CHAPTER 12. INDIVIDUAL ADJUSTMENTS OF RENT CEILINGS

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Subchapter A. Petitions

1201. Petitions

(A) Any landlord or tenant seeking an individual rent ceiling adjustment under Section 12 of the Ordinance must file a petition in accordance with the procedures set forth in this Chapter on forms approved by the Board.

(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 submit 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.

[Amended April 11, 1997, deleted paragraphs C, D & E; amended May 11, 2001]

1202. Previous Recent Hearing

Notwithstanding any other provision of this Chapter, the Board or Senior Hearing Examiner may refuse to hold a hearing and/or grant an individual rent ceiling 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 six months.

1203. Petition Filing Fee--****REPEALED****

(A) A filing fee for each individual rent adjustment petition shall be paid at the time the completed petition is submitted to the Board. Except as provided in Section (C), the fee is sixty dollars ($60.00) for the first unit and thirty dollars ($30.00) for each additional unit included in the petition, up to a maximum of three hundred dollars ($300.00). No hearing shall be held until the requirements of this subsection have been fulfilled.

(B) Filing fees are nonrefundable, except that one half of the filing fee may be refunded if the petition is withdrawn or if settlement is reached prior to the hearing.

(C) The filing fee for individual rent adjustment petitions filed solely on the basis of violations of rent ceilings and/or violation of security deposit provisions (including, but not limited to failure to pay interest on security deposits), shall be the same fee as for a petition for "Tenant Rent Withholding for Violations of Rent Ceilings" in accordance with Section 1541.

(D) The petition filing fee may be waived in accordance with Section 1204.

[**Repealed effective 9/19/19**]

1204. Waiver of Petition Filing or Appeal Fee

The appeal fee for individual rent adjustment petitions shall be waived for persons who qualify under (A) or (B) below:

(A) petitioners who declare in writing under penalty of perjury that they are receiving benefits pursuant to:

(1) the Supplemental Security Income (SSI) or State Supplemental Payments (SSP) Programs (Sections 12200-12205.2 of the Welfare and Institutions Code),

(2) the Aid to Families with Dependent Children (AFDC) Program (42 U.S.C. 601-644),

(3) the Food Stamp Program (7 U.S.C. 2011-2027), or

(4) Section 17000 of the Welfare and Institutions Code (general assistance, county aid and relief to indigents);

(B) petitioners who declare in writing under penalty of perjury that:

their gross monthly income is equal to or less than the amounts listed in the Information Sheet On Waiver of Court Fees and Costs adopted by the California courts for waiver of court filing fees pursuant to Rule 985 of the California Rules of Court. A copy of the Information Sheet shall be provided without cost upon request of any person.

(C) Appellants shall apply for an appeal fee waiver by submitting the appropriate declarations and any other information supporting their request on a form provided by the Board at the time that the appeal fee is due. The waiver is granted unless denied by the Executive Director or his/her designee within fifteen days after it is filed. If the request is denied, the agency shall notify the appellant of the basis for the denial and state that the appellant must remit the required installment of the appeal fee within thirty days of mailing of the notice of denial in order for the appeal to be accepted.

[Effective December 14, 1987, amended Section C to clarify that there is no filing fee for petitions – 9/19/19]

1205. Filing the Petition

(A) For rent increase petitions, the following procedure applies:

(1) Rent increase petitions may be filed under the following regulations: 1214, (Advisory Implementation), 1262-1265 (Maintenance of Net Operating Income), 1267 (Capital Improvement), 1268 (Recent Rent Changes), 1269 (Change in Space or Services/Code Violations), 1270 (Increase in Occupancy), 1276 (Debt Service), 1278 and 1278.5 (Restoration of Annual General Adjustment), and 1280 (Historically Low Rent).

(2) A copy of the rent increase petition and, except as provided in Regulation 1267 (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 petition, copies of the documentation required by Regulation 1201 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 for conformance to Board regulations and within five working days shall either mail notice of the petition's unacceptability (pursuant to Regulation 1207) to the landlord, or mail Notice to Opposing Parties to the tenants, as provided in Regulation 1210. For petitions filed pursuant to Regulations 1262-1265 (MNOI), the review period shall be 15 working days. If a petition is unacceptable, the landlord may refile at any time but the Board will administratively close the file after fourteen days. 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 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 1221, 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 Regulations 702 (Payment of Interest on Security Deposit), 1269 (Change in Space or Services/Code Violations), 1270 (Occupancy Level), 1271 (Overcharges) and Rent Withholding Petitions pursuant to Chapter 15.

(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 petition, copies of the documentation required by Regulation 1201 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 for conformance to Board regulations and within five working days shall either mail notice of the petition's unacceptability (pursuant to Regulation 1207) to the tenant, or mail notice to the landlord, as provided in Regulation 1210. If a petition is unacceptable, the tenant may refile at any time but the Board will administratively close the file after fourteen days. 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 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 1221, unless the landlord does not file objection within the time allowed, the tenant does not request 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.

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

[Amendments effective April 11, 1997, January 8, 2000; amended Sections (A)(3) and (B)(3) to make clear that petitioners need only file the petition and need not file two copies of the documentation required by Regulation 1201 – 9/19/19]

1206. Acceptance of Petitions

(A) Except as provided below in Subsection (C), 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 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 registration fee (plus any late fee) has been paid in full.

(B) No landlord petition for an individual rent adjustment will be accepted for filing unless the landlord has completed the provision of the petition form certifying that all security deposits for the units for which the adjustment is requested have been placed in an interest-bearing account at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation.

(C) A landlord who is participating in the Shelter-Plus Care Program, 42 U.S.C. section 11403, is eligible to file an HLR petition, pursuant to Regulation 1280, at any time after he or she has filed a completed rent registration statement and paid all required registration fees (plus any late fee). Any HLR petition filed pursuant to this section shall be treated expeditiously by the Board.

(D) 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.

[Amended regulation effective 3/9/2001]

1207. Proper Filing

(A) Proper filing of the petition is the responsibility of the petitioner. Provided that the requirements of Regulations 1205 and 1206 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, lacking 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 individual rent adjustment proceedings will take place for petitions that are not properly filed. The procedure for determining proper filing and allowing an unacceptable petition to be corrected is set out in Regulation 1205(A)(4) and (B)(4).

[Amendment effective April 11, 1997; May 11, 2001]

1208. 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 Section 1205. Notice and proof of service shall be in accordance with Section 1210. 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 1243 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.

[Amendments effective April 11, 1997 and January 8, 2000]

1209. 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 1234. 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.

1210. 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 party(ies) 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, and parties shall send 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, to each party.

[Amendment to section (B) effective January 8, 2000]

1211. Response to Petition

(A) A party wishing to object to the petition may do so on the form provided within twenty (20) days of the mailing of the notice of Section 1210(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 Rent Ceiling. In response to a petition filed solely on the basis of violations of rent ceilings, the landlord may defend as to the issue of violations of rent ceilings, but may not counterclaim for an increase of the lawful rent ceiling. To make such counter-claims, the landlord must file a separate petition in accordance with Chapter 12, and Section 1202 shall not prevent such a petition from being accepted.

[Amendment to section (A) effective January 8, 2000]

1212. 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 Senior Hearing Examiner may consolidate petitions pertaining to different buildings on the same property or different properties of the same landlord.

1213. Confidentiality

(A) Application for the waiver of filing fees due to economic hardship under Section 1204 shall be confidential even as to the opposing party. All other 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 specifically directed 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 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.

1214. Advisory Decisions for Exempt Units

(A) Conditional Approval of Rent Increases for Exempt Units. In conjunction with any IRA petition, a landlord may request that any building-wide rent increases (e.g., capital improvement, MNOI, property tax) approved by the hearing examiner also be conditionally granted for units which are exempt from the Ordinance at the time of the filing of the petition. In such an event, the hearing examiner, in his or her decision, shall determine the amount of the building-wide rent increase apportionable to the exempt unit and shall issue an advisory ruling conditionally granting the increases in the appropriate amount, provided that, at the time the petition is filed, no more than 50% of the building's units are exempt and no more that 50% of non-exempt units are vacant. For exempt units which are occupied for any reason, the amortization period for any temporary increases granted under Regulation 1267 shall run concurrently with the amortization period for the nonexempt units affected by the same capital improvement.

(B) Implementation of Rent Increases Conditionally Granted in Advisory Decisions. When a unit subject to an advisory decision under subsection (A) ceases to be exempt, the landlord may request the implementation of the rent increases conditionally granted in the advisory decision in the following fashion:

(1) Petitions; Notice.

(a) The landlord must file with the Board an original petition requesting implementation of the advisory decision and one copy of the completed petition, the advisory decision and an addressed, postage-paid envelope for each affected unit. By the conclusion of the next business day, the Board shall mail to the tenants of each affected unit a copy of the petition, a copy of the advisory decision and a notice which states that the tenant has a right to object to the petition, lists the possible objections as set forth in subsection (B)(3) and states that if the tenant does not object on any ground listed in subsection (B)(3) within twenty (20) days of the filing of the petition, the rent for the tenant's unit may be increased by the amount conditionally granted in the advisory decision, based on the information in the landlord's petition and the Board's files. A proof of service stating the date and place of mailing and to whom and to what addresses the petitions, advisory decisions and notices were sent shall be retained in the petition files. There shall be no fee for the filing of the petition and the petition shall not be subject to the limitations of Regulation 1267(K).

(b) If the unit ceases to be exempt by virtue of the creation of a new tenancy and the landlord is filing the petition within 6 months of the creation of the new tenancy, the landlord shall certify in the petition that, when the tenancy was created, the tenant was notified of the advisory decision and that the rent increases which were conditionally authorized in the advisory decision would be implemented as soon as possible, subject to final Board approval.

(2) Asserting Tenant Objections. Tenants subject to petitions under subsection (B)(1) may file objections with the Board within 20 days of the filing of the petition. Failure to file an

objection on any ground specified in subsection (B)(3) shall constitute a waiver of the right to a hearing on the petition.

(3) Grounds for Tenant Objection. Objections to a petition brought under subsection (B)(1) must be made on one or more of the following grounds:

(a) At the time that the petition resulting in the advisory decision was filed, more than 50% of the building's units were exempt from the Ordinance or less than half of the non-exempt units were occupied by tenants;

(b) The petition was filed within 6 months of the creation of a new tenancy and the landlord did not advise the tenant of his or her intent to file the petition prior to creation of the new tenancy;

(c) Any other grounds which would justify denial of the rent increase pursuant to the regulation under which the rent increase was conditionally granted in the original decision.

(d) The unit is not eligible to receive annual general adjustments for any period since the 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;

(e) The landlord has been charging rent in excess of the lawful rent ceiling;

(f) 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;

(4) Rent Increases.

(a) The record closes twenty (20) days after the filing of the petition or upon the filing of express written waivers of the right to a hearing signed by all affected tenants, whichever is sooner. Within ten (10) days of the closing of the record, the Board shall issue a decision increasing the lawful rent ceiling by the amount conditionally granted in the advisory decision for any unit where no tenant timely objects on a ground listed in subsection (B)(3), and where the evidence submitted supports the petition and substantially conforms to the Board's records. The Board shall serve a copy of the decision on all parties.

(b) For any unit where no tenant objects on a ground listed in subsection (B)(3), but the petition does not substantially conform to the records of the Board, the

Board shall notify the petitioner that the petition will be dismissed unless the petitioner cures the defect, within thirty (30) days of receiving notice of the defect. The Board shall issue a decision within ten (10) days of receipt of the petitioner's response.

(c) For any unit where a tenant files a timely objection, the Board shall set the petition for an individual rent adjustment hearing and so notify the landlord and tenants pursuant to Regulation 1223.

(d) Individual rent adjustment determinations under this regulation shall be limited to the issues raised by the petition and specific objections made pursuant to subsection (B)(3). Where an objection is found to be valid, the rent increase authorized under this regulation shall be reduced, denied, or deferred as the hearing examiner or Board determines to be appropriate. Any increase which is deferred due to a valid tenant objection shall be made effective upon submission of proof of compliance, subject to Regulation 1250.

[Effective April 9, 1993]

1215. Expedited Hearings

A. The purpose of this regulation is recognized that the Rent Board has an interest in how issues within its purview are decided. It is also recognized that consistency in rulings on the same issue by both the Rent Board and the courts is desirable. Therefore, in cases where both a Rent Board petition and an unlawful detainer action have been filed, in order to provide consistency of decisions on similar issues, the purpose of this Regulation is to ensure that the Rent Board rule 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 3 or 30 day notice to quit is 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.

[Effective 6/11/99]

1216 - 1220 [RESERVED]

Subchapter B. Hearing Procedure

1221. Hearings

(1) A hearing examiner shall conduct a hearing to determine whether the individual adjustment petition should be granted. The hearing examiner shall have the following powers with respect to cases assigned to him/her:

(A) to administer oaths and affirmations;

(B) to grant requests for subpoenas and to order the production of evidence;

(C) to rule upon offers of proof and receive evidence;

(D) to regulate the course of the hearing and rule upon requests for continuances;

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

(F) 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;

(G) to make and file decisions on petitions in accordance with this Chapter;

(H) to take any other action that is authorized by this Chapter.

(2) 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 insure 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 insure that all parties have a full and fair opportunity to respond to new issues, objections or evidence.

[Amendment effective January 8, 2000]

1222. 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 as provided in Section 1242.

1223. Notice of Hearing

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

1224. Continuances

(A) The date and time of the hearing may be continued, if the Senior Hearing Examiner (before the hearing) or the hearing examiner (at the hearing) 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 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 1210.

(C) The hearing examiner or Senior Hearing Examiner, may deny a request for a continuance if it has not been made in compliance with subsection (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 time, date and place of the rescheduled hearing.

1225. Disqualification of Hearing Officer or Board Member

(A) No hearing examiner or Board member shall take part in any hearing or appeal on a petition for an individual rent adjustment in which she/he 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 her/his political or philosophical beliefs shall not constitute personal bias.

(B) The hearing examiner or Board member 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) The hearing examiner or Board member may disqualify himself/herself at any time. In addition, any party may file a written request for disqualification, stating the grounds, with the 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.

1226. 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 prior to the hearing at the office of the Board. Parties to the hearing shall have the right to request the 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.

1227. Building Inspection

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 examiner may order an appropriate building inspection. A party may also request the examiner to order such an inspection prior to the hearing.

1228. Evidence

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 serious affairs, 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.

1229. 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.

