RENT ADJUSTMENT PROGRAM REGULATIONS

8.22.010 FINDINGS AND PURPOSE.

A. Purpose of Regulations

1. These Regulations entirely replace the Regulations approved by the City Council in Resolution No. 71518 C.M.S. on December 6, 1994 except as provided for herein.

8.22.020 DEFINITIONS.

"1946 Notice" means any notice of termination of tenancy served pursuant to California Civil Code §1946. This notice is commonly referred to as a 30-day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

"1946 Termination of Tenancy" means any termination of tenancy pursuant to California Civil Code § 1946.

“Anniversary Date” is the date falling one year after the day the Tenant was provided with possession of the Covered Unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent Tenant will assume the Anniversary Date of the previous Tenant (OMC 8.22.080).

“Appeal panel” means a three-member panel of board members authorized to hear appeals of Hearing Officer decisions. Appeals panels must be comprised of one residential rental property owner, one tenant, and one person who is neither a tenant nor a residential rental property owner. Appeals panels may be made up of all regular board members, all alternates, or a combination of regular board members and alternates.

"Banking" means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the Owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the Regulations.

“Board” and “Residential Rent Adjustment Board” means the Housing, Residential Rent and Relocation Board.

“Capital Improvements” means those improvements to a Covered Unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements must primarily benefit the Tenant rather than the Owner. Capital improvement costs that may be passed through to tenants include seventy percent (70%) of actual costs, plus imputed financing. Capital improvement costs shall be amortized over the useful life of the improvement as set forth in an amortization schedule developed by the Rent Board. Capital improvements do not include the following as set forth in the regulations: correction of serious code violations not created by the tenant; improvements or repairs required because of deferred

maintenance; or improvements that are greater in character or quality than existing improvements ("gold-plating" "over-improving") excluding improvements approved in writing by the tenant, improvements that bring the unit up to current building or housing codes, or the cost of a substantially equivalent replacement.

"CPI--All Items" means the Consumer Price Index – all items for all urban consumers for the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor Statistics for the 12 month period ending on the last day of February of each year.

"CPI--Less Shelter" means the Consumer Price Index- all items less shelter for all urban consumers for the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor Statistics for the 12 month period ending on the last day of February of each year.

"CPI Rent Adjustment" means the maximum Rent adjustment (calculated annually according to a formula pursuant to OMC 8.22.070 B. 3) that an Owner may impose within a twelve (12) month period without the Tenant being allowed to contest the Rent increase, except as provided in OMC 8.22.070 B. 2 (failure of the Owner to give proper notices, decreased Housing Services, and uncured code violations).

"Costa-Hawkins" means the California state law known as the Costa-Hawkins Rental Housing Act codified at California Civil Code § 1954.50, et seq. (Appendix A to this Chapter contains the text of Costa-Hawkins).

"Covered Unit" means any dwelling unit, including joint living and work quarters, and all Housing Services located in Oakland and used or occupied in consideration of payment of Rent with the exception of those units designated in OMC 8.22.030 A as exempt.

"Debt Service" means the monthly principal and interest payments on one or more promissory notes secured by deed(s) of trust on the property on which the Covered Units are located. NOTE: Debt Service for newly-acquired units has been eliminated as a justification for new rent increases in excess of the CPI pursuant to Ordinance No. 13221 C.M.S., adopted by the Oakland City Council on April 1, 2014.

"Housing Services" means all services provided by the Owner related to the use or occupancy of a Covered Unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

"Imputed interest" means the average of the 10 year United States treasury bill rate and the 10 year LIBOR swap rate for the quarter prior to the date the permits for the improvements were obtained plus an additional one and one-half percent, to be taken as simple interest. The Rent Program will post the quarterly interest rates allowable.

"Owner" means any owner, lessor or landlord, as defined by state law, of a Covered Unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

"Rent" means the total consideration charged or received by an Owner in exchange for the use or occupancy of a Covered Unit including all Housing Services provided to the Tenant.

"Rent Adjustment Program" means the department in the City of Oakland that administers this Ordinance and also includes the Board.

"Regulations" means the regulations adopted by the Board and approved by the City Council for implementation of this Chapter (formerly known as "Rules and Procedures") (After Regulations that conform with this Chapter are approved they will be attached to this Chapter as Appendix B).

"Security Deposit" means any payment, fee, deposit, or charge, including but not limited to, an advance payment of Rent, used or to be used for any purpose, including but not limited to the compensation of an Owner for a Tenant's default in payment of Rent, the repair of damages to the premises caused by the Tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

"Staff" means the staff appointed by City Administrator to administer the Rent Adjustment Program.

"Tenant" means a person entitled, by written or oral agreement to the use or occupancy of any Covered Unit.

"Uninsured Repairs" means that work done by an Owner or Tenant to a Covered Unit or to the common area of the property or structure containing a Covered Unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds.

8.22.030 EXEMPTIONS.

A. Dwelling Units That Are Not Covered Units

1. In order to be a Covered Unit, the Owner must be receiving Rent in return for the occupancy of the dwelling unit.

a. Rent need not be cash, but can be in the form of "in-kind" services or materials that would ordinarily be the Owner's responsibility.

i. For example, a person who lives in a dwelling unit and paints the premises, repairs damage, or upgrades the unit is considered to be paying Rent unless the person caused the damage.

b. Payment of some of expenses of the dwelling unit even though not all costs are paid is Rent.

i. Payment of all or a portion of the property taxes or insurance.

ii. Payment of utility costs that are not directly associated with the use of the unit occupied.

