

## **Chapter 9: Standards for Individual Maximum Allowable Rent Adjustments**

### **900. (RESERVED)**

### **901. Purpose**

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

*[Adopted February 21, 2018]*

### **902. Procedure**

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

*[Adopted February 21, 2018]*

### **903. Changes in Number of Tenants**

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

#### **B. Increase in Tenants:**

- (1) If the number of Tenants allowed by the Rental Housing Agreement actually occupying a unit as the Tenants' principal residence has increased above the Base Occupancy Level for that unit, then the Maximum Allowable Rent for the unit may be increased by up to fifteen percent (15%) for each additional tenant above the base occupancy level, in addition to any Maximum Allowable Rent adjustment to which the Landlord is otherwise entitled. A petition seeking rent adjustments solely for an increased number of Tenants will be processed under Regulation 903(D).
- (2) Notwithstanding Regulation 903(B)(1), no increase in the Maximum Allowable Rent for additional Tenants shall be granted for any additional Tenant who is a spouse, registered domestic partner, child, grandchild, parent, grandparent, legal guardian of a child, parent of any of the Tenants, or caretaker/attendant as required for a reasonable accommodation for a person with a disability, unless the Tenants agree in writing to the specific Maximum Allowable Rent increase.
- (3) If the number of Tenants actually occupying a Rental Unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (B)(1), then the Maximum Allowable Rent increase for

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

- (4) Increases in the Maximum Allowable Rent due to an increase in the Base Occupancy Level shall remain permanent. As such, if the number of Tenants actually occupying a Rental Unit as the Tenants' principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (B) (1), then the Tenants may replace the departing Tenant with another Tenant (subject to the Landlord's standard screening methods).

C. Decrease in Number of Tenants Allowed:

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

- (1) A policy shall be deemed unreasonable if it is different from and more restrictive than the policies originally used to screen the current Tenant(s).
- (2) Refusal based on the proposed additional occupant's lack of creditworthiness shall be deemed unreasonable if that person will not be legally obligated to pay some or all of the rent to the Landlord. (RMC Section 11.100.050(a) (1) (i) (c)).
- (3) Refusal shall be deemed reasonable if the increase would bring the total number of occupants above the maximum allowable under Section 503b the Uniform Housing Code as incorporated by California Health and Safety Code Section 17922. (RMC Section 11.100.050(a) (1) (i) (c)).

D. Grounds for Objections:

Tenants responding to petitions under subsection (B) (1) may file objections with the Board on one or more of the following grounds:

- (1) The base occupancy level alleged by the landlord is incorrect; however, a tenant may not contest a base occupancy level that was established in a prior decision;
- (2) The number of tenants alleged by the landlord as being currently allowed by the lease and actually occupying the unit as a principal residence is incorrect;
- (3) An additional tenant claimed by the landlord as justifying a rent increase is a spouse, registered domestic partner, child, grandchild, parent, grandparent, legal guardian of a child or caretaker/attendant as required for a reasonable accommodation for a person with a disability and the original tenant(s) did not agree in writing to an increase for such person(s);

- (4) The unit is not eligible to receive annual general adjustments for any period since its rent was last certified or individually adjusted by the Board. Any such objection shall identify each challenged annual general adjustment and the reason for the alleged ineligibility;
- (5) The landlord is collecting rent in excess of the Maximum Allowable Rent; or
- (6) The unit is substantially deteriorated, fails to comply substantially with applicable state rental housing laws or local housing, building, health and safety codes, or the landlord does not currently provide adequate housing services.

