents shall be made available to the parties involved, at least ten (10) days prior to the hearing or its continuation, at the offices of the Board.

B. If the hearing examiner finds good cause to believe that the Board's current information does not reflect the current condition of the rental unit, the hearing examiner shall conduct or request the City to conduct an appropriate building inspection. Any party may also request the hearing examiner to order such an inspection prior to the hearing.

C. The hearing examiner need not conduct the hearing according to technical courtroom rules of evidence. Any relevant evidence may be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of business regardless of any common law or statutory rule which might exclude such evidence in court proceedings. The hearing examiner may exclude unduly repetitious or irrelevant evidence.

D. No adjustment in Maximum Allowable Rent shall be granted unless supported by the preponderance of the evidence submitted at the hearing.

[Adopted January 24, 2018]

824. Board Action

The Board, on its own motion or on the request of any party, may hold a hearing on any individual adjustment petition without the petition first being heard by a hearing examiner. For purposes of these regulations, the Board shall be considered a hearing examiner when holding a hearing under this Section. In the event that the Board elects to hold a hearing, the decision of the Board shall be the final decision of the Board, except in cases where the Board decision is to send the issue to a hearing examiner for further review.

[Adopted January 24, 2018]

825. Notice of Hearing

Notice of the time, date and place of hearing shall be mailed to all parties no later than ten (10) days before the scheduled date of the hearing.

[Adopted January 24, 2018]

826. Continuances

A. The date and time of the hearing may be continued, either before the hearing or at the hearing, if the hearing examiner finds good cause to do so. Such good cause shall be stated in the record and may include, but is not limited to, the failure of a party to receive notice, the illness of a party or witness or other emergency which makes it impossible for a party or witness to appear on the scheduled date, or the failure of a party to provide the hearing examiner with required pertinent information in a timely manner. Mere inconvenience or difficulty in appearing shall not constitute good cause. Continuances may also be granted upon consent of all parties.

B. Requests for continuances shall be made as soon as possible. A written request for a continuance and the reasons for it must be received by the Board and all other parties at least 48 hours prior to the scheduled hearing, unless good cause is shown for a later request. The written request shall contain acceptable alternative dates and an explanation of what efforts were made to ascertain the position of the other parties regarding the request for a continuance. The request shall be served on both the Board and all opposing parties in accordance with the requirements of Section 808.

C. The hearing examiner may deny a request for a continuance if it has not been made in compliance with Section 826(B) or where a continuance has previously been granted to the requesting party in the same case.

D. The Board shall notify the parties if a continuance is granted, and the date and place of the rescheduled hearing.

[Adopted January 24, 2018]

827. Disqualification of Hearing Examiner or Board Member

A. No hearing examiners or Board members shall take part in any hearing or appeal on a petition for an individual rent adjustment in which the hearing examiner or Board member has a personal financial interest in the outcome (such as being the Landlord of, or a Tenant residing in, the property that is involved in the petition), or a personal bias for or against any party. The hearing examiner's or Board member's general status as a Landlord or Tenant, or political or philosophical beliefs, shall not constitute personal bias.

B. Hearing examiners or Board members shall disclose to all parties any prior communication with a party concerning the subject of the petition, as well as any possible or apparent personal financial interest or personal bias.

C. Hearing examiners or Board members may disqualify themselves at any time. In addition, any party may file a written request for disqualification, stating the grounds, with the Executive Director (for hearing examiners) or the Board Chairperson (for Board members) at least 72 hours prior to the hearing. However, if the identity of the hearing examiner or Board member was not known soon enough to allow this, the written request shall be filed as soon as possible but in no event later than the taking of any evidence at the hearing. Any such request shall be ruled upon prior to the taking of any evidence at the hearing.

[Adopted January 24, 2018]

828. Subpoenas

The hearing examiner may by order or subpoena require that either party or any other person provide her/him with any books, records, papers, or other evidence deemed pertinent to the petition or that any witness appear and testify. All documents required under this provision shall be made available to the parties at least ten (10) days prior to the hearing, at the office of the Board. Parties to the hearing shall have the right to request the hearing examiner to issue subpoenas on their behalf, but the responsibility for service of such subpoenas remains with the requesting party. The subpoena shall disclose on its face at whose request it has been issued and that it is issued in the name of the Board.

[Adopted January 24, 2018]

829. Stipulations

The parties, by written stipulation filed with the hearing examiner, may agree upon some or all of the facts or evidence involved in the hearing. Stipulations may also be made orally at the hearing.

Any fact or evidence which is the subject of a stipulation shall be treated as having been established by a preponderance of the evidence.

[Adopted January 24, 2018]

830. (RESERVED)

831. Ex-Parte Communications

There shall be no communications regarding any pending case outside of the hearing between the hearing examiner assigned to the case and any party, representative or witness in any case pending before the hearing examiner until the hearing examiner has completed the written decision in that case, except for discussions about requests for continuances, building inspections or determinations of confidentiality, prehearing discussions pursuant to Regulation 832, where both parties or their representatives have an opportunity to be present, or orders by the hearing examiner to produce evidence pursuant to Regulation 826. There may be communications on any matters with other Board staff.

[Adopted January 24, 2018]

832. Agreement Prior to Hearing

A. The parties may make a prehearing agreement. The Board staff may contact the parties in an effort to clarify the issues and/or to reach agreement on the individual adjustment prior to the hearing. Any agreement between the parties prior to a hearing must be approved by the Hearing Examiner in accordance with the provisions of this Chapter.

B. Any agreement made by the parties at the prehearing or hearing shall be made on the record and recorded. The terms of the agreement shall be read to the parties, and the parties shall state that they understand the terms of the agreement, that they do not want a hearing on the petition, and that they voluntarily agree to the terms of the agreement.

C. Parties shall submit any proposed joint agreement in writing to the Board staff. The hearing examiner shall approve or reject the agreement as soon as possible. Written notice of the determination shall be mailed to the parties. The notice shall contain the reasons for any rejection. The agreement and its approval or rejection shall be entered into the record.

D. Parties who prior to a hearing reach an agreement on an individual adjustment which is approved by the Hearing Examiner shall be deemed to have waived their rights to a hearing or appeal on the petition. Such an approved agreement shall also be deemed a hearing for the purposes of Section 802 of this Chapter.
However, upon demonstration of fraud, misrepresentation, or similarly compelling reasons, either party may request that the hearing examiner withdraw the settlement and set the matter for hearing. If such a request is denied, the party may appeal such denial to the Board.

[Adopted January 24, 2018]

833. Open Hearings

All individual Maximum Allowable Rent adjustment hearings shall be open to the public.

[Adopted January 24, 2018]

834. Rights of Parties

A. All parties to a hearing shall have the right to appear at the hearing and present evidence and argument in person, and/or have assistance from attorneys, legal workers, recognized Tenant organization representatives or any other designated persons. Before a representative is allowed to advocate for, or in any way represent, a party, the party must present to the Board a signed, written statement designating the representative. Representatives shall file written statements with the Board that they are assisting the named party, with the name, address and phone number of the representative. All parties shall also have the right to call, examine, and cross-examine witnesses to request the hearing examiner to issue orders or subpoenas for witnesses or evidence and to exercise any other rights conferred by the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance, this Chapter or other Board Regulations.

B. Unless otherwise specified by regulation or by order of the Rent Board or hearing examiner, any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of a document shall be extended by five days if the document was served by mail.

C. Except for the failure to timely file an appeal in accordance with Regulation 842, the Rent Board or hearing examiner may relieve a party of the consequences of a failure to perform an act on or before a date certain and allow additional time to perform the act where the party demonstrates that there was a good cause for the failure. Application for this relief shall be made within a reasonable time, in no case exceeding thirty days, after the date certain and shall be accompanied by a sworn declaration attesting to the facts alleged to constitute the good cause.

[Adopted January 24, 2018]

835. Hearing Record

A. The official record of the hearing shall include the following: an audio recording of the hearing; all exhibits, papers, and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted; a statement of all material officially noticed; all recommended and final decisions, orders, and/or rulings; and the reasons for each final decision, order and/or ruling. This official record shall constitute the exclusive record for the decision on the issues raised at the hearing.

B. Upon the end of a hearing, the Record shall be closed. Once closed, the Record shall not be reopened, and no further evidence shall be accepted from the parties. No statement is

needed to close the Record; rather the closure of the Record is a natural consequence of the end of a hearing.

C. Notwithstanding Regulation 835(B), at the conclusion of the hearing, the Hearing Examiner may keep the Record open for a period not to exceed thirty (30) calendar days to accept additional evidence. Where good cause exists, the Record may be kept open longer than thirty (30) calendar days, but must not remain open longer than sixty (60) calendar days, measured from the date of the conclusion of the hearing.

D. In all matters where the Record is kept open, the Hearing Examiner shall issue to the parties in writing the basis for keeping the Record open, including a statement of good cause where applicable, the length of the time the Record shall remain open, and the date on which the Record will be closed.

[Adopted January 24, 2018; Amended June 19, 2019]

836. Availability of Record

The Board shall make the official record available for inspection and copying by any person and provide a copy of all or part of the official record at a reasonable copying cost.

[Adopted January 24, 2018]

837. Notice of Decision

The Board shall send a notice of the hearing examiner's decision to all parties to the hearing. Such notice shall include a copy of the findings of fact and law supporting the decision, as well as a statement of their right to and the time limit for any appeal to the Board and/or judicial review of the decision.