2. If California law determines that an “employee of the Owner”, including a manager who resides in the Owner’s property, is not a Tenant, then the dwelling unit occupied by such person is not subject to OMC Chapter 8.22 so long as the person is an employee and continues to reside in the unit.

B. Types of Dwelling Units Exempt

1. Subsidized units. Dwelling units whose rents are subsidized by a governmental unit, including the federal Section 8 voucher program.

2. Newly constructed dwelling units (receiving a certificate of occupancy after January 1, 1983).

a. Newly constructed units include legal conversions of uninhabited spaces not used by Tenants, such as:

i. Garages;

ii. Attics;

iii. Basements;

iv. Spaces that were formerly entirely commercial.

b. Any dwelling unit that is exempt as newly constructed under applicable interpretations of the new construction exemption pursuant to Costa-Hawkins (California Civil Code Section 1954.52).

c. Dwelling units not eligible for the new construction exemption include:

i. Live/work space where the work portion of the space was converted into a separate dwelling unit;

ii. Common area converted to a separate dwelling unit.

3. Substantially rehabilitated buildings.

a. In order to qualify for the substantial rehabilitation exemption, the rehabilitation work must be completed within a two (2) year period after the issuance of the building permit for the work unless the Owner demonstrates good cause for the work exceeding two (2) years.

b. For the substantial rehabilitation exemption, the entire building must qualify for the exemption and not just individual units.

4. Dwelling Units Exempt Under Costa-Hawkins. Costa-Hawkins addresses dwelling units that are exempt under state law. The Costa Hawkins exemptions are contained at California Civil Code Section 1954.52. The text of Costa-Hawkins is attached as an appendix to OMC Chapter 8.22.

C. Certificates of Exemption

1. Whenever an Owner seeks a Certificate of Exemption the following procedures apply:

a. The petition cannot be decided on a summary basis and may only be decided after a hearing on the merits;

b. Staff may intervene in the matter for the purpose of better ensuring that all facts relating to the exemption are presented to the Hearing Officer;

c. In addition to a party's right to appeal, Staff or the Hearing Officer may appeal the decision to the Rent Board; and,

d. A Certificate of Exemption shall be issued in the format specified by Government Code Section 27361.6 for purposes of recording with the County Recorder.

2. In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud or mistake and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

8.22.040 THE BOARD.

A. Meetings

1. Notice. Meetings shall be noticed and the agenda posted in accordance with the Ralph M. Brown Act (California Government Code Sections 54950, et. seq. ("Brown Act") and Sunshine Ordinance (OMC Chapter 2.20).)

2. Regular Meetings. The Board or an Appeal Panel shall meet regularly on the second and fourth Thursdays of each month, unless cancelled. Rent Program staff is authorized to schedule these regular meetings either for the full Board or for an Appeal Panel.

3. Special Meetings. Meetings called by the Mayor or City Administrator, or meetings scheduled by the Board for a time and place other than regular meetings are to be designated Special Meetings. The agenda of Special Meetings shall be restricted to those matters for which the meeting was originally called and no additional matters may be added to the agenda.

4. Adjourned or Rescheduled Meetings. A meeting may be adjourned to a time and place to complete the agenda if voted by the Board members present. A rescheduled meeting may be held when a quorum cannot be convened for a regular meeting or when a quorum votes to substitute another time and/or place for a scheduled meeting. Notice of change of meeting time and/or place shall be sent to the City Clerk and absent Board members and provided in accordance with the Brown Act and Sunshine Ordinance.

5. Time of Meetings. Board meetings shall start at 7 p.m. and end by 10:00 p.m. unless some other time is set in advance or the meeting is extended by a vote of the Board.

6. Location of Meetings. The Board meetings shall be held at City Hall, One Frank H. Ogawa Plaza, Oakland, CA 94612, unless otherwise designated.

7. Agenda. The agenda for each meeting shall be posted at such time and places as required by the Brown Act and Sunshine Ordinance.

8. Board meetings shall be conducted in accordance with "Robert's Rules of Order (Revised)," unless modified by these Regulations, requirements of the Brown Act or Sunshine Ordinance, or the Board.

9. Open to Public. The meetings shall be open to the public in accordance with the Brown Act and the Sunshine Ordinance, except for circumstances where the Brown Act or Sunshine Ordinance permits the Board to address a matter in closed session, such as litigation or personnel matters.

10. Board Vacations. The Board may schedule dates during the year when no regular Board meetings may be held so that the entire Board may take vacations. The Board must schedule vacation times at least two (2) months prior to the date of the vacation time.

B. Quorum and Voting

1. Four Board members constitutes a quorum of the Board.

2. Decisions of the Board. For the Board to make a decision on the first time a matter comes before the Board, the quorum must include at least one of each of the three categories of Board members (Tenant, residential rental property Owner, and one who is neither of the foregoing). If a matter cannot be decided because at least one of each of the three categories of Board members is not present, the matter will be considered a second time at a future meeting where the matter can be decided even if at least one member from each category is not present. A majority of the Board members present are required to make decisions, provided a quorum is present and sufficient members of each category are present.

