CHAPTER 12

EXEMPTIONS AND COVERAGE

12000. Exemption Procedures

A property shall not be considered exempt from the Rent Control Law until the owner of said property has applied for, and received, a determination by the Rent Control Board that such property is exempt. With the exception of applications governed by Regulation 12051, all exemptions shall be prospectively effective for all purposes, upon the granting of an application. The prospective effect requirement of this regulation applies to all applications filed on or after August 31, 1989.

[12000 Amended 4/22/82; Effective 5/2/82]
[12000 Amended 9/28/89; Effective 10/10/89]

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

(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 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.

(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.

[12051 Adopted 5/26/83; Effective 6/4/83]
[12051(c) Amended 3/10/88; Effective 3/30/88]
[12051(f) Amended 5/12/11; Effective 5/20/11]

12052. Extended Medical Care Facilities

(d) For purposes of §1801 (c)(2), "extended medical care facilities" shall include skilled nursing facilities which are currently licensed as health care facilities under California Administrative Code, Title 22, Division 5, Chapter 3. A skilled nursing facility means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24 hour in-patient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program.

"Extended medical care facilities" shall not include community care facilities or alcoholic or drug rehabilitation or detoxification centers. A community care facility means a facility which is maintained and operated to provide non-medical residential care. Alcohol and drug rehabilitation or detoxification centers mean recovery houses or other similar facilities providing living arrangements for persons recovering from alcoholism or drug addiction.

(e) For purposes of §1801(c)(2), "asylums" shall include the benevolent institutions affording shelter and support to some class of the disabled or destitute.

(1) To qualify for a use exemption under this Regulation an applicant must meet the following requirements:

(a) The applicant must be an organization exempt from Federal income taxes under §501 (c)(3) of the Internal Revenue Code provided that the gross income derived from the subject property does not constitute unrelated business income as defined in §512 of the Internal Revenue Code.

(b) Housing services are or will be a necessary part of the social service program at the subject property, and the rental units for which an exemption is sought shall be used for residential housing purposes as part of the social service program.

(c) The applicant demonstrates to the Rent Control Board that it is proceeding and at all relevant times has proceeded in good faith to effectuate the purposes for which the applicant seeks exemption.

(2) The exemption shall last only so long as the applicant uses rental units as an asylum, or until the applicant gives up the exemption, whichever is sooner. The Board may, after notice and hearing, revoke any exemption upon a showing that any of the conditions upon which the exemption was based no longer exists.

(3) The granting of an exemption shall not in any way deprive the then current residents of the effected property of any of the protections contained in the Charter Amendment. These protections include, without limitation, the good cause eviction provisions of Charter Amendment §1806 and the maximum allowable rent provisions of Charter Amendment Sections 1805 and 1809.

(4) Upon the termination of this exemption, the maximum allowable rent existing prior to the granting of the temporary exemption, plus any subsequent general adjustments, shall be the new maximum allowable rent. This does not prevent a party from applying for an individual rent adjustment.

(5) The granting of a use exemption under this Regulation does not, in any way, constitute a removal permit under chapter 5 of these regulations.

[12052(d) Adopted 5/24/80; Effective 6/3/80]
[12052(e) Adopted 8/27/81; Effective 9/9/81]
[12052(e) Amended 8/12/82; Effective 9/3/82]

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 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 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) The following persons may serve as a hearing examiner at a hearing on an exemption application:

(i) A Board member.

(ii) The Administrator or his or her designee.

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

(3) Powers of Hearing Examiner.

The hearing examiner shall have the right to:

(i) Administer oaths and affirmations.

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

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

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

(v) Control the course of the hearing.

(vi) Rule on procedural requests.

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

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

[12053 Adopted 3/10/88; Effective 3/30/88]
[12053 Amended 11/10/94; Effective 11/22/94]
[12053(a)(1) Amended 6/10/99; Effective 6/25/99]
[12053(c)(1), (c)(3) Amended 5/25/00; Effective 6/9/00]
[12053(a)(3), (c)(3) Amended 12/14/06; Effective 12/17/06]
[12053(b), (f)(1)-(3) Amended 5/12/11; Effective 5/20/11]

12054. Procedure Where Three Unit or Less Owner-Occupied Exemption Has Been Referred to A Hearing Examiner

(a) Continuances. Continuances for any exemption hearings shall be granted only for good cause, by the Hearing Examiner, Hearings Department Manager or Administrator. Requests for continuances shall be made as soon as possible. A written request and the reasons for the continuance must be submitted to the Rent Control Board office at least 72 hours prior to the scheduled hearing, unless good cause is shown for a later request. The written request must 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. Copies of this written request must be sent immediately to all other parties and proof of such service must accompany the written request filed with the Board. A continuance request which meets the requirements of this section may nevertheless be denied if granting the continuance request would impede the Board's ability to decide the case within the ninety-day deadline of Rent Control Law Section 1801(c)(7). The applicant may execute a waiver of the ninety-day deadline to permit further time for consideration of the application.