[Amended effective 5/10/91]

1230 (RESERVED)

[Regulation 1230. Penalty for Filing False Information, repealed effective 3/9/91]

1231. 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 examiner until the 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 1232 where both parties or their representatives have an opportunity to be present, or orders by the examiner to produce evidence pursuant to Regulation 1226. There may be communications on any matters with other Board staff.

1232. 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 tape 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. 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 1202 of these regulations. However, upon demonstration of fraud, misrepresentation, or similarly compelling reasons, either party may request that the Hearings Unit withdraw the settlement and set the matter for hearing. If such a request is denied, the party may appeal such denial to the Board.

[Revisions to Regulation 1232 (A), (B) & (C) effective 11/18/85; Regulation 1232 (B) added effective 6/19/87]

1233. Open Hearings

All individual rent ceiling adjustment hearings shall be open to the public.

1234. 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 specifically designate the representative to represent him/her signed in writing to the Board. Any such representative shall file a written statement with the Board that he/she is 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 examiner to issue orders or subpoenas for witnesses or evidence, and to exercise any other rights conferred by the Ordinance or this chapter.

(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 1242, 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.

[Revisions to Regulation 1234 added the letter (A) in front of existing first paragraph and added paragraphs (B) and (C) effective 9/6/01; added the 4th sentence in paragraph (A) and the word *signed* before …in writing to the Board in the 5th sentence of Section (A) and the word *number* after the word …phone in the 7th sentence in Section (A) effective 9/20/10.]

1235. Tape Recording

Any party may have the hearing tape recorded or otherwise transcribed at his/her expense.

1236. Hearing Record

The record of the hearing shall include the following: 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.

1237. Availability of Record

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

1238. Quantum of Proof

No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing.

1239. Limitation of Rent Adjustment - ****REPEALED 9/4/03****

For any unit, the amount of the rent adjustment granted shall not exceed the amount requested in the petition.

1240. 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.

1241. Finality of Decision

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

1241.5 Effect of Landlord's Offer to Comply with Rent Overcharge Refund Order

(A) A tenant who accepts a full refund of rent overcharges, pursuant to Regulation 1271, 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.

[Effective date: December 6, 2004]

1242. **Appeal**

(A) Any party may appeal 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.

(B) Any appeal shall be filed on a form provided by the Board no later than 30 days after receipt of the notice of the hearing examiner's decision. A party is presumed to receive the decision five (5) days after it is mailed. Appeals that are not timely filed shall be dismissed by legal staff without further Board review. A party may file an appeal to the executive director regarding legal staff's dismissal but must include good cause as to why the appeal was not timely filed. Such good cause may include, but is not limited to, the failure of a party to receive the notice of decision, the illness of a party, or other emergency which makes it impossible for a party to have timely filed. The executive director shall grant or deny the request to consider the late-filed appeal. Should the request be granted, the Board will consider the appeal according to the terms outlined by this regulation.

(C) 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 subdivision (F), 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, appellant(s) 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 15 days from the date the appeal is filed.

(D) At the time of filing the appeal, appellant(s) shall pay an appeal fee in the amount of $100 for each unit for which an appeal is brought, up to a maximum of $500. The appeal fee may be waived in accordance with Regulation 1204.

(E) In accordance with the Constitution of the State of California, 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 examiner's decision been the same as that of the Board or had not been stayed.

(F) The Board will consider appeals of hearing examiners' decisions. At least 14 days prior to the date set for Board action on the appeal, a staff report shall be prepared recommending that the decision of the hearing examiner be affirmed, modified, reversed or remanded to the

examiner for further hearing. 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 14 days prior to the date set for Board action. Any objection to a staff request for official notice shall be filed no later than six days prior to the date set for Board action.

(G) At least 14 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 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 Public Information Unit of the Board at least 14 days prior to the date set for Board action. Parties may submit written comments to the Board up to 6 days prior to the Board action.

(H) At the Board meeting at which action on the appeals is scheduled, each party or their representative will be allowed seven minutes to address the Board at the beginning of the hearing in the following order: appellant for five minutes, respondent for seven minutes, appellant for two minutes.

(I) 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 five Commissioners is required to affirm, modify, remand or reverse the decision of the hearing examiner. If the Board has not acted on the appeal at two consecutive Board meetings, the appeal is deemed denied.

(J) 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.

(K) Continuances. Continuances of dates set for Board action on appeals shall be granted by a majority of the Board or by the Director only for good cause shown. A written request and the reasons for it must be received by the Rent Stabilization Board at least 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.

(L) Reconsideration.

(1) At the discretion of the executive director or his or her 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;

(b) there was good cause for a failure to appear at a settlement conference or hearing;

(c) he or she wishes to present relevant evidence that could not, with reasonable diligence, have been discovered and produced at the hearing; or

(d) the decision resulted from a clearly inaccurate application of the law; hearings staff 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.

(2) In the event that reconsideration under subsection (L)(1) is ordered, the parties will be so notified within 60 days of the filing of the appeal and, thereafter, all correspondence shall be directed to the hearing examiner. The threshold issue on reconsideration shall be whether a preponderance of the evidence supports the assertion that good cause existed for the failure to respond to a petition or to appear at a settlement conference or hearing or that the newly offered evidence could not, with reasonable diligence, have been discovered and produced at the hearing. Only if good cause for the failure is found, may the hearing examiner reconsider the merits of the petition.

(3) If the matter is reconsidered by the hearing examiner and the appellant does not then wish to appeal the new decision, the appellant may, within 30 days of receipt of the decision after reconsideration, request refund of the appeal filing fee and, upon such timely request, the filing fee shall be refunded. If the appellant wishes to contest the decision following reconsideration, he or she may file a supplemental appeal, so stating within 30 days after receipt of the decision after reconsideration. No filing fee shall be required for such supplemental appeal. Any other party may also appeal the decision after reconsideration within 30 days after its receipt.

[Amended Regulation 1242 effective April 9, 1993; Amended subdivisions B, D, E, G & H August 5, 2002; Amended Section (B) to redefine procedures for appeals that are not timely filed, Updated Appeal Fee, added subdivision (d) to new Section (L) to include several other reasons cases may be remanded, and increased the time legal staff has to notify parties of remand for reconsideration (amended on January 22, 2018).]

1243. Time for Decision

The Board shall take final action on any individual adjustment petition within 120 days following the date of proper filing, unless the conduct of the petitioner or other 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 petitioner to disqualify the hearing examiner or Board member(s).

1244. (Reserved)

1245. Notice for Rent Increases

Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling 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.

1246. Effective Date for Rent Decrease

If the hearing examiner or Board makes a downward individual adjustment of the rent ceiling, 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.

1247. Allocation of Petition Fees

The hearing examiner may, as part of each decision, order the respondent(s) to pay to the petitioner, over an appropriate period of time, a portion of the petition fee fairly allocable to the affected unit(s). In determining the portion to be paid by the respondent(s), the hearing examiner shall consider the good faith and cooperation of the parties, and the relationship between the amount of rent adjustment requested in the petition or other offers made by the parties and the final amount of the adjustment granted.

If the parties agree upon a prehearing settlement, which is approved pursuant to Section 1232 or Section 1248, then the respondent(s) shall pay one half of the fee to the petitioner, over an appropriate period of time, not to exceed twelve months.

If a petitioner is found to be frivolous, no portion of the fee shall be paid by the respondent(s).

1248. Professional Fees - ****REPEALED 12/27/98****

(A) Professional Fees Incurred by Landlords.

(1) A landlord's reasonable expenses, fees, and other costs for professional services, including but not limited to, legal, accounting, appraisal, bookkeeping, consulting, property management, or architectural services, reasonably incurred in the course of successfully pursuing rights under or in relationship to the Rent Stabilization Ordinance or these regulations or the right to a constitutional fair return, except those fees assessed against and paid by the Board pursuant to Civil Code §1947.lS(c), are legitimate business expenses and may be considered reasonable operating expenses for purposes of calculating net operating income (NOI) pursuant to Regulations 1262-1265 or, if incurred in obtaining an upward adjustment of rents or.in defending against a frivolous petition brought by a tenant, may be recouped through temporary upward rent adjustments pursuant to this section.

(2) A landlord is deemed to have successfully pursued or defended his or her rights, if the landlord:

(a) obtains an upward adjustment of rents;

(b) successfully defends his or her rights in an administrative proceeding brought by a tenant or the Board; or

(c) prevails in a proceeding brought pursuant to Civil Code §1947.8 concerning certification of maximum lawful rents.

(3) Where professional fees qualify as legitimate business expenses pursuant to this section, the Hearing Examiner or the Board shall, in the decision or in a separate order, determine the reasonableness of the expenses claimed, pursuant to subsection (A)(4), and whether the expenses shall be amortized, pursuant to subsection (A)(5) or (A)(6). In addition, where professional fees were incurred in obtaining an upward adjustment of rents or in defending against a tenant petition found by the Hearing Examiner to be frivolous, the Hearing Examiner or Board shall, when requested by the landlord, determine the amount of rent adjustments necessary to compensate the landlord for expenses and costs incurred as a result thereof and add this amount to the lawful rent ceilings. Rent adjustments authorized by this section shall terminate upon the expiration of the amortization period established under subsection (A)(5) or (A)(6). However, no temporary adjustment may be granted under this section to a landlord who has received a permanent rent adjustment under Regulation 1264 that is attributable, in whole or in part, to annually recurring professional expenses for any subsequent professional expenses except for subsequent professional expenses in a calendar year that exceed the amount of professional expenses found to be annually recurring when the permanent adjustment was granted.

(4) Unless professional services were rendered pursuant to a reasonable fixed-rate arrangement, a landlord claiming professional fees as reasonable operating expenses or seeking

temporary rent adjustments to recoup professional fees shall submit a written statement of services, prepared and verified by each professional representative employed, identifying with specificity each cost item claimed, the nature of the work performed, the amount of time expended on the various aspects of the representation, who performed the work and the hourly rate charged. · Items which are insufficiently documented may be reduced or disallowed. Where services are rendered pursuant to a fixed-rate arrangement, the landlord shall submit a statement detailing the arrangement. Concurrent with the filing of a fee statement with the Board, a copy of the fee statement must be served on all affected tenants. Challenges to the reasonableness of any fee statement or of any claimed item must be in writing and received by the Hearing Examiner or Board no later than ten (10) days after the date of filing of the fee statement. In determining the reasonableness of the expenses, f es, fixed-rate arrangements or other costs authorized by this section, the Hearing Examiner or the Board shall consider any and all of the following factors:

(a) The rate charged for those professional services in the relevant geographic area;

(b) The complexity of the matter;

(c) The degree of administrative burden imposed upon the petitioner;

(d) The amount of adjustment sought or the significance of the rights defended and the results obtained; and

(e) The relationship of the result obtained to the expenses, fees, and other costs incurred (i.e., whether professional assistance was reasonably related to the result achieved).

(5) In cases where it is determined that the expenses reasonably incurred in a Rent Board proceeding will not recur annually, the Hearing Examiner or the Board amortize the expenses for a reasonable period not to exceed five years, except as provided in subsection (6), and award a temporary rent adjustment to compensate the landlord for the reasonable expenses incurred. There is a rebuttable presumption that fees incurred in connection with Rent Board proceedings will not recur annually. An amortization schedule shall include 2.5% interest.

(6) In extraordinary circumstances, the period for amortizing professional fees may be extended to eight years. Extraordinary circumstances are deemed to exist in any case where a five year amortization would result in a monthly rent adjustment attributable to the recovery of professional fees which would exceed 5% of a unit's current rent ceiling. The extended amortization period shall not apply to vacant units and may end if the unit becomes vacant prior to the expiration of the amortization period, in which case, the landlord may apply to have the unrecovered portion of the fees reamortized over a reasonable, shorter period. An application for reamortization must be filed with the Board within sixty (60) days of the unit becoming vacant.

(B) Professional Fees Incurred by Tenants.

(1) If it is determined that a landlord petition is wholly without merit, any tenant who opposed the petition shall be awarded a temporary reduction in rent to compensate for the reasonable costs of attorneys or consultants retained to defund the petition. A landlord petition shall be deemed to be wholly without merit if the petition is dismissed or if the landlord is denied all of the relief sought in his or her petition.

(2) A tenant who successfully pursues rights under or in relationship to the Rent Stabilization Ordinance or these regulations shall be awarded a temporary reduction in rent to compensate for the tenant's reasonable expenses, fees, and other costs for professional services, including but not limited to, legal, accounting, appraisal, bookkeeping, consulting, property management, or architectural services, reasonably incurred in the course of the Rent Board proceedings. A tenant shall be deemed to have successfully pursued his or her rights if the tenant:

(a) obtains a downward adjustment of rents and/or an order authorizing the withholding of rent or the recovery of overcharges;

(b) successfully defends his or her rights in an administrative proceeding brought by a landlord or the Board; or

(c) prevails in a proceeding brought pursuant to Civil Code §1947.7 concerning certification of maximum lawful rents.

(3) Fees awarded to tenants under this section may be amortized and recovered over a reasonable period not to exceed five years. An amortization schedule shall include 2.5% interest. The terms of subsection (A)(4) shall apply to a tenant's fee statement, challenges thereto and the determination of the reasonableness of the tenant's expenses. A determination of the reasonableness of the expenses claimed, an appropriate amortization period and the award of a reduction in rents to compensate the tenant for costs incurred shall be made by the Hearing Examiner or the Board in the decision or in a separate post-decision order.

(C) Burden of Proof. In all awards of fees under this section, the party seeking the award shall bear the burden of proving the reasonableness of any claimed cost or fee item.

(D) Applicability. Unless claimed as reasonable operating expenses under Regulation 1265 for the purpose of calculating comparison year NOI, this section shall not apply to professional fees incurred or self-labor performed prior to January 1, 1994, unless incurred in connection with a petition filed after January 1, 1994.

[Amendments effective September 11, 1996; **repealed 12/27/98**.]

1249. Waiver of Filing Fees for Rental Rehabilitation Program Fast Track Individual Rent Adjustment Petitions

Petition filing fees for all Fast Track Petitions filed in conjunction with the Rental Rehabilitation program shall be waived.

[Effective date: 1/21/85]

1250. Compliance Hearings

(A) If there is a continuing 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 unit 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.

(B) The party or parties (and any successor in interest) who were originally ordered to make repairs, pay back rent, properly register the parcel, 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) There shall be no fee for compliance hearings, and the procedures set forth in Subchapter B (beginning with Regulation 1221) shall apply to compliance hearings.