3. A Board member who does not participate in a matter because of a conflict of interest or incompatible employment neither counts towards a quorum nor in calculating the number of Board members required to make a majority.

C. Officers

1. The Board shall select a Chair from among the Board members who are neither tenants nor residential rental property owners. Each Appeal Panel shall be chaired by the member of that panel who is neither a tenant nor a residential rental property owner.

2. The Board may also select a Vice-Chair (who is neither a Tenant nor an Owner) to act as Chair in the Chair's absence.

3. The Officers shall serve one-year terms.

4. The Board shall elect Officers each year at the second meeting in February.

5. The Chair votes on matters as any other Board member.

D. Standing Committees

The Board may establish standing committees subject to prior approval of the City Council. ~~a.~~ A request to create a standing committee must include:

i. The staffing costs for the committee; and

ii. The costs of complying with meeting noticing requirements.

8.22.050 SUMMARY OF NOTICES REQUIRED BY OMC CHAPTER 8.22.

Reserved for potential future regulations. See Ordinance, OMC 8.22.050.

8.22.060 NOTICE OF THE EXISTENCE OF CHAPTER 8.22 REQUIRED AT COMMENCEMENT OF TENANCY.

A. Providing Notice in Multiple Languages

1. The requirement to provide the Notice of the Existence of Chapter 8.22 Required at Commencement of Tenancy in multiple languages took effect on September 21, 2016 and only applies to new tenancies that commenced on or after that date.

2. No Owner will be penalized for failing to comply with this requirement until the later of sixty (60) days after the Rent Program makes a general announcement of the requirement or all the translations are available on the Rent Program website.

3. Until September 21, 2017, no Owner will be denied a Rent increase for failing to provide the notice in the required languages, unless:

a. the Tenant is proficient in one of the non-English languages specified in OMC 8.22.060 (Spanish or Chinese), and is not proficient in English;

or

b. the Owner negotiated the terms of the rental agreement in either Spanish or Chinese and failed to give the notice in that language.

8.22.065 RENT ADJUSTMENTS IN GENERAL

Reserved for potential future regulations. See Ordinance, OMC 8.22.065.

8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.

A. Purpose

This section sets forth the Regulations for a Rent adjustment exceeding the CPI Rent Adjustment and that is not authorized as an allowable increase following certain vacancies.

B. Justifications for a Rent Increase in Excess of the CPI Rent Adjustment

Regulations regarding the justifications for a Rent increase in excess of the CPI Rent Adjustment are attached as Appendix A to these Regulations. The justifications are: banking; capital improvement costs; uninsured repair costs; increased housing service costs; and the rent increase is necessary to meet constitutional or fair return requirements.

8.22.080 RENT INCREASES FOLLOWING VACANCIES.

Reserved for potential future regulations. See Ordinance, OMC 8.22.080.

8.22.090 PETITION AND RESPONSE FILING PROCEDURES.

A. Filing Deadlines

In order for a document to meet the filing deadlines prescribed by OMC Chapter 8.22.090, documents must be received by the Rent Adjustment Program offices no later than 5 PM on the date the document is due. A postmark is not sufficient to meet the requirements of OMC Chapter 8.22.090. Additional Regulations regarding electronic and facsimile filing will be developed when these filing methods become available at the Rent Adjustment Program.

B. Tenant Petition and Response Requirements

1. A Tenant petition or response to an Owner petition is not considered filed until the following has been submitted:

a. Evidence that the Tenant is current on his or her Rent or is lawfully withholding Rent. For purposes of filing a petition or response, a statement under oath that a Tenant is current in his or her Rent or is lawfully withholding Rent is sufficient, but is subject to challenge at the hearing;

b. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath; and

c. For Decreased Housing Services claims, organized documentation clearly showing the Housing Service decreases claimed and the claimed value of the services, and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

2. Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms

accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party.

C. Owner Petition and Response Requirements

1. An Owner's petition or response to a petition is not considered filed until the following has been submitted:

a. Evidence that the Owner has paid his or her City of Oakland Business License Tax;

b. Evidence that the Owner has paid his or her Rent Program Service Fee;

c. Evidence that the Owner has provided written notice, to all Tenants affected by the petition or response, of the existence and scope of the Rent Adjustment Program as required by OMC 8.22.060. For purposes of filing a petition or response, a statement that the Owner has provided the required notices is sufficient, but is subject to challenge at the hearing;

d. A substantially completed petition or response on the form prescribed by the Rent Adjustment Program, signed under oath;

e. Organized documentation clearly showing the Rent increase justification and detailing the calculations to which the documentation pertains. Copies of documents should be submitted rather than originals. All documents submitted to the Rent Adjustment Program become permanent additions to the file.

2. Staff shall serve on respondents copies of the completed petition forms accepted for filing with notification that the petition has been filed. Staff shall serve on petitioners completed response forms accepted for filing. Attachments to petitions and responses shall not be included but will be available to review upon request of either party.

D. Time of Hearing and Decision

1. The time frames for hearings and decisions set out below are repeated from OMC 8.22.110 D.

2. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.

3. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later.