[Adopted January 24, 2018]

838. Finality of Decision

The hearing examiner's decision shall be the final decision of the Board in the event no appeal is made to the Board.

[Adopted January 24, 2018]

839 – 840 (RESERVED)

841. Right of Appeal

Any party may appeal a hearing examiner’s decision to the Board. On appeal, the Board may affirm, reverse, remand or modify the decision of the hearing examiner. The Board may conduct a new hearing or may act solely on the basis of the official record before the hearing examiner. The decision on appeal shall be the final decision of the Board, and the Board shall send a notice of the decision to all parties to the appeal, which shall include a statement of their right to

judicial review. Decisions remanded to the hearing examiner shall be limited to instances where additional findings of fact are required.

[Adopted January 24, 2018]

841.5 Standard of Review on Appeal

A. The Standard of Review on Appeal shall be Substantial Evidence. Under the Substantial Evidence standard, the Board shall not reweigh the evidence nor second guess the factual findings of the Hearing Examiner, even if there was contrary evidence in the Record. Instead, the Board shall look only to the evidence contained in the Record which supports the prevailing party, and determine whether there existed Substantial Evidence in the Record to support the Hearing Examiner's findings.

B. Notwithstanding Regulation 841.5(A), where the Rent Board elects to hear an appeal De Novo, the Standard of Review shall be Preponderance of the Evidence. A De Novo hearing means a new hearing that contemplates an entire, new proceeding of the matter in question, in the same manner in which the matter was originally heard, as if the previous hearing had never occurred. Preponderance of the Evidence means that the party who has the burden of proof must provide evidence that is more likely to be true than not true and, when compared to the other side, outweighs, preponderates over, or is more than the evidence on the other side.

[Adopted June 19, 2019]

842. Appeal Process

A. Any appeal shall be filed on a form provided by the Board no later than thirty (30) calendar days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) business days after it is mailed. The appeal must contain a statement of the specific grounds on which the appeal is based. The Board will not consider an appeal that fails to state any facts or arguments in support of the grounds alleged in the appeal. Except as provided in Section 842(E), no other documents in support of the appeal will be accepted after the appeal deadline unless specifically requested by the Board. The appeal shall be sent to the Board and opposing parties and their representative. Additionally, appellants shall send a copy of the appeal to the hearing examiner whose decision is being appealed. The Board or staff may order that appeals relating to the same building or property, or different properties of the same Landlord, be consolidated. The opposing party shall file any response to the appeal within fifteen (15) calendar days from the date the appeal is filed.

B. The hearing examiner's decision shall be stayed pending appeal. In its decision, the Board shall order the appropriate party to make retroactive payments over a reasonably appropriate period to restore the parties to the positions they would have occupied had the hearing examiner's decision been the same as that of the Board or had not been stayed.

C. At least fourteen (14) calendar days prior to the date set for Board action on the appeal, a Board Staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the hearing examiner for further hearing. Board Staff may supplement the record by including matters of which the Board may take official notice, provided that the parties are notified of such matters at least fourteen (14) days prior to the date set for Board action. Any objection to a staff request for official notice of such matters shall be filed no later than seven (7) calendar days prior to the date set for Board action.

D. At least fourteen (14) calendar days prior to the date set for Board action, all parties shall be notified by mail of the date, time and place set for Board action on the appeal. Copies of the Board Staff recommendation shall be mailed to all parties and their representatives at least 14 days prior to the Board action. Copies of the official record and the staff recommendation shall be available for public review at the Board office at least fourteen (14) days prior to the date set for Board action. Parties may submit written comments to the Board up to seven (7) days prior to the Board action.

E. At the Board meeting at which action on the appeal is scheduled, each party or the party's representative will be allowed seven (7) minutes to address the Board at the beginning of the hearing in the following order: appellant for five (5) minutes, respondent for seven (7) minutes, appellant for two (2) minutes. For any party addressing the Board who requires translation the allowable times shall be doubled. The Board has the discretion to allow more time.

F. Unless the Board determines that a de novo hearing is required, the Board's decision will be based exclusively on the record before the hearing examiner. Parties shall be instructed not to discuss or comment upon factual matters or evidence that were not presented to the hearing examiner or officially noticed. Parties may discuss or comment upon the legal matters in question and any other pertinent issues raised by the appeal. The Board shall disregard any discussion or comment regarding factual matters that were not in the record before the hearing examiner or officially noticed. The vote of three (3) Board members is required to affirm, modify, remand or reverse the decision of the hearing examiner.

G. The Board's decision to affirm, modify, remand or reverse the decision of the hearing examiner shall be supported by written findings of fact and conclusions of law. When the Board votes to adopt the staff recommendation unchanged, the parties to the appeal will be notified only of the Board's decision. When the Board does not adopt the staff recommendation as written, a written decision of the Board shall be mailed to the parties or their representative of record.

H. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Executive Director only for good cause shown. A written request and the reasons for it must be received by the Board at least two (2) business days prior to the scheduled hearing, unless good cause is shown for later request. The written request must contain the reasons for the continuance, an explanation of what efforts were made to

ascertain the position of the other parties regarding the request for a continuance, and mutually acceptable alternative dates. Copies of this written request must be sent immediately to all other parties and proof of service must accompany the written request filed with the Board.

I. Reconsideration.

1) At the discretion of the Executive Director or their designee, an appeal may be treated as a request for reconsideration and referred back to the Hearing Examiner for such reconsideration only if it is claimed by the appellant that:

    a) There was good cause for a failure to respond to a petition; or
    b) There was good cause for a failure to appear at a settlement conference or hearing; or
    c) The appellant wishes to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing.
    d) The decision resulted from a clearly inaccurate application of the law; staff members discovered a problem with the record; the underlying legal standard upon which the decision is based changed before final disposition of the case, including matters subject to a pending petition for writ of administrative mandamus; or any other reason the case should be remanded for reconsideration for administrative efficiency.

In the event that the Executive Director or their Designee finds good cause exists to treat the appeal as a request for reconsideration, the Executive Director or their Designee shall, within 15 business days from the day to file an appeal has expired, issue an Order of Reconsideration, which shall describe the basis of granting reconsideration, the scope of issues to be reconsidered by the Hearing Examiner, and modified procedures, if any, of the hearing process to expedite the matter for a hearing on reconsidered issues. The Rent Program shall send the Order of Reconsideration to all parties and, schedule a hearing consistent with the Order of Reconsideration within 60 days from the day the Order of Reconsideration was issued.

[Adopted January 24, 2018; Amended November 14, 2018; Sec.(I) Amended July 17, 2019]

843. Appeal Filing Fee

There shall be a fee of $75 for filing an appeal to the Board regarding a hearing examiner decision on a petition for individual adjustment of the Maximum Allowable Rent. This fee shall be waived for parties who are low-income as defined by the applicable income limits established for Contra Costa County by the U.S. Department of Housing and Urban Development. The Board may make any additional waivers and reductions that it deems appropriate.

[Adopted January 24, 2018]

844. Time for Decision

The Board shall take final action on any individual adjustment petition within 120 days following the date of proper filing, unless good cause is responsible for the delay. Good cause may include, but is not limited to, continuances granted, the submission of additional information

by the petitioner, the filing of a motion for reconsideration, or a request by a party to disqualify the hearing examiner or Board member(s).

[Adopted January 24, 2018]

845. Conditions for Obtaining Individual Rent Adjustments

A. An individual upward adjustment of a Maximum Allowable Rent for a rental unit may be awarded but shall not become effective so long as the Landlord:
   (1) has failed to register any rental unit on the property with the Board;

   (2) has demanded, accepted, received or retained rent in excess of the lawful Maximum Allowable Rent for the affected unit;

   (3) has failed to comply with any order of the Board concerning the affected unit or a former Tenant of the affected unit; or

   (4) has failed to bring the affected rental unit into compliance with the implied warranty of habitability.

[Adopted January 24, 2018]

846. Notice for Rent Increases

Allowable rent increases pursuant to an individual upward adjustment of the Maximum Allowable Rent shall become effective only after the Landlord, following the decision of the hearing examiner or Board, gives the Tenant at least a thirty (30) day written notice of such rent increase and the notice period expires.

[Adopted January 24, 2018]

847. Effective Date for Rent Decrease

A. If the hearing examiner or Board makes a downward individual adjustment of the Maximum Allowable Rent, the rent decrease pursuant to such adjustment shall take effect on the date of the next regularly scheduled rent payment, but no later than thirty (30) days after the date of the decision by the hearing examiner or Board.

B. Where a rent decrease is reversible after correction of a defect in the unit or violation of the provisions of the Fair Rent, Just Cause For Eviction and Homeowner Protection Ordinance or its implementing Board Regulations, the Landlord shall be entitled to reinstatement of the prior rent level, retroactive to the date that the Landlord corrected the situation that warranted the decrease. The Landlord shall notify the Tenant and the hearing examiner of the correction and provide evidence of compliance.

C. The compliance notice to the Tenant shall include a notice that the Tenant has a right to object, and that if the Tenant does not object within twenty-one (21) calendar days of the mailing of the notice, or if the Tenant's objection does not specify in what way the Landlord is not in compliance, the rent for the Tenant's unit may be increased by the applicable

amount, based on the information in the Landlord's notice and the Board's files. Failure to file an objection may constitute a waiver of the right to a compliance hearing.

