

CHAPTER 4

INDIVIDUAL RENT ADJUSTMENTS

4000. Scope of Regulations

Any person seeking an individual rent adjustment under §1805 must file a petition under this chapter. In such a proceeding, the person seeking the individual rent adjustment shall have the burden of proof.

SUBCHAPTER A

PETITION

4001. Obligation to File

Any person who seeks an individual rent adjustment under §1805 must file a petition for an individual rent adjustment and obtain approval under this chapter.

4001A. Who May File a Petition

- (a) Petitions for individual rent adjustments may be filed by any landlord or tenant of the property which is the subject of the petition or any unit or units thereof, or by their authorized representatives. In order to act as authorized representative of any landlord or tenant, the representative must file concurrently with the petition an official authorization form provided by the Board, signed by the landlord or tenant, which expressly authorizes the representative to act on behalf of the landlord or tenant in the rent adjustment proceeding. Such authorized representative may be an individual or a recognized tenant organization within the meaning of Santa Monica Charter Section 1801(j). A separate authorization form executed by the landlord or tenant must be filed for each landlord or tenant represented.
- (b) In the event that a petition for rent decrease is filed concerning common areas or conditions common to two or more units of the subject property by a landlord or by any individual tenant or tenants occupying less than all of the controlled rental units on the subject property, any Board Commissioner or the Board's Administrator may, when appropriate, file a petition for decrease placing in issue the rent levels of all affected units on the property as to which no petition has previously been filed. All common area petitions concerning the subject property will whenever possible be heard and determined concurrently.
- (c) If a petition for rent increase is filed for a unit in a common interest development, including, but not limited to, condominiums, stock cooperatives or residential rental units converted pursuant to Article XX of the City Charter (TORCA), the petition must include all units in the development owned by the petitioner.

[4001A Amended 3/3/88; Effective 3/17/88]

[4001A Amended 10/28/93; Effective 11/10/93]

4002. Petition Forms

- (a) Petition forms shall be approved by the Board. Any person seeking an individual rent adjustment under this chapter must do so on the form approved by the Board. A petition for an individual rent adjustment shall be filed only after the petitioner has provided all the information called for by the form.
- (b) Petition forms will be available commencing on August 1, 1979. Petitions for individual rent adjustments will not be accepted until August 8, 1979, or thereafter.

- (c) A petitioner must attach to two of the copies of the individual rent increase petition copies of all documentary evidence that will be presented at the hearing as specified in the instructions to the rent increase petition. Such copies must be clear, legible, and organized by category, following the organization of the petition format. Additionally, the original documents must be made available at the hearing. Required documentary evidence includes the following: Expert witness reports, any and all invoices, cancelled checks, receipts and ledger sheets or other documentation showing, for the base year and current year of the petition, the following:
1. Rents collected from all tenants;
 2. Evidence of deposit of tenants' security deposits in an interest-bearing account, and bank statements showing interest earned thereon;
 3. The amount of other income received in the period;
 4. Property taxes assessed and paid;
 5. Amounts billed and paid for electricity, gas, and water and trash service;
 6. Amounts expended for maintenance and repair;
 7. Capital expenses;
 8. License or other fees paid;
 9. Owner-performed labor and the hourly rates listed on the petition;
 10. Miscellaneous expenses paid;
 11. In the case of a petition involving units in a common interest development (such as condominium units, units converted pursuant to TORCA and/or stock cooperatives): proof of actual expenses for each unit which is the subject of the petition, proof of common area or individual assessments as evidenced by corporation or association financial reports, budgets, reserve account statements. The following documents may be required by the hearing examiner: the governing instruments of the common interest development, including, but not limited to, any Declaration of Covenants, Conditions, and Restrictions (also known as C C & R's), articles of incorporation (or association) and bylaws. In addition, for petitions involving TORCA units:
 - (i) A true and correct copy of the "Tenant Participating Conversion Application" filed with the City of Santa Monica;
 - (ii) Any and all agreements between the developer of the TORCA project, the tenants and the City with respect to the repairs, maintenance and/or improvements proposed or completed in contemplation of the TORCA conversion.
- (d) If it is claimed that there are units at the property whose base rents did not reflect general market conditions at that time, two copies of all evidence which will be relied on at the hearing to substantiate this claim, two copies of all expert witness reports which will be used at the hearing, and two copies of all writings on which the expert's report and/or expert's testimony is or will be based must be submitted with the petition.

- (e) A petitioner must submit with the petition two copies of a witness list providing the name, address, and subject matter(s) of testimony of any person he or she expects to testify on his or her behalf at the hearing. If the petitioner intends to call an expert witness to offer an expert opinion at the hearing, the designation of that witness shall include or be accompanied by a brief narrative statement of the qualifications of the expert and a brief narrative statement of the general substance of the expected testimony of the expert.
- (f) The hearing examiner shall exclude from evidence all documents, reports, writings, and testimony not submitted or disclosed as required above, except upon good cause shown for non-submission or non-disclosure.

[4002(d)(f) Adopted 5/14/92; Effective 6/3/92]
 [4002 Amended 10/28/93; Effective 11/10/93]

4003. Filing and Notice Thereof

- (a) A landlord filing a petition for a rent increase shall file along with the original petition, a copy for the Board, and copies equal to the number of rental units on the property. The original petition and the copy for the Board must include the documentation required by Regulation 4002(c) above. Within five days of filing, the Board shall mail a copy of the petition to each rental unit along with a notice of filing approved by the board.

[4003(a) Amended 12/1/88; Effective 12/13/88]

- (b) A tenant or landlord filing a petition for a rent decrease shall file along with the original petition, two copies of the petition.
- (c) Any tenant who intends to file a decrease petition shall, at least thirty (30) days but not more than one hundred eighty (180) days prior to the filing of the petition, notify the landlord, the landlord's authorized representative or the resident manager of the subject property in writing of the conditions or the loss of housing services upon which the intended petition will be based. In order to be accepted for filing, all tenant-initiated decrease petitions must be accompanied by a copy of the aforementioned written notification and an official Board proof of service form signed by the tenant, or the tenant's agent, declaring under penalty of perjury that the written notice has been served in the manner and upon the person or persons specified herein.
- (d) Any tenant who intends to file a decrease petition may, in lieu of the notice provided for in paragraph (c) above, attach a Compliance Order issued to the landlord by the Santa Monica Department of Building and Safety. The Compliance Order must include the conditions upon which the petition is based, and must have been sent to the landlord at least thirty (30) days but no more than one hundred eighty (180) days before a petition may be filed.

If the petition is based on other conditions not covered in the Compliance Order, the tenant must comply with the notice requirements of paragraph (c) above for these other conditions.

- (e) Notwithstanding the amount of increase or decrease in the maximum allowable rent requested by a petitioner, the Board or its hearing examiners may, upon proof submitted at a hearing and without further notice to the opposing party, grant an increase or decrease in an amount greater or lesser than the amount requested by a petitioner.

[4003(d) Adopted 3/3/88; Effective 3/17/88]
 [4003 Amended 05/10/07; Effective 05/17/07]

4004. Response to Petition

Accompanying the notice of filing of the petition, a form shall be provided to the parties affected by the petition to respond to the petition in writing. This form shall be returned to the Board within ten (10) days

of the date of mailing of the notice of filing. A person who does not respond to the petition in writing does not waive his or her right to appear at the hearing before the hearing examiner.

- (a) If at any time prior to hearing a landlord indicates on the response form to a decrease petition that he/she has corrected the conditions or restored the services which are the subject of a petition for rent adjustment filed by a tenant, the Board shall dismiss the petition for rent adjustment after it has verified that the conditions have been corrected.
- (b) If a respondent to an increase petition or the Board intends to call an expert witness to offer an expert opinion at an increase hearing, the party or the Board must submit in writing, within a reasonable time prior to that testimony, the name and address of the expert witness, and a brief narrative statement of the qualifications of the expert. In addition, if an expert witness report will be used at the hearing, the respondent or the Board must submit two copies of the report within a reasonable time prior to its submission into evidence.
- (c) The hearing examiner shall exclude from evidence all documents, reports, writings, and testimony not submitted or disclosed as required in subsection (b) of this regulation, except upon good cause shown for non-submission or non-disclosure.

[4004(b) Amended 3/24/94; Effective 4/7/94]

4005. Administrative Dismissal of Individual Rent Adjustment Petition

- (a) The Board shall not accept a petition for individual rent increase in any of the following circumstances:
 - (1) Where the property in question is not properly registered with the Board as specified in Regulation §13002;
 - (2) Where registration fees or penalty fees are due and owing;
 - (3) Where the petition submitted has not been completed, or where complete documentation required by Regulation 4002(c) is not attached to the original and one copy of the petition;
 - (4) Where the property is subject to an uncorrected citation or notice of violation of any state or local housing, health, or safety laws issued by a government official or agency;
 - (5) Where a previously filed individual rent increase petition, with respect to the property in question, is presently pending before the Board or its hearing examiners. In this instance, the petitioner may amend his/her previously filed petition provided a request for extension of the 120 day time limit set forth in Charter Amendment §1805(d)(12) is submitted with respect to the period between the filing of the previous petition and the time of its amendment;
 - (6) Where the individual rent increase petition has been filed, with respect to the property in question, within six (6) months of a previous final Board decision, unless one of the circumstances enumerated in subsection (d) below applies; or
 - (7) Where a final Board decision on an individual rent increase petition is currently pending before the courts on a petition for a writ of administrative mandamus, unless one of the circumstances enumerated in subsection (d) below applies.
 - (8) Repealed

[4005(a)(8) Adopted 9/10/92; Effective 9/20/92]

[4005(a)(8) Amended 10/6/94; Effective 10/15/94]

[4005(a)(8) Repealed 7/31/97; Effective 8/10/97]

- (b) The Board shall not accept a petition for individual rent decrease in any of the following circumstances:
- (1) Where the decrease petition submitted has not been completed;
 - (2) Where a previously filed individual rent decrease petition, with respect to the unit in question, is presently pending before the Board or its hearing examiners. In this instance, the petitioner may amend his/her previously filed petition provided a request for extension of the 120 day time limit set forth in Charter Amendment §1805(d)(12) is submitted with respect to the period between the filing of the previous petition and the time of its amendment;

[4005(b)(2) Amended 1/4/90; Effective 1/26/90]

- (3) Where the individual rent decrease petition has been filed, with respect to the property in question, within six (6) months of a previous final Board decision, unless one of the circumstances enumerated in subsection (d) below applies; or
 - (4) Where a final Board decision on an individual rent decrease petition is currently pending before the courts on a petition for a writ of administrative mandamus, unless one of the circumstances enumerated in subsection (d) below applies.
- (c) Notwithstanding the acceptance of a petition, if any of the foregoing conditions exist, the Board shall dismiss the petition and shall not schedule a hearing or grant a rent adjustment. Prior to dismissal of a petition, Rent Control staff shall mail to the petitioner a written notice of intention to dismiss stating the applicable reasons for such dismissal. The petitioner shall have thirty (30) days from the date of mailing of the notice to cure the defects in the petition prior to dismissal. Rent Control staff shall be available to any petitioner who needs assistance in amending a petition during that thirty (30) day period.