(b) Hearing Procedure

1. Conduct of Hearing. The hearing on an exemption application shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.

2. Evidence Rules. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious or irrelevant evidence shall be excluded upon order by the hearing examiner.

3. Order of Proceedings

   (a) The hearing on an application for an owner-occupied exemption shall ordinarily proceed in the following order:

      (1) Presentation by or on behalf of the exemption applicant, if the applicant wishes to expand upon material contained in the application, including any witnesses on behalf of the applicant. A tenant may cross-examine each person who offers testimony. If there is more than one tenant at the property, the tenants shall choose a spokesperson to conduct cross-examination on behalf of all the tenants.

      (2) Presentation by or on behalf of tenants of the property, including any witnesses on behalf of the tenants. The applicant may cross-examine each witness at the conclusion of testimony by that witness.

      (3) Rebuttal by applicant or applicant's witness followed by cross-examination of that person regarding the rebuttal testimony.

      (4) Closing arguments may be presented by the applicant and by tenants of the property at the conclusion of testimony.

   (b) The hearing examiner or any party may request attendance at the hearing by the staff person who conducted the on-site inspection and prepared the staff report. The staff person may be questioned at the hearing by the applicant and tenants or their representatives and by the hearing examiner.

4. Speaker's Presentation. Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate. The hearing examiner may establish reasonable time limits for presentations.

5. Right of Assistance. In presenting evidence and developing their positions the applicant and tenants of the property may have assistance from attorneys, legal workers, recognized tenant organization representatives, landlord association representatives, or any other persons designated by said parties.

6. Hearing Record. The hearing examiner shall keep on file an official record, which shall constitute the exclusive record for decision, and which shall include:

   (a) A copy of the application for exemption

   (b) Any response to the application for exemption.

(c) Exhibits, papers, and documents offered either before or during the proceedings, including any reports or photographs submitted by Board staff.

(d) A list of participants present.

(e) A summary of all testimony accepted in the proceedings.

(f) A statement of all materials officially noticed.

(g) An evaluation of all evidence.

(h) Proposed findings of fact and conclusions of law.

(i) All evidentiary or procedural rulings made by the hearing examiner.

(j) A Recommended decision.

7. Hearing Record Public

The hearing record is a public record and may be inspected and copied by any person. The Board will provide to any person copies of any documents in the hearing record provided that the requesting party reimburse the Board for photocopy expenses. The reimbursement rate will be established by the Board.

[12054 Adopted 3/10/88; Effective 3/30/88]

12055. Recommendation of Hearing Examiner

(a) Within 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) Address(es) shown on applicant's driver's license, state identification card and/or vehicle registration.

(2) Address or addresses where applicant receives mail.

(3) Name and address where utility bills for subject property are sent.

(4) Date of utility connection for the applicant's residence.

(5) Address for purposes of voter registration.

(6) Observations by Board staff and/or neighbors regarding occupancy of applicant.

(7) Number of days in a week, month or year which applicant spends at the property for which exemption is sought.

(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) 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) The percentage of ownership interest in the property held by the applicant.

(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) A specific conclusion of law that:

(i) 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) 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.

[12055 Adopted 3/10/88; Effective 3/30/88]
[12055(b)(3), (b)(4)(a)-(b) Amended 5/25/00; Effective 6/9/00]
[12055(b)(3), (b)(4)(a)-(b) Amended 12/14/06; Effective 12/17/06]
[12055(a)-(d) Amended 5/12/11; Effective 5/20/11]

12056. Board Consideration

(a) Notice. The Board shall set the matter for consideration as soon as is practicable, so long as the date for consideration is within the ninety-day deadline set forth above. At least ten days prior to the date set for Board consideration, the Board shall give notice to the applicant and all tenants of the property of the date, time and place for Board meeting.