E. Designation of Representative

Parties have the right to be represented by the person of their choice. A Representative does not have to be a licensed attorney. Representatives must be designated in writing by the party. Notices and correspondence from the Rent Adjustment Program will be sent to representatives as well as parties so long as a written Designation of Representative has been received by the Rent Adjustment Program at

least ten (10) days prior to the mailing of the notice or correspondence. Parties are encouraged to designate their representatives at the time of filing their petition or response whenever possible.

8.22.100 MEDIATION OF RENT DISPUTES.

A. Availability of Mediation

Voluntary mediation of Rent disputes will be available to all parties participating in Rent adjustment proceedings after the filing of a petition and response. Mediation will only be conducted in those cases in which all parties agree in advance to an effort to mediate the dispute.

B. Procedures

1. Parties who desire mediation shall have the choice between the use of Rent Adjustment Program Staff Hearing Officers acting as mediators or the selection of an outside mediator. Staff Hearing Officers shall be made available to conduct mediations free of charge. The Rent Adjustment Program will develop a list of available outside mediators for those who do not wish to have Staff Hearing Officers mediate rent disputes. Any fees charged by an outside mediator for mediation of rent disputes will be the responsibility of the parties requesting the use of their services.

2. The following rules apply to mediations conducted by Staff Hearing Officers and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and a hearing on the petition will be scheduled;

c. Written notice of the mediation session shall be served on the parties by the Rent Adjustment Program in accordance with OMC 8.22.110.

d. It is the goal to have the mediation scheduled within the first 30 days after the response to the petition is filed.

e. Absence Of Parties

i. If a petitioner fails to appear at a properly noticed mediation, the Hearing Officer may, in the Hearing Officer's discretion, dismiss the case.

ii. If a respondent fails to appear, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.

3. The following rules apply to mediations conducted by outside mediators and notices regarding the scheduling of a mediation session shall explain the following:

a. Participation in a mediation session is voluntary;

b. The Rent Adjustment Program will not schedule the mediation; the parties will be responsible for scheduling the mediation between themselves and the mediator and for notifying the Rent Adjustment Program of the time and date for the mediation;

c. A request by any party for a hearing on the petition instead of the mediation session received prior to or during the scheduled mediation will be granted. Such a request will be immediately referred to the Rent Adjustment Program and an administrative hearing will be scheduled. In the event that the responding party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative review and or hearing on the petition, whichever is appropriate.

d. In the event that the petitioning party fails to appear for the mediation session, the case will be referred back to the Rent Adjustment Program for administrative dismissal of the petition.

4. The Regulations regarding representation by an agent and translation apply to mediations.

5. If the parties fail to settle the rent dispute through the mediation process after a good faith effort, a hearing on the petition will be scheduled on a priority basis with a Staff Hearing Officer. If the mediation was conducted by a Staff Hearing Officer, the hearing on the petition will be conducted by a different Hearing Officer.

6. If the parties reach an agreement during the mediation, a written mediation agreement will be prepared immediately by the mediator and signed by the parties at the conclusion of the mediation. To the extent possible, mediation agreements shall be self-enforcing. The Hearing Officer will issue an order corresponding to the mediated agreement and signed by the parties that either dismisses the petition or grants the petition according to terms set out in the mediation agreement.

7. A settlement agreement reached by the parties will become a part of the record of the proceedings on the petition unless the parties otherwise agree.

8. The parties cannot agree to grant an Owner a permanent exemption of for dwelling unit. Permanent exemption claims must be decided by a Hearing Officer after a hearing on the evidence.

C. Postponements of Mediations Before Hearing Officers

1. A Hearing Officer or designated Staff member may grant a postponement of the mediation only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. “Good cause" includes but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled mediation date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a mediation must be made in writing at the earliest date possible after receipt of the notice of mediation with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the mediation.

8.22.110 HEARING PROCEDURE.

A. Postponements

1. A Hearing Officer or designated Staff member may grant a postponement of the hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. “Good cause" includes but is not limited to: a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party; b. Verified travel plans scheduled before the receipt of notice of hearing; c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of a hearing must be made in writing at the earliest date possible after receipt of the notice of hearing with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date set for the hearing.

B. Absence Of Parties

1. If a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may, in the Hearing Officer’s discretion, dismiss the case.

2. If a respondent fails to appear, the Hearing Officer may rule against the respondent, or proceed to a hearing on the evidence.

C. Record Of Proceedings

1. All proceedings before a Hearing Officer or the Rent Board, except mediation sessions, shall be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

D. Translation

Translation services for documents, procedures, hearings and mediations in languages other than English pursuant to the Equal Access to Services ordinance (O.M.C. Chapter 2.3) shall be made available to persons requesting such services subject to the City's ability to provide such services. In the event that the City is unable to provide such services, petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. The translators will be required to take an oath that they are fluent in both English and the relevant foreign language and that they will fully and to the best of their ability translate the proceedings.

E. Conduct Of Hearings Before Hearing Officers

1. Each party, attorney, other representative of a party or witness appearing at the hearing shall complete a written Notice of Appearance and oath, as appropriate, that will be submitted to the Hearing Officer at the commencement of the hearing. All Notices of Appearance shall become part of the record.

2. All oral testimony must be given under oath or affirmation to be admissible.

3. Each party shall have these rights:

a. To call and examine witnesses;

b. To introduce exhibits;

c. To cross-examine opposing witnesses on any matter relevant to the issues even if that issue was not raised on direct examination;

d. To impeach any witness regardless of which party called first called him or her to testify;

e. To rebut the evidence against him or her;

f. To cross-examine an opposing party or their agent even if that party did not testify on his or her own behalf or on behalf of their principal.