[Effective November 18, 1985]

1251. Regulations Requiring Deposit of Disputed Rents Into Escrow

(A) Establishment of Escrow Accounts pending Hearing. 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 Ordinance and 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 Board.

(B) Upon receipt of such written request, the Hearing Examiner shall, at the 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 Hearing Examiner's decision on the petition. The Hearing Examiner may also condition any continuance or late scheduling of hearing upon an agreement that rent shall be either paid to the landlord and/or into escrow as may be appropriate. Pending the Hearing Examiner's decision on the petition, an order creating, modifying or terminating an escrow account shall be appealed to the Board.

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

[Effective 6/20/86]

1252. Establishment of Escrow Accounts pending Appeal

(A) Within twenty (20) 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 Hearings Unit 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.

(B) Upon receipt of such written application, the Hearings Unit 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 35 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 Hearings Unit. Upon such dissolution, the funds held in escrow shall be disbursed in accordance with the final decision of the Hearing Examiner.

(D) Within twenty (20) days of the date of mailing of the appeal, any non-appealing or cross-appealing party may make written application to the Hearing Unit 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 Hearings Unit 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.

[Effective 6/20/86]

1253. Provision for Disposition of Funds Held in Escrow - Appeal Decisions

In the Decision on Appeal, the Appeals Panel shall order disbursement of any funds held in escrow to the appropriate party. Actual disbursement shall not take place until the seven (7) day period for requesting reconsideration pursuant to Regulation 1244 has expired. If a timely request for reconsideration is filed, it may be accompanied by a written application concerning the maintenance or creation of an escrow account as in the case of an appeal. In the event of such an application, no distribution of funds held in escrow shall be made until the Appeals Panel acts on said application. However, if the request for reconsideration is deemed denied by virtue of Regulation 1244, distribution shall be made in accordance with Decision on Appeal upon the expiration of the thirty-day period set forth in said regulation.

[Effective 6/20/86]

1254. (RESERVED)

[Revised and renumbered as 1532, effective 4/10/98]

1255. Standards to Be Applied to Escrow Determinations

In deciding whether or not to require the payment of reasonably disputed amounts in escrow, the Senior Hearing Examiner, the Hearing Examiner, or the Appeals Panel of the Board, shall consider:

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

(B) The likely sum or sums involved;

(C) The likely length of the escrow;

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

(E) The desires of the parties;

(F) The tenant's (s') rent payment history, including any reasons for late or nonpayment of rent;

(G) The parties history of compliance or noncompliance with the Ordinance, Regulations and Orders of the Board; and

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

[Effective 6/20/86]

1256. Disbursement of Funds Held in Escrow

Upon issuance of an order of the Hearing Examiner, the Senior Hearing Examiner or an Appeals Panel of the Board, the Executive Director, or his or her 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.

1257. Enforcement of Escrow Orders

(A) In the event that an escrow account has been ordered pending the decision of the Hearing Examiner, upon the failure of a party to comply with any order regarding the deposit of funds into escrow, the petition shall be dismissed without prejudice if the noncomplying party is the petitioner or, if the noncomplying party is the respondent, the response shall be struck and the petition decided upon its merits.

(B) In the event that an escrow account has been ordered pending appeal, upon the failure of a party to comply with any order regarding the deposit of fund into escrow, the appeal shall be dismissed with prejudice if the noncomplying party is the appellant, or, if the noncomplying party is the appellee, the response shall be struck and the appeal decided upon its merits.

[Effective 6/20/86]

1258. 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.

[Effective 6/20/86]

1259. Board Initiated Hearings

(A) The Rent Stabilization Board or its designee, the Executive Director, who may designate such function to appropriate staff, may initiate a hearing after an investigation by the Rent Stabilization Board or its designee has resulted in a determination that there are substantial grounds to believe that major violations of the Rent Stabilization Ordinance or Regulations promulgated thereunder have occurred, and that 120 days have passed from the date of the first occurrence of the violations.

(B) The investigation of possible violations of the Ordinance or Regulations may be conducted as a result of the review of the records of the Rent Stabilization 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 Stabilization Board or its designee has found substantial grounds to believe that major violations of the Ordinance or 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 (have) 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 Subchapter B. (beginning with Regulation 1221) shall apply to Board initiated hearings.

(E) At a Board initiated hearing, the Compliance Unit of the Rent Stabilization Program shall present the Board's case. The issues in the hearing shall be disposed of in a final decision and an order of a Hearing Examiner, which may be appealed to the Rent Stabilization 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) 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.

[Effective date of Section 1259: 7/11/86]

1260 (RESERVED)

Subchapter C. Standards for Individual Rent Ceiling Adjustments

1261. Purpose of Subchapter

The purpose of this subchapter is to protect tenants from unwarranted rent increases, while at the same time allowing rent levels which provide landlords with a fair return on their investment. It is the intent of these regulations that individual upward adjustments in the rent ceilings be made only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment under the Rent Ordinance (Sections 1262, 1267, 1268, 1269, 1270, 1272, 1273 and 1276) or as required by the California or United States Constitution (Section 1275).

[Revised Regulation 1261 effective May 27, 1987]

1262. Base Year Net Operating Income (NOI)

(A) The base year shall be the calendar year of 1979, or the calendar year of 1981 for rental units specified in Section 13.76.050F of the Ordinance, except as otherwise provided in subsection (B) below.

(B) If the base year is demonstrated to be inappropriate for reasons other than the way the records are kept for bookkeeping or income tax purposes, the hearing examiner may use another more appropriate calendar year as an alternative base year. An alternative base year selected under this subsection may not be substituted for the actual base year in determining eligibility for an adjustment under subsection (C). However, if a property using an alternative base year is determined to be eligible for base year rent adjustments under subsection (C), the alternative base year gross income shall include the base year rent adjustment as increased by subsequent annual general adjustments. The net operating income for any such alternative base year shall be calculated without taking into account any portion of any rent increases allowable for the property under the 1991 Inflation Adjustment Order (Regulation 1113).

(C) The base year net operating income and current lawful rent ceiling shall be adjusted by the Board if the petitioning party demonstrates, by a preponderance of the evidence, that any of the following circumstances existed:

(1) The landlord's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating such expenses so the base year operating expenses reflect average expenses for the property over a reasonable period of time.

(2) The rent in the base year was exceptionally high or low due to the fact that the rent was not established in an arms-length transaction or was otherwise not set under market conditions.

If the circumstances specified in subsection (C)(2) are demonstrated, base year net operating income shall be adjusted to reflect the rents that would have been received if the base rent had been equal to the prevailing market rent for comparable units. Adjustments of current lawful rent ceilings under this subsection (C) may only be awarded in conjunction with an NOI analysis under Regulation 1264. For future net operating income petitions, the base year net operating income shall include this increase.

[Amended regulation effective December 8, 1995]

1263. Definition of Net Operating Income

(A) The net operating income for a property for any period shall be the gross income less the following: property taxes, reasonable maintenance and operating expenses, and the amortized cost of capital improvements (pursuant to Section 1267). Gross income shall be the total of the gross rents lawfully collectible from a property at 100% occupancy, plus any other consideration received or receivable for, or in connection with, the use or occupancy of rental units and housing services (including consideration from laundry, parking, or any other facilities or fees). Gross rents collectible shall include the imputed rental value of owner-occupied units.

(B) If the necessary data for the base year is not available, base year NOI will be 60% of the gross rents collected in the base year. In addition, if the actual base year NOI has not been determined in a prior petition and for the purpose of simplifying the petition process, a landlord may elect to have the base year NOI set at 60% of the gross rents collected in the base year.

[Amended regulation effective December 8, 1995]

1264. Maintenance of Net Operating Income (Fair Return)

(A) The landlord is entitled to a fair return. Ordinarily, a fair return will be measured by maintaining the net operating income produced by the property in the base year, adjusted by 65% of the percentage increase in the Consumer Price Index (CPI), All Urban Consumers, for the San Francisco-Oakland-San Jose metropolitan area, less its shelter component, as reported by the U.S. Bureau of Labor Statistics, since June 1979, if 1979 is the base year, or since June of any alternative base year. Rent ceilings shall be adjusted prospectively, subject to the limitations set forth in Section 1274, upon a showing that the net operating income in the comparison year is not equal to the base year net operating income adjusted by 65% of the percentage increase in the CPI since June 1979, if 1979 is the base year, or since June of any alternative base year.

Notwithstanding the foregoing, if the comparison year is 1994 or earlier, the base year net operating income shall be adjusted by 75%, and if the comparison year is 1995, the base year net operating income shall be adjusted by 70% of the percentage increase in the CPI since June of 1979, if 1979 is the base year, or since June of any alternative base year.

(B) The percentage increase in the CPI shall be determined by comparing the monthly CPI for All Urban Consumers for the San Francisco-Oakland-San Jose metropolitan area, less its shelter component, as reported by the U.S. Bureau of Labor Statistics, for June of the comparison year to the monthly CPI for June 1979 (i.e., 73.2), or the monthly CPI for June of any alternative base year, whichever is later.

(C) Any individual adjustment established pursuant to this section shall take into account annual general adjustments for which the landlord is entitled up to and including the adjustment for the comparison year, and shall also take into account in the comparison year rent increases allowed under the 1991 Inflation Adjustment Order (Regulation 1113). The comparison year shall be the most recent calendar or fiscal year, unless another period is found by the hearing examiner to be more appropriate.

(D) If a landlord claims professional fees as reasonable operating expenses in determining comparison year NOI and it is determined that the professional fees are not likely to recur
annually, any portion of a rent adjustment granted pursuant to this section that is attributable to such fees shall be treated as a temporary rent adjustment which shall terminate when the amortization period established pursuant Regulation 1248(A) expires.

[Amended regulation effective November 25, 1995]

1265. Maintenance and Operating Expenses

(A) Maintenance and operating expenses shall include all repair and reasonable maintenance and operating expenses for a unit of property, including self labor, except as provided in subsection (B) below. Repair and reasonable maintenance includes but is not limited to interior and exterior painting; plastering and replacing broken windows; replacement of drapes and carpets; cleaning; fumigation; routine landscaping; repair of all standard services, including electrical repairs, plumbing repairs and carpentry; and repair and replacement of furnished appliances.

(B) Maintenance and operating expenses shall not include the following expenses:

(1) avoidable expense increases since the base year;

(2) mortgage principal and interest payments;

(3) any penalties, fees or interest assessed or awarded for violation of the Ordinance or these regulations;

(4) organization or association dues or fees;

(5) legal and other costs for any evictions brought under Section 13(a) and (9) or (10) of the Ordinance;

(6) depreciation of the property;

(7) expenses for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed upon payments, or any other method including but not limited to a prior petition.

(C) Reasonable costs of capital improvements to rental property that cannot be recouped under Regulation 1267 because of failure to meet the minimum cost requirement shall be considered reasonable maintenance expenses under this section.

(D) Amortizable Maintenance, Repair and Operating Expenses.

(1) Any maintenance, repair or operating expense incurred in the comparison year or the fifteen calendar years preceding the comparison year, which results in a benefit which can reasonably be expected to extend over a period of more than twelve months, shall be treated as an amortizable operating expense. The amount of the expense shall be spread over the expected useful life ("amortization period") of the benefit. Amortization periods shall be set forth in a schedule approved by the Board. In any particular case, the amortization period on the schedule shall apply unless a different period is specifically found to be more appropriate. The amortization period shall begin at the time the useful life of the repair began or begins.

(2) The cost of an amortized maintenance, repair or operating expense shall include either: (a) the actual and reasonable amount of interest and other charges paid to the lender in connection with a loan taken to finance the operating expense, or (b), if a landlord has financed the operating expense with his own funds, an "imputed financing cost" equal to the costs the landlord would have incurred had the landlord financed the operating expense with a loan for the amortization period of the operating expense at an interest rate of ten percent (10%) per annum. In determining the cost of an amortized maintenance, repair or operating expense, no consideration shall be given to any additional cost incurred for increased property damage and/or deterioration resulting from an unreasonable delay in the undertaking or completion of any repair.

(3) At the end of the amortization period of such operating expense, the rent ceiling shall automatically be adjusted downward by the amount of the upward rent ceiling adjustment attributable to that expense.

(E) Reasonable expenses, fees, and other costs for professional services approved pursuant to Regulation 1248 shall be considered reasonable operating expenses under this section unless such expenses, fees or costs have already been the basis for temporary rent adjustments under Regulation 1248(A).

(F) Retroactivity of this Regulation. This regulation shall not be applicable to petitions properly filed with the Rent Board, pursuant to Regulation 1207, before August 12, 1995.

[Amended regulation published December 8, 1995]

1266. Self Labor

(A) Self labor compensation shall include reasonable compensation for labor performed by the landlord in the operation of a property. Self labor compensation shall be included as a maintenance and operating expense, or as part of a capital improvement, upon documentation of the amount and nature of the work performed. The compensation for skilled and unskilled labor shall be calculated at the hourly rate established for the year in which such labor was performed. If no hourly rate has been established for the year in which such labor was performed, compensation shall be calculated by using the hourly rate of the nearest year for which a rate has been established. The hourly rates for skilled and unskilled labor for the years since 1979 are as follows and shall be adjusted each year by 100% of the change in the Consumer Price Index, all items, for the San Francisco-Oakland-Hayward metropolitan area for the prior calendar year:

Year	Unskilled	Skilled		Year	Unskilled	Skilled
1979	$6.00	$10.00		2002	$17.72	$29.53
1980	$6.51	$10.86		2003	$18.01	$30.02
1981	$7.50	$12.50		2004	$18.33	$30.54
1982	$8.47	$14.12		2005	$18.55	$30.92
1983	$9.11	$15.18		2006	$18.91	$31.52
1984	$9.18	$15.30		2007	$19.52	$32.53
1985	$9.70	$16.17		2008	$20.16	$33.60
1986	$10.12	$16.86		2009	$20.79	$34.64
1987	$10.41	$17.36		2010	$20.94	$34.90
1988	$10.77	$17.95		2011	$21.23	$35.38
1989	$11.24	$18.74		2012	$21.78	$36.30
1990	$11.79	$19.66		2013	$22.36	$37.27
1991	$12.33	$20.54		2014	$22.86	$38.11
1992	$12.87	$20.54		2015	$23.51	$39.19
1993	$13.30	$22.16		2016	$24.13	$40.21
1994	$13.65	$22.75		2017	$24.85	$41.42
1995	$13.88	$23.13		2018	$25.65	$42.76
1996	$14.15	$23.58		2019	$26.65	$44.41
1997	$14.47	$24.12		2020	$27.53	$45.88
1998	$14.97	$24.95		2021	$28.00	$46.67
1999	$15.44	$25.74		2022	$28.90	$48.17
2000	$16.10	$26.83		2023	$30.52	$50.86
2001	$16.81	$28.02				

(B) For a landlord to receive compensation for skilled labor, the landlord must provide evidence of having experience and skills comparable to specialized workers in the building trades for jobs requiring skilled labor, such as plumbing, roofing, carpentry, electrical and masonry work. If a landlord is licensed, or certified as a journeyman/woman, in a particular craft, he/she meets the requirement for skilled labor in that craft, but licensing or certification is not a requirement for the

skilled labor rate.