[Adopted January 24, 2018]

848. Compliance Hearings

A. If there is a dispute among any of the parties (or any successor in interest) as to whether there has been compliance with a previously issued decision, the hearings examiner may notice and conduct a hearing to determine whether compliance has in fact occurred, and may issue an appropriate decision which sets forth the extent of compliance, the date of such compliance, and any adjustments to the original decision which are necessary in light of such compliance or non-compliance.

B. The party or parties (and any successor in interest) who were originally ordered to make repairs, pay back rent, properly register the property, or otherwise comply with an order of the Board, shall be required to demonstrate compliance by a preponderance of the evidence submitted at the compliance hearing.

C. Any party to the original proceeding (and any successor in interest) may request that a compliance hearing be noticed and held. Such request shall set forth the area of disagreement, and a copy of the request must be served upon all adverse parties (and any successor in interest of any adverse party) by the party requesting the hearing.

D. The procedures set forth in Regulations 821-838 shall apply to compliance hearings.

[Adopted January 24, 2018]

849. Board Initiated Hearings

A. The Rent Board or the Executive Director, who may designate such function to appropriate Board Staff, may initiate a hearing after an investigation by the Rent Board or the Executive Director has resulted in a determination that there are substantial grounds to believe that major violations of the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance or Board Regulations promulgated thereunder have occurred, and that 120 calendar days have passed from the date of the first occurrence of the violations.

B. The investigation of possible violations of the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance or Board Regulations may be conducted as a result of the review of the records of the Rent Program or the records of courts and governmental agencies. Investigations of possible violations may also be conducted on the basis of complaints and allegations received orally or in writing by the Executive Director.

C. If an investigation by the Rent Board or the Executive Director has found substantial grounds to believe that major violations of the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance or Board Regulations have occurred, a notice of a prehearing shall be prepared and served on the Landlord and Tenants of the affected units. The notice of

prehearing shall state clearly the sections(s) of the Ordinance or Regulations which has allegedly been violated, along with a brief statement of the evidence found during the investigation which supports the determination that an alleged violation has occurred. The notice shall also set forth a proposed order which may be rendered against the alleged violator.

D. The procedures set forth in Regulations 821-838 shall apply to Board-initiated hearings.

E. At a Board initiated hearing, the Executive Director or designee shall present the Board's case. The issues in the hearing shall be disposed of in a final decision and order of a hearing examiner, which may be appealed to the Rent Board.

F. Intervention by any current Landlord, current Tenant, former Tenant and former Landlord shall be permitted. Intervention by any other person or entity may be allowed upon a showing that some right, interest, liability or obligation of the person or entity seeking to intervene may be materially affected as a result of the hearing. Requests to intervene shall be made in writing, and should be filed and served upon all parties at least five (5) business days before the hearing. However, upon a showing of a substantial interest in the outcome, requests to intervene may be made and acted upon at any time prior to the conclusion of the hearing.

[Adopted January 24, 2018]

850. (RESERVED)

851. Deposit of Disputed Rents into Escrow

The Rent Program does not currently have an escrow process. Once the Executive Director establishes an escrow process, Regulations 852 – 857 shall apply.

[Adopted January 24, 2018]

852. Standards to Be Applied to Escrow Determinations

A. In deciding whether or not to require the payment disputed amounts in escrow, the hearing examiner or the Board shall consider:

(1) The likelihood that the party requesting the escrow account will prevail on the merits;

(2) The likely sum or sums involved;

(3) The likely length of the escrow;

(4) The likelihood that either party may be prejudiced by the creation of denial of an escrow account;

(5) The desires of the parties;

(6) The Tenant’s rent payment history, including any reasons for late or nonpayment of rent;

(7) The parties' history of compliance or noncompliance with the Fair Rent, Just Cause of Eviction and Homeowner Protection Ordinance, Board Regulations and Orders of the Board; and

(8) All other relevant facts which may affect the right of the Tenant not to be required to pay rent in excess of that which is lawful.

[Adopted January 24, 2018]

853. Requiring Deposit of Disputed Rents into Escrow Pending Hearing

A. Whenever a petition for individual rent adjustment is filed and it is alleged, or reasonably appears from the circumstances, that the rent charged or demanded by the Landlord is in excess of that permitted by the Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance and Board Regulations, any party to the proceedings may make a written request for an order requiring the deposit of rent into an escrow account. Said request shall be made on a form approved by the Executive Director or designee.

B. Upon receipt of such written request, the hearing examiner shall, at a prehearing conference, consider whether an escrow account should be established and may order that reasonably disputed amounts be paid into escrow pending the hearing and the hearing examiner's decision on the petition. The hearing examiner may also condition any continuance or later scheduling of a hearing upon an agreement that rent shall be either paid to the Landlord and/or into escrow as may be appropriate.

C. Pending the hearing examiner's decision on the petition, an order by the hearing examiner creating, modifying or terminating an escrow account may be appealed to the Board.

D. Any party requesting creation of an escrow account shall serve a copy of the request on all other parties to the case.

[Adopted January 24, 2018]

854. Establishment of Escrow Accounts Pending Appeal

A. Within twenty (20) calendar days of the date of mailing of the final decision of the hearing examiner to the parties, any party may make written application to the Board for an order concerning the disposition of any funds held in escrow or creation of an escrow account pending appeal. Any such request shall be made on a form approved by the Executive Director or designee. During the period within which such an application can be made and pending action on said application, no disbursement of funds held in escrow shall be made.

B. Upon receipt of such written application, the Executive Director or designee may:

(1) Continue, terminate, or modify any escrow created by the hearing examiner; or

(2) Order that reasonably disputed amounts be paid into escrow pending the decision on any appeal.

C. In the event that the party applying for the escrow order does not file an appeal within thirty-five (35) calendar days of the date of mailing of the hearing examiner's final decision to the parties, any order requiring the maintenance or creation of an escrow account shall automatically be dissolved unless otherwise ordered by the hearing examiner. Upon such dissolution, the funds held in escrow shall be disbursed in accordance with the final decision of the hearing examiner.

D. Within twenty-one (21) calendar days of the date of mailing of the appeal, any non-appealing or cross-appealing party may make written application to the Board for an order concerning the disposition of any funds held in escrow or creation of an escrow account pending appeal. Any such request shall be made on a form approved by the Board. During the period within which such an application can be made and pending action on said application, no disbursement of funds held in escrow shall be made.

E. Upon receipt of such written application, the Board may:

(1) Continue, terminate, or modify any escrow created by the hearing examiner; or

(2) Order that reasonably disputed amounts be paid into escrow pending the decision on the appeal.

F. Any party requesting creation of an escrow account shall serve a copy of the request on all other parties to the case.

G. In the decision on appeal, the Board shall order disbursement of any funds held in escrow to the appropriate party.

[Adopted January 24, 2018]

855. Landlord's Compliance with Rent Overcharge Refund Order Subject to Appeal

A. A Tenant who accepts a full refund of rent overcharges, pursuant to Regulation 8XX, after receiving written notification that acceptance of the refund will extinguish the Tenant's right to appeal the amount of rent overcharges, is deemed to have waived the right to appeal the amount of the refund order. The written notification shall be in language approved by the Board.

B. Notwithstanding a Tenant's appeal of the hearing examiner's decision, the Landlord's tender of the full amount of rent overcharges as ordered by the hearing examiner shall constitute compliance with the refund order provided that the amount tendered, if not accepted by the Tenant, is deposited into an escrow account established and maintained by the Rent Board. If, on appeal, the Rent Board modifies the hearing examiner's decision and orders additional amounts refunded, a Landlord who has tendered the full amount of the original refund order remains in compliance with the refund order so long as the Landlord tenders to the Tenant the additional amount of rent overcharges within 30 days of the date of the Rent Board's decision on appeal.

[Adopted January 24, 2018]

856. Disbursement of Funds Held in Escrow

Upon issuance of an order of the hearing examiner or the Board, the Executive Director or designee, shall cause the funds held in escrow to be disbursed in accordance with the order. Any interest which has accrued on the funds shall be disbursed and distributed in the same proportion as the principal.

[Adopted January 24, 2018]

857. Effects of Escrow Accounts on Eviction Actions

A Tenant's deposit of rent into an escrow account pursuant to an order of the hearing examiner or the Board shall be a defense to any action brought by the Landlord for nonpayment of that rent.

[Adopted January 24, 2018]

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Chapter 9: Standards for Individual Maximum Allowable Rent Adjustments

900. (RESERVED)

901. Purpose

The purpose of this Chapter is to protect Tenants from unwarranted rent increases, while at the same time allowing rent levels which provide Landlords with a fair return. It is the intent of these regulations that individual upward adjustments in the Maximum Allowable Rent be made only when the Landlord demonstrates that such adjustments are necessary to provide the Landlord with a fair return under the Ordinance (RMC Sections 11.100.070 (e - k) and as required by the California or United States Constitution.

[Adopted February 21, 2018]

902. Procedure

Unless otherwise specified, petitions for rent increases and decreases under this Chapter shall follow the procedures in Chapter 8 of these Regulations.

[Adopted February 21, 2018]

903. Changes in Number of Tenants

A. Base Occupancy Level: The Base Occupancy Level for a Rental Unit, as used in this Chapter, shall be the number of Tenants allowed by the Rental Housing Agreement as defined in Section 11.100.030(k) of the Ordinance for the unit effective July 21, 2015, or at the beginning of any subsequent tenancy established after a vacancy.