If a petitioner amends a petition following receipt of a notice of intention to dismiss, the petitioner must submit a written request for extension of the 120 days for the final Board decision specified in Charter Amendment §1805(d)(12) with respect to the period preceding the submission of the amended petition. Unless such written request is submitted, the amendment to the petition shall not be deemed filed and the petition shall be dismissed. However, the six month bar to filing shall not apply with respect to the dismissed petition.

[4005(c) Amended 1/4/90; Effective 1/26/90]

- (d) Notwithstanding any other provisions of these regulations, an individual rent adjustment petition shall not be dismissed if any of the following circumstances exists:
- (1) The grounds upon which the petitioner seeks a rent adjustment could not have been raised at the prior hearing;
 - (2) Currently available evidence which supports a rent adjustment was not available for good reason at the time of the prior hearing;
 - (3) Rent adjustments were not sought as to the particular units in question in the prior petition; or
 - (4) The Board has explicitly stated, in a prior written decision or other written document, that subsection (a)(6) or (b)(3) shall not apply to the petitioner.

[4005(d)(4) Amended 12/1/88; Effective 12/13/88]

- (e) Any of the following persons may make an administrative determination to dismiss a petition:
- (1) A majority of the Rent Control Commissioners;
 - (2) The Administrator; or

- (3) The Hearings Department Manager.
- (f) A copy of an administrative determination to dismiss a petition containing the applicable reasons for dismissal shall be mailed to the parties within 30 days of the date of filing of the petition.
- (g) The petitioner may appeal dismissal of a petition by the Administrator or the Hearings Department Manager to the Board within 10 days of the date of dismissal. However, if the Board grants the appeal, the 120 days for final Board decision specified in Charter Amendment §1805(d)(12) shall be extended to exclude the period from the date of dismissal to the date the Board grants the appeal, or for 30 days, whichever is shorter.

[4005(g) Amended 1/4/90; Effective 1/26/90]
[4005 (previously §4200) Adopted 4/23/83; Effective 5/15/83]
[4005 Amended 10/27/83; Effective 11/5/83]

4006. Settlement Conference

- (a) Prior to the hearing on a decrease petition, at the discretion of the Board Administrator or Hearings Department Manager, a settlement conference may be scheduled with a Settlement Conference Facilitator. Failure of any party to participate in the settlement conference shall not bar the matter from proceeding to hearing. The purpose of the settlement conference is to provide an expeditious mechanism for the parties to resolve their differences informally, with the assistance of a skilled intermediary.
- (b) No attorney may participate in the settlement conference on behalf of a party. All parties must appear individually, except that a representative other than an attorney may appear on behalf of a landlord which is a business entity and not an individual. Only the petitioner, the landlord (or landlord's representative as discussed above), and the Settlement Conference Facilitator shall participate in the settlement conference. No record shall be made of any act, statement, or occurrence during the settlement process.
- (c) If the parties fail to reach an agreement on all issues, the matter will be set for hearing by the Hearings Department.

[4006 Adopted 5/14/92; Effective 6/3/92]

SUBCHAPTER B

ACTION BY HEARING EXAMINER

4007. Determination

As soon as practicable after the filing of a petition, and in no event later than 60 days from the date of filing, a hearing examiner shall hold a hearing as hereinafter provided to determine whether to grant or deny the petition for a rent adjustment.

4008. Hearing Examiner

- (a) The following persons may serve as a hearing examiner at a rent adjustment hearing:
 - (1) A Board member.
 - (2) A management employee of the Board.
 - (3) One or more hearing examiners employed by the Board on a part-time or full-time basis.

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

4009. Powers of Hearing Examiner

The hearing examiner shall have the right to:

- (a) Administer oaths and affirmations.
- (b) Cause the Board to issue subpoenas for the attendance of persons to testify and to produce books, records and other papers.
- (c) Cause inspections to be made of the rental unit for which a rent adjustment is sought.
- (d) Rule on offers of proof and receive relevant evidence.
- (e) Control the course of the hearing.
- (f) Rule on procedural requests.
- (g) Render decisions on applications for individual rent adjustments.
- (h) Take other action authorized by the rules and regulations adopted by the Board.

4010. Notice of Hearing

At least ten days prior to the hearing, notice shall be mailed to the landlord, and to tenants of the rental units for which a rent adjustment is sought, of the date, time, and place of the hearing. The notice shall be provided on a form approved by the Board.

4010A. Continuances

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

[4010A Adopted 5/1/80; Effective 5/8/80]

4011. Conduct of Hearing

The hearing on a petition for individual rent adjustment shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.

4012. Evidence Rules

The hearing need not be conducted according to technical rules of evidence and witness. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule

which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious or irrelevant evidence shall be excluded upon order by the hearing examiner.

4013. Order of Proceedings

- (a) Prior to the presentation of the petitioner's case, the hearing examiner may convene a pre-hearing conference with the parties and their representatives. At the pre-hearing conference, the hearing examiner will determine those issues which are not in controversy, evidence that may be admitted without objection, the order in which the evidence is to be presented, the scheduling of hearings and witnesses, and any other procedures consistent with Regulation 4011. The pre-hearing conference may be held immediately preceding the commencement of the hearing.
- (b) The hearing on an application for individual rent adjustment shall ordinarily proceed in the following order:
 - (1) Presentation by or on behalf of petitioner, if the petitioner wishes to expand upon material contained in the petition for individual rent adjustment, including any witnesses on behalf of the petitioner.
 - (2) Presentation by or on behalf of opponents to the petition, including any witnesses on behalf of the opponents.
 - (3) Rebuttal by petitioner.

[4013(a) Amended 3/24/94; Effective 4/7/94]

4014. Speaker's Presentation

Each speaker's presentation shall be to the point and shall be as brief as possible; visual and other materials may be used as appropriate. The Board may establish reasonable time limits for presentations, which time limits will be made known prior to any hearing.

4015. Right of Assistance

All parties to a hearing may have assistance in presenting evidence and developing their positions from attorneys, legal workers, recognized tenant organization representatives, landlord association representatives, or any other persons designated by said parties.

4016. Hearing Record

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

- (a) A copy of the petition for individual rent adjustment;
- (b) Any response to the application for an individual rent adjustment;
- (c) Exhibits, papers, and documents offered either before or during the proceedings;
- (d) A list of participants present;
- (e) A summary of all testimony accepted in the proceedings;
- (f) A statement of all materials officially noticed;
- (g) All findings of fact and conclusions of law;

- (h) All final or recommended decisions, orders, or rulings.

4017. Hearing Record Public

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

[4017 Amended 11/8/79; Effective 11/15/79]

4018. Quantum of Proof

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

4018A. Re-Opening of Hearing

The Hearings Department Supervisor may re-open the hearing record when she or he believes that further evidence should be considered to resolve a material issue, where the hearing record has been closed and where a decision has not yet been issued by the hearings department. The parties may waive the further hearing by agreeing to allow additional exhibits into evidence. If the matter is an increase case, the hearing may be re-opened only if the petitioner waives the benefit of the 120 day deadline by agreeing to an extension equal to the number of days between the date the hearing record was closed and the date of the proposed additional hearing.

[4018A Amended 3/3/88; Effective 3/17/88]

[4018A Amended 1/4/90; Effective 1/26/90]

4019. Decision

Within sixty-five days after the date of the filing of the petition, the hearing examiner shall render a written decision, supported by findings of fact and conclusions of law.

- (1) This deadline may be extended by written waiver, executed by the petitioner.
- (2) The filing of an amended petition begins a new sixty-five (65) day time period.
- (3) In addition, if, at a hearing on a decrease petition, the hearing examiner determines that official records of other city agencies or expert testimony regarding alleged housing, health or safety code violations are required, the hearing examiner may, on his or her own motion, extend the deadline for decision by no more than thirty (30) days to permit issuance of subpoenas and submission of such evidence.

[4019 Amended 2/23/80; Effective 2/28/80]

[4019 Amended 3/24/94; Effective 4/7/94]

4019A. Review of Decisions

Each hearing examiner decision must be reviewed and approved by the Hearings Department Manager or his/her designee before it is issued.

4020. Notification of Decision

The hearing examiner's decision shall notify the parties to the hearing of the effect of the decision and of their appeal rights.

SUBCHAPTER C
APPEAL TO BOARD

4021. Time for Appeal

Within ten days after the date of the decision of the hearing examiner, any person aggrieved by the decision of the hearing examiner may appeal to the Board. Upon a showing of good cause, and at the Board's discretion, the Board may accept a late appeal.