*[Adopted February 21, 2018]*

#### **904. Changes in Space or Services**

##### **A. Increase in Space:**

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

- (1) Additional or reconfigured space: Where a Landlord adds habitable living space to a unit or reconfigures it, the Maximum Allowable Rent for such unit shall be permanently increased as provided under Section 8XX Capital Improvements.
- (2) Additional services: Where a Landlord adds non-habitable space or increases the services provided to a unit, the Maximum Allowable Rent for such unit shall be increased by an amount representing the commercially reasonable value of the additional space or increased services. If the additional or reconfigured space or the services are subsequently reduced or eliminated, the rent increase authorized herein shall be reduced or terminated. Any increase for an additional bedroom shall result in an increase to the Base Occupancy Level for an additional occupant.
- (3) Increases may be denied if the added or reconfigured space or services do not clearly benefit a majority of the affected Tenants and a Tenant objects.
- (4) If the added or reconfigured space or services clearly benefit a majority of the affected Tenants, then increases may be denied if a majority of the affected Tenants object.

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

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

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

- (2) Denial of Petitions for Unilateral Removal: The Board will not accept petitions from Landlords who seek a Maximum Allowable Rent decrease for the unilateral removal or reduction of space or services from a Tenant's base level space or services. Landlord petitions shall be accepted only when a Tenant has expressly agreed in writing to the removal of such space or services. "Base level space or services" are the housing services or living space that was provided at the unit on July 21, 2015, or at the beginning of the tenancy.
- (3) Inadequate Services & Substantial Deterioration: The Maximum Allowable Rent shall be adjusted downward for any substantial deterioration in a Rental Unit and/or for any failure to provide adequate Housing Services occurring during the petitioner's tenancy. For purposes of this subsection, a substantial deterioration means a noticeable decline in the physical quality of the Rental Unit resulting from a failure to perform reasonable or timely maintenance and adequate Housing Services means all services necessary to operate and maintain a Rental Unit in compliance with all applicable state and local laws and with the terms of the Rental Housing Agreement. The amount of the rent decrease shall be calculated by multiplying the percentage of impairment of the Tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide adequate service, violation, breach or failure to comply) by the Maximum Allowable Rent in effect at the time of the impairment.
- (4) Code Violations & Breach of the Warranty of Habitability:
  - a. Where a condition at the Rental Unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the Maximum Allowable Rent decrease shall be in an amount that reflects the reduction in value of the Rental Unit due to the unsafe or unhealthy condition.
  - b. A substantial lack of any of the affirmative standard characteristics for habitability set forth in Civil Code section 1941.1 shall be deemed a violation of the warranty of habitability and the Maximum Allowable Rent shall be decreased by no less than 10% or, for a violation of subsections (b), (c) or (d) of Civil Code section 1941, no less than 20%, until the condition is corrected, notwithstanding seasonal variations in or an absence of impairment to a Tenant's use of or benefit from the unit.
  - c. The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of Tenants (e.g., dangerous window bars, missing smoke detector) shall be

- automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Board within thirty-five (35) calendar days of mailing of the hearing examiner's decision unless the Landlord establishes that the violation cannot be corrected within that time due to circumstances beyond the Landlord's control.
- d. No rent shall be charged for a period in which the Landlord is found to be in violation of California Civil Code Section 1942.4.
  - e. For purposes of this subsection, a breach of the warranty of habitability occurs when the Rental Unit is not in substantial compliance with applicable building and housing code standards, which materially affect health and safety. Minor housing code violations which do not interfere with normal living requirements do not constitute a breach of the warranty of habitability.
- (5) Maximum Allowable Rent reductions pursuant to this Section shall be effective from the date the Landlord first had notice of the space or service reduction, deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Board that the condition for which the reduction was granted no longer exists.
- (6) A Tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the Landlord first received notice of the decreased service, deterioration, code violation or habitability violation. Notice may be actual or constructive. A Landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been disclosed by a reasonable inspection of the Rental Unit. A copy of a housing code inspection report from the City of Richmond should be submitted with the petition.

*[Adopted February 21, 2018]*

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

### **A. Fair Return Standard**

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

(3) Base Year.

- a. For the purposes of making Fair Return determinations pursuant to this section, the calendar year 2015 is the Base Year. The Base Year CPI shall be 2015, unless subsection (b) is applicable.
- b. In the event that a determination of the allowable Rent is made pursuant to this section, if a subsequent petition is filed, the Base Year shall be the year that was considered as the "current year" in the prior petition.