(C) Notwithstanding the above, a landlord may receive greater or lesser allowance for self labor if it is shown that the hourly rates established pursuant to subsection (A) above are substantially unfair in a given case.

(D) Compensation for self-management shall be at the unskilled labor rate, regardless of the landlord's qualifications, and there shall be a maximum allowance of 5% of the gross rental income as compensation for self-management. Self-management activities shall include, but not limited to: renting vacant units, collecting rents, coordinating or supervising maintenance, repairs and purchasing, maintaining financial and management records, and paying bills.

[Amended to add 1997 rates, effective June 6, 1997; Amended 2/10, added 1998 through 2009 rates to Section (A) table; Amended January 19, 2023 to add 2015 through 2022 rates and edited 1997-2014 using correct rate of calculation to Section (A) table and updated San Francisco – Oakland – San Jose to reflect San Francisco – Oakland - Hayward]

1267. Capital Improvements

(A) Purpose

The purpose of this section is to encourage landlords to improve the quality of their rental housing and to ensure that landlords receive a fair return on their capital expenditures.

(B) Capital Improvement

For purposes of this subchapter, 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 $200.00 or more per unit affected, or $1,500.00, whichever is less. Except as provided in subsection (E)(2), no rent adjustment shall be granted under this section for routine repair, replacement or maintenance including but not limited to interior and exterior painting; plastering and replacing broken windows; replacement of drapes and carpets; cleaning; fumigation; routine landscaping; repair of all standard services, including electrical repairs, plumbing repairs, and carpentry; and repair and replacement of furnished appliances.

(C) Policy

The rent ceilings for a unit or property shall be adjusted upward to provide a fair return on expenditures for capital improvements, where such capital improvements:

(1) are necessary to bring the unit or property into compliance with applicable new code requirements or significantly improve the security of the property or any unit, provided that in determining the cost of a capital improvement no consideration shall be given to any additional cost incurred for increased property damage and/or deterioration resulting from an unreasonable delay in the undertaking or completion of any repair or improvement; or

(2) have as their primary purpose to significantly improve the seismic safety of the rental property or increase the energy efficiency of the rental property (including any improvement to allow a significantly more accurate allocation of utility costs), provided that in determining the cost of a capital improvement no consideration shall be given to any additional cost incurred for increased property damage and/or deterioration resulting from an unreasonable delay in the undertaking or completion of any repair or improvement; or

(3) are provided by the landlord in good faith to primarily benefit the tenant(s). There shall be a rebuttable presumption that a specific capital improvement is so provided if it has been approved in writing by tenants in a majority of the units affected.

(4) The rent adjustments authorized under this regulation are intended to provide a fair return on capital expenditures for improvements and repairs to rental units that have had their rent ceilings continuously controlled under the Rent Ordinance. For a rental unit that has an initial rent established pursuant to the Costa-Hawkins Rental Housing Act on or after January 1, 1999, the initial rent so established, having been set under unregulated, market conditions, is presumed to

provide the landlord of that unit with a fair return on expenditures for improvements and repairs that were completed at the unit or reasonably anticipated prior to the establishment of the initial rent. In addition, to the extent that vacancy increases imposed at a property on or after January 1, 1999, pursuant to the Costa-Hawkins Rental Housing Act, result in rent ceilings that exceed the return that would be obtained from rent ceilings that were continuously controlled, the rent adjustments authorized under this regulation may not be necessary in order to obtain a fair return on capital expenditures at the property. Accordingly, rent adjustments otherwise authorized under this regulation for improvements or repairs at such properties shall be modified as provided in subsection (I).

(D) Rent Ceiling Adjustments for Capital Improvements

Where a landlord demonstrates that an improvement affecting a rental unit qualifies as a capital improvement under subsections (B) and (C), the lawful rent ceiling for such unit shall be permanently increased by 1.042% of the documented cost of the improvement attributable to that unit. The cost of repairs necessarily performed in conjunction with the approved capital improvement shall be included in the cost of the capital improvement.

(E) Major Long-term Repairs

(1) A landlord's expenditure for any of the major long-term repairs listed in (E)(2), to the extent that they are reasonably necessary for the proper maintenance of the property, shall qualify for a permanent increase in the rent ceiling. The increase for exterior painting and siding (subsection (E)(2)(d)) shall be equal to the cost of the major repair amortized over ten years, with interest imputed at 7.5% per annum. (The monthly increase shall be equal to 1.187% of the cost of the major repair.) The increase for the other major repairs listed below in subsection (E)(2) shall be equal to the cost of the major repair amortized over fifteen years, with interest imputed at 7.5% per annum. (The monthly increase shall be equal to .927% of the cost of the major repair.) The cost of repairs necessarily performed in conjunction with the approved major long-term shall be included in the cost of the major long-term repair. Nothing in this section shall preclude a landlord from seeking an NOI adjustment under Regulation 1264, however, any repair for which a rent adjustment is granted under this Subsection shall not qualify as a maintenance or operating expense under Regulation 1265.

(2) The following major repairs shall be eligible for the rent adjustment specified in Subsection (E)(1):

(a) a new roof covering all or substantially all of a building or a structurally independent portion of a building;

(b) a significant upgrade of the foundation of all or substantially all of a building or a structurally independent portion of a building;

(c) a new or substantially new plumbing, electrical or heating system for all or substantially all of a building;

(d) exterior painting or replacement of siding on all or substantially all of a building; and

(e) repairs reasonably related to correcting and/or preventing the spread of defects which are noted as findings in a Wood Destroying Pest and Organisms Inspection Report issued by a pest control company registered in Branch 3 of the State of California Structural Pest Control Board provided that any expenditure for such repairs exceeds the lesser of $6,000 or the product of $1,000 times the number of units in the property.

(3) In determining the cost of a major repair under this subsection, no consideration shall be given to any additional cost incurred for increased property damage and/or deterioration resulting from an unreasonable delay in the undertaking or completion of any repair or improvement.

(4) Any rent increase granted for a major repair item under subsection (E) shall be subtracted from any rent increase subsequently granted under this subsection for the replacement or renovation of the same item.

(5) Notwithstanding the foregoing, the monthly sum of all rent ceiling increases awarded under subsection (E)(1)shall, during the tenancy of any person described in subsection (E)(5), be no greater than $25. The portion of the rent increase awarded under this subsection may be increased by the Cost of Living Adjustment (COLA) awarded annually by the State Legislature to Supplemental Security Income (SSI) recipients in California, provided, however, that in no case shall the COLA adjusted rent increase exceed the total monthly increase granted under subsection (E)(1).

(a) Any tenant over the age of 62 whose household income does not exceed 30% of the Oakland PMSA median income of a household of the same size, as estimated by HUD annually; or 150% of the total SSI payment (i.e. federal and state components) in California, effective January 1, 1996, adjusted by the COLA, for a person or persons living in their own household; whichever is more for a household of the same size.

(b) Any tenant receiving general assistance pursuant to California Welfare & Institutions Code sections 17000 et seq., Aid to Families with Dependent Children or any successor program, Supplemental Security Income or Social Security Disability Insurance.

(6) As used in the following sections of this Regulation 1267, the term capital improvement shall be read to include major long-term repairs.

(F) Future Improvements

A landlord may petition for rent adjustments based upon the anticipated cost of a capital improvement to be completed within two years of the date the petition is filed. If approved, the rent adjustments shall not take effect until the completion and actual cost of the improvement is documented to the Board. Within 30 days of submission of the documentation, the rent adjustments shall be granted administratively unless (1) the tenant files an objection which requires a hearing or (2) the Hearing Examiner requests additional evidence or testimony because the actual costs significantly exceed the anticipated costs. Rent adjustments authorized

under this subsection on or after January 1, 1999 shall be implemented in accordance with the terms of subsection (I) and shall be allocated in accordance with the rent ceilings in effect when the documentation of completion and cost is submitted to the Board.

(G) Petition Procedure

(1) Petitions. A landlord requesting rent adjustments for capital improvements only shall file a petition and two copies of the supporting documentation with the Board and shall submit one copy of the completed petition and a postage paid, addressed envelope for each unit affected by the petition. Within fifteen (15) days of the filing of the petition, Board staff shall review the petition and supporting documentation for completeness and conformance to Board regulations and either mail notice of the petition's unacceptability to the landlord or, if the petition is acceptable, mail the petition to the tenants in compliance with subsection (F)(2). The notice of a petition's unacceptability shall specify the defect or deficiency and state that the landlord may cure the defect or deficiency within thirty (30) days or the petition will be dismissed.

(2) Supporting Documentation.

(a) The supporting documentation must substantiate the nature and cost of the claimed improvement and may include copies of invoices, signed contracts, material and labor receipts, self labor logs, proof of entitlement to skilled labor rate (if claimed), canceled checks or any other items of documentation accepted and used in the normal course of business. Reports which merely summarize or refer to undocumented expenditures are not, by themselves, adequate substantiation. Hearing Examiners shall weigh and evaluate the nature of the documentation submitted as substantiation, and may require additional proof. Evidence of compliance with applicable permit requirements and correction of any cited code violations may also be required.

(b) If a hearing is held on the petition, tenants may subpoena additional evidence if the submitted documentation is inadequate. One copy of the supporting documentation shall be available for inspection at the Board. The landlord shall also provide the supporting documentation to any tenant who requests it within five (5) days of the request; however, if the petition is approved, in whole or in part, the landlord may recover the cost of duplicating the documentation, at the rate of $0.05 per page, from the tenant as a temporary rent increase. In addition, for properties containing sixteen (16) or more units, the landlord shall make the supporting documentation available for reasonable inspection by the tenants at a designated unit located at the property. "Reasonable inspection" shall include the right to remove the documentation from the designated unit for up to twenty four (24) hours for review in private and copying by tenants.

(3) Notice to Tenants. Within fifteen (15) days of the filing of an acceptable petition, the Board shall mail to all affected tenants a copy of the petition, a notice of the tenants' right to object to the petition listing the possible grounds for objection and a rent adjustment analysis (RAA) indicating the amount of rent increases which would be authorized for each affected unit if the petition were approved as submitted. The notice shall further state that if the tenant does not file an objection on any of the possible grounds for objection listed in subsection (H)(4) within thirty (30) days of the mailing of the notice, the tenant will be deemed to have waived his or her right to a hearing and that the rent for the tenant's unit may be increased by the appropriate amount

based on the landlord's petition and the Board's files. A copy of the RAA shall also be sent to the landlord. A proof of service stating the date and place of mailing of each petition, notice and RAA shall be retained in the petition file.

(4) Grounds for Tenant Objection. Tenants subject to petitions under subsection (G)(1) may file objections with the Board within thirty (30) days of the mailing of the petition and notice of right to object to the tenants. Failure to file an objection on any ground specified in this subsection shall constitute a waiver of the right to a hearing on the petition. Such objections must be made on one or more of the following grounds:

(a) The increases set forth in the RAA are inaccurate;

(b) One or more of the improvements is actually repair or maintenance or does not have a useful life of more than one year;

(c) One or more of the improvements has a direct cost of less than $1,500.00 and less than $200.00 per affected unit;

(d) Some or all of the work alleged to have been performed has not been performed;

(e) The costs claimed for one or more of the improvements are not true or reasonable or are unsubstantiated;

(f) The landlord has recouped the cost of one or more of the improvements through a prior petition;

(g) One or more of the improvements is unnecessary to comply with applicable code requirements, is not reasonably necessary for the proper maintenance of the property or the correction of defects described in Subsection (E)(2), does not improve the seismic safety of the rental property, does not significantly increase the energy efficiency of the property, or is not provided by the landlord in good faith to primarily benefit the tenants;

(h) Some or all of the cost of an improvement is attributable to the landlord's negligence or to an unreasonable delay in the undertaking or completion of the improvement;

(i) Some or all of the cost of the improvement was paid for with proceeds from an insurance policy covering the property;

(j) The landlord has claimed an inappropriate self labor rate;

(k) The landlord did not make the supporting documentation reasonably available to the tenant;

(l) The work was not done in compliance with applicable permit and/or code requirements;

(m) 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;

(n) The landlord is collecting rent in excess of the lawful rent ceiling;

(o) 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;

(p) The capital improvement was completed prior to or commenced within one year after the establishment of an initial rent on or after January 1, 1999;

(q) The rent adjustment allocable to my rental unit for the capital improvement should be decreased because there have been vacancy increases imposed on this rental unit on or after January 1, 1999;

(r) The rent adjustment allocable to my rental unit for the capital improvement should be decreased because there have been vacancy increases imposed on other rental units at the property on or after January 1, 1999 and the vacancy increases exceed the amount of the capital improvement adjustment allocable to those units; or

(s) The tenant believes in good faith that the landlord is not entitled to a rent increase for some other substantive reason.

(5) Rent Increases. Within thirty (30) days of the termination of the period for objecting, specified in subsection (F)(4), or of the filing of express written waivers of the right to a hearing signed by all affected tenants, whichever is sooner, the Board shall take one of the following courses of action:

(a) For any property where no tenant timely objects on a ground listed in subsection (F)(4), and where the evidence submitted supports the assertions in the petition and substantially conforms to the records of the Board, the Board shall issue a decision increasing the lawful rent ceiling in accordance with the petition, supporting documentation and the Board's records;

(b) For any property where no tenant files a timely objection, but where the evidence submitted does not support the assertions in the petition or information in the petition does not substantially conform to the records of the Board, the Board shall notify the landlord of the defect or discrepancy and that, unless the petitioner cures the defect or requests a hearing within thirty (30) days of receiving notice of the defect, the Board shall issue a decision in conformance with the evidence. Any landlord response must be served on the affected tenants, who may thereafter reassert their right to a hearing within twenty (20) days of the service of the response. If the landlord submits a response to the Board's notice of defect and no hearing is requested, the Board shall issue a decision on the petition within thirty (30) days of the receipt of the landlord's response;

(c) For any property where a tenant objects, the Board shall set the petition for an individual rent adjustment hearing and so notify the landlord and tenants pursuant to Regulation 1223. Individual rent adjustment hearings pursuant to this regulation may be consolidated with hearings on other issues concerning the same units.