(b) Response to Recommendation. The applicant, any tenant of the property, any authorized representative of either landlord or tenant, or any other interested person may file a written response to the Recommendation. The response must be received by the Board at least seventy-two hours prior to the date set for Board hearing on the recommendation. Upon a showing of good cause, the Board may accept a later filing of the response/request.

(c) Continuances. Continuance requests will be considered by the Board where the requesting party has complied with the requirements of Regulation 12054(a) and the Board has sufficient time within the ninety (90) day deadline to decide the case.

(d) Presentation by Parties

(1) The applicant and any tenant of the property are parties.

(2) The parties may offer oral argument and the presentation shall not exceed five minutes per person. The Board's Chair may extend the time.

(3) If any party claims that there is new evidence available at the time of Board hearing which was undiscoverable at the time of the hearing before the hearing examiner, that party must make an offer of proof to the Board regarding the evidence and why it was undiscoverable previously. If a majority of Commissioners find that the offer of proof is sufficient, they may agree to receive the new evidence at the time of the Board hearing, but may limit the time for presenting such evidence.

(4) If the Board agrees to receive new evidence, and the applicant agrees to waive time deadlines, the Board may refer the matter back to a hearing examiner for presentation of the evidence and preparation of a new Recommendation.

(e) Decision. The Board's decision shall be based upon the hearing record and Recommendation prepared by the hearing examiner, the responses to the Recommendation and any oral argument presented to the Board. The Board may adopt, reverse, reverse and remand or modify the hearing examiner's recommendation. Remand of the matter may only be ordered if there remains sufficient time to permit such a procedure, or if the applicant executes a waiver of time deadlines sufficient to permit an additional hearing before the hearing examiner. The Board's decision must be supported by findings of fact and conclusions of law.

(f) The granting of an exemption does not relieve the applicant of the obligation to pay registration fees and/or penalties which may have accrued prior to the date of filing of the exemption.

[12056 Adopted 3/10/88; Effective 3/30/88]
[12056(e)(2) Amended 5/25/00; Effective 6/9/00]
[12056 Amended 7/10/14; Effective 7/18/14]

12060. New Construction

(a) Rental units and dwellings constructed and first receiving occupancy permits outside the boundaries of the City of Santa Monica prior to April 10, 1979 and thereafter moved into the City and first receiving occupancy permits after April 10, 1979 shall not be considered new construction qualifying for exemption under §1801(c)(5).

(b) Residential rental units constructed and offered for rent or lease within five years of the withdrawal and subsequent demolition of controlled rental units pursuant to Government Code section 7060, et seq. (the Ellis Act) and Board regulations 1600, et seq. shall not be considered new construction qualifying for exemption under §1801(c)(5).

[12060 Adopted 9/9/82; Effective 9/22/82]
[12060 Amended 5/3/90; Effective 8/4/91]
[12060(b) Adopted 2/18/10; Effective 2/24/10]

12070. Lapse of Exemptions

(a) Scope. This regulation provides the administrative process for lapse of exemptions provided pursuant to Section 1801(c).

(b) Notice of Lapsed Exemption. Upon receiving credible information that an exemption under Charter Section 1801(c) has lapsed because the facts that supported the Board's granting of that exemption are no longer true, Board staff must notify the landlord and affected tenants of the potential lapse as follows:

(1) If an owner notifies the Board, in a writing signed by the owner, that the facts which support the exemption no longer exist, 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 – including the establishment of the maximum allowable rent under Regulation 2007– 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, or notifies the Board in a writing signed by the new owner that the facts which support the exemption no longer exist, the exemption will be deemed to have lapsed and a Final Notice will be sent to the former owner (except as specified in subparagraph 4 of this subdivision), 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 – including the establishment of the maximum allowable rent under Regulation 2007– 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 – including the establishment of the maximum allowable rent under Regulation 2007 – and the procedures available to contest the lapse.

(4) For exemptions granted under Charter Section 1801(c)(4), notice shall not be sent to the former owner if the Administrator and General Counsel jointly determine that the former owner is deceased, or that attempting to contact the former owner would otherwise be futile. The basis for any such joint determination shall be stated in a writing signed by the Administrator and General Counsel and that statement, along with any supporting documentation, shall be included in the property file.