(4) Current Year

The "current year" shall be the calendar year preceding the application. The "current year CPI" shall be the annual CPI for the current year.

(5) Adjustment of Base Year Net Operating Income.

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

- a. Exceptional Expenses in the Base Year. The Landlord's operating expenses in the Base Year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating operating expenses in order that the Base Year operating expenses reflect average expenses for the property over a reasonable period of time. The following factors shall be considered in making such a finding:
  - i. Extraordinary amounts were expended for necessary maintenance and repairs.
  - ii. Maintenance and repair expenditures were exceptionally low so as to cause inadequate maintenance or significant deterioration in the quality of services provided.
  - iii. Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.
- b. Exceptional Circumstances in the Base Year. The gross income during the Base Year was disproportionately low due to exceptional circumstances. In such instances, adjustments may be made in calculating Base Year gross rental income consistent with the purposes of this chapter. The following factors shall be considered in making such a finding:
  - i. If the gross income during the Base Year was lower than it might have been because some residents were charged reduced rent.

- ii. If the gross income during the Base Year was significantly lower than normal because of the destruction of the premises and/or temporary eviction for construction or repairs.
- iii. The pattern of rent increases in the years prior to the Base Year and whether those increases reflected increases in the CPI.
- iv. Base period rents were disproportionately low in comparison to the base period rents of comparable apartments in the City.
- v. Other exceptional circumstances.

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

a. Gross Rental Income.

- i. Gross rental income shall include:

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

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

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

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

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

ii. Gross rental income shall not include:

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

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

Charges for laundry services; and

Storage charges.

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

- i. Reasonable costs of operation and maintenance of the Rental Unit.
- ii. Management expenses. It shall be presumed that management expenses have increased between the Base Year and the current year by the percentage increase in rents or the CPI, whichever is greater, unless the level of management services has either increased or decreased significantly between the Base Year and the current year. This presumption shall also be applied in the event that management expenses changed from owner managed to managed by a third party or vice versa
- iii. Utility costs except a utility where the consideration of the income associated with the provision of the utility service is regulated by state law and consideration of the costs associated with the provision of the utility service is preempted by state law or the income associated with the provision of the utility is not considered because it is recouped from the Tenants on a cost pass-through basis..
- iv. Real property taxes and insurance, subject to the limitation that property taxes attributable to an assessment in a year other than the Base Year or current year shall not been considered in calculating Base Year and/or current year operating expenses.
- v. License, registration and other public fees required by law to the extent



these expenses are not otherwise paid or reimbursed by Tenants.

- vi. Landlord-performed labor compensated at reasonable hourly rates. However, no Landlord-performed labor shall be included as an operating expense unless the Landlord submits documentation showing the date, time, and nature of the work performed. There shall be a maximum allowed under this provision of five percent (5%) of gross income unless the Landlord shows greater services were performed for the benefit of the residents (HOURLY RATE PRESUMPTIONS TO BE INSERTED UPON ESTABLISHMENT OF CAPITAL IMPROVEMENT REGULATION).
  
- vii. Legal expenses. Reasonable attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, legal expenses necessarily incurred in dealings with respect to the normal operation of the Property, and reasonable costs incurred in obtaining a rent increase pursuant to Sections 11.100.070 of the Ordinance.  
To the extent allowable legal expenses are not annually reoccurring and are substantial they shall be amortized over a five-year period, unless the Rent Board concludes that a different period is more reasonable. At the end of the amortization period, the allowable monthly rent shall be decreased by any amount it was increased because of the application of this provision.
  