B. Increase in Tenants:

(1) If the number of Tenants allowed by the Rental Housing Agreement actually occupying a unit as the Tenants' principal residence has increased above the Base Occupancy Level for that unit, then the Maximum Allowable Rent for the unit may be increased by up to fifteen percent (15%) for each additional tenant above the base occupancy level, in addition to any Maximum Allowable Rent adjustment to which the Landlord is otherwise entitled. A petition seeking rent adjustments solely for an increased number of Tenants will be processed under Regulation 903(D).

(2) Notwithstanding Regulation 903(B)(1), no increase in the Maximum Allowable Rent for additional Tenants shall be granted for any additional Tenant who is a spouse, registered domestic partner, child, grandchild, parent, grandparent, legal guardian of a child, parent of any of the Tenants, or caretaker/attendant as required for a reasonable accommodation for a person with a disability, unless the Tenants agree in writing to the specific Maximum Allowable Rent increase.

(3) If the number of Tenants actually occupying a Rental Unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (B)(1), then the Maximum Allowable Rent increase for

that Rental Unit shall automatically decrease by the amount of the Maximum Allowable Rent increase that is no longer justified, as a result in the decrease in the number of Tenants, unless the Tenant and Landlord agree in writing to permanently increase the Base Occupancy Level.

(4) Increases in the Maximum Allowable Rent due to an increase in the Base Occupancy Level shall remain permanent. As such, if the number of Tenants actually occupying a Rental Unit as the Tenants' principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (B) (l), then the Tenants may replace the departing Tenant with another Tenant (subject to the Landlord's standard screening methods).

C. Decrease in Number of Tenants Allowed:

If any policy or policies imposed by the Landlord unreasonably prevent the Tenant from maintaining the Base Occupancy Level for that unit, then the Maximum Allowable Rent for that unit shall be decreased by an amount equal to the percentage by which the number of allowable Tenants has been reduced. As used in this regulation, "policy" or "policies" means any rule, course of conduct, act or actions by a Landlord.

(1) A policy shall be deemed unreasonable if it is different from and more restrictive than the policies originally used to screen the current Tenant(s).

(2) Refusal based on the proposed additional occupant's lack of creditworthiness shall be deemed unreasonable if that person will not be legally obligated to pay some or all of the rent to the Landlord. (RMC Section 11.100.050(a) (1) (i) (c)).

(3) Refusal shall be deemed reasonable if the increase would bring the total number of occupants above the maximum allowable under Section 503b the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922. (RMC Section 11.100.050(a) (1) (i) (c)).

D. Grounds for Objections:

Tenants responding to petitions under subsection (B) (l) may file objections with the Board on one or more of the following grounds:

(1) The base occupancy level alleged by the landlord is incorrect; however, a tenant may not contest a base occupancy level that was established in a prior decision;

(2) The number of tenants alleged by the landlord as being currently allowed by the lease and actually occupying the unit as a principal residence is incorrect;

(3) An additional tenant claimed by the landlord as justifying a rent increase is a spouse, registered domestic partner, child, grandchild, parent, grandparent, legal guardian of a child or caretaker/attendant as required for a reasonable accommodation for a person with a disability and the original tenant(s) did not agree in writing to an increase for such person(s);

(4) The unit is not eligible to receive annual general adjustments for any period since its rent was last certified or individually adjusted by the Board. Any such objection shall identify each challenged annual general adjustment and the reason for the alleged ineligibility;

(5) The landlord is collecting rent in excess of the Maximum Allowable Rent; or

(6) The unit is substantially deteriorated, fails to comply substantially with applicable state rental housing laws or local housing, building, health and safety codes, or the landlord does not currently provide adequate housing services.

[Adopted February 21, 2018]

904. Changes in Space or Services

A. Increase in Space:

The Maximum Allowable Rent may be adjusted upward when, with the written agreement of the Tenant(s), there is an increase in the usable space or in the Housing Services beyond that which was provided to a unit on July 21, 2015, or when the Base Rent was first established.

(1) Additional or reconfigured space: Where a Landlord adds habitable living space to a unit or reconfigures it, the Maximum Allowable Rent for such unit shall be permanently increased as provided under Section 8XX Capital Improvements.

(2) Additional services: Where a Landlord adds non-habitable space or increases the services provided to a unit, the Maximum Allowable Rent for such unit shall be increased by an amount representing the commercially reasonable value of the additional space or increased services. If the additional or reconfigured space or the services are subsequently reduced or eliminated, the rent increase authorized herein shall be reduced or terminated. Any increase for an additional bedroom shall result in an increase to the Base Occupancy Level for an additional occupant.

(3) Increases may be denied if the added or reconfigured space or services do not clearly benefit a majority of the affected Tenants and a Tenant objects.

(4) If the added or reconfigured space or services clearly benefit a majority of the affected Tenants, then increases may be denied if a majority of the affected Tenants object.

B. Decrease in Space or Services; Substantial Deterioration; Failure to Provide Adequate Services; Failure to Comply with Codes, the Warranty of Habitability or the Rental Agreement:

(1) Decreases in Space or Services. The Maximum Allowable Rent shall be adjusted downward where a Landlord is aware of and causes a Tenant to suffer a decrease in housing services or living space from the services and space that were provided on July 21, 2015, or from any services or space provided at the beginning of the tenancy. The amount of the rent decrease shall be calculated by multiplying the percentage of impairment of the Tenant's use of and benefit from the unit (as a result of the reduction in living space or housing services) by the Maximum Allowable Rent in effect at the time of

the impairment, and for past decreases, multiplied by the period of time the impairment existed. In determining the amount of the downward rent adjustment by the percentage of impairment of use/benefit method, the hearing examiner may consider the reasonable replacement cost of the space or service in question. Decreases in the Maximum Allowable Rent shall not be granted due to a decrease in space or services that is a direct result of intentional actions on the part of the Tenant to purposefully cause a decrease in space or services.

(2) Denial of Petitions for Unilateral Removal: The Board will not accept petitions from Landlords who seek a Maximum Allowable Rent decrease for the unilateral removal or reduction of space or services from a Tenant's base level space or services. Landlord petitions shall be accepted only when a Tenant has expressly agreed in writing to the removal of such space or services. "Base level space or services" are the housing services or living space that was provided at the unit on July 21, 2015, or at the beginning of the tenancy.

(3) Inadequate Services & Substantial Deterioration: The Maximum Allowable Rent shall be adjusted downward for any substantial deterioration in a Rental Unit and/or for any failure to provide adequate Housing Services occurring during the petitioner's tenancy. For purposes of this subsection, a substantial deterioration means a noticeable decline in the physical quality of the Rental Unit resulting from a failure to perform reasonable or timely maintenance and adequate Housing Services means all services necessary to operate and maintain a Rental Unit in compliance with all applicable state and local laws and with the terms of the Rental Housing Agreement. The amount of the rent decrease shall be calculated by multiplying the percentage of impairment of the Tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide adequate service, violation, breach or failure to comply) by the Maximum Allowable Rent in effect at the time of the impairment.

(4) Code Violations & Breach of the Warranty of Habitability:

a. Where a condition at the Rental Unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the Maximum Allowable Rent decrease shall be in an amount that reflects the reduction in value of the Rental Unit due to the unsafe or unhealthy condition.

b. A substantial lack of any of the affirmative standard characteristics for habitability set forth in Civil Code section 1941.1 shall be deemed a violation of the warranty of habitability and the Maximum Allowable Rent shall be decreased by no less than 10% or, for a violation of subsections (b), (c) or (d) of Civil Code section 1941, no less than 20%, until the condition is corrected, notwithstanding seasonal variations in or an absence of impairment to a Tenant's use of or benefit from the unit.

c. The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of Tenants (e.g., dangerous window bars, missing smoke detector) shall be

automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Board within thirty-five (35) calendar days of mailing of the hearing examiner's decision unless the Landlord establishes that the violation cannot be corrected within that time due to circumstances beyond the Landlord 's control.

d. No rent shall be charged for a period in which the Landlord is found to be in violation of California Civil Code Section 1942.4.

e. For purposes of this subsection, a breach of the warranty of habitability occurs when the Rental Unit is not in substantial compliance with applicable building and housing code standards, which materially affect health and safety. Minor housing code violations which do not interfere with normal living requirements do not constitute a breach of the warranty of habitability.

(5) Maximum Allowable Rent reductions pursuant to this Section shall be effective from the date the Landlord first had notice of the space or service reduction, deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the condition for which the reduction was granted no longer exists.

(6) A Tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the Landlord first received notice of the decreased service, deterioration, code violation or habitability violation. Notice may be actual or constructive. A Landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been disclosed by a reasonable inspection of the Rental Unit. A copy of a housing code inspection report from the City of Richmond should be submitted with the petition.

[Adopted February 21, 2018]

905. Maintenance of Net Operating Income (MNOI) Fair Return Standard

A. Fair Return Standard

(1) Presumption of Fair Base Year Net Operating Income. It shall be presumed that the net operating income received by the Landlord in the Base Year provided a Fair Return.

(2) Fair Return. A Landlord has the right to obtain a net operating income equal to the Base Year net operating income adjusted by 100% of the percentage increase in the Consumer Price Index (CPI), since the Base Year. It shall be presumed this standard provides a Fair Return.