(c) Annual Certification by Owner. The owner of a property found to be exempt under Charter Section 1801(c)(4) (owner occupancy) must annually certify that he or she continues to occupy the property as his or her principal residence. The certification must be on a form approved by the Board's Administrator, and must be signed under penalty of perjury by the landlord. If an owner fails to return the signed certification to the Board within 30 days from the date when it was mailed to him or her, that failure constitutes sufficient evidence to make an initial determination that an exemption has lapsed, under paragraph (3) of subdivision (b) of this section.

(d) Evidence Available for Inspection. 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.

(e) Opportunity to Respond.

(1) Within fifteen (15) days of the mailing of the Final Notice, pursuant to subparagraphs (b)(1) and (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 (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.

(f) 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.

(g) 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 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.

(h) No Lapse Upon Death of a Co-owning Surviving Spouse. The death of an owner in whose name an exemption was granted under Charter Section 1801(c)(4) creates an irrebuttable presumption that the facts upon which the exemption was granted are no longer true. But that presumption shall not apply if the deceased owner is survived by a spouse who held at least a fifty percent ownership interest in the property at the time of the deceased owner's death and otherwise qualifies for the exemption.

[12070 Adopted 5/14/98; Effective 5/22/98]
[12070(a)(1)-(2), (b)(1) Adopted 5/22/03; Effective 6/6/03]
[12070(a)(3)-(4), (b)(2) Amended 5/22/03; Effective 6/6/03]
[12070(a), (b), (b)(1)-(2), (c)(1)-(2), (d), (e)(2) Amended 5/12/11; Effective 5/20/11]
[12070 Amended 5/14/15; Effective 5/23/15]
[12070(b) Amended 2/11/16; Effective 2/19/16]
[12070(b)(2) Amended 12/8/16; Effective 12/15/16]
[12070(b)(4), (h) Adopted 12/8/16; Effective 12/15/16]

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) 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. 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 examiner's Recommendation shall include proposed findings of fact and conclusions of law consistent with the Recommendation.

(d) The 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.

[12071 Adopted 5/14/98; Effective 5/22/98]
[12071(a)(2), (b)-(d) Amended 5/12/11; Effective 5/20/11]

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) Placement on Board Agenda. The Lapse of Exemption shall be considered on the Board's agenda as a jurisdictional item. The parties to the claimed lapse shall be permitted to address the Board according to regulations governing jurisdictional items.

(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.

[12072 Adopted 5/14/98; Effective 5/22/98]
[12072(c), (f) Amended 5/12/11; Effective 5/20/11]
[12072(e) Amended 7/10/14; Effective 7/18/14]

12073. Notice of Discontinuance of Exempt Use of Property

(a) The owner(s) of a property exempted by the Board pursuant to Section 1801(c) shall notify the Board when 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 end of the exempt use, owner-occupancy or transfer of ownership, whichever is applicable.

[12073 Adopted 5/25/00; Effective 6/9/00]
[12073(a), (b) Amended 5/12/11; Effective 5/20/11]

12200. Administrative Dismissal of Application for Exemption

(a) The Board shall dismiss an application for exemption and shall not schedule a hearing or grant an exemption:

(1) Where the application submitted has not been completed in its entirety, with evidence of ownership interest and occupancy attached to the application; or

(2) Where the application fails, on its face, to state a basis for exemption under §1801(c) of the Charter.

(b) Rent Control staff shall mail to the applicant and tenants of the property a written notice of dismissal stating the applicable reasons for such dismissal.

(c) Any of the following persons may make an administrative determination to dismiss a petition:

(1) A majority of the Rent Control Commissioners; or

(2) The Administrator or his or her designee.

(d) After dismissal of an application pursuant to §12200(a), an applicant may file an appeal of the dismissal for consideration by the Board.

(1) The appeal must be filed within ten days of the date of the notice of dismissal on an appeal form provided by the agency. The appeal shall set forth the specific grounds upon which the appeal is based. Only one appeal may be filed by or on behalf of the applicant.

(2) At least ten days prior to the date set for Board action, a staff report on the appeal shall be prepared. The staff report shall contain a written recommendation to affirm the dismissal or to allow the applicant to proceed with the exemption application.

(3) At least ten 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. A copy of the staff report shall be mailed along with the notice.