4. Unless otherwise specified in these Regulations or OMC Chapter 8.22, the rules of evidence applicable to administrative hearings contained in the California Administrative Procedures Act (California Government Code Section 11513) shall apply.

F. Decisions Of The Hearing Officer

1. The Hearing Officer shall make written findings of fact and issue a written decision on petitions filed.

2. If an increase in Rent is granted, the Hearing Officer shall state the amount of increase that is justified, and the effective date of the increase.

3. If a decrease in Rent is granted, the Hearing Officer shall state when the decrease commenced, the nature of the service decrease, the value of the decrease in services, and the amount to which the rent may be increased when the service is restored. When the service is restored, any Rent increase based on the restoration of service may only be taken following a valid change of terms of tenancy notice pursuant to California Civil Code Section 827. A Rent increase for restoration of decreased Housing Services is not considered a Rent increase for purposes of the limitation on one Rent increase in twelve (12) months pursuant to OMC 8.22.070 A. (One Rent Increase Each Twelve Months).

4. The Hearing Officer may order Rent adjustment for overpayments or underpayments over a period of months, however, such adjustments shall not span more than a twelve (12) month period, unless longer period is warranted for extraordinary circumstances. The following is a schedule of adjustments for underpayment and overpayments that Hearing Officers must follow unless the parties otherwise agree or good cause is shown:

a. If the underpayment or overpayment is 25% of the Rent or less, the Rent will be adjusted over 3 months;

b. If the underpayment or overpayment is 50% of the Rent or less, the Rent will be adjusted over 6 months;

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be adjusted over 9 months;

d. If the underpayment or overpayment is 100% of the Rent or more, the Rent will be adjusted over 12 months.

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the decision shall also include a calculation of any interest that may be due pursuant to Reg. 10.2.5 (see Appendix A).

6. If the Landlord has petitioned for multiple capital improvements covering the same unit or building, the Hearing Officer may consolidate the capital improvements into a single amortization period and, in the Hearing Officer's discretion, determine the length for that amortization period in the Decision.

8.22.120 APPEALS.

A. Statement of Grounds for Appeal and Supporting Documentation

1. A party who appeals a decision of a Hearing Officer or administrative decision must clearly state the grounds for the appeal on the appeal form or an attachment. The grounds for appeal must be stated sufficiently clearly for the responding party, and the Board to reasonably determine the basis for the

appeal so that the responding party can adequately respond and the Board adequately adjudicate the appeal.

2. A party who files an appeal must file any supporting argument documentation and serve it on the opposing party within fifteen (15) days of filing the appeal along with a proof of service on the opposition party.

3. A party responding to an appeal must file any response to the appeal and any supporting documentation and serve it on the opposing party within fifteen (15) days of the service of the supporting documentation along with a proof of service on the opposing party.

4. Any argument and supporting documentation may not be any more than twenty-five (25) pages. Arguments must be legible and double-spaced if typed. Any submissions not conforming to these requirements may be rejected by Staff. Staff may limit the pages for argument and supporting documentation submitted in consolidated cases.

5. Staff, in its discretion, may modify or waive the above requirements for good cause. The good cause must be provided in writing by the party seeking a waiver or modification.

B. Grounds for Appeal

The grounds on which a party may appeal a decision of a Hearing Officer include, but are not limited to, the following:

1. The decision is inconsistent with OMC Chapter 8.22, the Regulations, or prior decisions of the Board;

2. The decision is inconsistent with decisions issued by other Hearing Officers;

3. The decision raises a new policy issue that has not previously been decided by the Board;

4. The decision violates federal, state, or local law;

5. The decision is not supported by substantial evidence. Where a party claims the decision is not supported by substantial evidence, the party making this claim has the burden to ensure that sufficient record is before the Board to enable the Board to evaluate the party's claim;

6. The Hearing Officer made a procedural error that denied the party sufficient opportunity to adequately present his or her claim or to respond to the opposing party; or

7. The decision denies the Owner a fair return.

a. This appeal ground may only be used by an Owner when his or her underlying petition for approval of a rent increase was based on a fair return claim.

b. Where an Owner claims the decision denies a fair return, the Owner must specifically state on the appeal form the basis for the claim, including any calculations, and the legal basis for the claim.

C. Postponements

1. The Board or Staff may grant a postponement of the appeal hearing only for good cause shown and in the interests of justice. A party may be granted only one postponement for good cause, unless the party shows extraordinary circumstances.

2. “Good cause" shall include but is not limited to:

a. Verified illness of a party an attorney or other authorized representative of a party or material witness of the party;

b. Verified travel plans scheduled before the receipt of notice of hearing;

c. Any other reason that makes it impractical to appear at the scheduled date due to unforeseen circumstances or verified prearranged plans that cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause".

3. A request for a postponement of an appeal hearing must be made in writing at the earliest date possible after receipt of the notice of appeal hearing with supporting documentation attached.

4. Parties may mutually agree to a postponement at any time. When the parties have agreed to a postponement, the Rent Adjustment Program office must be notified in writing at the earliest date possible prior to the date for the appeal hearing.