(6) Individual rent adjustment determinations under this subsection (F) shall be based only on the issues raised by the petition and the specific objections made pursuant to subsection (F)(4). Where an objection is found to be valid in whole or in part, the rent increase authorized under this regulation shall be reduced, denied or deferred, as the hearing examiner or Board determines to be appropriate. Any increase which is deferred due to a valid tenant objection shall be made effective upon submission of proof of compliance, subject to Regulation 1250. Where the only objections are found to be frivolous or made solely for the purpose of delay, the hearing examiner shall order the tenant making such objections to pay to the petitioner 50% of the petitioner's filing fee pursuant to Regulation 1247.

(H) Applicability

This regulation shall not be applicable to petitions properly filed with the Rent Board pursuant to Regulation 1207 before August 12, 1995; it will, however, apply to all petitions filed on or after August 12, 1995. The changes adopted by the Board on June 17, 1996 shall be deemed extinguished, null and void effective on June 17, 1996 if any bill passes in the State Legislature which occupies any part of the subject matter area of this regulation. The changes adopted herein are intended to establish the long term policy of the Board on capital improvement increases and are intended to remain in effect until December 31, 1998, at a minimum.

(I) Limit on Rent Adjustments After January 1, 1999.

(1) No rent adjustment pursuant to this regulation shall be granted in consideration of any capital improvement to a rental unit that had an initial rent established on or after January 1, 1999 if the capital improvement was completed before the establishment of the initial rent or completed or commenced within one year thereafter, except for a qualifying capital improvement that was not reasonably foreseeable at the time the initial rent was established.

(2) An upward rent adjustment authorized by this regulation that is allocable to a rental unit that has had one or more vacancy increases shall be decreased by the aggregate amount of such vacancy increases, except for work completed to achieve compliance with Berkeley’s seismic retrofit and soft-story ordinances (Berkeley Municipal Code Chapters 19.38 and 19.39) as provided in subsections (2)(a)-(d), below:

(a) Work that is timely performed in accordance with the requirements of the seismic retrofit and soft-story ordinances (Berkeley Municipal Code Chapters 19.38 and 19.39) shall not be subject to vacancy increase offsets otherwise set forth in this subsection (2). Work completed before issuance of a second notice informing the owner of non-compliance with Chapters 19.38 or 19.39 shall be deemed timely.

(b) Incidental work not explicitly required by Chapters 19.38 or 19.39 shall not be subject to

vacancy increase offsets only if such work has been mandated by the City as part of the permitting process for work required by Chapters 19.38 or 19.39 and not as the result of outstanding code violations. "Incidental work" for purposes of this subsection shall include any work that an appropriately licensed professional certifies is necessary to enable access for work required by either Chapter 19.38 or 19.39, permits such work to be accomplished at a commercially reasonable price, or restores or replaces an area damaged or required to be removed as part of completing work required by either Chapter 19.38 or 19.39.

(c) The exception created by this Subsection (I)(2) (a) and (b) shall be available to any petitioners whose ownership interest pre-dates the enactment of the applicable requirements, which is as of December 12, 2000 for work required by Chapter 19.38 or as of December 5, 2013 for work required by Chapter 19.39 .

(d) The exception created by this Subsection (I)(2) (a) and (b) shall not be available to any owners who hold more than a ten percent (10%) interest in any form whatsoever in more than a total of 12 residential units in Berkeley.

(3) To the extent that a particular rental unit's vacancy increases exceed the amount of the rent adjustment authorized by this regulation that is allocable to that unit at the time of decision, the excess shall be applied to reduce equally the rent adjustments otherwise allocable to other units at the subject property. For any unit that is vacant at the time of decision, vacancy increases shall be computed by using the most recent initial rent taking effect after December 31, 1998. This paragraph shall not apply to any unit or building to which the exception described above in subsections (I)(2)(a)-(I)(2)(b) above also applies.

(4) For the purpose of this regulation:

(a) The term "initial rent" means the rent established after a qualifying vacancy within the meaning of the Costa-Hawkins Rental Housing Act.

(b) The term "vacancy increase" means the increase in rent above the rent ceiling otherwise permitted by the Rent Ordinance that is obtained when an initial rent is established on or after January 1, 1999 under the Costa-Hawkins Rental Housing Act.

(c) A capital improvement is "commenced" when a contract is entered into for the performance of the capital improvement, when any supplies to perform the work are purchased or when any of the work is actually performed.

[As amended June 21, 1996, January 9, 1999 and November 19, 1999 and May 7, 2018]

1268. Recent Rent Changes

(A) Purpose. The purpose of this Section is to provide an additional one-time rent ceiling adjustment for units for which there have been no or minimal rent increases in recent years. The 10% figure takes into account general increased costs to landlords in the 1976-79 period, and the fact that landlord generally realized substantial property tax savings as a result of Proposition 13.

(B) Additional Rent Increase. In addition to any rent ceiling adjustment pursuant to Sections 1262-67, and Section 1269-70, the rent ceiling for any unit may be further increased by the dollar differences between 10% of the rent in effect on January 1, 1976 and the dollar amount that the rent was increased for that unit between January 1, 1976 and December 31, 1979, if:

(1) the landlord has complied with Measure I, Ordinance 5212, and Measure D in all respects; and

(2) the tenant's use of and benefit from the unit has not been impaired by a reduction in housing services or living space, or by other factors, subsequent to January 1, 1976; and

(3) the rent in effect on December 31, 1979, was no more than 10% greater than the rent in effect on January 1, 1976.

(C) Rent ceiling adjustments pursuant to this section may only be made one time for any unit.

1269. Changes in Space or Services

(A) Increase in Space or Services. Rent ceilings may be adjusted upward when there is an increase to the usable space or the housing services beyond that which was provided to a unit on May 31, 1980 or when the base rent was first established.

1. Additional space. Where a landlord adds habitable living space to a unit, other than by merely reconfiguring existing residential rental space, the lawful rent ceiling for such unit shall be permanently increased by 1.042% of the cost of adding such additional space to the existing unit. The supporting documentation must substantiate the nature and cost of the claimed additional space and may include copies of invoices, signed contracts, material and labor receipts, self labor logs, proof of entitlement to skilled labor rate (if claimed), canceled checks or any other items of documentation accepted and used in the normal course of business. Reports which merely summarize or refer to undocumented expenditures are not, by themselves, adequate substantiation. Hearing Examiners shall weigh and evaluate the nature of the documentation submitted as substantiation, and may require additional proof. Evidence of compliance with applicable permit requirements and correction of any cited code violations may also be required.

For increases in space for which on-site construction commenced before April 17, 1995, the owner may elect, as an alternative to the rent adjustment set forth above, a permanent rent increase equal to $1.00 per square foot of habitable living space added to the unit.

2. Additional services. Where a landlord adds non-habitable space or increases the services provided to a unit, the lawful rent ceiling for such unit shall be increased by an amount representing the market value of the additional space or increased services.

If the additional services and proposed rent adjustment are agreed to in writing by the landlord and tenants, the Board shall approve the proposed rent increase unless it can be shown that the agreement clearly violates the Ordinance. Increases may be denied if a tenant objects and the added space or services do not clearly benefit a majority of the affected tenants. If the additional space or services are subsequently reduced or eliminated, the rent increase authorized herein shall be reduced or terminated. If a rent increase is granted under this subsection, no additional rent increase shall be granted under Regulation 1264 or 1267 for materials or labor involved in providing the space or service. Any increase for an additional bedroom shall result in an increase to the base occupancy level for an additional occupant.

The addition of furniture or furnishings will not be considered an increase in services eligible for a permanent rent increase, but may be the subject of a separate agreement under Regulation 1012.

(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. Rent ceilings shall be adjusted downward where a landlord causes a tenant to suffer a decrease in housing services or living space, from the services and space that were provided at the unit on May 31, 1980, or from any additional services or space provided at the beginning of the tenancy pursuant to the rental agreement. For tenancies beginning after January 1, 1999, rent ceilings shall be adjusted downward only where a landlord causes a tenant to suffer a decrease in housing services or living space from that which was provided at the beginning of the tenancy pursuant to the rental agreement. It shall be presumed that any space or service provided at the beginning of the tenancy was provided pursuant to the rental agreement. The amount of the rent decrease is 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 rent ceiling 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. Any rent ceiling reductions pursuant to this subsection shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the space or service has been restored.

2. Denial of Petitions for Unilateral Removal. The Board will not accept petitions from landlords who seek a rent ceiling decrease for the unilateral removal or reduction of space or services from a tenant’s base level space or services. 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 were provided at the unit on May 31, 1980, and any additional services or space provided at the beginning of the tenancy pursuant to the rental agreement; except that, for tenancies beginning on or after January 1, 1999, “base level space or services” are the housing services or living space that were provided at the beginning of the tenancy pursuant to the rental agreement.

3. Substantial Deterioration, Inadequate Services. Rent ceilings 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. The amount of the rent decrease is 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) by the rent ceiling in effect at the time of the impairment. 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 property in compliance with all applicable state and local laws and with the terms of the rental agreement.

4. Code Violations, Breach of the Warranty of Habitability. Rent ceilings shall be adjusted downward for any failure to substantially comply with applicable state rental housing laws, the warranty of habitability or local housing and safety codes. The amount of the rent decrease is calculated by multiplying the percentage of impairment of the tenants’ use of and benefit from the unit (as a result of the violation, breach or failure to comply) by the rent ceiling in effect at the time of the impairment. 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 rent ceiling decrease

shall be in an amount that reflects the reduction in value of the premises due to the unsafe or unhealthy condition. A substantial lack of any of the affirmative standard characteristics for tenantability set forth in Civil Code section 1941.1(a) shall be deemed a violation of the warranty of habitability and the rent ceiling shall be decreased by no less than 10% or, for a violation of subsections (2), (3) or (4) of Civil Code section 1941.1(a), 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. 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 35 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. For purposes of this subsection, a breach of the warranty of habitability occurs when the rental premises are 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 bare living requirements do not constitute a breach of the warranty of habitability.

5. Rent ceiling reductions pursuant to subsections (3) and (4) of this regulation shall be effective from the date the landlord first had notice of the 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. 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 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 premises. A copy of a housing code inspection report from the City of Berkeley department responsible for the residential rental inspection program should be submitted with the petition.

[Effective Date: 08/01/81; subsection (A) amended 05/05/91, 05/08/92, 06/09/95, 04/11/97; subsection (B) amended 04/11/97, 09/09/98, 04/05/99, 08/05/02, 08/18/03, amended subsection (B) and (B)1; subsection (B)2 added 11/18/13; amended subsection (B)4 to refer to correct sections of California State Civil Code section 1941.1 on 12/17/18, amended Section (B)5. to refer only to subsections (3) and (4) – 9/19/19]

1269.5 Payment of Sewer Service Fees by Tenants - ****REPEALED 9/19/19****

A. Background

On May 31, 1980, sewer service fees charged by the City for the cost of maintaining sewers, were billed on the property tax bill and paid by property owners. For this reason sewer service has always been considered a housing service that is provided to the unit as part of the rent. Sewer service is considered to be a base year operating/maintenance expense and increases or decreases to the sewer service fee have always been included in the calculation of the Annual General Adjustment. Landlords are responsible for providing and paying for a unit's sewer service, notwithstanding any changes in the City's method of billing for such services.

On or about July 1, 1997, the City of Berkeley stopped billing sewer service fees on the property tax bill and arranged to have them billed by East Bay Municipal Utility District on their water bills. Some water bills are paid by landlords, and some are paid by tenants. As a result of this change in billing, some tenants may be billed for the sewer fee which is a responsibility of the landlord.

B. Sewer Service Charges Paid by the Tenant May Be Deducted from the Rent

(1) Any tenant who pays for the unit's water and who receives a bill for sewer services as part of his or her water bill may deduct the amount paid from the rent. Any tenant who deducts the sewer services charge from his or her rent is advised to inform the landlord of the reason for the deduction at the time the deduction is made. The landlord may request a copy of the water bill from the tenant.

(2) Where a tenant fails to pay a sewer service fee and, as a consequence, his or her water is shut off, the lack of water shall not constitute a breach of the warranty of habitability.

C. Sewer Service Charges for Tenancies Beginning On or After January 1, 1999

For tenancies beginning on or after January 1, 1999, payment of sewer service charges shall remain the responsibility of the landlord unless such responsibility is expressly assigned to the tenant by the terms of a written lease or rental agreement.

[Effective June 20, 1997, as amended December 5, 1997 and December 27, 1998; **Repealed 9/19/19**]

1269.6 Payment of Refuse Fees by Tenants - ****REPEALED 9/19/19****

A. Background

On May 31, 1980, fees for refuse collection charged by the City were billed on the property tax bill and paid by property owners. For this reason refuse collection has always been considered a housing service that is provided to the unit as part of the rent. Refuse collection is considered to be a base year operating/maintenance expense and increases or decreases to the refuse collection fee have always been included in the calculation of the Annual General Adjustment. Landlords are responsible for providing and paying for a unit's refuse collection service, notwithstanding any changes in the City's method of billing for such services.

On or about July 1, 1997, the City of Berkeley stopped billing refuse collection fees on the property tax bill and arranged to have them billed directly to the landlord by the City. As a result of this change in billing, some landlords may transfer the billing to the tenants although the responsibility for the refuse fee is the landlord's.

B. Refuse Charges Paid by the Tenant May Be Deducted from the Rent.

(1) Any tenant who receives a refuse bill may make an arrangement with the landlord to have the landlord pay the bill. The landlord may pay the bill directly or, if the tenant pays the bill, may arrange to reimburse the tenant or allow the tenant to deduct the amount paid from the rent or may make any other arrangement to which both parties agree, including a rent ceiling decrease pursuant to Regulation 1269(B).

(2) If the landlord refuses to reimburse the tenant for the amount of the refuse bill paid by the tenant, after the tenant has presented the landlord with a copy of the bill and proof of payment, the tenant may deduct the amount of payment from his or her rent.

C. Refuse Charges for Tenancies Beginning On or After January 1, 1999

For tenancies beginning on or after January 1, 1999, payment of refuse charges shall remain the responsibility of the landlord unless such responsibility is expressly assigned to the tenant by the terms of a written lease or rental agreement.