4022. Aggrieved Person

The following persons may appeal a decision of the hearing examiner to the Board:

- (a) A landlord of the building for which the rent adjustment is sought.
- (b) A tenant of any rental unit for which the rent adjustment is sought.
- (c) Any Board member.

4023. Appeal Filing Procedures

Appeal forms shall be approved by the Board. Any person wishing to appeal the decision of a hearing examiner must do so on the form approved by the Board. The appeal shall set forth the specific grounds upon which the appeal is based. The Board may consider the hearing examiner decision final with respect to matters not raised in the appeal. Any person filing an appeal shall file along with the original completed appeal form, one extra copy. Only one appeal may be filed by or on behalf of each party. Supplemental briefs may be filed responding to the staff report on appeal. However, the Board may refuse to consider issues raised for the first time after Regulation §4021's ten-day appeal period has expired.

[4023 Amended 4/19/80; Effective 4/26/80]

[4023 Amended 5/12/83; Effective 5/20/83]

4024. Determination

As soon as practicable after the filing of the appeal in any individual rent adjustment or base rent or amenities case, and in no event later than 120 days from the date of filing of a petition for individual rent increase, the Board shall affirm, reverse or modify the decision of the hearing examiner.

- (1) This deadline may be extended by written waiver, executed by the petitioner.
- (2) The Board may also reverse and remand a decision to a hearing examiner to take additional evidence, or reverse and remand a part of the decision and affirm, reverse or modify another part of the decision.
- (3) The filing of an amended petition begins a new one hundred-twenty (120) day time period.

[4024 Amended 3/24/94; Effective 4/7/94]

4025. Staff Report

At least ten days prior to the date set for Board action, a staff report shall be prepared on the appeal. The staff report shall contain a written recommendation to affirm, reverse or modify the decision of the hearing examiner and all pertinent facts upon which the recommendation is based.

4026. Notice of Time Set for Board Action

At least ten days prior to the date set for Board action, all parties shall be notified by mail of the date, time and place set for Board action on the appeal. A copy of the staff report shall be mailed along with notice.

4026A. Continuances

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

[4026A Adopted 5/1/80; Effective 5/8/80]

[4026A Amended 7/17/82; Effective 7/28/82]

4027. Appeals Calendar

The appeal shall be decided on the Board's appeal calendar. The parties to the appeal will only be allowed to address the Board upon a two-thirds vote of the Commissioners present.

4028. Decision

Unless the Board determines that it should hold a de novo hearing, the Board's decision shall be based upon the hearing record before the hearing examiner, any information submitted in connection with appeal, and any testimony heard by the Board. If the Board determines to hold a de novo hearing, the hearing shall be conducted in the manner set forth in Subchapter B.

4029. Findings

The Board's decision to affirm, reverse or modify the decision of the hearing officer shall be supported by written findings of fact and conclusions of law. When the Board affirms the decision of the hearing officer, it adopts the findings of fact and conclusions of law in the hearing officer's decision, unless the motion to affirm states otherwise. This is declaratory of, and not a change in, the policy of the Rent Control Board.

[4029 Amended 2/23/80; Effective 2/28/80]

SUBCHAPTER D

BOARD ACTION IN LIEU OF REFERENCE TO HEARING EXAMINER

4030. Board Action in Lieu of Reference to Hearing Examiner

The Board on its own motion, may hold a hearing on a petition for individual rent adjustment without the petition first being heard by the hearing examiner.

4031. Request

Repealed.

4032. Action on Request

Repealed.

4033. Standards

Repealed.

4034. Granting Request

Repealed.

[4030 Amended 11/09/2000; Effective 11/25/2000]
[4031 through 4034 Repealed 11/09/2000; Effective 11/25/2000]

SUBCHAPTER E

EFFECT AND FINALITY OF DECISION

4035. Finality of Hearing Examiner's Decision

Unless appealed to the Board within the time prescribed in §4021, the decision of the hearing examiner shall be the final decision of the Board.

4036. Appealed Decision

If the hearing examiner's decision is timely appealed, the Board's decision to affirm, reverse or modify the hearing examiner's decision shall become final at the time of Board action.

4037. Effect of Decision for Rent Increase

If a landlord's petition for an upward rent adjustment is granted by the hearing examiner, the landlord may immediately increase the rent by giving the tenant written notice as provided by §827 of the California Civil Code. If the hearing examiner's decision is appealed, and if the Board reduces or nullifies the amount of the rent increase, the landlord shall immediately reduce the amount of the rent in accordance

with the Board's decision and shall refund to the tenant any rent the landlord collected during the period following the hearing examiner's decision that is in excess of the rent allowed to be charged by the Board after rendering its decision on appeal.

4038. Effect of Decision for Rent Decrease

- (a) If a tenant's petition for a downward rent adjustment is granted by the hearing examiner, the tenant may decrease the rent payment in accordance with the decision in the first rent payment due following thirty (30) days after the date of the hearing examiner's decision. If the hearing examiner's decision is appealed, and if the Board reduces or nullifies the amount of the rent decrease, the tenant shall immediately increase the amount of the rent payment in accordance with the Board's decision and shall refund to the landlord any rent the tenant withheld during the period following the hearing examiner's decision that is in excess of the rent allowed to be withheld by the Board after rendering its decision on appeal.
- (b) Decisions decreasing rents shall remain in effect until the Board finds that the landlord has corrected the defect warranting the decrease, except as provided in subsection (d), below.
 - (1) Upon a determination of compliance, the landlord shall be entitled to reinstatement of the prior rent level, retroactive to the date of the first rent payment due after the landlord corrected the defect which warranted the decrease, provided the landlord has made a written request for a compliance determination within sixty (60) days of the correction of the defect or condition which warranted the decrease, as set forth in subsection (c)(1) below.
 - (2) If the landlord requests compliance more than sixty (60) days from the date of correction of the defect or condition which warranted the decrease, the landlord shall, upon determination of compliance, be entitled to reinstatement of the prior rent level, retroactive to the date of the first rent payment due after the filing of the written request for compliance with the Hearings Department.
 - (3) If any general adjustment has gone into effect while the decrease was in effect, the hearing examiner shall, upon compliance, adjust the maximum allowable rent to include the general adjustment amount that would have been earned if the decrease were not in effect.
- (c) Procedures for compliance determinations are as follows:
 - (1) The landlord shall make a written request to the Hearings Department for a compliance determination and include any documentation or other evidence that the defect or condition which warranted the decrease has been corrected.
 - (2) Within 30 days after receipt of the request for compliance determination, a hearing examiner for the Board shall issue a proposed addendum to the decision which originally authorized the rent decrease stating whether all or part of the decrease shall be reinstated and stating the date and amount upon which such reinstatement shall occur.
 - (3) Any party who wishes to contest the proposed addendum may do so by filing a request on a form provided and approved by the Board for limited hearing within 10 days of issuance of proposed addendum. If no such request is filed within 10 days, the proposed addendum shall become final.
 - (4) Following receipt of the request for limited hearing on the proposed addendum, the hearing examiner shall schedule a hearing as soon as practicable and give 10 days notice of such hearing to the parties. Within 45 days following the request for limited hearing, the hearing examiner shall issue a final addendum to the decision which authorized the rent decrease.

(5) The parties have no further right of administrative appeal of the final addendum. However, the landlord may request a new compliance determination as to any remaining conditions which are found to warrant a continued rent decrease. Notwithstanding the issuance of the addendum, a tenant who claims the condition giving rise to the decrease petition is still uncorrected may file a new decrease petition.

(d) If there is a rent decrease decision in effect at the time the unit becomes vacant and the landlord is entitled to implement a vacancy increase pursuant to Civil Code section 1954.53 and regulation 3301, the decrease will terminate upon the landlord's filing of a proper vacancy registration form.

[4038(b) Amended 12/18/86; Effective 12/25/86]

[4038(b) Amended 10/13/94; Effective 10/23/94]

[4038 Amended 12/17/98; Effective 1/1/99]

SUBCHAPTER F

FAILURE TO ACT WITHIN 120 DAYS

4039. Good Cause Extension of 120-Day Time Limit

The hearing examiner and/or the Board may extend the one-hundred-twenty-day deadline for issuance of final Board decision in increase proceedings for a maximum of forty-five days for good cause only. The factors which may be considered in a determination of good cause include but are not limited to complexity of case, reasonable requests for continuance, scheduling difficulties, and allowing parties time to obtain representation. The good cause extension must be set forth in writing, and written notice of it shall be given to all parties.

