

## SANTA MONICA RENT CONTROL BOARD – MEMO

TO: Board Commissioners

FROM: Hakhamanesh Mortezaie, Staff Attorney

BOARD MEETING: May 12, 2011

RE: Proposed Amendments to Chapter 12 Regulations  
12051, 12053, 12055 and 12070-12073  
Lapse of Exemptions

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### INTRODUCTION

Staff is recommending that the Board adopt the proposed amendments to Chapter 12 Regulations 12051, 12053, 12055 and 12070-12073 (attached with proposed new language in italics) to govern the administrative process for lapse of all exemptions from the Rent Control Law (Santa Monica Charter Article XVIII, "RCL").

### DISCUSSION

Section 1801 of the Santa Monica Charter defines the jurisdiction of the RCL. It identifies units which are subject to it and those which are exempt. Section 1801(c) enumerates the exemptions, in relevant part, as follows:

1. Rental units in hotels, motels, inns, tourist homes and rooming and boarding houses which are rented primarily to transient guests for a period of less than fourteen (14) days;
2. Rental units in any hospital, convent, monastery, extended medical care facility, asylum, non-profit home for the aged, or dormitory owned and operated by an institution of higher education;
3. Rental units which a government unit, agency or authority owns, operates, manages, or in which governmentally subsidized tenants reside only if applicable federal or state law or administrative regulation specially exempt such units from municipal rent control;
4. Rental units in owner-occupied dwellings with no more than three (3) units;
5. Rental units and dwellings constructed after the adoption of this Article;
6. Where a unit is actually used for purposes of providing, on a non-profit basis, child care or other residential social services in accordance with applicable law.

In addition to the exemptions above, the Board has also granted exemptions for units in properties that may otherwise be subject to the RCL which have never been rented, or which are being used for commercial purposes. These types of units are exempt from the RCL based on the definition of rental units in section 1801(h).

Section 1801(c)(7) provides that exemptions are not automatic. They are granted by the Board upon application by the owner pursuant to Board rules and regulations. The Board promulgated Chapter 12 of its regulations to govern the process for issuance of specified exemptions. Regulation 12070 et seq. provides the administrative process for lapse of the exemption for three or fewer unit owner-occupied properties, the most common exemption. There are no regulations which govern the lapse of other exemptions.

Pursuant to Board instructions, staff has commenced the monitoring and review of existing exemptions. Staff proposes the attached amended regulations to provide administrative due process in all cases where the exemption has been determined to have lapsed.

The proposed regulation also streamlines the process for approval of applicable forms. Finally, it standardizes the time within which a hearing examiner is to issue a decision for both approval of exemptions and the lapse of exemptions.

### RECOMMENDATION

Staff recommends that the Board adopt the attached proposed amendments to Chapter 12 of the Board's regulations.

Attachment: Proposed Amendments to Chapter 12 Regulations 12051, 12053, 12055 and 12070-12073

**12051. Exemption Procedures for Rental Units in Hotels, Motels, Inns, Tourist Homes and Rooming and Boarding Houses**

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- (a) Scope of Section. Hotels, motels, inns, tourist homes and rooming and boarding houses shall not be considered exempt from the Rent Control Law unless and until the owner of the property has applied for, and received, a determination that such units are exempt.
- (b) Filing of Application and Notice Thereof. Any person seeking an exemption determination under this section must make application on the form approved by the *Administrator Board*. Within five days of filing of an application, the owner shall either:
- (1) Serve a copy of such application along with a response form provided by the Board on tenants from every rental unit for which the owner seeks an exemption, or
  - (2) Post a copy of such application along with a copy of the response form provided by the Board in each rental unit for which the owner seeks an exemption.

The applicant must provide occupancy records for the period from January 1, 1979, to the present for every unit of the property for which the applicant seeks an exemption for inspection and copying at the Rent Control Board offices upon request. Failure to provide such records may result in dismissal of the application.