(3) Base Year.

a. For the purposes of making Fair Return determinations pursuant to this section, the calendar year 2015 is the Base Year. The Base Year CPI shall be 2015, unless subsection (b) is applicable.

b. In the event that a determination of the allowable Rent is made pursuant to this section, if a subsequent petition is filed, the Base Year shall be the year that was considered as the "current year" in the prior petition.

(4) Current Year
The “current year” shall be the calendar year preceding the application. The “current year CPI” shall be the annual CPI for the current year.

(5) Adjustment of Base Year Net Operating Income.
Landlords or Tenants may present evidence to rebut the presumption that the Base Year net operating income provided a Fair Return. Grounds for rebuttal of the presumption shall be based on at least one of the following findings:

a. Exceptional Expenses in the Base Year. The Landlord’s operating expenses in the Base Year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating operating expenses in order that the Base Year operating expenses reflect average expenses for the property over a reasonable period of time. The following factors shall be considered in making such a finding:

i. Extraordinary amounts were expended for necessary maintenance and repairs.

ii. Maintenance and repair expenditures were exceptionally low so as to cause inadequate maintenance or significant deterioration in the quality of services provided.

iii. Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.

b. Exceptional Circumstances in the Base Year. The gross income during the Base Year was disproportionately low due to exceptional circumstances. In such instances, adjustments may be made in calculating Base Year gross rental income consistent with the purposes of this chapter. The following factors shall be considered in making such a finding:

i. If the gross income during the Base Year was lower than it might have been because some residents were charged reduced rent.

ii. If the gross income during the Base Year was significantly lower than normal because of the destruction of the premises and/or temporary eviction for construction or repairs.

iii. The pattern of rent increases in the years prior to the Base Year and whether those increases reflected increases in the CPI.

iv. Base period rents were disproportionately low in comparison to the base period rents of comparable apartments in the City.

v. Other exceptional circumstances.

(6) Calculation of Net Operating Income. Net operating income shall be calculated by subtracting operating expenses from gross rental income.

a. Gross Rental Income.

i. Gross rental income shall include:

Gross rents calculated as gross scheduled rental income at one hundred percent occupancy and all other income or consideration received or receivable in connection with the use or occupancy of the Rental Unit, except as provided in Subparagraph (B) of this section.

If there is a difference in the number of rental units between the Base Year and the current year, in making calculations of net operating income in the Base Year and the current year, the rental income and expenses for the same number of units shall be used in calculating the net operating income for both periods.

The purpose of this provision is to ensure that a petitioner is not requesting that the current fair net operating income reach a level which was provided in the Base Year by a larger number of units or is limited to a net operating income which was formerly provided by a smaller number of units.

If there are units that are vacant or owner-occupied at the time a petition is filed which were rented in the Base Year, for the purposes of the MNOI analysis a rental income for the unit shall be calculated on the basis of average rents for comparable units in the building which have been permitted vacancy decontrol increases within the past two years. If there are no comparable units in the property rental income for the vacant or owner occupied units, the rent shall be calculated on the basis of recently established initial rents for comparable units in the City. If there are units that were rented in the current year, which were vacant or owner-occupied

in the Base Year, for the purposes of the MNOI analysis a rental income for the unit for the Base Year shall be calculated on the basis of average rents for comparable units in the building in the Base Year. If there are no comparable units in the property, rental income for the vacant or owner occupied units in the Base Year shall be calculated on the basis of Base Year rents for comparable units in the City. In the alternative, the Hearing Examiner may use another reasonable methodology to insure compliance with the purposes of this subsection.

ii. Gross rental income shall not include:

Utility Charges for sub-metered gas, electricity or water;

Charges for refuse disposal, sewer service, and, or other services which are either provided solely on a cost pass-through basis and/or are regulated by state or local law;

Charges for laundry services; and

Storage charges.

b. Operating Expenses**.** Operating expenses shall include the following:

i. Reasonable costs of operation and maintenance of the Rental Unit.

ii. Management expenses. It shall be presumed that management expenses have increased between the Base Year and the current year by the percentage increase in rents or the CPI, whichever is greater, unless the level of management services has either increased or decreased significantly between the Base Year and the current year. This presumption shall also be applied in the event that management expenses changed from owner managed to managed by a third party or vice versa

iii. Utility costs except a utility where the consideration of the income associated with the provision of the utility service is regulated by state law and consideration of the costs associated with the provision of the utility service is preempted by state law or the income associated with the provision of the utility is not considered because it is recouped from the Tenants on a cost pass-through basis..

iv. Real property taxes and insurance, subject to the limitation that property taxes attributable to an assessment in a year other than the Base Year or current year shall not been considered in calculating Base Year and/or current year operating expenses.

v. License, registration and other public fees required by law to the extent

these expenses are not otherwise paid or reimbursed by Tenants.

vi. Landlord-performed labor compensated at reasonable hourly rates. However, no Landlord-performed labor shall be included as an operating expense unless the Landlord submits documentation showing the date, time, and nature of the work performed. There shall be a maximum allowed under this provision of five percent (5%) of gross income unless the Landlord shows greater services were performed for the benefit of the residents (HOURLY RATE PRESUMPTIONS TO BE INSERTED UPON ESTABLISHMENT OF CAPITAL IMPROVEMENT REGULATION).

vii. Legal expenses. Reasonable attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, legal expenses necessarily incurred in dealings with respect to the normal operation of the Property, and reasonable costs incurred in obtaining a rent increase pursuant to Sections 11.100.070 of the Ordinance.
To the extent allowable legal expenses are not annually reoccurring and are substantial they shall be amortized over a five-year period, unless the Rent Board concludes that a different period is more reasonable. At the end of the amortization period, the allowable monthly rent shall be decreased by any amount it was increased because of the application of this provision.

viii. The Amortized Costs of Capital Improvements. Operating expenses include the amortized costs of capital improvements plus an interest allowance to cover the amortization of those costs. For purposes of this section a capital improvement shall be any improvement to a unit or property which materially adds to the value of the property, appreciably prolongs its useful life or adapts it to new use and has a useful life of more than one year and a direct cost of $250.00 or more per unit affected. Allowances for capital improvements shall be subject to the following conditions:

The costs are amortized over the period set forth in Section (A)(6)(b)(viii) of this regulation and in no event over a period of less than thirty-six (36) months.

The costs do not include costs incurred to bring the Rental Unit into compliance with a provision of the Richmond Municipal Code or state law where the original installation of the improvement was not in compliance with code requirements.

At the end of the amortization period, the allowable monthly rent

shall be decreased by any amount it has increased due to the application of this provision.

The improvement is not an ordinary repair, replacement, and/or maintenance, and is necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety in accordance with Richmond Municipal Code Section 11.100.070(g).

The amortization period shall be in conformance with the following schedule adopted by the Rent Board unless it is determined that an alternate period is justified based on the evidence presented in the hearing.

Amortization of Capital Improvements and Expenses	
In amortizing capital improvements, and/or expenses, the following schedule shall be used to determine the amortization period of the capital improvements and/or expenses	Years
Appliances	
Air Conditioners	10
Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5
Cabinets	10
Carpentry	10
Counters	10
Doors	10
Knobs	5
Screen Doors	5
Fencing and Security	5
Management	5
Tenant Assistance	5
Structural Repair and Retrofitting	

Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
Electrical Wiring	10
Elevator	20
Fencing	
Chain	10
Block	10
Wood	10
Fire Systems	
Fire Alarm System	10
Fire Sprinkler System	20
Fire Escape	10
Flooring/Floor Covering	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
Fumigation Tenting	5
Furniture	5
Automatic Garage Door Openers	10
Gates	
Chain Link	10
Wrought Iron	10
Wood	10
Glass	
Windows	5
Doors	5
Mirrors	5
Heating	

Central	10
Gas	10
Electric	10
Solar	10
Insulation	10
Landscaping	
Planting	10
Sprinklers	10
Tree Replacement	10
Lighting	
Interior	10
Exterior	5
Locks	10
Mailboxes	10
Meters	10
Plumbing	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
Painting	
Interior	5
Exterior	5
Paving	
Asphalt	10
Cement	10
Decking	10
Plastering	10
Sump Pumps	10
Railings	10
Roofing	
Shingle/Asphalt	10
Built-up, Tar and Gravel	10
Tile	10

Gutters/Downspouts	10
Security	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
Sidewalks/Walkways	10
Stairs	10
Stucco	10
Tilework	10
Wallpaper	5
Window Coverings	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

ix. Interest Allowance for Expenses that Are Amortized. An interest allowance shall be allowed on the cost of amortized expenses. The allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the Rent Board shall designate by regulation an index which is most comparable to the PMMS index.

x. Impact of Vacancy Decontrol on Rent Increases Based on Capital Improvements

If a unit becomes vacant during the pendency of a schedule which provides for the expiration of increases for capital improvements and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53, the capital improvements schedule shall terminate.

c. Exclusions from Operating Expenses. Operating expenses shall not include the following:

i. Mortgage principal or interest payments or other debt service costs and costs of obtaining financing.

ii. Any penalties, fees or interest assessed or awarded for violation of any provision of this chapter or of any other provision of law.

iii. Land lease expenses.

iv. Political contributions and payments to organizations or individuals which are substantially devoted to legislative lobbying purposes.