4040. Interim Rule

[4040 Repealed 9/19/81; Effective 10/19/81]

4041. Amortization of Capital Improvements

(a) In amortizing capital improvements, the following schedule shall be used to determine the amortization period of the capital improvement:

<u>Improvement</u>	<u>Years</u>
Air Conditioners	10
Appliances	
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
Earthquake Expenses	
Architectural and Engineering Fees	5
Emergency Services	
Clean-up	5
Fencing and Security	5
Management	5
Tenant Assistance	5
Structural Repair and Retrofitting	
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
Fencing	
Chain	10
Block	10
Wood	10
Fire Alarm System	10
Fire Sprinkler System	20
Fire Escape	10
Flooring/Floor Covering	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
Fumigation	
Tenting	5
Furniture	5
Automatic Garage Door Openers	10
Gates	
Chain Link	10
Wrought Iron	10
Wood	10
Glass	
Windows	5
Doors	5
Mirrors	5

Heating	
Central	10
Gas	10
Electric	10
Solar	10
Insulation	10
Landscaping	
Planting	10
Sprinklers	10
Tree Replacement	10
Lighting	
Interior	10
Exterior	10
Locks	5
Mailboxes	10
Meters	10
Plumbing	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
Painting	
Interior	5
Exterior	5
Paving	
Asphalt	10
Cement	10
Decking	10
Plastering	10
Pumps	
Sump	10
Railings	10
Roofing	
Shingle/Asphalt	10
Built-up, Tar and Gravel	10
Tile	10
Gutters/Downspouts	10
Security	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
Sidewalks/Walkways	10
Stairs	10

Stucco	10
Tilework	10
Wallpaper	5
Window Coverings	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

- (b) The cost of a capital improvement shall be added to the maximum allowable monthly rent of the rental unit only if consistent with Section 1805 of the Santa Monica Rent Control Charter Amendment and only according to the following formula: Cost of Capital Improvement divided by the Amortization Period divided by 12.
- (c) The increase in the maximum allowable rent resulting from any increase authorized pursuant to subsection (a) and (b) above shall be permanent, and shall not decrease upon expiration of the amortization period set forth in subsection (a) above.
- (d) 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 and regulation 3301, the capital improvements schedule shall terminate upon the landlord's filing of a proper vacancy registration form and no further reductions in rent shall occur pursuant to the schedule.
- (e) Rent increases authorized pursuant to this section shall be allocated as follows:
- (1) Rent increases for unit-specific capital improvements shall be allocated to that unit;
 - (2) Rent increases for building-wide or common area capital improvements shall be allocated equally among all units;
 - (3) Rent increases resulting from the Net Operating Income analysis shall be allocated equally among all units;
 - (4) 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.

[4041 Adopted 4/12/80; Effective 4/20/80]

[4041 Amended 3/24/94; Effective 4/7/94]

[4041 Amended 12/17/98; Effective 1/1/99]

4042. Conditional Rent Adjustments

- (a) 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) 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. 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 twelve months from the date of final Board decision granting the conditional rent adjustment. A landlord shall be allowed to file no more than three Requests for Addenda authorizing such increases regardless of the number of capital improvements or the timing of their completion. All addenda must be requested within fourteen months from the date of final Board decision. For good cause, and in extraordinary circumstances, the Board may extend this deadline.
- (d) Any unit which received a vacancy rent increase pursuant to Civil Code section 1954.53 and regulation 3301 within the five years prior to the date of the final increase decision shall be ineligible for a rent increase for proposed capital improvements..

[4042 Adopted 3/12/87; Effective 3/19/87]

[4042(d) Adopted 10/03/02; Effective 10/12/02]

SUBCHAPTER G STANDARDS FOR DECISION

4100. Fair Return

It is the intent of this Regulation to establish rents at a level which will provide landlords with a fair return on their property, consistent with the Rent Control Charter Amendment (Santa Monica City Charter, Article XVIII).

[4100 Adopted 9/19/81; Effective 10/19/81]

SUBCHAPTER G STANDARDS FOR DECISION

4101. Definitions

For purposes of individual rent adjustment proceedings, the following definitions shall be used:

- (a) Net Operating Income equals Gross Income less Operating expenses.
- (b) Gross Income equals the total of the following:
 - (1) Gross Rents, computed as gross rental income at 100% paid occupancy.
 - (i) The rents of units which received a vacancy rent increase pursuant to Civil Code section 1954.53 and regulation 3301 at any time from the first date of the petition's current year through the date of the last hearing on the petition before the hearing officer, shall be computed at the unit's new base rent after vacancy for all twelve months of the petition's current year. In addition, if the unit is eligible for a general adjustment during any months of the current year, the general adjustment shall be included for those months.
 - (ii) The rents of units which are vacant at the start of the petition's current year or which become vacant at any time from the first date of the petition's current year through the date of the last hearing on the petition before the hearing officer, and which have not yet been re-rented on the date of the last hearing, shall be calculated as follows for all twelve months of the petition's current year. For purposes of this subparagraph, comparable unit is defined as a unit with the same number of bedrooms as the vacant unit, and the definition of property includes a former single parcel or property which has been subdivided into condominiums.

- (A) If the vacant unit received a vacancy rent increase within three years prior to the first date of the current year of the increase petition, the unit's maximum allowable rent shall be used.
 - (B) If (A) above does not apply, and if a comparable unit or units on the property received a vacancy rent increase at any time from three years prior to the first date of the petition's current year through the date of the last hearing on the petition before the hearing officer, the rent for the vacant unit shall be calculated at the average maximum allowable rent of those comparable units in effect at the time of the last hearing on the petition.
 - (C) If (A) and (B) above do not apply, the rent for the vacant unit shall be calculated using the following rent amount.
 - (aa) The median rent for comparable units in the area defined in regulation 4104(D)(1) in which the property is located, which have had at least one post-January 1, 1999 vacancy increase. This median rent amount shall be taken from the most recent Board Report entitled Impact of Market Rate Vacancy Increases.
 - (bb) If the property is located in Area C of the city, as defined in regulation 4104(D)(1), the rent of the vacant unit shall be calculated as provided above in subparagraph (C)(aa), except that the median rent amount of comparable units in an area adjacent to Area C may be used. The hearing officer and Board have the discretion to determine the most appropriate area based on similarity of the subject property to properties in the area selected, using factors such as the size and the location of the property.
- (2) Income from laundry facilities, cleaning fees or services, garage and parking fees; plus
 - (3) All other income or consideration received or receivable for or in connection with the use or occupancy of rental units and housing services;
 - (4) Minus uncollected rents due to vacancy and bad debts to the extent that the same are beyond the landlord's control, calculated at the same rent level as the rental income for the relevant period. Uncollected rents in excess of 3% of Gross Rents shall be presumed to be unreasonable unless established otherwise. Where uncollected rents must be estimated, the average of the preceding 3 years' experience shall be used, or some other comparable method. The hearing examiner and the Board shall have the discretion to amortize rent loss in excess of 3% of Gross Rents over a period of five (5) years if it is determined that the rent loss is unusual and will not recur annually.
- (c) Operating Expenses:
- (1) Operating expenses shall include the following:
 - (i) Real Property Taxes;
 - (ii) Utility costs;
 - (iii) Insurance expense;
 - (iv) Management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting and other managerial

expenses, and Allowable Professional Expenses. Management expenses are presumed to be 5% of Gross Income, unless established otherwise;

- (v) Normal repair and maintenance expenses, including painting, normal cleaning, fumigation, landscaping, and repair of all standard services, including electrical, plumbing, carpentry, furnished appliances, drapes, carpets, and furniture;
- (vi) Owner-performed labor, which shall be compensated at the following hourly rates upon documentation being provided showing the date, time, and nature of work performed:

Unskilled labor (e.g. collecting rents, keeping records, mowing or watering the lawn, cleaning, sweeping, driving to the bank, buying supplies, making telephone calls to tenants, arranging for handypersons): \$10/hr.

Semi-skilled labor (e.g. painting, minor plumbing, minor repairs, planting): \$17/hr.

Skilled labor (e.g. jobs requiring formal training, education, or work experience: electrical, plumbing, carpentry): \$27/hr.

The documentation must be clear and concise and must indicate for which unit(s) the work has been performed. If the owner-performed labor relates to a specific capital improvement expense, the documentation should so indicate.

Notwithstanding the above, a landlord may receive greater or lesser compensation for self-labor if it can be shown that the amounts set forth above are substantially unfair in a given case.

There shall be a maximum allowance under this paragraph of 5% of Gross Income, unless the landlord shows greater services for the benefit of tenants.

- (vii) License and registration fees required by law to the extent same are not otherwise paid by tenants.
- (viii) The amortized portion of Capital Improvement Expenses otherwise allowed by regulation. A capital improvement is the addition or replacement of a long term betterment to the property. Factors to consider in determining whether an expense is a capital improvement include but are not limited to: (1) nature and extent of the work performed; (2) the amount of the expense, with expenses exceeding \$200 per benefitted unit generally considered a capital improvement; and (3) the likelihood that the expense will recur annually. Capital improvement expenses with a total cost of less than \$200 per benefitted unit, may be considered as a repair to be expensed in one year, at the discretion of the hearing examiner or the Board.
- (ix) Petitioners must prove by a preponderance of evidence that all labor, whether owner-performed labor or other labor, was performed in connection with either administrative-management tasks, or repair and maintenance tasks, or capital improvements. The documentation for all labor performed must indicate the unit in which the work was done.

(2) Operating Expenses shall not include:

- (i) Avoidable and unnecessary expense increases since the base year;

- (ii) Mortgage principal and interest;
 - (iii) Any penalties, fees or interest assessed or awarded for violation of this or any other law;
 - (iv) Owner-performed labor incurred in connection with proceedings before the Board or in connection with civil actions against the Board;
 - (v) Depreciation of the property;
 - (vi) Any expense for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, settlement, or any other method.
- (d) Allowable Professional Expenses shall include:
- (1) Attorney's fees, legal fees and costs incurred in connection with successful good faith attempts to recover rents owing and successful good faith unlawful detainer actions not in derogation of applicable law, to the extent those amounts are not recovered. If, on the basis of substantial evidence, it is determined that these expenses will not reoccur annually, the hearing examiner may amortize those expenses over a period of five (5) years;
 - (i) Actual and reasonable professional expenses that are amortized shall include a reasonable rate of interest. There shall be added to the cost of the professional expense an amount equal to the reasonable rate of interest at an interest rate equal to the rate 5% per annum plus the rate established by the Federal Reserve Bank of San Francisco on advances to member banks under Section 13 and 13(a) of the Federal Reserve Act prevailing on the date the petition was filed.
 - (ii) The cost of the reasonable professional expense shall be considered according to the following formula: The reasonable professional expense, plus reasonable interest, divided by the Amortization Period.
- (e) Base Year for purposes of individual rent increase proceedings shall mean calendar year, 1978.
- (f) Consumer Price Index (CPI) is the CPI for All Urban Consumers for the Los Angeles, Long Beach, Anaheim Metropolitan Area (All Items), provided by the U.S. Bureau of Labor Statistics.