D. Procedures at Appeal Hearings

1. It is the Board’s or Appeal Panel’s goal to hear three (3) appeals per meeting.

2. Unless the Board or Appeal Panel votes otherwise, each party will have fifteen (15) minutes to present argument on or in opposition to the appeal. This time includes opening argument and any response.

3. Whenever the Board or Appeal Panel considers an appeal at more than one meeting, any Board member not present at a prior hearing must listen to a tape of the prior hearing in order to participate at a subsequent hearing.

4. Only those grounds presented in the written appeal may be argued before the Board or the Appeal Panel.

E. Record Of Proceedings

1. All proceedings before the Rent Board shall be recorded by tape or other mechanical means. A party may order a duplicate or transcript of the tape recording of any appeal hearing provided that the party ordering the duplicate or transcript pays for the expense of duplicating or transcribing the tape.

2. Any party desiring to employ a court reporter to create a record of a proceeding, except a mediation session, is free to do so at their own expense, provided that the opportunity to obtain copies of any transcript are offered to the Rent Adjustment Program and to the opposing party.

F. Evidentiary Hearings

1. As a general rule, the Board and Appeal Panels should not conduct evidentiary hearings. When the Board or Appeal Panel determines that additional evidence or reconsideration of evidence is necessary, the Board or Appeal Panel should remand the matter back to a Hearing Officer for consideration of evidence.

2. The Board or Appeal Panel should only consider evidence when the evidence is limited in scope and resolution of the matter is more efficient than having it remanded to a Hearing Officer for consideration of the evidence.

3. In order for new evidence to be considered, the party offering the new evidence must show that the new evidence could not have been available at the Hearing Officer proceedings.

4. If the Board or Appeal Panel deems an evidentiary hearing necessary, the appeal will be continued and the Board will issue a written order setting forth the issues on which the parties may present evidence.

5. The parties must file any new documentary evidence with the Board or Appeal Panel and also serve it the opposing party not more than ten (10) days after notice is given that a date has been set for the evidentiary appeal hearing.

a. Parties must also file with the Rent Program proofs of service of the evidence on the opposing party.

b. Failure to file the evidence and the proofs of service may result in the evidence not being considered by the Board or Appeal Panel.

6. When the Board or Appeal Panel conducts an evidentiary hearing, the same rules will apply as to hearings before Hearing Officers.

G. Appeal Decisions

1. Vote Required. Provided a quorum of the Board is present, or all three Appeal Panel members if a matter is being heard by an Appeal Panel, a majority vote of the Board members present is required to overturn or modify a Hearing Officer's decision. A tie vote upholds the Hearing Officer's decision. If no Board member makes a motion to uphold, reverse, or modify the Hearing Officer's decision on appeal or no motion receives a second, the appeal is deemed denied without comment.

2. Vote at Close of Appeal Hearing. Unless the Board or Appeal Panel votes otherwise, it shall vote on each appeal at the close of the appeal. The motion should include the reasons for the decisions so that the reasons can be set forth in a written decision.

a. Form of Decision. An appeal decision must be in writing and include findings and conclusions.

b. Time for Written Decision. The Board has the goal of issuing a written decision within thirty (30) days of the close of the appeal hearing.

c. Final decision.

i. Written appeal decisions are drafted by Staff, reviewed by the City Attorney, signed by staff as the Board's designee, and served on the parties.

ii. In any individual matter, however, the Board or Appeal Panel may vote to require that a decision first come to the full Board or full Appeal Panel or to the Board or Appeal Panel Chair for final approval and signature of that Chair. A decision is not final until signed by Staff or the Board or Appeal Panel Chair and served on the parties.

d. In its decision, the Board is authorized to designate a schedule for refunds or repayments consistent with Reg. 8.22.110 F.4 in cases where its decision results in under- or over-payments by a party; alternatively, the Board may remand to the Hearing Officer for purposes of devising a refund or repayment plan.

e. Staff shall serve decisions on the parties.

H. Dismissal of Appeal

1. Untimely appeal filing.

a. Staff may dismiss an appeal that is not timely filed.

b. Within ten (10) days following Staff's notice of the dismissal, the party filing the late appeal may submit a written statement explaining any good cause for the late filing.

c. If the good cause appears within the guidelines for acceptable good cause set out in Rent Board decisions, Staff may reinstate the appeal or set a hearing before the Board on whether there is good cause for the late appeal.

d. If the good cause does not appear within the acceptable good cause parameters, Staff may reject the good cause and affirm the appeal dismissal.

2. Failing to adequately state grounds for appeal.

a. If Staff determines that an appeal fails to adequately state the grounds for appeal, Staff will send a deficiency notice to the appellant notifying the appellant of the deficiency and giving the appellant ten (10) days to correct the deficiency.

b. If the appellant fails to respond to the deficiency notice or fails to correct the deficiency in the response, Staff may dismiss the appeal, or ask the Rent Board to determine the adequacy of the appeal.

I. Failure to Appear.

1. Appellant. If an appellant fails to appear at an appeal hearing, the Board will consider the appeal dropped and will issue a decision dismissing the appeal, subject to the appellant showing good cause for the failure to appear.

a. Any excuse for failing to appear, along with supporting documentation, must be submitted to Staff with ten (10) days of the date of the service of the appeal decision.

b. Staff will, in the first instance determine if the excuse represents a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.

c. If a prima facie case of good cause is shown, Staff will schedule an appeal hearing on whether the Board or Appeal Panel accepts the good cause.