v. Depreciation.

vi. Any expenses for which the Landlord has been reimbursed by any utility rebate or discount, Security Deposit, insurance settlement, judgment for damages, settlement or any other method or device.

vii. Unreasonable increases in expenses since the Base Year.

viii. Expenses associated with the provision of master-metered gas and electricity services.

ix. Expenses which are attributable to unreasonable delays in performing necessary maintenance or repair work or the failure to complete necessary replacements. (For example if a roof replacement is unreasonably delayed, the full cost of the roof replacement would be allowed; however, if interior water damage occurred as a result of the unreasonable delay

d. Adjustments to Operating Expenses**.** Base Year and/or current year operating expenses may be averaged with other expense levels for other years or amortized or adjusted by the CPI or to reflect levels that are normal for residential Rental Units or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of Base Year and current year expenses and providing a Fair Return. If the claimed operating expense levels are exceptionally high compared to prior expense levels and/or industry standards the Landlord shall have the burden of proof of demonstrating that they are reasonable and/or reflect recurring expense levels. Expenses which are exceptional and reasonable shall be amortized in order to achieve the objectives of this section.

e. Projections of Base Year Operating Expenses in the Absence of Actual Data

If the Landlord does not have Base Year operating expense data, it shall be presumed that operating expenses increased by the percentage increase in the CPI between the Base Year and the current year. This presumption is subject to the exception that specific operating expenses shall be adjusted by other

amounts when alternate percentage adjustments are supported by a preponderance of evidence (such as data on changes in the rates of particular utilities or limitations on increases in property taxes.)

(7) Allocation of Rent Increases

Rent increases authorized pursuant to this section shall be allocated as follows:

a. Rent increases for unit-specific capital improvements shall be allocated to that unit;

b. Rent increases for building-wide or common area capital improvements shall be allocated equally among all units;

c. Rent increases resulting from the Net Operating Income analysis shall be allocated equally among all units;

d. Notwithstanding the subsections above, the hearing examiner or the Board, in the interests of justice, shall have the discretion to apportion the rent increases in a manner and to the degree necessary to ensure fairness. Such circumstances include, but are not limited to, units that are vacant or owner occupied.

(8) Conditional Rent Adjustments for Proposed Capital Improvements

a. In order to encourage necessary capital improvements, the Board allows a Landlord to petition for an upward rent adjustment based upon anticipated future expenses for capital improvements. The purpose of this procedure is to permit Landlords to seek advanced authorization for future rent adjustments based upon anticipated capital improvements. A petition under this Section should only be made for anticipated expenses that the Landlord intends to incur during the twelve month period following the date of final Board decision. This procedure should not be used for anticipated expenses for ordinary repairs and maintenance.

b. If the petition is granted in whole or in part, the rent increase shall be postponed until such time as the capital improvements are made and an Addendum authorizing the increases is issued.

c. No addendum shall be issued for such proposed capital improvements unless they are completed within twenty four (24) months from the date of final decision granting the conditional rent adjustment, unless the Landlord obtains an additional addenda authorizing an extension of the time period to complete the capital improvement. Extensions may be granted due to reasonable delays in the completion of capital improvements as determined by the Hearing Examiner.

(9) Any unit which received a vacancy rent increase pursuant to Civil Code section 1954.53 within one year prior to the Fair Return application shall be ineligible for a rent increase for the portion of any rent increased based on the cost of proposed capital improvements.

(10) Relationship of Individual Rent Adjustment to Annual General Adjustment

Any Individual Increase Adjustment established pursuant to this Section shall take into account the extent of any Annual General Adjustments the Landlord may be implementing, or otherwise be entitled to, at and during the time for which the Individual Adjustment is sought regarding the petitioning year, and the Individual Adjustment may be limited or conditioned accordingly.

If it is determined that the Landlord is not entitled to an Individual Adjustment, the Landlord may implement the full upcoming General Adjustment.

(11) Limits to Annual Rent Adjustments Based on Maintenance of Net Operating Income Standard

a. Purpose. The purpose of this subsection (a) is to protect Tenants from substantial rent increases which are not affordable, and which may force such Tenants to vacate their homes and result in consequences contrary to the stated purposes of the Ordinance, namely, to maintain the diversity of the Richmond community, to preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped and the aged.

b. Rent Increase Limit

Notwithstanding any other provision of this regulation, the implementation of a Maximum Allowable Rent increase shall be limited each year to fifteen percent (15%) of the Maximum Allowable Rent on the date the petition is filed.

If the amount of any rent increase granted under these regulations exceeds this limit, any portion in excess of the annual limit shall be deferred.

In subsequent years deferred amounts of the allowable rent increase may be implemented.

At the end of each year the deferred amount of the increase shall be calculated and an interest allowance shall be calculated based on the standard set forth in Section (A)(6)(b)(ix) of this regulation. One twelfth (1/12) of the interest allowance shall be added on to full monthly increase authorized under the MNOI standard.

(12) Constitutional Right to a Fair Return.

No provision of this regulation shall be applied so as to prohibit the Board from granting an individual rent adjustment that is demonstrated by the Landlord to be necessary to meet the requirements of this ordinance and/or constitutional Fair Return requirements.

[Adopted March 21, 2018]
[Amended August 15, 2018]

906-910 (RESERVED)

911. Overcharges and Other Violations

A. Overcharges: If on or after July 21, 2015, the Landlord has received rent in violation of the Ordinance, the Landlord shall be ordered to refund the overcharge. Any overcharge refund shall be paid to the person or persons overcharged, except as provided in Regulation 911(B), below. For purposes of this Regulation, any receipt or retention of rent, including security deposits and interest earned on security deposits, in violation of any order, rule or regulation of the Board or any other applicable law shall be deemed to be an overcharge.

B. Overcharges paid by former Tenants: If any of the rent overcharge was received from former Tenant(s), the Landlord shall make reasonable efforts to find the former Tenant(s) and refund the overcharge. The Landlord shall notify the Board in writing of the nature, extent, and result of those efforts within sixty (60) calendar days of the overcharge refund order.

If the Landlord does not refund any past overcharge(s) to any former Tenant(s) within sixty (60) calendar days, or has made reasonable but unsuccessful efforts to locate the former Tenant(s), the Landlord shall pay the overcharge(s) to the Richmond Rent Board to be held in trust for the former Tenants for one year. Staff shall annually provide the Rent Board with an accounting of any unclaimed funds, following which, the Board, by resolution, shall designate a program of the City of Richmond that benefits low- and/or moderate-income Tenants to which the unclaimed funds shall be transferred.

C. Other Violations: If the Landlord has failed to comply with the Ordinance or any rule or regulation of the Board or in any way charges unlawful rent, the hearing examiner may make an appropriate order for compliance or other appropriate relief.

D. Limitation on Liability for the Refund of Overcharges:

(1) Except as provided in subsection (2), no order for the refund of rent overcharges shall require the repayment of overcharges that were actually received by the Landlord more than three years prior to the date upon which the Individual Rent Adjustment petition is filed.

(2) The three year limitation period shall not apply and the Landlord shall be ordered to refund to the Tenant(s) of the affected unit(s) that portion of the rent payments made by

such Tenant(s) that have been illegally retained by the Landlord from the date which the Tenant(s) first paid excess rent, upon proof of any of the following:

a. The Landlord willfully failed to register the affected property, or

b. The Landlord willfully provided false or inaccurate information to the Board and the Tenant(s) were thereby induced to pay excess rent in reliance upon said information, or

c. The Landlord, through threats of eviction, physical violence, coercive actions, or intentional misrepresentation on which the Tenant reasonably relied, prevented a timelier filing of the petition.

(3) If the Landlord has willfully failed to register the affected property, the three year limitations period shall commence to run on the date upon which the Landlord completes all required registration forms for the affected property.

E. Supporting Documentation: For Tenant petitions under this Regulation, the documentary evidence attached to the petition shall include any copies of canceled checks, rent receipts or other documentary evidence of the claimed overcharge. If no such documentary evidence is in the possession of the Tenant, the Tenant shall state on the petition that they do not have documentary evidence of the overcharge and set forth the factual basis for the claim of overcharge. Where the basis of any overcharge is ineligibility for Annual General Adjustments due to violation of housing codes, the Tenant shall attach documentation indicating that the unit was in violation of the warranty of habitability prior to and as of September 1st of the applicable year and that the Landlord was aware of such violation of the warranty of habitability. Such documentation may include a copy of an inspection report issued by the City of Richmond.

[Adopted February 21, 2018]

911.5. Determining the Lawful Rent in Master Tenant – Subtenant Occupancies

A. For purposes of this Regulation 911.5, Master Tenant shall mean any person, other than the owner of record, who is entitled to receive Rent for the use and occupancy of any portion of a Rental Unit.

B. Where a Master Tenant subleases a Controlled Rental Unit, the Master Tenant shall not demand, accept, receive, or retain from the subtenant(s) more Rent than that which is actually and lawfully due and payable to the Landlord of the Controlled Rental Unit. If the Master Tenant receives, accepts or retains Rent in excess of that which is actually and lawfully due and payable to the Landlord of the Controlled Rental Unit, the Master Tenant shall be responsible to the subtenant(s) for all such Rent Overcharges. If the Master Tenant acts as an agent, employee, or conduit of the Landlord of the Controlled Rental Unit in demanding, accepting, receiving, or retaining Rent in excess of that which is actually and lawfully due

and payable to the Landlord of the Controlled Rental Unit, the Master Tenant and the Landlord of the Controlled Rental Unit shall be jointly and severally responsible for all such Rent Overcharges.