[4101 Adopted 9/19/81; Effective 10/19/81]

[4101 Amended 3/24/94; Effective 4/7/94]

[4101 Amended 12/17/98; Effective 1/1/99]

[4101(b),4101(b)(1)(4),4101(c)(vi),4101(e) Amended 10/03/02; Effective 10/12/02]

[4101(b)(1)(ii)(A)(B)(C)(aa)(bb) Adopted 10/03/02; Effective 10/12/02]

4102. Presumption of Fair Base Year Net Operating Income

Except as provided in §4103, it shall be presumed that the Net Operating Income produced by a property during the base year provided a fair return on property. Landlords shall be entitled to maintain and increase their Net Operating Income from year to year in accordance with §4106.

[4102 Adopted 9/19/81; Effective 10/19/81]

4103. Rebutting the Presumption

It may be determined that the base year Net Operating Income yielded other than a fair return on property, in which case, the base year Net Operating Income may be adjusted accordingly. In order to make such a determination, the Board or Hearing Examiner must make at least one of the following findings:

- A. The landlord's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating such expenses so the base year Operating Expenses reflect average expenses for the property over a reasonable period of time. The Board or Hearing Examiner shall consider the following factors:
 - (1) The landlord made substantial capital improvements during 1978, which were not reflected in the rent levels on the base date;
 - (2) Substantial repairs were made due to damage caused by natural disaster or vandalism;
 - (3) Maintenance and repair were below accepted standards so as to cause significant deterioration in the quality of housing services;
 - (4) Other expenses were unreasonably high or low notwithstanding the following of prudent business practice. In making this determination, the fact that property taxes prior to 1978 may have been higher than in the base year shall not be considered.

- B. The April 10, 1978 Gross Income includes rents that did not reflect general market conditions due to special and/or unique circumstances.
 - (1) The landlord must prove, by a preponderance of evidence, the existence of peculiar or special circumstances by establishing at least one of the enumerated factors below. In such instances, adjustments may be made in calculating Gross Rents consistent with the purposes of this Chapter. In the absence of such a showing, the landlord does not have standing to establish entitlement to an adjustment pursuant to this section.
 - (a) The rent on the base date was established by a lease or other formal rental agreement which provided for substantially higher rent at other periods during the term of the lease;
 - (b) The rent on the base date was substantially higher or lower than at other times of the year by reason of seasonal demand or seasonal variations in rent;
 - (c) The rent on the base date was substantially higher or lower than preceding months by reason of premiums being charged or rebates being given for reasons unique to a particular unit or limited to the period determining the base rent;
 - (d) There existed a special relationship between the landlord and the tenant (i.e., a family or close friend relationship) on the base date that resulted in an undercharging of rent;
 - (e) The rent had not been increased for five (5) years prior to the base date;
 - (f) The tenant lawfully assumed maintenance responsibilities in exchange for low rent increases or no rent increases; or,
 - (g) Any other special or peculiar circumstances which establish that the base rent was not set as the result of an arm's-length transaction.

- (2) "Rents reflecting general market conditions" is defined as those base rents which fall within the major portion of the range of rents surrounding the median for comparable units on April 10, 1978, as set forth in Appendix "A" to these regulations.
 - (3) "Comparable units" is defined as those units with the same number of bedrooms within the same neighborhood or assessor's map area of the City in which the unit is located, as defined in subsection 4104D of these regulations.
- C. It shall be presumed that where Net Operating Income is less than 50% of Gross Income in the base year, after making adjustments as permitted by subsections (a) and (b) of this Section, the landlord was receiving less than a fair return on property. In such a case, for purposes of determining Base Year Net Operating Income, Gross Income shall be adjusted upward to twice the amount of adjusted Base Year Operating Expenses.

[4103 Adopted 9/19/81; Effective 10/19/81]

[4103 Amended 7/1/93; Effective 7/11/93]

4104. Determination of Base Year Net Operating Income

If a finding is made pursuant to Regulation 4103A (unusual base year Operating Costs), Net Operating Income shall be adjusted pursuant to subsections A and B below. If a finding is made pursuant to Regulation 4103B (base year Net Operating Income did not yield a fair return because the base rent did not reflect general market conditions due to special circumstances), the base year Net Operating Income shall be adjusted as set forth in Subsections C and D below.

- A. To determine the Net Operating Income during the base year, there shall be deducted from the annualized Gross Income being realized on April 10, 1978, a sum equal to the actual Operating Expenses for calendar year 1978, unless the landlord demonstrates to the satisfaction of the Board or Hearing Examiner that some other 12 consecutive month period is justified by reasons independent of the purpose of this Section. In all cases, April 10, 1978, shall fall within the 12 month period utilized herein, except as provided in subsection B.
- B. In the event that the landlord did not own the subject property on January 1, 1978, the Operating Expenses for 1978 shall be determined by one of the following manners, whichever the Board or Hearing Examiner determines to be more reliable in the particular case:
 - (1) The previous owner's actual Operating Expenses as defined in §4101(c); or, where unavailable,
 - (2) Actual Operating Expenses for the first calendar year of ownership, discounted to 1978 by the schedule in §4105.
- C. In order to determine the adjusted base year Net Operating Income pursuant to Regulation 4103B, the hearing examiner shall adjust the base year Gross Income as set forth in subsection D below (the "Adjustment Levels"), then subtract from the adjusted base year Gross Income the base year Operating Expenses, as set forth in subsections A and B above. Nothing in this subsection shall be construed to allow adjustments to base rents outside of the Net Operating Income analysis.
- D. Any adjustment in the base year Gross Income shall be accomplished by recalculating, on a unit-by-unit basis, rent levels reflecting general market conditions for comparable units, according to the Adjustment Levels set forth below.
 - (1) Neighborhoods of the City of Santa Monica Defined
 The neighborhoods or assessor map areas of the City of Santa Monica for purposes of this regulation are set forth on the map marked as Appendix "B" to this regulation. The

neighborhoods of the City of Santa Monica are further defined as zones of the City as follows:

- (a) Zone A is defined as that area of the City of Santa Monica bounded on the North by Pico Boulevard, on the West by the Pacific Ocean, on the South by the City limits, and on the East by Lincoln Boulevard.
- (b) Zone B is defined as that area of the City of Santa Monica bounded on the North by Pico Boulevard, on the West by Lincoln Boulevard, on the South by the City limits, and on the East by the City limits.
- (c) Zone C is defined as that area of the City of Santa Monica bounded on the North by Wilshire Boulevard, on the West by the Pacific Ocean, on the South by Pico Boulevard, and on the East by Lincoln Boulevard.
- (d) Zone D is defined as that area of the City of Santa Monica bounded on the North by Colorado Boulevard, on the West by Lincoln Boulevard, on the South by Pico Boulevard, and on the East by the City limits.
- (e) Zone E is defined as that area of the City of Santa Monica bounded on the North by Wilshire Boulevard, on the West by Lincoln Boulevard, on the South by Colorado Boulevard, and on the East by the City limits.
- (f) Zone F is defined as that area of the City of Santa Monica bounded on the North by the City limits, on the West by the Pacific Ocean, on the South by Montana Avenue, and on the East by 14th Street; plus, that area of the City bounded on the North by Montana Avenue, on the West by the Pacific Ocean, on the South by Washington Avenue, and on the East by 5th Street; plus, that area of the City bounded on the North by Washington Avenue, on the West by the Pacific Ocean, on the South by Wilshire Boulevard, and on the East by Lincoln Boulevard.
- (g) Zone G is defined as that area of the City of Santa Monica bounded on the North by the City limits, on the West by 14th Street, on the South by Wilshire Boulevard, and on the East by the City limits; plus, that area of the City bounded on the North by Montana Avenue, on the West by Lincoln Boulevard, on the South by Wilshire Boulevard, and on the East by 14th Street; plus, that area of the City bounded on the North by Montana Avenue, on the West by 5th Street, on the South by Washington Avenue, and on the East by Lincoln Boulevard.
- (h) The center line of the roadway defines the above boundaries.

(2) Bedrooms Defined

Bedrooms are defined as those rooms within the controlled rental unit that are not otherwise designated as living rooms, kitchens, dining rooms, bathrooms or laundry rooms. The bedrooms must be of sufficient size and character to meet minimum health and safety standards, and must conform to the definition set forth in Santa Monica Municipal Code 9.04.02.030.

(3) Any base year Gross Income adjustment shall be on a unit-by-unit basis, according to number of bedrooms per unit and zone or assessor's map area of the City as set forth in the following schedule.