- (c) Determination. As soon as practicable after the filing of an application, and in no event later than ninety (90) days from the date of filing, the Board shall make a final determination as to the exempt or non-exempt status of the property. The Board may hold a hearing or direct a hearing examiner to hold a hearing for the purpose of receiving evidence upon which to make the determination.
- (d) Standards for Exemption. The Board shall determine that the property is exempt from the Rent Control Law upon making the following findings and subject to the proviso set forth in subsection (e):
- (1) The property is a hotel, motel, inn, tourist home, or rooming and boarding house.
  - (2) The rental units at the property are rented primarily for use by transient guests.
  - (3) The rental units at the property are rented primarily for rental collection periods of less than fourteen (14) days.
- (e) Exemption Exceptions. A determination of exemption shall not apply to units occupied by tenants in any of the following circumstances until such tenants cease to reside on the property:
- (1) The current occupant has continuously resided in the rental unit for at least three (3) months as of the date of Board hearing; or
  - (2) The current occupant has continuously resided on the property, whether in the rental unit currently occupied or in another unit, for at least three (3) months as of the date of Board hearing; or
  - (3) The current occupant has an oral or written agreement entered into with the owner or owner's agent before the date of Board hearing establishing a tenancy of three (3) months or more.
- (f) Burden of Proof. An applicant shall have the burden of proving entitlement to an exemption under this section. The applicant shall present the records of occupancy required to be kept and documentation of transient occupancy taxes paid to the City under Santa Monica Municipal Code Section 6.68 §6600, ~~et seq.~~

- (g) Effective Date of Exemption. Upon determination by the Board that a property is exempt from rent control, the exemption shall be deemed to relate back to the date upon which the conditions entitling an applicant to an exemption arose, providing that such conditions have continued to exist at all times since that date.
- (h) Expiration of Exemption. If the use of a hotel, motel, inn, tourist home, rooming house or boarding house which has been granted an exemption under this section changes such that the rental units on the property are no longer rented primarily for use by transient guests, the exemption shall automatically expire.

**12053. Exemption Procedures For Three Unit or Less Owner-Occupied Properties**

- (a) Filing of Application.
  - (1) Any person seeking a determination of exemption under Charter §1801(c)(4) must make application on the form approved by the ~~Administrator~~ Board. Such application shall not be considered complete until the applicant has submitted a copy of a grant deed or other evidence of applicant's ownership interest and other documentation showing that there [are] were, on April 10, 1979, three or fewer units at the property and that the applicant's principal place of residence is the property for which exemption is claimed. The application for exemption shall not be accepted for filing unless accompanied by a processing fee of one hundred dollars (\$100).
  - (2) Staff shall have five business days from the date the application is submitted to determine if an application is complete. If the application is incomplete, it shall be returned to the applicant and shall not be considered "filed". Any application which is not rejected as incomplete during the five day review period shall be considered filed on the sixth business day after the date of submission and the ninety days for consideration of the application shall begin on that date. Even if an incomplete application is accepted for filing, it may be dismissed pursuant to Section 12200 of these Regulations.
  - (3) If an application for an exemption has been denied or withdrawn the applicant may refile one hundred twenty (120) days or more after the denial.
- (b) Notice. Within five days of filing of a completed application, the Board shall mail a copy of the application for exemption to each rental unit at the property along with *an Administrator-approved* ~~a Board-approved~~ notice of filing and a tenant response form.
- (c) Standards of Proof. The applicant shall have the burden of proving by a preponderance of evidence that:
  - (1) The applicant owns at least a fifty percent (50%) interest in the property for which exemption is sought and has owned fifty percent (50%) interest since the date of filing the application for exemption;
  - (2) The property, including any contiguous parcels or lots in which the applicant has at least a *fifty percent (50%)* ownership interest, had three or fewer residential units, including residential units not used for rental purposes, on April 10, 1979;
  - (3) The owner has continuously resided at the property as his or her principal place of residence beginning at least one hundred twenty (120) days prior to the filing of the application for exemption.
- (d) Recommendation Without a Hearing Where Facts Are Not In Dispute. Staff shall review the documentation submitted with each application, Board records of the property and all tenant response forms returned to the Board. Staff shall prepare a "Recommendation to the Board" recommending that the application be granted without a hearing, if the applicant's documentation,

Board records and all tenant responses confirm that as of the date of filing, the applicant has met the requirements of Regulation 12053(c).

(e) Reference to Hearing Examiner. If upon review of the application, attachments and tenant responses, staff determines that there are any disputed facts or issues of law which are relevant to a determination of owner-occupancy, staff shall not prepare a "Recommendation to Board" and shall instead refer the case to a hearing examiner. Notice of such a hearing shall be given by the hearings department at least ten days prior to the date set for the hearing.