- viii. The Amortized Costs of Capital Improvements. Operating expenses include the amortized costs of capital improvements plus an interest allowance to cover the amortization of those costs. For purposes of this section a capital improvement shall be any improvement to a unit or property which materially adds to the value of the property, appreciably prolongs its useful life or adapts it to new use and has a useful life of more than one year and a direct cost of \$250.00 or more per unit affected. Allowances for capital improvements shall be subject to the following conditions:

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

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

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

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

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

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

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

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

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

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

- ix. Interest Allowance for Expenses that Are Amortized. An interest allowance shall be allowed on the cost of amortized expenses. The allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the Rent Board shall designate by regulation an index which is most comparable to the PMMS index.
- x. Impact of Vacancy Decontrol on Rent Increases Based on Capital Improvements
- If a unit becomes vacant during the pendency of a schedule which provides for the expiration of increases for capital improvements and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53, the capital improvements schedule shall terminate.
- c. Exclusions from Operating Expenses. Operating expenses shall not include the following:

- i. Mortgage principal or interest payments or other debt service costs and costs of obtaining financing.
  - ii. Any penalties, fees or interest assessed or awarded for violation of any provision of this chapter or of any other provision of law.
  - iii. Land lease expenses.
  - iv. Political contributions and payments to organizations or individuals which are substantially devoted to legislative lobbying purposes.
  - v. Depreciation.
  - vi. Any expenses for which the Landlord has been reimbursed by any utility rebate or discount, Security Deposit, insurance settlement, judgment for damages, settlement or any other method or device.
  - vii. Unreasonable increases in expenses since the Base Year.
  - viii. Expenses associated with the provision of master-metered gas and electricity services.
  - ix. Expenses which are attributable to unreasonable delays in performing necessary maintenance or repair work or the failure to complete necessary replacements. (For example if a roof replacement is unreasonably delayed, the full cost of the roof replacement would be allowed; however, if interior water damage occurred as a result of the unreasonable delay
- d. Adjustments to Operating Expenses. Base Year and/or current year operating expenses may be averaged with other expense levels for other years or amortized or adjusted by the CPI or to reflect levels that are normal for residential Rental Units or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of Base Year and current year expenses and providing a Fair Return. If the claimed operating expense levels are exceptionally high compared to prior expense levels and/or industry standards the Landlord shall have the burden of proof of demonstrating that they are reasonable and/or reflect recurring expense levels. Expenses which are exceptional and reasonable shall be amortized in order to achieve the objectives of this section.
- e. Projections of Base Year Operating Expenses in the Absence of Actual Data

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

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

(7) Allocation of Rent Increases

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

- a. Rent increases for unit-specific capital improvements shall be allocated to that unit;
- b. Rent increases for building-wide or common area capital improvements shall be allocated equally among all units;
- c. Rent increases resulting from the Net Operating Income analysis shall be allocated equally among all units;
- d. Notwithstanding the subsections above, the hearing examiner or the Board, in the interests of justice, shall have the discretion to apportion the rent increases in a manner and to the degree necessary to ensure fairness. Such circumstances include, but are not limited to, units that are vacant or owner occupied.

(8) Conditional Rent Adjustments for Proposed Capital Improvements

- a. In order to encourage necessary capital improvements, the Board allows a Landlord to petition for an upward rent adjustment based upon anticipated future expenses for capital improvements. The purpose of this procedure is to permit Landlords to seek advanced authorization for future rent adjustments based upon anticipated capital improvements. A petition under this Section should only be made for anticipated expenses that the Landlord intends to incur during the twelve month period following the date of final Board decision. This procedure should not be used for anticipated expenses for ordinary repairs and maintenance.
- b. If the petition is granted in whole or in part, the rent increase shall be postponed until such time as the capital improvements are made and an Addendum authorizing the increases is issued.
- c. No addendum shall be issued for such proposed capital improvements unless they are completed within twenty four (24) months from the date of final decision granting the conditional rent adjustment, unless the Landlord obtains an additional addenda authorizing an extension of the time period to complete the capital improvement. Extensions may be granted due to reasonable delays in the completion of capital improvements as determined by the Hearing Examiner.

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

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

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

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

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

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

b. Rent Increase Limit

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

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

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

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



(12) Constitutional Right to a Fair Return.