(a) 0 BEDROOM

<u>ZONE</u>	<u>ADJUSTMENT LEVELS</u>
A	\$165

B	165
C	170
D	Individual case- by-case analysis
E	180
F	190
G	190

(b) 1 BEDROOM

<u>ZONE</u>	<u>ADJUSTMENT LEVELS</u>
A	
Assessor's Map	
Area 4287	\$240
Area 4289	285
Area 4288	Individual case- by-case analysis
B	225
C	225
D	200
E	225
F	300
G	250

(c) 2 BEDROOM

<u>ZONE</u>	<u>ADJUSTMENT LEVELS</u>
A	\$325
B	
Assessor's Map:	
Area 4270	300
Area 4272	250
Area 4273	285
Area 4284	285
Area 4285	300
C	Individual case- by-case analysis
D	250
E	325
F	385
G	350

(d) 3+ BEDROOM

<u>ZONE</u>	<u>ADJUSTMENT LEVELS</u>
A	\$400
B	375
C	Individual case- by-case analysis
<u>ZONE</u>	<u>ADJUSTMENT LEVELS</u>
D	300
E	400
F	

	Assessor's Map:	
	Area 4280	Individual case- by-case analysis
	Area 4292	425
	Area 4293	500
G		450

- (4) The hearing examiner or the Board, in the interests of justice, may make further adjustments either upward or downward for those property-specific or unit-specific characteristics or features, or lack thereof, which differentiate those units or properties from the general market on April 10, 1978. Only those characteristics or features that are quantitatively significant, measurable and affect monthly rent levels may be included.
- (a) These characteristics or features include, but are not limited to, the following: date of construction; swimming pool; dishwasher; air conditioning; balcony/patio; ocean view; parking (unsecured, secured, garage); building size (professionally managed); building maintenance; unit size; traffic exposure and externalities.
- (b) Cooking facilities, on-site laundry facilities, carpets and drapes were amenities that predominated for all units on April 10, 1978, regardless of neighborhood or number of bedrooms. Therefore, no upward adjustment shall be allowed for the presence of these amenities. However, the absence of such amenities may result in a downward adjustment.
- (c) In determining adjustments for specific characteristics and features, the hearing examiner or the Board shall apply the principle of diminishing relative value. With the addition of each unit- or property-specific characteristic or feature, the value of each may diminish, such that a point is reached where the addition of further amenities to a unit no longer influences the rental amount. The individual adjustment shall not fall either above or below the rents set forth in Appendix "B", by zone or map area and number of bedrooms, regardless of the amenities missing or present.
- (5) The rent adjustments set forth in subsections (3) and (4) above shall then be used in calculating adjusted annualized Gross Income called for in subsection C.

E. The base year Net Operating Income adjustment process set forth in regulation 4103B and this regulation is effective for any rent adjustment petition filed on or after June 1, 1993. Regulation 4103B and 4104 shall also apply to any rent increase petition pending as of June 1, 1993 provided no administrative hearing has been held

[4104 Amended 7/1/93; Effective 7/11/93]

4105. Schedule of Increase In Operating Expense

Where scheduling of rent increases or other calculations require projections of income and expenses, it shall be assumed that Operating Expenses, exclusive of Property Taxes and Management Expenses, increase at 10% per year, that Property Taxes increase at 2% per year, and that Management Expenses are 5% of Gross Income.

[4105 Adopted 9/19/81; Effective 10/19/81]

4106. Allowable Rent Increases

Upon filing of an individual petition by a landlord, the Board may permit rent increases, unless otherwise proscribed by law, such that the landlord's Net Operating Income will be increased at the rate of forty percent (40%) of the increase in the Consumer Price Index (CPI) over the Base Year. The increase in the CPI shall be calculated by subtracting the monthly figure for April, 1978 (4/78 CPI = 189.6) from the most recently reported monthly figure at the time of the filing of the petition and dividing the result by the April, 1978 monthly figure. In the interests of justice, the hearing officer and the Board shall have the discretion to apportion the rent increases resulting from the Net Operating Income analysis among the units in a manner necessary to ensure fairness. Factors to be considered in the allocation of the NOI increases include, but are not limited to, the size of units, whether units are vacant, and whether units are owner-occupied.

[4106 Adopted 9/19/81; Effective 10/19/81]
[4106 Amended 10/03/02; Effective 10/12/02]

4107. Limit on Annual Increases - Severe Economic Hardship

- (a) No upward rent adjustment may be authorized for any 12 month period in an amount in excess of twelve percent (12%) or twice the Employment Cost Index (ECI), or fifty dollars per month (\$50.00), whichever is greater, for any tenant of low or moderate income for whom such a rent increase shall result in severe economic hardship. The applicable figure for the ECI shall be the most recently reported calendar year figure at the time of the filing of the petition. If the amount of any individual adjustment otherwise justified under this regulation is greater than said limit, the full justified amount shall be granted over a period of years such that the rent does not increase by greater than the said limit in any given year. The annual rent limitation shall be exclusive of the general adjustment. This annual limit on upward rent adjustments shall not apply to owner-occupied units or units which have been voluntarily vacated.
- (1) Upon the issuance of a hearing examiner decision granting an increase, a tenant of low or moderate income of the subject property has the right to claim that the implementation of the full increase would impose an unreasonably severe economic or financial hardship.
- (i) The tenant(s) shall have thirty (30) days from the date of the mailing of the hearing examiner decision to submit a tenant hardship claim on a form provided by the Board. The tenant shall provide all information called for by the form, including all relevant income information.
- (ii) The Board shall notify the petitioner of the filing of any tenant hardship claim.
- (iii) The petitioner shall have ten (10) days from the date of mailing of the notice of filing of tenant hardship claim to file any written objections to the tenant claim, along with all relevant evidence in support of the objection.
- (2) The tenant shall have the burden of proof to establish unreasonably severe economic or financial hardship by a preponderance of the evidence. "Unreasonably severe economic or financial hardship" includes, but is not limited to, either subsection (i) or subsection (ii) below:
- (i) The tenant is entitled to and has received a registration fee waiver as a very low-income senior citizen or disabled citizen as set forth in Chapter 11 of the Board's regulations; or,
- (ii) The gross household income, as certified by the hearing examiner, is at or below 120% of the current median income, adjusted for household size, for the Los Angeles area as determined by the U.S. Department of Housing and Urban Development (HUD), and that, the tenant household will pay more than thirty per cent (30%) of its gross income for rent if the full increase is implemented.
- (3) The hearing examiner shall consider the tenant hardship claim based upon the relevant evidence submitted by the tenant and petitioner regarding the tenant's gross household income.

- (i) The hearing examiner has the discretion to require additional information, including third-party income verification, consistent with the relevant portions of Board Regulation 17304.
- (4) The hearing examiner shall have the discretion to refer the tenant hardship claim to mediation or to schedule a hearing to resolve any issue relevant to the tenant hardship claim.
- (5) The hearing examiner shall issue a decision regarding the tenant hardship claim by way of an addendum to the increase decision within thirty (30) days of the submission of the claim. The Board shall serve notice of the addendum decision to the tenant(s) and the petitioner.
 - (i) If the increase is determined to constitute an unreasonably severe financial or economic hardship on a particular tenant, the hearing examiner shall determine that the amount of the increase, or any portion thereof, be subject to the limitations set forth in this regulation for the property, or any individual unit.
 - (ii) The increase rent schedule shall not exceed sixty (60) months from the date the increase is authorized.
 - (iii) The hearing examiner shall impute interest into the schedule. The rate of interest shall be calculated as the interest rate equal to the rate 5% per annum plus the rate established by the Federal Reserve Bank of San Francisco on advances to member banks under Section 13 and 13(a) of the Federal Reserve Act prevailing on the date the petition for rent increase was filed.
- (6) The hearing examiner decision with respect to the imposition of the annual limits shall be appealable to the Board in the same manner and subject to the same procedures as set forth in Chapter 4, Subchapter C of the Board's regulations, except to the extent that the 120 day time limit set forth in Regulation 4024 shall not apply.
- (b) If a unit becomes vacant during the pendency of a hardship increase schedule pursuant to this section's annual limit on rent increases and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53 and regulation 3301, the hardship increase schedule will terminate upon the landlord's filing of a proper vacancy registration form.
- (c) On appeal of the addendum granting a schedule due to a claim of tenant hardship, the Board may waive this regulation's annual limit on rent increases in extraordinary circumstances.

[4107 Adopted 11/24/85; Effective 10/30/85]

[4107 Amended 10/24/86; Effective 10/30/86]

[4107 Amended 5/14/92; Effective 6/3/92]

[4107 Amended 3/24/94; Effective 4/7/94]

[4107 Amended 12/17/98; Effective 1/1/99]

4108. Relationship to General Adjustment

The Board shall calculate and establish General Adjustments consistent with §1805 of the Rent Control Charter Amendment.

- (a) In petitioning for an Individual Increase Adjustment, the landlord elects to receive an Individual Adjustment rather than to accept the formula of general application used to determine the General Adjustments for the same time period as the Individual Adjustment. Therefore, any Individual Increase Adjustment established pursuant to this Chapter shall take into account the extent of any 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.

- (b) The current year of an increase petition shall consist of four consecutive full quarters and must begin on January 1, April 1, July 1, or October 1. Increase petitions must be filed within ninety (90) days of the end of the last quarter of the petition's current year.
- (c) Based upon the landlord's election to seek an Individual Increase rather than to accept the formula of general application in determining the General Adjustment as outlined in 1805(b) of the Charter, the landlord shall not be entitled to implement any upcoming General Adjustment otherwise authorized by the Board for a twelve-month period from the operative date of a decision authorizing an Individual Increase. If the final decision authorized an increase for proposed capital improvements only, pursuant to Regulation 4042, this regulation applies to the general adjustment that occurs within twelve months of the first addendum authorizing an increase.
- (d) If it is determined from the Net Operating Income analysis that the landlord is not entitled to an Individual Adjustment, s/he may implement the full upcoming General Adjustment.
- (e) If a unit becomes vacant during the twelve-month period in which a general adjustment is deferred pursuant to subsection (c) above and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53 and regulation 3301, the unit shall not be entitled to the deferred general adjustment.

[4108 Adopted 9/19/81; Effective 10/19/81]
 [4108 Amended 3/24/94; Effective 4/7/94]
 [4108 Amended 12/17/98; Effective 1/1/99]

4109. Relationship to Other Individual Rent Adjustments

Repealed

[4109 Adopted 9/19/81; Effective 10/19/81]
 [4109 Repealed 10/03/02; Effective 10/12/02]

4110. Retroactive Effect

In no event shall retroactive rent increases be authorized by application of this Regulation, except as permitted by §1805(d)(11) of the Rent Control Charter Amendment.

[4110 Adopted 9/19/81; Effective 10/19/81]

4111. Partial Invalidity

If any provision of this Regulation or application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of this Regulation which can be given effect without the invalid provision or application, and to this end the provisions of this Regulation are declared to be severable. The Regulation shall be liberally construed to achieve the purposes of this Regulation and to preserve its validity.