(1) Where a case is referred to a hearing examiner, staff shall conduct an on-site inspection of the property prior to the date set for hearing.

(2) Staff shall prepare a written "Staff Report" for submission to the hearing examiner and admission to the case record. The staff report shall contain a report of staff's observations during the on-site inspection, any photographs taken by staff, a review of any documents contained in Board records or submitted by the applicant and other parties and the names of any persons who could present evidence. The staff report shall be included in the case file and shall be available for inspection by the parties. It shall be considered competent evidence, but the staff member who prepared the report shall be subject to cross-examination at the hearing.

(f) Hearing Examiner

(1) ~~4.~~ The following persons may serve as a hearing examiner at a hearing on an exemption application:

(i) ~~(a)~~ A Board member.

(ii) ~~(b)~~ The ~~administrator~~ *Administrator* or his or her designee.

(2) ~~2.~~ The functions of the hearing examiner shall be performed in an impartial manner.

(3) ~~3.~~ Powers of Hearing Examiner.

The hearing examiner shall have the right to:

(i) ~~(a)~~ Administer oaths and affirmations.

(ii) ~~(b)~~ Cause the Board to issue subpoenas for the attendance of persons to testify and to produce books, records and other papers.

(iii) ~~(c)~~ Direct staff to conduct a pre-hearing inspection and take photographs of the property for which the exemption is sought.

(iv) ~~(d)~~ Rule on offers of proof and receive relevant evidence.

(v) ~~(e)~~ Control the course of the hearing.

(vi) ~~(f)~~ Rule on procedural requests.

(vii) ~~(g)~~ Question any witness during the course of the hearing.

(viii) ~~(h)~~ Render a Recommendation to the Board to either grant or deny the application.

#### **12055. Recommendation of Hearing Examiner**

(a) Within ~~twenty-one days~~ *thirty days (30)* of the date of hearing on an application for a three unit or less owner-occupied exemption, the hearing examiner shall issue a "Recommendation to the

Board" to either grant or deny the application for exemption. *This deadline may be extended by written waiver, executed by the petitioner.*

- (b) In making the recommendation the hearing examiner shall consider all documentary material submitted with the application, any information contained in the Board files, any tenant responses and all relevant evidence produced at the hearing. The hearing examiner will consider the applicant's production of or failure to produce the following information, to the extent it appears reasonably available to the applicant without undue effort:
- (1) ~~1-~~ Address(es) shown on applicant's driver's license, state identification card and/or vehicle registration.
  - (2) ~~2-~~ Address or addresses where applicant receives mail.
  - (3) ~~3-~~ Name and address where utility bills for subject property are sent.
  - (4) ~~4-~~ Date of utility connection for the applicant's residence.
  - (5) ~~5-~~ Address for purposes of voter registration.
  - (6) ~~6-~~ Observations by Board staff and/or neighbors regarding occupancy of applicant.
  - (7) ~~7-~~ Number of days in a week, month or year which applicant spends at the property for which exemption is sought.
  - (8) ~~8-~~ Ownership by applicant of any other real property or evidence of any other residence of applicant.
- (c) The hearing examiner's Recommendation shall include proposed findings of fact and conclusions of law consistent with the Recommendation. Such proposed findings and conclusions must refer to the following specific subjects:
- (1) ~~1-~~ The number of units at the subject property, including units on any contiguous lots or parcels in which applicant has at least a fifty percent (50%) interest.
  - (2) ~~2-~~ The percentage of ownership interest in the property held by the applicant.
  - (3) ~~3-~~ Applicant's continuous occupancy of the subject property for at least one hundred twenty (120) days prior to the date of the filing of the exemption application, or evidence of occupancy at another address, and the dates of such occupancy.
  - (4) ~~4-~~ A specific conclusion of law that:
    - (i) ~~(a)~~ the applicant has continuously resided at the property as his or her principal place of residence beginning at least one hundred twenty (120) days prior to the date of the filing of the exemption application or
    - (ii) ~~(b)~~ the applicant did not reside at the property as his or her principal place of residence beginning at least one hundred twenty (120) days prior to the date of the filing of the exemption application.
- (d) Upon completion by the hearing examiner of the Recommendation to the Board, the hearings department shall send the applicant and all tenants at the property a copy of the Recommendation, and a Notice of Recommendation.