(4) Continuances of dates set for Board action on the appeal shall be granted only for good cause by a majority of the Board or by the Administrator. Requests for continuances shall be made as soon as possible. A written request and the reasons for it must be received by the Rent Control Board at least 72 hours prior to the scheduled hearing, unless good cause is shown for a later request. The written request must contain acceptable alternate dates and an explanation of what efforts were made to ascertain the position of any other parties regarding the request for continuance. Copies of this written request must be sent immediately to all other parties and proof of such service must accompany the written request filed with the Board.

(5) The Board decision shall be based upon the application, any information submitted in connection with the appeal, and the parties' responses to the staff report on appeal.

(6) The Board shall issue a statement of decision which sets forth the basis of the decision.

(7) In the event that the Board reverses the dismissal of the application for exemption, the application shall be deemed filed as of the date of the Board's decision.

[12200 Adopted 4/23/83; Effective 5/15/83]
[12200 Amended 10/27/83; Effective 11/5/83]
[12200 Amended 3/10/88; Effective 3/30/88]
[12200(d)(1)-(7) Amended 5/25/00; Effective 6/9/00]

[Chapter 12 Adopted 2/23/80; Effective 2/28/80]
[12052(d) Adopted 5/24/80; Effective 6/3/80]
[12052(e) Adopted 8/27/81; Effective 9/9/81]
[12000 Amended 4/22/82; Effective 5/2/82]
[12052(e) Amended 8/12/82; Effective 9/3/82]
[12060 Adopted 9/9/82; Effective 9/22/82]
[12200 Adopted 4/23/83; Effective 5/15/83]
[12051 Adopted 5/26/83; Effective 6/4/83]
[12200 Amended 10/27/83; Effective 11/5/83]
[12051(c) Amended 3/10/88; Effective 3/30/88]
[12053 Adopted 3/10/88; Effective 3/30/88]
[12054 Adopted 3/10/88; Effective 3/30/88]
[12055 Adopted 3/10/88; Effective 3/30/88]
[12056 Adopted 3/10/88; Effective 3/30/88]
[12200 Amended 3/10/88; Effective 3/30/88]
[12000 Amended 9/28/89; Effective 10/10/89]
[12060 Amended 5/3/90; Effective 8/4/91]
[12053 Amended 11/10/94; Effective 11/22/94]
[12070 Adopted 5/14/98; Effective 5/22/98]
[12071 Adopted 5/14/98; Effective 5/22/98]
[12072 Adopted 5/14/98; Effective 5/22/98]
[12053(a)(1) Amended 6/10/99; Effective 6/25/99]
[12053(c)(1), (c)(3) Amended 5/25/00; Effective 6/9/00]
[12055(b)(3), (b)(4)(a)-(b) Amended 5/25/00; Effective 6/9/00]
[12056(e)(2) Amended 5/25/00; Effective 6/9/00]
[12073 Adopted 5/25/00; Effective 6/9/00]
[12200(d)(1)-(7) Amended 5/25/00; Effective 6/9/00]
[12070(a)(1)-(2), (b)(1) Adopted 5/22/03; Effective 6/6/03]
[12070(a)(3)-(4), (b)(2) Amended 5/22/03; Effective 6/6/03]
[12053(a)(3), (c)(3) Amended 12/14/06; Effective 12/17/06]

[12055(b)(3), (b)(4)(a)-(b) Amended 12/14/06; Effective 12/17/06]
[12060(b) Adopted 2/18/10; Effective 2/24/10]
[12051(f) Amended 5/12/11; Effective 5/20/11]
[12053(b), (f)(1)-(3) Amended 5/12/11; Effective 5/20/11]
[12055(a)-(d) Amended 5/12/11; Effective 5/20/11]
[12070(a), (b), (b)(1)-(2), (c)(1)-(2), (d), (e)(2) Amended 5/12/11; Effective 5/20/11]
[12071(a)(2), (b)-(d) Amended 5/12/11; Effective 5/20/11]
[12072(c), (f) Amended 5/12/11; Effective 5/20/11]
[12073(a), (b) Amended 5/12/11; Effective 5/20/11]
[12056 Amended 7/10/14; Effective 7/18/14]
[12072(e) Amended 7/10/14; Effective 7/18/14]
[12070 Amended 5/14/15; Effective 5/23/15]
[12070(b) Amended 2/11/16; Effective 2/19/16]
[12070(b)(2) Amended 12/8/16; Effective 12/15/16]
[12070(b)(4), (h) Adopted 12/8/16; Effective 12/15/16]