[4111 Adopted 9/19/81; Effective 10/19/81]

4112. Rounding

In calculating the amount of any increase in rent resulting from an increase petition the total increase amount for each unit shall be rounded to the nearest dollar. Rounding shall occur by calculating the amount to two decimal places. Any fraction of a dollar equal to or less than 49 cents shall be dropped off and any fraction of a dollar equal to or more than 50 cents shall be rounded up to the next dollar. Each

capital improvement increase scheduled to drop off after the useful life of the improvement shall be rounded to the nearest dollar so that that drop off amount will be in whole dollars.

[4112 Adopted 3/12/87; Effective 3/19/87]

[4112 Amended 12/17/98; Effective 1/1/99]

4113. Recovery of Earthquake-Related Capital Expenditures

Repealed

[4113 Adopted 1/27/94; Effective 2/16/94]

[4113 Amended 2/3/94; Effective 2/16/94]

[4113 Amended 4/28/94; Effective 5/11/94]

[4113(f) Amended 1/5/95; Effective 1/14/95]

[4113(f) Amended 3/7/96; Effective 3/16/96]

[4113 Repealed 10/03/02; Effective 10/12/02]

4113A. Recovery of Earthquake-Related Capital Expenditures- Multifamily Earthquake Residential Loan Program (MERLP)

Repealed

[4113A Adopted 5/11/95; Effective 5/21/95]

[4113A Repealed 10/03/02; Effective 10/12/02]

4113B. Mitigation of Potentially Hazardous Structures

(a) **Purpose:** This regulation is adopted to implement portions of City Ordinances 1748 and 1771(CCS) regarding the mitigation of potentially hazardous multifamily residential structures.

(b) **Pass-Through:** For qualifying expenditures, this regulation establishes an entitlement to a rent increase of one-half (1/2) of the amortized portion of such expenditures, without reference to the net operating income earned by the property for any period, and notwithstanding the procedure ordinarily applicable to rent increase petitions specified in regulations 4100 through 4107, 4113 or 4113A. Since this process will not be concerned with fair return, the provisions of Civil Code section 1947.15 relating to attorney fees shall not apply.

(c) **Effective Date:** The effective date of this regulation is August 1, 1995.

(d) **Qualifying Expenditures:** Expenditures qualifying for rent increase pass-through under this regulation are one-half (1/2) of any and all expenditures reasonably incurred in mitigation of potentially hazardous structures, as identified in City Ordinances 1748 and 1771(CCS). These ordinances require structural alterations to unreinforced masonry structures, soft/weak story structures, pre-1976 tilt-up concrete buildings, steel framed buildings and pre-cast/reinforced poured in place concrete/non-ductile buildings.

Reasonable expenditures include costs associated with the structural alterations required by Ordinances 1748 and 1771, and as approved by the City's Building and Safety Department, including filing fees charged by the Rent Control Board, and all fees charged by architects, engineers, contractors, subcontractors, and laborers or the Board, provided such expenditures are reliably documented. However, expenditures for demolition of entire structures are not subject to this regulation. Reasonable expenditures do not include attorney fees, although applicants may choose to have the assistance of counsel in pursuing a rent increase under this regulation.

Any owner who petitions for and receives an increase pursuant to this regulation shall waive the right to a rent increase for qualified expenditures under the Board's fair return formula (Regulation 4100, et seq.). If an owner petitions for a net operating income rent increase for qualified expenditures pursuant to the City's "Potentially Hazardous Structures Mitigation Program," no petition may be filed or accepted pursuant to this regulation. This regulation does not preclude any owner from seeking a rent increase pursuant to regulation 4100 through 4107, Regulation 4113 or regulation 4113A on the basis of nonqualified expenditures. Nonqualifying expenditures will not be considered in proceedings under this regulation.

(e) **Amortization Periods:** All expenditures subject to this regulation shall be deemed common-area capital expenditures subject to the amortization period set forth below.

- (1) All architectural and/or engineering costs related to the inspection, report, design or plans for hazard mitigation required by Ordinances 1748 and 1771(CCS), and any administrative fees charged by the Board for the processing of the retrofitting petition, shall be amortized at five (5) years.
- (2) All other expenses related to the required actual hazard mitigation work, including, but not limited to, steel, carpentry, plastering, painting, masonry and clean-up, shall be amortized at twenty (20) years.
- (3) Amortization shall be for the purpose of calculating an annual amount for rent increases. Rent increases granted pursuant to this section shall not expire at the end of the amortization period.

(f) **Time Limits:** An owner may file a petition for rent increase under this regulation either prior to incurring the expenditure, to obtain pre-approval, or after incurring the expenditure.

No petition may be filed after the time limits for compliance set forth in City Ordinances 1748 and 1771(CCS), and in no event more than four (4) years from the date of the submission of the engineering report called for in the city ordinances, unless time for compliance is subsequently extended by the City Council.

(g) **Petition Process:** A petition for rent increase on the basis of pass-through of the repairs of potentially hazardous structures capital expenditures shall be filed on a form supplied by the Board, which form must be completed in all respects. In addition to the information called for on the form itself, owners must attach the following:

- (1) The report, as required by the city ordinances, certified or under seal, of a qualified structural engineer or similarly qualified professional identifying any structural deficiencies to be remedied;
- (2) Proof that the remedial plans have been submitted to and approved by the the appropriate city agencies, including, but not limited to, the Building and Safety Department;
- (3) Proof that the actual remedial work has been approved by the appropriate city agencies, including, but not limited to, the Building and Safety Department;
- (4) Estimates, or contract(s) and invoices from licensed contractors or subcontractors, which itemize materials and labor supplied or to be supplied, the specific repair or replacement to be effected, and the address of the building and unit (if any) in which the repairs are to be made;
- (5) Proof of expenses incurred;

- (6) The Administrator (or hearing examiner) shall have the discretion to require further documentary evidence in support of the petition.
- (h) **Administrative Costs-Filing Fees:** Upon the filing of the petition, the landlord shall pay a filing fee to cover the administrative costs of processing the petition. The filing fee shall be \$100 per petition for all properties up to ten (10) units. For properties with between eleven (11) and fifteen (15) units, the filing fee shall be \$150. For properties with sixteen (16) or more units, the filing fee shall be \$200.
- (i) **Notice and Determination:** If the petition does not meet the requirements of subsection (g) above, the administrator shall deny it without prejudice to later refiling. The owner must provide a list of tenants and all known current addresses of tenants to the Board along with the petition.
- (1) The Board shall immediately mail notices to tenants whose addresses are known advising that tenants have 10 days in which to submit written opposition to the rent increase petition.
- (2) Tenants may oppose a rent increase petition filed under this regulation only on the following grounds:
- (i) that an expenditure does not relate to the mitigation of potentially hazardous structures as required by city ordinances;
- (ii) that the amount of an expenditure is unreasonably high relative to generally prevailing fees for equivalent services; or
- (iii) if the petition relates to costs already incurred, that the work was not actually performed.
- (3) The burden of proof with regard to each basis for opposition shall be on the tenant.
- (4) The Board administrator reserves the right to investigate and make independent determinations of each of the issues of opposition on the basis of information from any source.
- (5) Petitioning owners must allow physical inspection of the building by a representative of the Board and must produce additional documentation on request. Failure of the owner to cooperate in the foregoing respects will permit denial of the petition without prejudice to the owner's right to seek a rent increase under regulations 4100, et seq.
- (6) The petition may be granted administratively. If the petition is granted administratively, tenants may file an appeal as specified in subsection (i) below. If the administrator denies the petition, the owner may appeal to the Board.
- (7) If a tenant or tenants oppose the petition for one of the three permissible grounds, the Board's administrator shall have the discretion to schedule a mediation session or a hearing to resolve the disputed issues. If the issues are not resolved by mediation, the administrator shall have the discretion to grant the petition or schedule a hearing. The hearing will be limited to the issue properly disputed.
- (8) In the interests of justice, the Administrator (or the hearing examiner) shall have the discretion to apportion the individual unit rent increases among the units in a manner and to the degree necessary to insure fairness.
- (9) If a hearing is denied, the tenant may appeal to the Board. If a hearing is held, notice of the decision shall be mailed to the owner and all tenants whose addresses are known, and the party against whom the hearing examiner rules may appeal to the Board.

- (10) Nothing in this regulation is intended to abrogate section 1805(h) of the Rent Control Law, prohibiting owners from implementing rent increases while out of compliance with the Rent Control Law or applicable health, safety or housing codes. Such noncompliance will not be an issue in proceedings under this regulation.
 - (11) Except as expressly set forth in this regulation, the procedural requirements set forth in Chapter 4, Regulations 4001 through 4029, shall apply to petitions filed pursuant to this program.
- (j) **Approval of Proposed Expenditures:** Owners may petition for rent increase under this regulation on the basis of proposed expenditures or completed capital improvements.
- (1) In the event of proposed expenditures, after approval, the owner will not be permitted to implement the approved rent increases until an addendum is requested and issued.
 - (2) Upon completion of repairs, the owner must file a written request for issuance of an addendum and provide copies of contracts and invoices showing payment of actual expenditures. With the request for issuance of addendum (on a form to be supplied by the Board), the owner shall certify that the building has been inspected by the appropriate city department and deemed habitable.
 - (3) The Board shall give notice to tenants that a request for addendum has been filed and that tenants have ten days in which to contest the issuance of an addendum.
 - (4) The sole ground upon which an addendum may be opposed is that claimed repairs were not actually made.
 - (5) After review, the administrator shall approve the issuance of the addendum if it meets the foregoing requirements and corresponds to approval already given. If the actual cost of repairs exceeds the approved estimate by a substantial amount, the administrator may require further information and documentation, and may disallow the excess if it appears unreasonable.
 - (6) There shall be no right of appeal from the issuance of an addendum allowing pass-through of all claimed costs. If the administrator refuses to issue the addendum for any reason, or denies pass-through of costs in excess of those previously authorized, the owner may appeal to the Board.
- (k) **Implementation of Rent Increases:** Upon receiving authorization for the rent increase pursuant to this regulation, notice of the increase must be given by the owner pursuant to Civil Code §827 and §1805(h) of the Rent Control Charter Amendment.
- (l) **Appeal to Board:** If a party has a right to appeal to the Board under any of the foregoing provisions, such appeal shall be filed within ten days of mailing of notice of the event which gives rise to the appeal. Appeals under this regulation shall be processed in the same manner as appeals from other administrative decisions concerning rent increases under regulation 4100 through 4107, except that the parties shall have the right to present oral argument to the Board on appeal.
- (m) **Time for Final Board Action:** The Administrator shall oversee the processing of rent increase petitions under this regulation so as to require an initial administrative decision within 30 days and a final Board decision within 90 days of filing. This shall apply to approval of proposed expenditures and approval of completed expenditures, but not to issuance of addenda under subsection (h) above. Addenda shall be issued or denied within 30 days of proper request.