[Effective June 20, 1997 and amended December 27, 1998; **Repealed 9/19/19**]

1270. Changes in Number of Tenants

(A) Base Occupancy Level. The base occupancy level for a unit shall be the number of tenants allowed by any lease or rental agreement for the unit, between June 1, 1979 and May 31, 1980, or the highest number of tenants actually occupying the unit, with the landlord's knowledge, as a principal residence, between June 1, 1979 and May 31, 1980, whichever is greater or, for units that had an initial rent established on or after January 1, 1999, the number of tenants allowed by any lease or rental agreement entered into at the beginning of the current tenancy, including any tenant considered an original occupant under Regulation 1013(O)(5). If documentation establishing the historic base occupancy level is not available, the hearing examiner may use another appropriate period to determine the base occupancy level, or may otherwise determine an appropriate base occupancy level for the unit. In the absence of evidence to the contrary, it shall be presumed that the base occupancy level for a unit was not less than one tenant per bedroom. A declaration under penalty of perjury attesting to personal knowledge of the actual base occupancy level normally shall not by itself be considered sufficient to rebut this presumption. A party who lacks personal knowledge of the base occupancy level may not stipulate to a base occupancy level of less than one tenant per bedroom.

(B) Increase in Tenants.

(1) If the number of tenants allowed by the lease or rental agreement and actually occupying a unit as a principal residence has increased above the base occupancy level for that unit, then the rent ceiling for the unit shall be increased by 10% for each additional tenant above the base occupancy level, in addition to any rent ceiling adjustment to which the landlord is otherwise entitled. A petition seeking rent adjustments solely for increased tenants will be processed under subsections (D), (E) and (F) of this regulation.

(2) No rent ceiling increase for additional tenants, as provided for in subsection (B)(1), shall be granted for any additional tenant who is a spouse, registered domestic partner, child, or parent of any of the original tenants, unless the original tenants agree in writing to the specific rent ceiling increase. "Original tenants" means the sitting tenants who agreed with the landlord to rent the unit at the beginning of the current tenancy.

(3) If the number of tenants actually occupying a rental unit as a principal residence decreases subsequent to any rent ceiling increase for additional tenants granted pursuant to subsection (B)(1), then the rent ceiling for that unit shall automatically decrease, by the amount of the rent ceiling increase that is no longer justified, as a result of the decrease in the number of tenants.

(C) Decrease in Number of Tenants Allowed. If any policy or policies imposed by the landlord reduces the number of tenants allowed to occupy a rental unit as a principal residence to a number less than the base occupancy level for that unit, then the rent ceiling 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. This reduction shall not apply

when the number of tenants allowed to occupy the rental unit at the commencement of the tenancy was less than the base occupancy level for the unit.

(D) Petitions; Notice. To obtain a rent increase under subsection (B)(1), owners of qualifying units shall file a petition on a form prescribed by the Board.

(E) Grounds for Tenant Objection. Tenants subject to petitions under subsection (B)(1) may file objections with the Board as set forth in Chapter 12 of these Regulations. Failure to file an objection on any ground specified in this subsection shall constitute a waiver of the right to a hearing on the petition. Such objections must be made 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 or parent of any of the original tenants 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 lawful rent ceiling; 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.

(F) Rent Increases.

(1) Within ten (10) days of the closing of the record, the Board shall issue a decision increasing the lawful rent ceiling, pursuant to subsection (B)(1), for any unit where no tenant timely objects on a ground listed in subsection (E), and where the evidence submitted supports the assertions in the petition and substantially conforms to the records of the Board. The record closes twenty-five (25) days after the filing of the petition or upon the filing of express written waivers of the right to a hearing signed by all affected tenants, whichever is sooner. The Board shall serve a copy of the decision on all parties.

(2) For any unit where a tenant objects, the Board shall set the petition for an individual rent adjustment hearing and so notify the landlord and tenants pursuant to Regulation 1223. Individual rent adjustment hearings pursuant to this regulation may be consolidated with hearings on other issues concerning the same units.

(3) Individual rent adjustment determinations under subsection (B)(1) shall be based only on the issues raised by the petition and the specific objections made pursuant to subsection (E). Where an objection is found to be valid, the rent increase authorized under this regulation shall be reduced, denied or deferred, as the hearing examiner or Board determines to be appropriate. Any increase which is deferred due to a valid tenant objection shall be made effective upon submission of proof of compliance, subject to Regulation 1250.

(4) Where the increased occupancy was the result of an agreement between the landlord and the tenant that the increased occupancy would be accompanied by a rent increase otherwise authorized under this Regulation, the hearing examiner may, in his or her discretion, grant the increase retroactively to the date of the original agreement, provided there is no dispute about the date of the agreement and no unreasonable delay in filing the petition under this regulation.

[As amended April 8, 1995; December 5, 1997 and December 27, 1998]; amended (C) April 1, 2002; amended 9/19/19]

1271. Overcharges and Other Violations

(A) Overcharges. If the landlord has received rent in violation of the Ordinance, on or after June 29, 1980, 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 Subsection (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 from 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 60 days of the overcharge refund order.

If the landlord does not refund any past overcharge(s) to any former tenant(s) within 60 days, or has made reasonable but unsuccessful efforts to locate the former tenant(s), the landlord shall pay the overcharge(s) to the Rent Stabilization Board to be held in trust for the former tenants for one year. Each year, no later than the second meeting in March, staff shall 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 Berkeley that benefits low- and/or moderate-income tenants to which the unclaimed funds shall be transferred.

(C) Petition Fee. If the landlord has received and retained rent in violation of the Ordinance, or has failed to comply with the Ordinance or any rule, regulation, or order of the Board, for any unit in a property for which he/she has filed an individual rent adjustment petition, and such failure or violation continues at the time of the filing of the petition, then the landlord shall not be entitled to recover any part of the petition fees from the tenants affected by the petition, notwithstanding the provisions of Regulation 1247.

(D) 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.

(E) 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, subsequent to June 28, 1980, of 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 on rent registration forms filed with the Board and that 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 more timely filing of the petition.

(d) the rent overcharge resulted from the landlord's failure to annually refund interest earned on the tenant's security deposit.

(3) If 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.

(4) Within 21 days of recovering full possession of a rental unit, state law requires a landlord to either return to the tenant the full security deposit or provide the tenant with an itemized accounting of how any nonrefunded portion of the deposit was used. Therefore, unless otherwise provided in the lease or rental agreement, a landlord shall not be liable under this Section for the refund of a security deposit until 22 days after full possession of the rental unit has been recovered by the landlord.

(F) 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 he or she does 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 on January 1 of the applicable year. Such documentation may include a copy of an inspection report issued by the Department of Codes and Inspection of the City of Berkeley.

[Amended April 11, 1997; July 9, 1999; November 5, 1999 change to (A) and addition of (E)(2)(a)(d); amended January 7, 2002; and April 4, 2005.]

1272. Refinancing

No individual upward adjustment of a rent ceiling shall be authorized by reason of increased interest or other expenses resulting from the landlord's refinancing the rental unit if, at the time the landlord refinanced, the landlord could have reasonably foreseen that such increased expenses could not be covered by the rent schedule then in existence, except where such refinancing is reasonable and is necessary for the landlord to make capital improvements which meet the criteria set forth in Section 1267(C). This regulation shall only apply to that portion of the increased expenses resulting from the refinancing that were reasonably foreseeable at the time of the refinancing of the rental unit and shall only apply to rental units refinanced after the date of the Ordinance.

1273. New Purchases

No individual upward adjustment of a rent ceiling shall be authorized by the Board because of the landlord's increased interest or other expenses resulting from the sale of the property, if at the time the landlord acquired the property, the landlord could have reasonably foreseen that such increased expenses would not be covered by the rent schedule then in effect. This regulation shall only apply to rental units acquired after the date of adoption of the Ordinance.

1274. Limit on Individual Increases

(A) Purpose. The purpose of this regulation 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 Berkeley 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 chapter, the implementation of a rent ceiling increase shall be limited each year as follows:

15% of the rent ceiling on the date the petition is granted, before any awarded increase is added.

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 to the subsequent year, to take effect on the anniversary of the decision. Where the subsequent year's increase exceeds the annual limit, the remainder shall be deferred again, until the entire increase has taken effect.

The rent increase limit of this subsection (B) does not apply to the following situations:

1. Annual General Adjustments granted by the Board;

2. Landlord and tenant agreements to an increase schedule which exceeds these limits;

3. Units which are or become vacant, where the vacancy was voluntary or the result of an eviction for any of the good causes listed in Section 13 of the Ordinance except for 13(a)(8), 13(a)(9), or 13(a)(10);

4. Rent increases granted for an increase in the number of tenants under Regulation 1270;

5. Temporary rent adjustments granted under Regulation 1281 in cases where the Board finds that a different implementation schedule is appropriate.

[As amended December 26, 1992 and December 5, 1997; amended 9/19/19]

1274.1 Limited Extension of time to file Claim of Eligibility for incremental phase-in of Regulation 1113 (Searle) Rent Adjustment **(Temporary emergency regulation)**

Any qualified tenant who received a notice of a rent increase pursuant to Regulation 1113 (Searle increase) between October 1, 1991 and November 10, 1991 may file a claim of eligibility for a phase-in of the rent adjustment as provided in Regulation 1274(C)(1) provided this claim is mailed to the landlord and filed with the Board on or before November 30, 1991. Landlords shall have 20 days from the date the claim is filed with the Board, and in all instances no later than December 20, 1991, to file an objection to the tenant's claim of eligibility for a phase-in of the Regulation 1113 rent adjustment.

This emergency regulation provides a limited exception to both the tenant and landlord notice requirements of Regulation 1274(C)(3) and applies to all qualified tenants even if they have already begun to pay a properly noticed Regulation 1113 rent adjustment.

[Effective October 21, 1991]

1274.5. Historically Low Rents: Phase-In for Limited Income Tenants

(1) Eligibility Standard.

(a) The Rent Increase Phase-In authorized by this section shall apply only to rent increases implemented pursuant to Regulation 1113 or Regulation 1280.

(b) Increases shall be subject to this section for so long as: the monthly rent allowed under this regulation exceeds one-twelfth of 30% of the household's annual gross income as published for Section 8 of the United States Housing Act of l937; and at least one tenant who resided in the affected unit at the date the landlord filed a petition under Regulation 1280, or, with respect to an increase under Regulation 1113, who resided in the affected unit on the date the landlord first increased the rent under that regulation, continues to reside there, and either:

(i) that tenant receives general assistance pursuant to California Welfare & Institutions Code Sections 17000 et seq., Aid to Families with Dependent Children, Supplemental Security Income or Social Security Disability Insurance; or

(ii) the household's income is less than the low (80% of AMI) income limit for a household of the applicable size published by the Department of Housing and Urban Development for the Oakland-Fremont, CA HUD Metro FMR Area. The Executive Director or his or her designee shall make available, as an appendix to this regulation or by some other means, the applicable income limits.

(c) Prior to January 1, 1992, the amount of a rent increase authorized by Regulation 1113(5) shall be limited to 10% of the tenant's actual rent prior to the Regulation 1113 adjustment, provided the tenant gives notice of qualification for this Rent Increase Phase-In, as described in subsection(3)(a) If the first phase of a rent increase limited by this subsection is implemented prior to January 1, 1992, no increase may be implemented during calendar year 1992 under Regulation 1113 and/or Regulation 1280 unless the increase is necessary to equal the increase allowed under subsection(1)(d) below.

(d) On or after January 1, 1992, increases subject to this section implemented during any calendar year shall be limited to the greater of:

(i) ten percent (10%) of the lawful rent ceiling in effect on September 1 of the prior calendar year; or

(ii) the amount which increases the rent to 30% of one-twelfth of the household's annual gross income as published for Section 8 of the United States Housing Act of 1937. For purposes of this section, income is defined to include only the following categories: wages, salaries, and other monetary compensation; business and professional income; interest and dividends; income received as beneficiary of a trust; periodic payments such

as social security, retirement funds, pensions, annuities, and royalties; payments in lieu of earnings, such as unemployment and disability; welfare assistance; alimony and child support. Earned income of household members under the age of eighteen is not income for purposes of this regulation.

(e) Increases in years subsequent to the year in which a household first qualified for the Rent Increase Phase-In and during which such household remains eligible shall be limited to ten percent (10%) of the sum of: the lawful rent ceiling in effect on September 1, 1991 and any Regulation 1113 and/or Regulation 1280 rent increases permitted to be implemented after October, 1991.

(2) Grounds for Disqualification.

(a) A household shall be disqualified from the Rent Increase Phase-In if any member of the household over the age of eighteen and under the age of sixty-five was claimed as a dependent on the federal or state income tax return for the most recently completed tax year of any person whose principal residence is not the household in question unless the eligibility of a household is based upon subsection (1)(b)(i).

(b) No tenant or household shall qualify for the Rent Increase Phase-In if the household occupying the unit in question contains less than one person for each bedroom, unless at least one tenant in the household is disabled as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) or is over the age of 65. A bedroom, for purposes of this regulation, shall include a room intended for sleeping which conforms to the provisions of Chapter 5 of the Uniform Housing Code, being not smaller than seventy (70) square feet in floor area with a ceiling height not less than seven (7) feet six (6) inches.

(3) Determination of Eligibility.

(a) To obtain a Rent Increase Phase-In, a tenant must mail to the landlord and file with the Board, within twenty (20) days after service of the rent increase notice, a statement that the tenant's household qualifies for the phase-in. Unless the landlord files a written objection with the Board within ten (10) days of receipt of the tenant's statement, the Rent Increase Phase-In shall become effective.

If a landlord files a timely, written objection with the Board, the tenant shall be required to complete and file a Declaration of Household Income, on a form supplied by the Board. The Executive Director or his or her designee shall thereafter administratively determine if the household qualifies based upon the information supplied in the Declaration. Refusal to supply information verifying income may be grounds for disqualification.

After a tenant gives notice of the household's eligibility and until the administrative determination of eligibility, the rent increase shall be limited pursuant to subsection(1). If it is determined that a household does not qualify for the Rent Increase Phase-In or has underpaid rent pursuant to this subsection, the tenant(s) shall be liable for the amount of the rent increase which was not paid.

A landlord or tenant who objects to the determination of the Executive Director or his or her designee, may appeal the determination by filing an individual petition with the Board no more than fifteen (15) days after the administrative determination, pursuant to the applicable provisions of Chapter 12 of these Regulations.

(b) Eligibility for application of this section to a rent increase under Regulation 1280 shall be determined consistently with the terms of that regulation.