## **12070. Lapse of Three-Unit or Less Owner-Occupied Exemptions**

- (a) Scope. This regulation provides the administrative process for lapse of exemptions provided pursuant to Section 1801(c).
- (b) Notice of Lapsed Exemption. ~~When the facts supporting an exemption no longer exist, an exemption lapses by operation of law. An owner-occupied three-unit or less exemption lapses by operation of law, as set forth in Section 1801 (c) (4), when the owner no longer resides on the property as his/her principal place of residence. The exemption also lapses when the owner no longer owns at least 50% of the property.~~
- (1) If an owner notifies the Board, in a writing signed by the owner, *that the facts which support the exemption no longer exist*, ~~owner no longer resides on the property as his/her principal place of residence~~, the exemption will be deemed to have lapsed and a Final Notice will be sent to the owner and tenants notifying them of the lapse, specifying the facts upon which the determination was made, the date the lapse became effective, the consequences of such lapse, and the procedures available to contest the lapse. The Final Notice shall be sent to the property address and any other known address of the owner.
  - (2) If a new owner files a registration form for the property, and/or notifies the Board in a writing signed by the new owner *that the facts which support the exemption no longer exist*, ~~that he/she is the new owner~~, the exemption will be deemed to have lapsed and a Final Notice will be sent to the former owner, the new owner, and the tenants notifying them of the lapse, specifying the facts upon which the determination was made, the date the lapse became effective, the consequences of such lapse, and the procedures available to contest the lapse. The Final Notice shall be sent to the property address and any other known addresses of the former and new owners.
  - (3) Upon determination by Board staff that sufficient evidence exists to make an initial determination that an exemption has lapsed, by a means other than outlined in subparagraphs 1 and 2 above, a Notice of Lapse will be mailed to the exemption holder at the property address and any other known address and to the tenants, specifying the facts upon which the initial determination was made, the date upon which the lapse is believed to have occurred, the consequences of such a lapse, and the procedures available to contest the lapse.
  - (4) All written or documentary evidence used in the initial determination shall be available to the owner and tenants for inspection and review during normal business hours.
- (c) Opportunity to Respond.
- (1) Within fifteen (15) days of the mailing of the Final Notice, pursuant to subparagraphs ~~(a)(b)(1)~~ and ~~(a)(b)(2)~~ above, an owner or tenant of the property may file a written response to the Notice. The owner and tenant may include with the response any and all relevant documents. Staff shall review the response and any attached documentation. If, after reviewing all relevant material submitted, staff determines that the facts upon which the Notice was based were inaccurate, incomplete, or otherwise in error, the exemption will be deemed not to have lapsed, and the owner and tenants will be so notified. A response received more than fifteen days after the mailing of the Notice will not be considered in the absence of good cause.
  - (2) Within fifteen (15) days of the mailing of the Notice of Lapsed Exemption, pursuant to subparagraph ~~(a)(b)(3)~~ above, an owner or tenant of the property may file a written response to the Notice. The owner and tenant may include with the response any and all relevant documents. Staff shall review the response and any attached documentation. If, after reviewing all relevant material submitted, staff determines that the facts upon which the initial Notice of Lapsed Exemption was based were inaccurate, incomplete, or

otherwise in error, the exemption will be deemed not to have lapsed, and the owner and tenants will be so notified.

- (d) Failure to Respond to Notice of Lapsed Exemption. If an owner does not respond within fifteen (15) days of mailing of the Notice of Lapsed Exemption, the exemption will be deemed to have lapsed and a Final Notice will be sent to the owner and tenants notifying them of the lapse and of the date the lapse became effective. A response received more than fifteen days after the mailing of the Notice of Lapsed Exemption will not be considered in the absence of good cause.
- (e) Referral to Hearing Examiner. If an owner responds within the fifteen day period, but the response fails to resolve the issues of law or fact set forth in the original Notice, the matter shall be referred to a hearing examiner for hearing. Notice of such a hearing will be given by the Hearings Department to the owner and all tenants residing at the property at least ten days prior to the date set for hearing.
  - (1) Upon referral to a hearing examiner on a Lapse of Exemption, staff may conduct an on-site inspection of the property and prepare a written report for submission to the hearing examiner and submission to the case record.
  - (2) The staff report shall contain a report of staff's observations during the on-site ~~investigation exemption~~ and any photographs taken by staff. The staff report shall be included in the case file and shall be available for inspection by the owner and tenants. It shall be considered competent evidence, but the staff member who prepared the report shall be subject to cross-examination at the hearing.