C. Where a Tenant is designated as a Master Tenant or acts as a Master Tenant, and the Master Tenant is subletting a portion of a Controlled Rental Unit, the subtenant shall not pay more than the proportional share of the total current Rent paid to the Landlord by the Master Tenant for the housing and housing services to which the subtenant is entitled to under the Rental Housing Agreement. A Master Tenant's violation of this section shall not constitute a basis for eviction under Richmond Municipal Code Section 11.100.050, et seq.

D. An appropriate proportional share of a subtenant's Rent may be calculated based on the square footage shared with and/or exclusively occupied by the subtenant; or the space shared with and/or exclusively occupied by the subtenant (for instance, dividing the total Rent in equivalent proportions amongst all occupants); or any other method of proportioning the Rent such that the subtenant(s) do not pay more Rent than the proportional share of the total Rent which is actually and lawfully due and paid to the Landlord by the Master Tenant.

E. Where the subtenant(s) and Master Tenant elect to determine their Rent based on either the proportion of the space shared with and/or exclusively occupied by the subtenant(s) and Master Tenant or the proportion of square footage shared with and/or exclusively occupied by the subtenant(s) and Master Tenant, there shall be a rebuttable presumption as to the lawfulness of the subtenant's and Master Tenant's Rent. This presumption may be overcome by evidence of the relative amenities of the rooms, special obligations of the Master Tenant and/or subtenant(s), or any other evidence the Hearing Examiner deems relevant.

F. Subtenant(s) may file a petition pursuant to Regulation 805(B)(1) and Regulation 911 for Rent Overcharges, or a petition for an adjustment in Rent, to enforce rights and obligations under this Regulation. In the event the Hearing Examiner determines a Rent Overcharge has occurred, and where the actual rent charged or collected is not the same as the lawful Rent, the Overcharge award(s) must be calculated based on the actual rent charged or collected.

[Adopted September 19, 2018]

912. Petition to Obtain Previously Lost Annual General Adjustments (AGAs)

A. General. When a Landlord who has previously been out of compliance comes into compliance with the Ordinance, regulations, or applicable housing, health and safety codes, the Hearing Examiner may grant all Annual General Adjustment rent increases denied during the period of noncompliance prospectively. For any Rental Unit which has been registered and for which a Base Rent has been listed or for any Rental Unit which a Landlord can show,

by a preponderance of the evidence, a good faith attempt to comply with the registration requirements, all Annual General Adjustments which may have been denied during the period of the Landlord's non-compliance shall be restored prospectively once the Landlord is in compliance with the Ordinance or regulation.

In addition, to be eligible for an Annual General Adjustment, the Landlord must state under penalty of perjury that the unit is in substantial compliance with the ordinance, regulations and applicable codes. Specifically, the Landlord shall certify to payment of all fees and penalties owed to the Richmond Rent Program which have not otherwise been barred by the statute of limitations, substantial compliance with applicable local and state housing code provisions, and satisfaction of all claims for refunds of rental overcharges brought by Tenants or by the Rent Board on behalf of Tenants of the affected unit.

The Landlord is not entitled to recover any Annual General Adjustments which have been previously regained through a net operating income analysis or for new tenancies that were established after the loss of the Annual General Adjustment.

B. Petition: Upon the petition of the Landlord, the Landlord's eligibility for previously lost Annual General Adjustments shall be determined. At the time of filing the petition, the owner shall submit a proof of service showing that all affected Tenants have been provided with a complete copy of the documents filed. Chapter 8 these Regulations shall govern all additional petition procedures for Annual General Adjustment petitions.

C. Rent increases permitted under this Section shall be applied in a manner consistent with Regulation 602 (Banking of Annual General Adjustment rent increases.)

[Adopted February 21, 2018]

CHAPTER 10: JUST CAUSE REQUIRED FOR EVICTION

1000. Purpose

The purpose of this Chapter is to clarify provisions of the Fair Rent, Just Cause for Eviction, and Homeowner Protection Ordinance concerning termination of a tenancy for a breach of the lease or creating a nuisance, and the necessity of, in most situations, providing a written warning notice to cease.

[Formerly Regulation 17-08; adopted December 20, 2017]

1001. Notices of Termination of Tenancy or Change in Terms of Tenancy – All Rental Units

Landlords of Controlled Rental Units and Landlords of Rental Units as described in Chapter 2 of this Regulation shall file with the Board within two (2) business days *after* service of a notice on a Tenant of a termination of tenancy or change in terms of tenancy a copy of such notice, with a proof of service of the notice, including time and date of service, using, absent extraordinary circumstances, the appropriate online form on the Rent Program website. If a Landlord does not file with the Board the notice and proof of service concerning a change in the terms of a tenancy as provided in this Section, such change shall be deemed null and void. If a Landlord does not file with the Board the notice and proof of service concerning a termination of tenancy as provided in this Section, the failure is a complete defense in an unlawful detainer.

"Notice of Termination of Tenancy" as used in this Chapter 10 shall mean any notice served on a Tenant in accordance with State law which seeks to recover possession of a Rental Unit. This includes, but is not limited to, three-day notices to pay rent or quit, notices to perform covenant or quit, and all other termination notices permitted under State law.

[Formerly Regulation 17-10; adopted September 20, 2017]

1002. Termination of a Tenancy for Breach of Lease

The Fair Rent, Just Cause for Eviction and Homeowner Protection Ordinance (Chapter 11.100, Richmond Municipal Code) provides that a Landlord may terminate a tenancy if a Tenant has continued, after written notice to cease, to substantially violate the material terms of a rental agreement, provided such terms are reasonable, legal and have been accepted in writing by the Tenant or made part of the rental agreement. R.M.C § 11.100.050(a)(2). Some behavior, however, may warrant a Landlord to initiate the termination of a tenancy immediately without providing a written notice to cease. This Regulation would provide that authority.

A. Notices to cease concerning violations of the material terms of a rental agreement: Except for those items identified in paragraph 3 of this Chapter, if a Tenant violates the material terms of a rental agreement, the Landlord must provide the Tenant with a Written Warning Notice to Cease. The Landlord must serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (A), a reasonable

time period shall mean either not less than five business days or, if it is not reasonable that the time period to cure the violation can be accomplished within five business days, the Tenant has started to cure the violation within five business days and thereafter diligently pursues the cure of the violation. The written notice shall inform the Tenant (i) that the failure to cure the violation may result in the Landlord's initiating an eviction proceeding, (ii) of the right to request a reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reason for the notice. See R.M.C § 11.100.050(d). If the Tenant violates the same or substantially the same material terms of the rental agreement within 12 months from the date the Tenant received the initial Written Warning Notice to Cease, the Landlord need not serve a further Written Warning Notice to Cease but may then take action to terminate the tenancy. As to Tenants who violate paragraph 3 of this Chapter, a Landlord need not serve a Written Warning Notice to Cease for a violation of the terms of the lease.

B. Tenant's right to sublease: R.M.C. § 11.100.050(a)(2)(i) RMC provides: If (i) a Tenant requests the Landlord in writing to sublease the rental unit, (ii) the Tenant continues to reside in the rental unit as the Tenant's primary residence, (iii) the sublease replaces one or more departed Tenants under a rental housing agreement on a one for one basis and (iv) the Landlord fails to respond to the Tenant in writing within fourteen (14) *calendar* days of receipt of the Tenant's written request, the Tenant's request shall be deemed approved by the Landlord.

(1) A Landlord's reasonable refusal of the Tenant's written request may be based on, but is not limited to, the ground that the total number of occupants in a rental unit exceeds the maximum number of occupants as determined under Section 503(b) of the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922, as described below:

i. Every residential rental unit must have at least one room that is at least 120 square feet; other rooms used for living must be at least 70 square feet; and any room used for sleeping must increase the minimum floor area by 50 square feet for each occupant in excess of two. Different rules apply in the case of "efficiency units." (See 1997 Uniform Housing Code Section 503(b), Health and Safety Code Section 17958.1.)

ii. The standard shall be two occupants per bedroom plus one additional occupant.

[Formerly Regulation 17-08; adopted December 20, 2017]

1003. Termination of a Tenancy for Engaging in Criminal Activity, including Drug-related Criminal Activity

A. A Landlord may initiate an action to terminate a tenancy (as provided under State law) without providing a written warning notice to cease if all of the following are met:

(1) The Tenant has:

a. engaged in criminal activity, including drug-related criminal activity, in or near the Tenant's rental unit that threatens the health, safety or right to peaceful enjoyment of the property by other members of the Tenant's household or by other Tenants; or

b. has engaged in or threatened violent or abusive behavior to other members of the Tenant's household or to other Tenants; or

c. has permitted the rental unit to be used for, or to facilitate criminal activity, including drug related criminal activity, that threatens the health, safety or right to peaceful enjoyment of the property by other members of the Tenant's household or by other Tenants

(2) The Landlord has within a reasonable time reported the criminal activity or the violent or abusive behavior to law enforcement.

(3) Law enforcement has investigated the criminal activity or violent or abusive behavior and has advised the Landlord there is probable cause that the Tenant engaged in criminal activity or violent or abusive behavior as reported by the Landlord.