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

*[Adopted March 21, 2018]*

*[Amended August 15, 2018]*

**906-910 (RESERVED)**

**911. Overcharges and Other Violations**

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

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

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

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

D. Limitation on Liability for the Refund of Overcharges:

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

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

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

- a. The Landlord willfully failed to register the affected property, or
- b. The Landlord willfully provided false or inaccurate information to the Board and the Tenant(s) were thereby induced to pay excess rent in reliance upon said information, or
- c. The Landlord, through threats of eviction, physical violence, coercive actions, or intentional misrepresentation on which the Tenant reasonably relied, prevented a timelier filing of the petition.

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

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

*[Adopted February 21, 2018]*

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

- A. For purposes of this Regulation 911.5, Master Tenant shall mean any person, other than the owner of record, who is entitled to receive Rent for the use and occupancy of any portion of a Rental Unit.
- B. Where a Master Tenant subleases a Controlled Rental Unit, the Master Tenant shall not demand, accept, receive, or retain from the subtenant(s) more Rent than that which is actually and lawfully due and payable to the Landlord of the Controlled Rental Unit. If the Master Tenant receives, accepts or retains Rent in excess of that which is actually and lawfully due and payable to the Landlord of the Controlled Rental Unit, the Master Tenant shall be responsible to the subtenant(s) for all such Rent Overcharges. If the Master Tenant acts as an agent, employee, or conduit of the Landlord of the Controlled Rental Unit in demanding, accepting, receiving, or retaining Rent in excess of that which is actually and lawfully due

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

- C. Where a Tenant is designated as a Master Tenant or acts as a Master Tenant, and the Master Tenant is subletting a portion of a Controlled Rental Unit, the subtenant shall not pay more than the proportional share of the total current Rent paid to the Landlord by the Master Tenant for the housing and housing services to which the subtenant is entitled to under the Rental Housing Agreement. A Master Tenant's violation of this section shall not constitute a basis for eviction under Richmond Municipal Code Section 11.100.050, et seq.
- D. An appropriate proportional share of a subtenant's Rent may be calculated based on the square footage shared with and/or exclusively occupied by the subtenant; or the space shared with and/or exclusively occupied by the subtenant (for instance, dividing the total Rent in equivalent proportions amongst all occupants); or any other method of proportioning the Rent such that the subtenant(s) do not pay more Rent than the proportional share of the total Rent which is actually and lawfully due and paid to the Landlord by the Master Tenant.
- E. Where the subtenant(s) and Master Tenant elect to determine their Rent based on either the proportion of the space shared with and/or exclusively occupied by the subtenant(s) and Master Tenant or the proportion of square footage shared with and/or exclusively occupied by the subtenant(s) and Master Tenant, there shall be a rebuttable presumption as to the lawfulness of the subtenant's and Master Tenant's Rent. This presumption may be overcome by evidence of the relative amenities of the rooms, special obligations of the Master Tenant and/or subtenant(s), or any other evidence the Hearing Examiner deems relevant.
- F. Subtenant(s) may file a petition pursuant to Regulation 805(B)(1) and Regulation 911 for Rent Overcharges, or a petition for an adjustment in Rent, to enforce rights and obligations under this Regulation. In the event the Hearing Examiner determines a Rent Overcharge has occurred, and where the actual rent charged or collected is not the same as the lawful Rent, the Overcharge award(s) must be calculated based on the actual rent charged or collected.

*[Adopted September 19, 2018]*

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

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

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

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

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

- B. Petition: Upon the petition of the Landlord, the Landlord's eligibility for previously lost Annual General Adjustments shall be determined. At the time of filing the petition, the owner shall submit a proof of service showing that all affected Tenants have been provided with a complete copy of the documents filed. Chapter 8 these Regulations shall govern all additional petition procedures for Annual General Adjustment petitions.
- C. Rent increases permitted under this Section shall be applied in a manner consistent with Regulation 602 (Banking of Annual General Adjustment rent increases.)

*[Adopted February 21, 2018]*