#### **12071. Recommendation of Hearing Examiner.**

- (a) Hearing Examiner and Powers of Hearing Examiner.
  - (1) The designation and powers of the hearing examiner are as set forth in Regulation 12053, subsection (f), and are incorporated herein by reference.
  - (2) ~~Hearing Procedure~~. The hearing shall be conducted consistent with Regulation 12054(b), ~~and are~~ incorporated herein by reference.
- (b) Within thirty (30) days of the date of hearing on a Notice of Lapsed Exemption, the hearing examiner shall issue a written "Recommendation to the Board" *determining whether the exemption has lapsed.* ~~to either lapse or not lapse the three unit or less owner-occupied exemption.~~ In making the recommendation the hearing examiner shall consider all documentary material submitted with the application, any information contained in the Board files, any tenant responses, and all relevant evidence produced at the hearing.
- (c) The hearing ~~officer's~~ *examiner's* Recommendation shall include proposed findings of fact and conclusions of law consistent with the Recommendation.
- (d) The ~~recommendation~~ *Recommendation* shall be reviewed and approved by the Hearings Department Manager or his/her designee before it is issued.
- (e) Upon completion by the hearing examiner of the Recommendation to the Board, the Hearings Department shall send all parties a copy of the Recommendation, a Notice of Recommendation and notice of the Board Consideration process set forth in Regulation 12072.

#### **12072. Board Consideration.**

- (a) Notice. The Board shall set the matter for consideration as soon as is practicable. At least ten days prior to the date set for Board consideration, the Board shall give notice to all parties of the date, time and place for Board meeting.

- (b) Response to Recommendation. The parties, any authorized representative of the parties, or any other interested person may file a written response to the Recommendation. The written response shall be filed and received by the Board at no later than fifteen (15) days after the date of the Hearing Examiner's Recommendation. Upon a showing of good cause, the Board may accept a later filing of the response.
- (c) Staff Report. At least ten days prior to the date set for Board consideration, a staff report shall be prepared on the Recommendation. The staff report shall contain a written recommendation to adopt, modify, or reverse, or reverse and remand the written Recommendation of the hearing examiner.
- (d) Continuances. Continuance requests will be considered by the Board where the party has complied with the requirements of Regulation 12054(a), incorporated by this reference.
- (e) Consent Calendar. The Lapse of Exemption shall be considered on the Board's consent calendar. The parties to the claimed lapse shall be permitted to address the Board.
- (f) Decision. The Board's decision shall be based upon the hearing record and Recommendation prepared by the hearing examiner, the responses to the Recommendation, any recommendations of staff and any oral argument presented to the Board. The Board may adopt, reverse, reverse and remand, or modify the hearing examiners recommendation. The Board's decision must be supported by findings of fact and conclusions of law.

**12073. Notice of Discontinuance of ~~Owner-Occupancy or Transfer of Ownership of Three-Or-Fewer-Unit Exempt Use of Property~~**

- (a) The owner(s) of a ~~three-or-fewer-unit, owner-occupied exempt property~~ *property exempted by the Board pursuant to Section 1801(c)* shall notify the Board when ~~he/she no longer resides at the property as his/her principal place of residence or no longer owns at least a fifty percent (50%) interest in the property.~~ *there is a change in the exempt use of the property. If the exemption is for a three-or-fewer-unit, owner-occupied exempt property,* the owner(s) shall notify the Board when he/she no longer resides at the property as his/her principal place of residence or no longer owns at least a fifty percent (50%) interest in the property.
- (b) The notice shall be in writing and made as soon as practicable, but not later than fourteen (14) days after the ~~occupancy has ended or ownership has been transferred~~ *end of the exempt use, owner-occupancy or transfer of ownership, whichever is applicable.*