(c) If a landlord alleges in writing on a form supplied by the Board that a unit no longer qualifies for the phase-in, in whole or part, the Executive Director or his or her designee shall determine whether the unit qualifies. A party may contest this determination by filing a petition with the Board pursuant to Chapter 12 of these Regulations. The petition must be on a form approved by the Board and filed within fifteen (15) days of the mailing of the determination.

(4) Relation to Other Rent Increases. The limitation of this section shall apply only to rent increases authorized under Regulation 1113 or Regulation 1280. Where rent increases are authorized under both Regulation 1113 and Regulation 1280, the limitation of this section shall apply to the total of the two increases provided the tenant had timely applied for limitation for both increases pursuant to this section. Other rent increases authorized for the same units during the same year shall be subject only to subsection (B) of Regulation 1274.

[Effective Date 9/19/19.]

1275 (RESERVED)

[Regulation 1275. Fair Return under Constitution, repealed effective 2/7/92]

1276. Debt Service Cost

The Board or Hearing Examiner shall consider debt service as a basis for adjustment of rent ceilings only in the following circumstances:

(A) The Board or Hearing Examiner may adjust rent ceilings by reasons of increased debt service costs for properties purchased or financed between June 6, 1978, and June 3, 1980, if, and to the extent that, the owner demonstrates that rents were not increased prior to the adoption of the Ordinance to cover such increased costs.

(B) The Board or Hearing Examiner may adjust rent ceilings by reason of increased debt service costs for properties refinanced subsequent to June 3, 1980, only if such refinancing is required as a result of a financing agreement entered into prior to the adoption of the Ordinance.

(C) For the purposes of this Regulation, the following definitions and limitations shall apply:

(1) "Increased debt service" shall mean the difference in interest payments and loan costs associated with the current or proposed financing arrangement and those financing arrangements which immediately preceded it.

(2) In the case of refinancing, increased debt service shall include only interest payments and costs associated with the original principal balance remaining at the time the replacement financing arrangement was entered into.

(3) Any decrease in interest payments and/or one-time loan costs associated with arranging financing shall be offset against any increased debt service costs.

(4) All adjustment of rent ceilings herein shall be in conformity with the provisions of Regulations 1263 and 1264 concerning computation of net operating income. Consideration shall be given to any increases in said income which result from decreased operating and maintenance expenses and which serve to offset increased debt service costs.

(5) Insofar as there is conflict between this Regulation and Regulation 1272, the former shall prevail.

(6) Except in the case of imputed financing an upwards adjustment of the rent ceiling may be granted only when the financing agreements which form the basis of the requested adjustment are secured by the subject property pursuant to a recorded deed of trust or comparable mortgage arrangement.

(D) In making rent ceiling adjustments for increased debt service costs under Subsection A. above, the Board or Hearing Examiner shall:

(1) Adjust the rent ceiling upwards to compensate for increased interest costs. For purposes of this subsection, increased costs are those costs actually incurred or those costs based on the assumption that the property was purchased with a minimum down payment of twenty-five percent (25%), that the loan was fully amortized over a period of twenty-five (25) years, with interest costs not exceeding the interest costs reported by the Real Estate Research Council of Northern California for the month in which the property was purchased.

(2) Adjust the rent ceiling upwards to compensate for increased one-time costs of arranging financing. All such increased costs shall be amortized over the life of the loan and at the loan rate.

(E) In making rent ceiling adjustments pursuant to Subsection B above, the Board or Hearing Examiner shall:

(1) Adjust the rent ceiling upwards to compensate for increased interest costs. For the purposes of this subsection, increased interest costs are those costs actually incurred or those costs based on the assumption that the property was purchased or refinanced with a minimum down payment of twenty-five percent (25%), that the loan is fully amortized over a period of twenty-five (25) years, with interest costs not exceeding the interest costs reported by the Real Estate Council of Northern California for the month in which the debt was incurred, whichever is less.

(2) Adjust the rent ceiling upward to compensate for increased one-time costs of arranging financing. All such costs shall be amortized over the life of the loan and at the loan rate. The costs allowable under this subsection shall be the lesser of the actual costs incurred or those which would have been incurred in a commercially normal transaction with an institutional lender. In the case of imputed financing pursuant to subsection E.1., the costs shall be those which would have been incurred in the imputed financing arrangement with an institutional lender.

(F) Rent Ceiling adjustments may be approved by the Board or Hearing Examiner prior to the actual execution of a refinancing agreement. Any such approval shall be contingent upon execution of the refinancing agreement. Rents may not be increased pursuant to such a contingent adjustment prior to the disbursement of loan proceeds. In all cases where a contingent rent adjustment is granted, the Board or Hearing Examiner shall retain jurisdiction
modify the approved adjustment should the actual increased debt service costs differ from those originally projected. In all cases where a contingent adjustment is granted, the Board or Hearing Examiner shall retain jurisdiction to modify the approved adjustment should the actual increased debt service costs differ from those originally projected. In all cases where a contingent adjustment is granted, the owner shall submit to the Board of Examiners such documentation as is necessary to verify that the projected increased debt service costs have in fact been incurred.

(G) All rent ceiling adjustments allowed under this Regulation shall be allocated to each unit of the property in proportion to the rent paid unless it is demonstrated to the satisfaction of the

Board or Hearing Examiner that another allocation will result in a more rational distribution of total rent among the units of the property. Any such alternative allocation of the adjustment shall be in accordance with the purposes of the Ordinance.

[Revisions effective October 21, 1988]

1277. Conditions for Obtaining Individual Rent Adjustments

An individual upward adjustment of a rent ceiling for a rental unit may be awarded but shall not become effective so long as the landlord:

(A) has failed to register any rental unit on the property with the Board;

(B) has demanded, accepted, received or retained rent in excess of the lawful rent ceiling for the affected unit;

(C) has failed to comply with any order of the Board concerning the affected unit;

(D) has failed to comply with a refund order or payment plan order by the Board concerning a former tenant in the affected rental unit;

(E) has failed to bring the affected rental unit into compliance with the implied warranty of habitability; or

(F) has failed to pay interest on security deposits for the affected unit as required by Section 7 of the Ordinance.

1278. Petition to Obtain Previously Lost Annual General Adjustments (AGA's) Pursuant to California Civil Code Section 1947.7

(A) General. When an owner who has previously been out of compliance comes into compliance with the ordinance, regulations, or applicable housing, health and safety codes, all AGA's lost during the period of noncompliance may be granted prospectively. For any residential unit which has been registered and for which a base rent has been listed or for any residential unit which an owner can show, by a preponderance of the evidence, a good faith attempt to comply with the registration requirements or who was exempt from registration requirements in a previous version of the ordinance and for which the owner of that residential unit has subsequently found not to have been in compliance with the ordinance or regulation, all annual rent adjustments which may have been denied during the period of the owner's non-compliance shall be restored prospectively once the owner is in compliance with the ordinance or regulation.

In addition, to be eligible, the owner must state under penalty of perjury that the unit is in substantial compliance with the ordinance, regulations and applicable codes. Specifically, he or she certify payment of all fees and penalties owed to the Rent Stabilization Program (RSP) 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 be tenants or by the RSP on behalf of tenants of the affected unit.

The owner is not entitled to recover any AGA's which have been previously regained through a net operating income analysis or, for tenancies beginning on or after January 1, 1999, that were lost prior to the establishment of the most recent initial rent.

(B) Petition. Upon the petition of the landlord, the owner's eligibility for previously lost AGA's shall be determined. There is no filing fee.

At the time of filing the petition, the owner shall submit a proof of service showing that all opposing parties have been provided with a complete copy of the documents filed.

Sections 1201-1213 of these regulations shall govern all additional petition procedures for AGA petitions.

(C) Administrative Determination. The petition may be decided without a hearing where no material facts are in dispute, all needed information is filed with the petition, and the owner waives his/her right to a hearing in any of the following circumstances:

(1) The owner submits an agreement with the petition which is signed by the parties in accordance with Section 1232 of these Regulations.

(2) The unit(s) included in the petition are vacant.

(3) The tenant(s) fails to file a response to the petition within thirty-five (35) days of the date the response form is mailed to the tenant(s).

(D) Hearing Procedure. The procedure governing hearings and appeals in individual rent adjustment petitions set forth in Sections 1221-1259 of these regulations shall apply to petitions to obtain previously lost AGA's. The following additional procedures shall also apply:

(1) If the increase requested exceeds 20% of the current rent and the tenant shows by a preponderance of the evidence it would cause undue financial hardship if taken at once, the Hearing Examiner shall grant a phased-in rent increase for the amount over 20%, in equal installments for a period up to three years.

(2) If the tenant establishes that the owner has not refunded rent overcharges for the unit, or that the building is not in substantial compliance with registration requirements, that the affected unit is not in substantial compliance with housing, health and safety codes, these issues shall be fully adjudicated in the course of the hearing on the petition to obtain previously lost AGA's and the Hearing Examiner shall make the appropriate order pursuant to Chapter 12 of these regulations.

(3) The decision will be issued within sixty (60) days of hearing, unless the time is extended for good cause at the owner's request.

[Regulation 1278 effective January 12, 1990, amended December 27, 1998]

1278.5 Petition to Obtain Annual General Adjustments (AGA's) Lost Due to a Good Faith Failure to Register.

(A) The lawful rent ceiling of a rental unit shall be adjusted prospectively by all Annual General Adjustments for which a petitioner is otherwise ineligible due to the owner's failure to register the rental unit, if:

(1) the rental unit is currently properly registered;

(2) the prior failure to register the rental unit is demonstrated by a preponderance of the evidence to have been the result of a good faith error; and

(3) the petitioner demonstrates or certifies under penalty of perjury that the unit is in substantial compliance with all provisions of the Rent Stabilization Ordinance, Regulations, orders of the Board and applicable housing and safety codes.

(B) The owner is not entitled to recover any AGA's which have been previously regained through a net operating income analysis or, for tenancies beginning on or after January 1, 1999, that were lost prior to the establishment of the most recent initial rent.

(C) The provisions of subsections (B), (C) and (D) of Regulation 1278 shall apply to petitions brought under this regulation.

[Effective October 23, 1992 and amended December 27, 1998]

1279. (RESERVED)

[Repealed, effective April 10, 1998]

1280. Individual Rent Adjustments for Historically Low Rents

(A) Purpose. The purpose of this regulation is to provide prompt and fair adjustments of rents which are well below typical levels because they were significantly below market levels at the inception of rent controls.

Information included in a comprehensive study of the issue, testimony at a series of public hearings, information contained in Rent Board records, experience in other matters before the Board and materials submitted to the Board show that many units in Berkeley had rents in 1979 and 1980 which were significantly below market rents for comparable units. Where current rent levels and the ability to receive a fair return under the rent ordinance depend on rents at the outset of rent control, it is appropriate to adjust rents for units which had below-market rents at that time. The information before the Board shows that those Berkeley units which were rented at market in 1979 had rents at or above 75% of the HUD fair market rent for Alameda County; rents below that level were not at market.

Except for a limited number of units which have qualified for and received individual rent adjustments or have had an initial rent set after January 1, 1999, units which were below market in 1979 have continued to have lower rents. But for this regulation, such rent disparities would be unnecessarily perpetuated. Moreover, this regulation affects less expensive units, for which below-market rents provide especially limited net operating income, make adequate maintenance difficult and restrict the opportunity to earn a fair return. Where rents qualify for relief pursuant to this regulation, in almost every case they were below rents for comparable units at the outset of rent control and are unlikely to provide a fair return without adjustment. Providing guidelines for rent increases through this regulation allows a minimum adjustment to reduce disparities in rents for comparable units and avoids unduly delaying fair returns to landlords who own such units.

Rent increases are authorized under this regulation on the understanding that they will be imposed only subject to the hardship provisions included in Regulation 1274(C). Those hardship provisions will prevent displacement of tenants. Any potential physical changes in the environment from this regulation will be avoided.

The Board has determined lawful rent ceilings for May 31, 1980, but not for 1979. Further, May 31, 1980 rents are closely related to 1979 rents since intervening rent increases were regulated. Therefore, for purposes of this regulation rent levels for 1979 are measured by May 31, 1980 lawful rent ceilings, as adjusted.

(B) Qualifying Units; Rent Increase. Subject to the grounds for objection listed in section (D), a unit is a qualifying unit, and shall be entitled to an increase in lawful rent ceiling under this regulation, if:

(1) (a) its lawful rent ceiling as of May 31, 1980, reduced by five percent as an allowance for rent increases after December 30, 1979, or

(b) for rental units in formerly exempt triplexes and fourplexes for which the December 31, 1981 rent has been determined by the Board to be the lawful base rent, the lawful rent ceiling as of December 31, 1981, reduced by the 1981 annual general adjustment granted by the

Board and by five percent as an allowance for rent increases permitted between December 30, 1979 and May 31, 1980, was less than the amount in column II of Table 1 below, which amount is seventy-five percent (75%) of the Department of Housing and Urban Development fair market rents established for existing housing in Alameda County in 1979 under Section 8 of the United States Housing Act of 1937; and

(2) its current lawful rent ceiling, excluding the adjustment granted pursuant to the 1991 Inflation Adjustment Order (Regulation 1113) and the amounts of any individual rent adjustments granted on the basis of capital improvements, a property tax increase on sale under Regulation 1279, an increase in the number of tenants or an increase in space or services (an "applicable adjustment"), is less than the amount in column II adjusted upward to take into account all general adjustments granted since 1979 (without utility increases). (The calculated amounts for the current year are set forth in Appendix A, on page 5);

(3) it has not had an initial rent established after January 1, 1999; and

(4) its rent ceiling has not previously been adjusted under this regulation.

Except to the extent of any valid objection under section (D), upon a petition and pursuant to this regulation, the lawful rent ceiling for any qualifying unit shall be increased by the amount of the difference between its current lawful rent ceiling (not including the 1991 Inflation Adjustment or any applicable adjustment) and the amount in Appendix A.

TABLE I	Column I	Column II
UNIT SIZE	1979 HUD RENT	MINIMUM
Studio	$217	$163
1-Bedroom	$264	$198
2-Bedroom	$310	$233
3-Bedroom	$430	$323
4-Bedroom	$470	$353

(C) Petitions; Notice.

(1) Owners of qualifying units may petition for individual rent adjustments pursuant to this section on a form prescribed by the Board. Neither fees nor supporting documents are required to accompany the petition when filed. The petition shall be served on tenants pursuant to Regulation 1205(B)(1).