Notwithstanding the foregoing, if there is more than one Tenant in a rental unit, this Regulation 1003(A) shall apply only to that Tenant or those Tenants for which the law enforcement investigation determines there is probable cause that the Tenant(s) engaged in criminal activity or violent or abusive behavior.

B. A Landlord may initiate an action to terminate a Tenant's tenancy without providing a written warning notice to cease if (1) a member of Tenant's household or a guest or invitee of the Tenant engages in the activity or behavior set forth in paragraphs (i), (ii) or (iii) of subsection (a) of this Section 3, (2) the Landlord within a reasonable time has reported the activity or behavior to law enforcement, (3) law enforcement has investigated the activity or behavior and has advised the Landlord there is probable cause a member of the Tenant's household or a guest or invitee of the Tenant has engaged in the activity or behavior as reported by the Landlord and (4) the Tenant fails to demonstrate to the Landlord that the person who engaged in the activity or behavior has been removed from the Tenant's household or the Tenant demonstrated that the person who engaged in the activity or behavior had been removed from the Tenant's household but the Tenant has permitted such person to return to the Tenant's household. Notwithstanding the foregoing, if there is more than one Tenant in the rental unit, this subsection (b) shall apply only to that Tenant or those Tenants to which paragraphs (1) and (4) of this subsection (b) applies.

C. For purposes of this Regulation, criminal activity shall include but not be limited to prostitution as defined in Penal Code, section 647 (b), criminal street gang activity as defined in Penal Code section 186.20 and following, assault and battery, as defined in Penal Code, sections 240 and 242, burglary as defined in Penal Code section 459, the unlawful use and discharge of firearms as prohibited under Penal Code section 245, sexual offenses as defined In Penal Code sections 261 and following and 286 or any other behavior that involves the imminent or actual threat to the health of safety of the Landlord or other Tenants or actual property damage in excess of $5,000.

1) For purposes of this Regulation, drug related criminal activity includes, but is not limited to, the illegal manufacture, sale, distribution, use or possession with the intention to manufacture, sell, distribute or use a controlled substance as defined in Section 102 of the Controlled Substance Act [21 USC 802] and/or as defined in Health and Safety Code, Section 11350, except as may be permitted under State and local law.

2) For purposes of this Regulation, abusive or violent behavior includes verbal as well as physical abuse or violence, including the use of racial epithets or other language, written or oral that is customarily used to intimidate.

3) For purposes of this Regulation, threatening refers to oral or written threats or physical gestures that communicate to a reasonable person an intent to abuse to intent to commit violence.

[Formerly Regulation 17-08; adopted December 20, 2017]

1004. Termination of a Tenancy for Creating a Nuisance

A. Definition: A nuisance, as used in this Regulation, is any conduct that constitutes a nuisance as defined in subsection 4 of Section 1161 of the Civil Code of Procedure or causing substantial damage to the rental unit. Nuisance also includes conduct by the Tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance as defined in subsection 4 of Section 1161 of the Code of Civil Procedure.

B. Violations for Creating a Nuisance within a 12 Month Period: If a Tenant engages in conduct that constitutes a nuisance, the Landlord must provide the Tenant with a Written Warning Notice to Cease. The Landlord must serve the written notice within a reasonable time period prior to serving a notice to terminate a tenancy. For purposes of this subsection (b), a reasonable time period shall mean either not less than five business days or, if it is not reasonable that the time period to abate the nuisance can be accomplished within five business days, the Tenant has taken steps to abate the nuisance within five business days and thereafter diligently pursues the abatement of the nuisance. The written notice shall inform the Tenant (i) that the failure to abate the nuisance may result in the Landlord's initiating an eviction proceeding, (ii) the right to request reasonable accommodation and (iii) the contact number for the Rent Board. The written notice shall also include sufficient details allowing a

reasonable person to comply and shall also include any information necessary to determine the date, time, place, witnesses present and other circumstances concerning the reasons for the notice. If the Tenant creates the same or substantially similar nuisance within 12 months from the date the Tenant received the initial Written Warning Notice to Cease, the Landlord need not serve a further Written Warning Notice to Cease, but may then take action to terminate the tenancy.

[Formerly Regulation 17-08; adopted December 20, 2017]

1005. Substantial Damage to the Rental Unit

Except as provided in Regulation 1003(C), notice that the Tenant has willfully caused substantial damage to the rental unit must give the Tenant at least 45 days after service of the notice to repair the damage or pay the Landlord for the reasonable cost of repairing such damage.

[Formerly Regulation 17-08; adopted December 20, 2017]

1006. Illegal Use of the Rental Unit or the Property on which the Rental Unit is located

A person who illegally sells a controlled substance in the rental unit or on the property on which the rental property is located, or uses the rental unit or the property on which the rental property is located to further that illegal purpose, is deemed to have committed the illegal act in the rental unit or on the property on which the rental unit is located, in accordance with subsection 4 of Section 1161 of the Civil Code of Procedure.

[Formerly Regulation 17-08; adopted December 20, 2017]

1007. Victims of Certain Criminal Activity

A. Notwithstanding Regulation 1003(A) and Regulation 1003(B), a Landlord shall not take any action to terminate a tenancy under R.M.C § 11.100.050 (a)(3), against a Tenant or a member of a Tenant's household who is a victim of domestic violence as defined in Section 6211 of the California Family Code, or against a Tenant or a member of a Tenant's household who is a victim of sexual assault, stalking, human trafficking or abuse or an elder or dependent adult if (i) the domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult has been documented (A) by a temporary restraining order, emergency protective order or protective order issued within the last 180 days pursuant to law that protects the Tenant or member of Tenant's household from domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (B) there is a written report, written within the last 180 days, by a peace officer stating that the Tenant or a member of the Tenant's household has filed a report alleging that he or she is a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult or (ii) the person against whom the protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse or an elder or a dependent adult is not a Tenant of the same rental unit as the Tenant or a member of the Tenant's household.

B. Notwithstanding Regulation 1007(A), a Landlord may terminate the tenancy of a Tenant or a member of a Tenant's household if (i) either (A) the Tenant allows the person against whom he protective order has been issued or who was named in the police report as committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or a dependent adult to visit the rental property or (B) the Landlord reasonably believes the presence of the person against whom the protective order has been issued or who was named in the police report as having committing an act of domestic violence, sexual assault, stalking, human trafficking or abuse an elder or a dependent adult poses a physical threat to other Tenants, guests, invitees or to a Tenant's right to quiet enjoyment and (ii) the Landlord previously gave a three days' notice to the Tenant to correct a violation of paragraph (i) of subsection (b) of this Section.

[Formerly Regulation 17-08; adopted December 20, 2017]

1008. Requirement to File the Written Warning Notice to Cease with the Rent Board

If a Landlord seeks to terminate a tenancy on grounds of breach of lease, nuisance or failure to give access, the Landlord shall file with the Rent Board, within two business days of service on the Tenant of such notice of termination of tenancy, a proof of service that such notice of termination of tenancy, along with a copy of the Written Warning Notice(s), if applicable, was served on the Tenant.

[Formerly Regulation 17-08; adopted December 20, 2017]

CHAPTER 11: SECURITY DEPOSITS

1101. Security Deposit Cannot be Increased During the Tenancy

A. At the inception of a tenancy, a Landlord may set the security deposit in accordance with California Civil Code Section1950.5 et seq, as amended. However, where a Landlord demands, accepts, or retains any payment as a security deposit within the meaning of California Civil Code Section1950.5 et seq, as amended, the security deposit shall not be increased during the tenancy. The tenancy shall be measured by the existence of at least one original occupant occupying the Rental Unit as described in Regulation 703 and Regulation 706 . Where all of the original occupants have voluntarily vacated the Rental Unit, the Landlord may reset the security deposit amount in accordance with California Civil Code Section1950.5 et seq, as amended, and other applicable State law.

B. Notwithstanding Regulation 1101(A), where a pet is not a service animal or assistance animal, which includes emotional support animals, and where pets were prohibited or limited under the Rental Housing Agreement, a landlord may file a petition for an upward adjustment of the security deposit if the tenant provides written consent to the security deposit increase in exchange for being allowed to have a pet or pets. If an increase in the security deposit is granted, in no event shall the total security deposit exceed the limitations provided in California Civil Code Section1950.5, et seq, as amended. Nothing in this section shall abrogate any rights afforded by Local, State or Federal law, including but not limited to, the Fair Housing Act and California Fair Employment and Housing Act.

[Adopted July 18, 2018]

1102. Security Deposit as Rent Overcharges

A. Richmond Municipal Code Section 11.100.030(j) defines security deposit as Rent. Where a security deposit, or increase in a security deposit, is demanded, accepted, or retained in violation of Regulation 1101(A), there exists a Rent increase. A Tenant may file a Petition for Rent Overcharges pursuant to Regulation 911 with the Richmond Rent Program to challenge the Rent increase.

B. California Civil Code Section 1950.5 et seq., as amended, establishes a Landlords' obligation to return a security deposit. Where a Landlord retains a security deposit in violation of California Civil Code 1950.5 et seq, as amended, such an act shall constitute a Rent overcharge and a Tenant may bring a petition for Rent Overcharges pursuant to Regulation 911 with the Richmond Rent Program.

[Adopted July 18, 2018]

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CHAPTER 12: JUDICIAL REVIEW

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