2. Responding party. If the responding party fails to appear, the Board or Appeal Panel must still hear and decide the appeal.

8.22.130 RETALIATORY EVICTIONS.

Reserved for potential future regulations. See Ordinance, OMC 8.22.130.

8.22.140 VOLUNTARY MEDIATION OF EVICTIONS.

Reserved for potential future regulations. See Ordinance, OMC 8.22.140.

8.22.150 GENERAL REMEDIES.

A. Administrative Citation

1. General Intent of Administrative Citation. The intent of this section is to provide a means to secure compliance with the Rent Adjustment Law without the parties having to go to court. This section provides an opportunity to cure a violation without penalty so long as compliance is demonstrated within 10 days of the notice of an initial violation. This section also provides for a series of increasing fines if violations of the law are not cured.

2. Violations Subject to Administrative Citation. Violations of the specific provisions of OMC Chapter 8.22 set forth in this Regulation are subject to administrative citation. The provisions of OMC Chapter 8.22 subject to administrative citation are:

a. Failure to give the required notice at commencement of the tenancy (OMC 8.22.060 A.)

b. Demanding payment of a rent increase if the increase is based on a notice that does not conform to OMC 8.22.070 H.

c. Demanding payment of a Rent increase in excess of that permitted after a Tenant has filed a petition challenging a Rent increase (OMC 8.22 .070 D).

d. Failure or refusal to abide by a final order of a Hearing Officer or the Board.

e. Failure to pay the Rent Adjustment Program Service Fee or passthrough as required pursuant to OMC 8.22.500.

f. Failure to file notice that a unit is no longer exempt as required under OMC 8.22.030 C.

g. Failure to remove a Capital Improvement Rent increase on the first month following the end of the amortization period.

3. Procedures for Issuing Administrative Citation.

a. Any person, including the City, who is affected by a violation of the Rent Adjustment Law may request that the Rent Adjustment Program issue an administrative citation. The Rent Adjustment Program may issue a notice of intent based on having reason to believe a violation has occurred.

b. Upon a sworn allegation of a violation of the Rent Adjustment Law, the Rent Adjustment Program may, at its discretion, serve a notice of intent to issue an administrative citation on the person allegedly committing the violation.

c. The notification by the Rent Adjustment Program shall be served by one or more of the following methods to the last known mailing address:

i. First-class mail accompanied by a proof of service;

ii. Personal delivery; or

iii. Certified mail with return receipt.

d. In response to the notice of intent to issue a citation, the party served with the notice of intent to issue a citation may, within ten (10) days of service of the notice of intent to issue a citation:

i. Cure the violation and send the Rent Adjustment Program evidence that the violation is cured; or

ii. Deny that the violation exists and send the Rent Adjustment Program evidence that the violation does not exist.

e. If the recipient of a notice of intent to issue citation does not respond within ten (10) days after service, the Rent Adjustment Program may issue a citation for the violation.

f. If the recipient of a notice of intent to issue a citation has responded within the ten (10) day period, the Rent Adjustment Program may either:

i. Issue a notice of no violation if the respondent's response is sufficient to demonstrate that there was no violation or that the violation is cured;

ii. Issue a citation if the respondent's response is insufficient to show that there was no violation;

iii. Issue a citation if this is the second violation of the same section of OMC Chapter 8.22, even if the violation is cured.

g. Both the recipient of a notice of intent to issue a citation and the person seeking the citation will be notified of the issuance or non-issuance of a citation.

4. Administrative Citation Penalties. The following are the penalties for administrative citations:

a. A first violation that is cured within the cure period set out in Regulation is not subject to a penalty.

b. If the recipient of a notice of intent to issue citation fails to cure the violation within the cure period or commits a second violation of the same provision of OMC Chapter 8.22, the citation amount is $100;

c. If the recipient of a notice of intent to issue a citation commits a third violation of the same provision of Chapter 8.22 or fails to cure a second violation within the cure period, the citation amount is $250;

d. For each violation after the third violation or failure to cure a third violation within the cure period, the citation amount is $500.

e. An uncured violation that is re-noticed is considered a subsequent violation and the citation amount equals that for a subsequent violation.

f. The following are required for a violation to be considered a subsequent violation:

i. The succeeding violation must have occurred within the twelve (12) month period following the date of service of the immediately prior violation;

ii. The succeeding violation must be for a violation of the same section of OMC Chapter 8.22 (for example failing to give a notice at the commencement of the tenancy (OMC 8.22.060).)

iii. Subsequent violation can occur for a different Tenant, at a different dwelling unit, or a different property as the first violation so long as the violator is the same.

g. Each day following the end of the cure period that a violation remains uncured may be subject to a separate violation.

h. Administrative citations for any individual recipient of a notice of violation, excluding accrued interest, shall not be assessed at more than five thousand dollars ($5000) cumulatively per twelve (12) month period starting with the date of issuance of the first violation.

i. After a recipient of a notice of violation has committed three (3) violations of any provision of OMC Chapter 8.22 subject to administrative citation, the Rent Adjustment Program may assess administrative costs, charges, fees, and interest as established in the master fee schedule of the city pursuant to OMC Section 1.12.070.

j. Full or partial reimbursement for recovery administrative penalties and administrative expenses shall not

i. Excuse the failure to correct violations wholly and permanently; nor

ii. Preclude the assessment of additional administrative citations or other abatement actions by the Rent Adjustment Program; nor iii. Preclude any other claims or penalties that may be available to any person under OMC Chapter 8.22.