(2) The Board shall notify each tenant of a unit subject to a petition under this

section following receipt of the petition. The notice shall state that the tenant has a right to object to the petition, and that if the tenant does not object within the time allowed, or the tenant's objection does not specify one or more grounds listed in section (D), the rent for the tenant's unit may be increased by the applicable amount under subsection (B)(4), based on the information in the landlord's petition and the Board's files.

(D) Grounds for Tenant Objection. Tenants subject to petitions under section (C) may file objections with the Board within 15 working days of the date the Board gives notice that the petition has been filed. No fee shall be required to accompany tenant objections. Such objections must be made on one or more of the following grounds:

(1) The unit does not qualify under subsections (B)(1) and (B)(2). Any such objection shall state the rents which the tenant alleges were lawful as of May 31, 1980 and at the date of the petition;

(2) 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;

(3) The unit does not contain, or did not contain as of December 31, 1979, the number of bedrooms on which the petition is based. Any such objection shall state the number of bedrooms which the unit currently contains and the number which it contained on December 31, 1979;

(4) The rent increase sought in the petition is subject to deferral under Regulation 1274. Any such objection under Regulation 1274(C) shall identify the basis on which the tenant qualifies for relief;

(5) The tenant has requested an inspection by the City of Berkeley on the basis that the unit is substantially deteriorated, does not currently provide adequate housing services, or fails to comply substantially with applicable state rental housing laws or local housing, building, health and safety codes.

(6) Although the tenant did not request an inspection by the City of Berkeley, the unit is substantially deteriorated, does not currently provide adequate housing services or fails to comply substantially with applicable state rental housing laws or local housing, building, health and safety codes.

(7) The unit has suffered a significant decrease in space or services since December 31, 1979, or the landlord is in material breach of the rental agreement.

(8) The unit has had an initial rent established after January 1, 1999.

(9) The rent ceiling for the unit has previously been adjusted under this regulation.

(E) Rent Increases

(1) For any unit where, after the Board gives notice of the petition, no tenant objects on a ground listed in subsection (D), and where the information on the petition substantially conforms to the records of the Board, the Board shall increase the lawful rent ceiling to the applicable amount pursuant to subsection (B)(4) for the tenant's unit.

(2) For any unit where the information on the petition does not substantially conform to the records of the Board, the Board shall allow ten (10) days to explain the discrepancy, cure the defect, or amend or withdraw the petition.

(3) For any unit as to which a tenant objects, the Board shall set the petition for an individual rent adjustment hearing and so notify the landlord and tenants pursuant to Regulation 1223.

(4) Individual rent adjustment determinations under this regulation shall be based only on the issues raised by the petition and objections pursuant to section (D). Where an objection is found to be valid in whole or in part, the rent increase authorized under this regulation shall be reduced or denied, as the hearing examiner or Board determines to be appropriate. A petition under this section shall not preclude a landlord from seeking any other rent increase to which the landlord may otherwise be entitled. Individual rent adjustment hearings pursuant to this regulation may be consolidated with hearings on other issues concerning the same units. Where a tenant objects under subsection (D)(5) or (D)(6), any increase which is otherwise due shall be made effective upon the landlord bringing the tenant's unit into compliance.

(F) Definitions for Covered Units. Unit sizes, for purposes of this regulation, shall be determined as follows:

(1) A "bedroom" shall include a room intended for sleeping which conforms to the provisions of Chapter 5 of the Uniform Housing Code, being not smaller than seventy (70) square feet in floor area with a ceiling height not less than seven (7) feet six (6) inches.

(2) A "studio" apartment means a rental unit having independent cooking facilities, a bathroom, and one main room used for living and sleeping. A "l-bedroom" apartment contains a kitchen, a bathroom, a living room, and a bedroom. A "2-bedroom" apartment contains a 1-bedroom unit plus a second bedroom. A 3-bedroom" apartment contains a 2-bedroom unit plus a third bedroom. A "4-bedroom" apartment contains a 3-bedroom unit plus a fourth or more bedrooms. Laundry rooms, utility rooms, halls, storage rooms and other rooms not intended for sleeping shall be disregarded in applying these definitions.

(3) This regulation shall not apply to single-family residences or units not included in the above definitions, such as rooms in boarding houses and residential hotels.

APPENDIX A	2002	2003	2004	2005	2006	2007	2008	2009
Studio	393.77	393.77	402.68	406.30	409.14	419.78	429.02	440.60
1-Bedroom	445.97	445.97	455.66	459.76	462.98	475.02	485.47	498.58
2-Bedroom	496.23	496.23	506.67	511.23	514.81	528.20	539.82	554.40
3-Bedroom	631.93	631.93	644.41	650.21	654.76	671.78	686.56	705.10
4-Bedroom	677.39	677.39	690.55	696.76	701.64	719.88	735.72	755.58

[Effective May 31, 1991, amended October 1, 1991, December 21, 1991, March 6, 1992, April 22, 1994, September 23, 1998 and January 9, 1999, March 13, 2000. March 23, 2001.] Appendix A updated January 9, 1999, March 13, 2000, March 23, 2001, October 2002, January 2005, February 2007, March 2008 and January 2009.]

1281. To allow for temporary rent adjustment for petitions that take over 120 days

If final action on any individual rent adjustment petition seeking an adjustment to the permanent rent ceiling is delayed beyond the 120 days following the date of proper filing, the hearing examiner or the Board, in the decision approving the petition, shall, upon request by the petitioner, in addition to any permanent rent increase or decrease awarded by the decision, award a temporary rent increase or decrease to compensate the petitioner for any monetary loss caused by the delay unless it is expressly found that the conduct of the petitioner or other good cause is responsible for the delay. The temporary increase or decrease awarded under this section shall be in the amount necessary to put the petitioner in the same monetary position as if the decision approving the petition had been issued 120 days after filing and may be amortized over a reasonable period, not to exceed eighteen months. Temporary adjustments awarded under this regulation shall not be subject to Regulation 1274.

[Amendment effective April 8, 1995]

1282. Individual Rent Adjustments for Units in Properties With No Vacancy Increases Since December 31, 1998

(A) Purpose. The purpose of this regulation is to provide timely and fair adjustments of rents in properties where all of the units have been occupied by long-term tenants since prior to the inception of full vacancy decontrol on January 1, 1999.

Historically, over the period from the inception of the ordinance in 1980 to 2004, the Rent Board's AGA process provided increases in rent ceiling roughly comparable to the increase in the Consumer Price Index (CPI) and these increases met the constitutional standard for providing a fair return on the owner's investment. ("The Effects of Rent Stabilization and Vacancy Decontrol on Rents, Rental Property Values and Rent Burdens in Berkeley, California", April 19, 2010.) There are a limited number of properties where all tenants are long-term tenants who have been in place since before January 1, 1999 when full vacancy decontrol began. In these properties the average rent increase for the entire property allowed by the AGA formula in effect since January 2005 is less than the increase in the CPI and this could restrict the owner's opportunity to earn a fair return. For these properties this regulation will allow a catch-up increase in rent ceiling approximately equal to the difference between the percentage CPI increase measured from the June 2004 index number to the June 2011 index number and the percentage increase in rent ceiling measured by the AGA increase in the allowable rent ceiling from January 2005 to January 2012.

(B) Qualifying Units. A unit is a qualifying unit and shall be entitled to an increase in rent ceiling under this regulation if it is in a property where no units have received a vacancy increase on or after January 1, 1999 and no units are currently exempt from registration except that one unit may be owner-occupied.

(C) Increase in Rent Ceiling. Qualifying units shall be eligible for a supplementary increase of 3% of the lawful rent ceiling in effect on the filing date of the petition and twelve months after the initial increase, a further increase of 3% of the lawful rent ceiling then in effect. The initial increase can take effect no sooner than January 1, 2013.

(D) Petitions; Notice.

(1) Owners of qualifying units may petition for individual rent adjustments pursuant to this section on a form prescribed by the Board. Neither fees nor supporting documents are required to accompany the petition when filed. The petition shall be served on tenants pursuant to Regulation 1210(A).

(2) The Board shall notify each tenant of a unit subject to a petition under this section following receipt of the petition. The notice shall state that the tenant has a right to object

to the petition, and that if the tenant does not object within the time allowed, or the tenant's objection does not specify one or more grounds listed in section (E), the rent for the tenant's unit may be increased by the applicable amount under subsection (C), based on the information in the landlord's petition and the Board's files.

(E) Grounds for Tenant Objection. Tenants subject to petitions under section (C) may file objections with the Board within twenty (20) days of the date the Board gives notice that the petition has been filed. No fee shall be required to accompany tenant objections. Such objections must be made on one or more of the following grounds:

(1) The property or unit does not qualify under subsection (B). Any such objection shall state which unit or units have received a vacancy increase subsequent to December 31, 1998.

(2) The owner is charging more than the legal rent ceiling for the unit.

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

(4) The unit has suffered a significant decrease in space or services since the tenant moved in, or the landlord is in material breach of the rental agreement.

(5) The rent ceiling for the unit has previously been adjusted under this regulation.

(F) Rent Increases.

(1) For any unit where, after the Board gives notice of the petition, no tenant objects on a ground listed in subsection (E), and where the information on the petition substantially conforms to the records of the Board, the Board shall increase the lawful rent ceiling to the applicable amount pursuant to subsection (C) for the tenant's unit. The record closes thirty (30) days after the filing of the petition or upon the filing of express written waivers of the right to a hearing signed by all affected tenants, whichever is sooner.

(2) For any unit where no tenant files a timely objection, and where the evidence submitted does not support the assertions in the petition or information in the petition does not substantially conform to the records of the Board, the Board shall notify the petitioner that the petition will be dismissed unless the petitioner cures the defect within thirty (30) days of receiving notice of the defect. The Board shall issue a decision on the petition within twenty (20) days of receipt of the petitioner's response.

(3) If any tenant files a timely objection, the Board shall set the petition for an individual rent adjustment hearing. Proceedings shall be conducted according to all provisions of Chapter 12, Subchapter B.

(4) Individual rent adjustment determinations under this regulation shall be based only on the issues raised by the petition and the specific objections made under subsection (E). Where an objection is found to be valid, the rent increase authorized under this regulation shall be denied or deferred, as the hearing examiner or Board determines to be appropriate. Any increase that is deferred due to a valid tenant objection shall be made effective following proof of compliance, in accordance with Regulation 1250.

(G) Review. The Rent Program staff shall include in the annual AGA report to the Board a report on the number of properties and units receiving increases under this regulation, the number of units potentially eligible and the cumulative percentage difference between the increase in the AGA and the increase in the CPI, so that the Board may consider whether to adjust or extend the increases allowed under this regulation.

[Adopted on July 16, 2012.]

1283 - 1299 (RESERVED)

CITY OF BERKELEY
RENT STABILIZATION BOARD
2125 Milvia Street
Berkeley, CA 94704
(510) 981-7368

APPENDIX A

DATE: March 18, 1996
TO: Rent Stabilization Board, Hearing Examiners, General Public
FROM: Members of the Rent Stabilization Board
SUBJECT: Amortization Schedule

Pursuant to Board Regulations Chapter 12, the following Amortization Schedule for capital improvements and amortizable maintenance and repair expenses is hereby established. These amortization periods shall apply to all petitions filed after January 1, 1991 unless the Hearing Examiner makes a specific finding that a different time period is more appropriate. The amortization periods are approximate and expire on December 31 of the appropriate year.

IMPROVEMENT	YEARS
Air Conditioner	10
Appliances	
Dishwasher	10
Dryer	10
Fans	10
Garbage Disposal	10
Refrigerator	10
Stove	10
Washing Machine	10
Water Heater	10
Cabinets	15
Carpentry	15
Ceiling	15
Doorbells	15
Doors	15
Dumpster	10
Electrical light fixtures	15
Electrical wiring	15
Elevator	15
Fencing	15
Fire Alarm/Smoke Detect.	5
Fire Escape	15
Flooring	
Hardwood	15
Linoleum	15
Tile	15
Carpet	5
Foundation	15
Furniture (bed, table, chair, bureau, couch)	5
Gates	15
Gutters, downspouts	15

IMPROVEMENT	YEARS	IMPROVEMENT	YEARS
Heating (gas, electric, central system)	15	Security system, intercom	10
Insulation, weather-strip	15	Siding	15
Landscaping (planting, sprinklers)	15	Solar energy equip.	15
Locks	5	Stairs, steps	15
Mailboxes	15	Wallpaper	5
Masonry	15	Walls	15
Interior Painting	5	Windows	15
Exterior Painting	10		
Patio, porch, deck	15		
Paving (asphalt, cement)	15		
Plastering	15		
Plumbing			
Fixtures	10		
Pipes	15		
Pump (sump)	10		
Renovation*	15		
Roofing	15		

*Definition: Renovation shall be defined as the restoration and/or upgrade of a rental unit or any part of a rental unit.

Rent Stabilization Board

APPENDIX B

DATE: July 20, 2023

TO: Members of the Berkeley Rent Stabilization Board, Program Staff, and the Public

FROM: DéSeana Williams, Executive Director

SUBJECT: US Bureau of Labor Statistics CPI Information

CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U)
SAN FRANCISCO-OAKLAND-SAN JOSE, ALL ITEMS LESS SHELTER 1982-84=100

NEW SCALE	JUNE
1979	73.2
1980	83.3
1981	89.7
1982	97.3
1983	99.7
1984	104.1
1985	107.6
1986	109.2
1987	111.1
1988	116.6
1989	122.8
1990	127.5
1991	133.3
1992	138.2
1993	142.1
1994	143.7
1995	147.6
1996	150.7
1997	153.5
1998	155.2
1999	158.8
2000	163.7
2001	169.7
2002	169.1

NEW SCALE	JUNE
2003	172.9
2004	178.4
2005	180.6
2006	190.0
2007	196.33
2008	207.473
2009	205.878
2010	211.081
2011	217.252
2012	221.915
2013	225.872
2014	230.971
2015	231.934
2016	233.095
2017	237.107
2018	244.644
2019	253.308
2020	255.063
2021	268.989
2022	297.067

Rent Stabilization Board

APPENDIX C

DATE: July 20, 2023

TO: Rent Stabilization Board Commissioners, RSB Staff and the Public

FROM: DéSeana Williams, Executive Director

SUBJECT: HUD Lower Income Limits

Pursuant to Regulation 1274.5 (1)(b)(ii), the applicable household income limits which determine eligibility for a hardship phase-in are listed below:

Household Size	Income Limit
1 person	$78,550
2 people	$89,750
3 people	$100,950
4 people	$112,150
5 people	$121,150
6 people	$130,100
7 people	$139,100
8 people	$148,050

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