5. Hearing on Administrative Citation.

a. The cited party may request a hearing before a Hearing Officer on the issuance of a violation.

b. A hearing must be requested within 10 (ten) days of service of the citation.

c. The City has the burden of proving-the violation by a preponderance of the evidence.

d. The cited party has the option of requesting a hearing officer other than the Rent Program Hearing Officers under the same terms as hearing officers used for Building Code violations.

e. Hearings shall be conducted under the same rules and time frames as for Rent adjustment hearings as set out in OMC Section 8.22.110.

6. Appeal.

a. The cited party may request an appeal of the Hearing Officer's decision to the Board.

b. The timeframes and procedures for appeal shall be the same as those for a Rent adjustment proceeding as set out in OMC Section 8.22.120.

B. Administrative Assessment of Civil Penalties

1. Violations of OMC Chapter 8.22 that are subject to civil penalties.

a. Five concurrent uncured administrative citations received by any recipient for any violation subject to administrative citation.

2. Amount of Civil Penalties.

a. A cited party will be assessed $500 as the first civil penalty.

b. A cited party will be assessed $750 as the second civil penalty.

c. A cited party will be assessed $1,000 as the third civil penalty.

d. A cited party may be assessed a maximum of $5,000 in any one twelve (12) month period commencing from the date of the initial civil penalty.

3. Procedures for issuing and appealing civil penalties will be the same as for administrative citations.

8.22.160 COMPUTATION OF TIME.

Reserved for potential future regulations. See Ordinance, OMC 8.22.160.

8.22.170 SEVERABILITY.

Reserved for potential future regulations. See Ordinance, OMC 8.22.170.

8.22.180 NONWAIVERABILITY.

Reserved for potential future regulations. See Ordinance, OMC 8.22.180.

8.22.190 APPLICABILITY—EFFECTIVE DATE OF CHAPTER.

A. Effective Date of Regulations

1. The amended and restated OMC Chapter 8.22 passed by the City Council on February 5, 2002 provided that it was not to go into effect until July 1, 2002, unless otherwise provided in OMC Chapter 8.22.

2. The Regulations adopted herein take effect as follows unless otherwise stated in the applicable regulation:

a. Rent adjustments:

i. To any Rent increase wherein the notice is served on the Tenant on or after July 1, 2002;

ii. To any decrease in Housing Services wherein the notice is served on the Tenant on or after July 1, 2002, or, if no notice is served, to any Housing Service decrease that occurs on or after July 1, 2002.

b. Terminations of Tenancy

i. To any tenancy terminated by a notice served by either the Owner or the Tenant on or after July 1, 2002.

8.22.500 RENT PROGRAM SERVICE FEE.

A. Payment of Fee After Loss of Exemption

1. A dwelling unit that was exempt from Chapter 8.22 less than nine months during a year must pay the full fee for that year.

2. After a dwelling unit loses its exemption, the Fee is due within 30 days after the loss of the exemption and late 90 days after the loss of the exemption.

B. Pass-through of One-half of the Fee to Tenant

1. If an Owner elects to pass through one half of the Fee to the Tenant, the Owner must pass through the one half of the Fee in the fiscal year in which the Fee is due, provided the Owner has paid the Fee before it is deemed delinquent.

2. The pass-through amount may be part of the Rent or simply a debt due from the Tenant to the Owner at the Owner's option.

3. The Owner may submit a request for payment of the pass-through amount, in which case the pass-through will be a debt to the Owner and not collectable as part of the Rent.

4. Pass-through as Rent. The pass-through of one-half of the fee to the Tenant will be considered part of the Tenant's Rent provided that the Owner does the following:

a. If the Tenant has a month to month rental agreement, the Owner must first give the Tenant a notice of change of term of tenancy pursuant to state law (California Civil Code Section 827) and the requirements of OMC 8.22.070 H. (requirements for Rent increase notices). The Fee may be passed on in a lump sum amount or spread out at the Owner's option.

b. If the tenant has a term other than month to month, the Owner must give the Tenant a notice in accordance with the terms of the rental agreement.

c. Any notice of Rent increase for the fee is not subject to the restriction of one Rent increase per year pursuant to OMC 8.22.070 H.

d. The Fee is not part of the Base Rent for purposes of calculating the Rent increases.

C. Fee is not a Housing Service Cost

The Owner's portion of the Fee cannot be used to calculate an increase in costs to justify a Rent increase.

D. Fees and Delinquencies Payable by Successor to Owner

Fees and delinquent charges are payable by any successor to the Owner's business of renting the Covered Units on which the Fee is charged.

E. Fee Regulations Repealed if Fee Sunsets

1. The Fee sunsets on June 30, 2003 unless extended by the City Council (OMC 8.22.500.).

2. If the Fee is allowed to sunset, this Reg. 8.22.500 is automatically repealed, except to the extent necessary to complete collection of any Fees, delinquencies, or other costs that became during the period when the Fee was in place.

3. If the Fee is reinstated in the future, then this regulation will also be reinstated.