- (n) Limitations on Rent Increases: Regulation 4107, regarding severe economic hardship of rent increases upon tenants, shall apply to any increase granted pursuant to this Regulation.

[4113B Adopted 5/11/95; Effective 5/21/95]

[4113B Amended 6/29/95; Effective 7/6/95]

[4113B Amended 7/13/95; Effective 7/26/95]

4114. Professional Expense Surcharges

If a unit becomes vacant during the pendency of a professional fee surcharge schedule pursuant to former regulation 4114 and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53 and regulation 3301, the professional fee surcharge will terminate upon the landlord's establishing the new initial rental rate for the new tenancy.

[4114 Adopted 3/24/94; Effective 4/7/94]

[4114 Amended 12/17/98; Effective 1/1/99]

4115. Termination of Schedules after Vacancy

Individual rent adjustment schedules are terminated when a new base rent upon vacancy is established pursuant to Civil Code section 1954.53 and regulation 3301, as follows:

- (a) If there is a rent decrease in effect pursuant to regulations 4038 and 4200 at the time the unit becomes vacant and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53 and regulation 3301, the decrease will terminate upon the landlord's filing of a proper vacancy registration form.
- (b) If a unit becomes vacant during the pendency of a schedule which provides for the expiration of increases for capital improvements under former regulation 4041(e) and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53 and regulation 3301, the capital improvements schedule shall terminate upon the landlord's filing of a proper vacancy registration form and no further reductions in rent shall occur pursuant to the schedule.
- (c) If a unit becomes vacant during the pendency of a hardship increase schedule with an annual limit on rent increases under regulation 4107 and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53 and regulation 3301, the hardship schedule will terminate upon the landlord's filing of a proper vacancy registration form.
- (d) If a unit becomes vacant during the twelve-month period in which a general adjustment is deferred under regulation 4108 and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53 and regulation 3301, the unit shall not be entitled to the deferred general adjustment.
- (e) If a unit becomes vacant during the pendency of a professional fee surcharge schedule pursuant to former regulation 4114 and the unit qualifies for a vacancy increase pursuant to Civil Code section 1954.53 and regulation 3301, the professional fee surcharge will terminate upon the landlord's establishing the new initial rental rate for the new tenancy.

[4115 Adopted 12/17/98; Effective 1/1/99]

4200. Rent Decrease Standards

- (a) Under the provisions of Santa Monica Charter Section 1805 and of this Chapter, the maximum allowable rent guarantees landlords a fair return on their properties, and provides sufficient rental income to permit landlords to adequately maintain their properties. In view of that fact, and of the public policy disfavoring deterioration of the condition of the rental housing stock in the City of Santa Monica, decreases under this regulation are intended to be remedial in nature and are not

designed to provide a precise correlation between the rental value of particular deteriorated conditions or reductions in services and the decrease in rent.

(b) RESERVED

(c) RESERVED

(d) As to maintenance-related conditions, the monthly decreases granted shall be based upon the degree of deterioration, lack of maintenance or inoperability, and shall be within the following limits for each item:

	<u>Category</u>	<u>Range of Decreases</u>
(1)	Water leakage through roof, windows, doors, walls, ceiling (This range is per area affected by leakage.)	\$ 10.00 - \$120.00
(2)	Broken window or door	\$ 5.00 - \$60.00
(3)	Broken or inoperative window blinds, venetian blinds, or screens	\$ 5.00 - \$30.00
(4)	Loss of or insufficient heat, hot water or water supply	\$ 10.00 - \$150.00
(5)	Serious infestation of insects or rodents	\$ 10.00 - \$120.00
(6)	Dangerous porches, walks, stairs or railings	\$ 10.00 - \$120.00
(7)	Substantial holes in floors, walls or ceilings	\$ 10.00 - \$120.00
(8)	Unsafe or inoperative electrical wiring or outlets or exposed wiring	\$ 10.00 - \$180.00
(9)	Defective plumbing, drains, sewage system or toilet facilities	\$ 10.00 - \$240.00
(10)	Accumulation of garbage, debris or other inappropriate materials in common areas	\$ 5.00 - \$30.00
(11)	Drapes or window coverings with stains, holes, tears, or disintegrating fabric or drapes or window coverings which have been removed	\$10.00 - \$120.00
(12)	Carpets or other floor coverings including hardwood, tile or linoleum, with tears, holes, stains, cracks, gaps, shredded or disintegrating material, or carpet padding or carpet which is moldy, malodorous, worn thin, threadbare or disintegrated	\$10.00 - \$225.00
(13)	Defective or inoperative appliance in unit	\$10.00 - \$60.00
(14)	Broken fan or vent	\$ 5.00 - \$20.00
(15)	Broken or defective intercom	\$ 10.00 - \$25.00
(16)	Broken or missing smoke detector, alarm, fire extinguisher	\$ 10.00 - \$50.00

(17)	Peeling, crumbling, water-stained, worn, scraped, scuffed or cracked paint or peeling, torn, water-stained wall-covering	\$10.00 - \$60.00
(18)	Deteriorated countertops	\$10.00 - \$30.00
(19)	Missing or cracked, broken tile	\$10.00 - \$30.00
(20)	Missing caulking, grout	\$5.00 - \$20.00
(21)	Deteriorated or broken cabinets or drawers	\$15.00 - \$40.00
(22)	Broken or missing mailbox	\$10.00 - \$30.00
(23)	Inoperative or insufficient exterior lights	\$10.00 - \$45.00
(24)	Defective or inoperative elevator	\$10.00 - \$60.00

(e) Notwithstanding any other standards or limits contained herein, if any condition or conditions of deterioration or malfunction in a unit are of such a nature and/or degree as to substantially interfere with the use of a significant part of the unit for dwelling purposes, the decrease awarded shall be based upon the degree of interference with the use and occupancy of the unit.

(f) As to decreases based upon reduced base amenities of a unit, the decreases shall be within the following limits:

(1)	Parking	\$20.00 - \$375.00
(2)	Storage	5.00 - 150.00
(3)	Furniture	5.00 - 190.00
(4)	Laundry Facilities	20.00 - 120.00
(5)	Security gates, doors and fencing	20.00 - 180.00
(6)	Recreational facilities	10.00 - 120.00
(7)	Yards, patio, balconies, or play areas	10.00 - 120.00
(8)	Landscaping or yard care services	5.00 - 60.00
(9)	On-site management services	20.00 - 80.00

The items listed in (d) and (f) above are a nonexclusive list, and are not intended to exclude rent decreases in connection with other reductions in housing services or maintenance-related conditions.

(g) With respect to the categories of amenities or housing services referred to in this subsection, the determination of the appropriate amount of any decrease shall take into account, but not be limited to consideration of the factors listed below:

- (1) Parking:
 - (i) Number of spaces provided for the unit
 - (ii) Whether indoor or outdoor parking
 - (iii) Whether or not parking is in secured area
 - (iv) Whether or not parking is in separate garage
 - (v) Whether tandem or reserved for individual
 - (vi) Amount charged for other, similar parking facilities on the same property
 - (vii) Amount charged for other, similar parking facilities on other comparable properties in the neighborhood

- (viii) Availability of street parking in the immediate area
 - (ix) The property's average maximum allowable rent
 - (x) Alternate uses such as storage, recreation, studio or workshop
- (2) Storage:
- (i) Size
 - (ii) Location
 - (iii) Whether or not secured
 - (iv) Whether individual or shared access
- (3) Furniture:
- (i) Number of rooms provided furniture
 - (ii) Items of furniture provided
 - (iii) Quality of furniture
 - (iv) Condition of furniture
 - (v) Whether new or used
- (4) Recreational Facilities:
- (i) Type of facility provided
 - (ii) Accessibility
 - (iii) Whether indoor or outdoor
- (h) Decreases in amounts above or below the indicated ranges shall be granted only upon clear and convincing proof that under the circumstances of the particular case a decrease within the range would be either inadequate or excessive in relation to the condition giving rise to the petition. If a decrease within the ranges set forth in subparagraphs (d) or (f) is inadequate in a particular case, the hearing officer or the Board may determine the decrease amount by utilizing a percentage of the rent in appropriate cases, considering, among other relevant factors, the percentage of impairment of the tenant's use of and benefit from the unit as a result of the decrease condition. The foregoing limits decrease ranges in subparagraphs (d) and (f) shall be subject to periodic review by the Board as to their adequacy in view of existing conditions in the City, and may be amended accordingly, after due notice and public hearing in compliance with the provisions of Santa Monica Charter Section 1803(g).
- (i) If the reduction in housing service or base amenity is the landlord's refusal to allow a tenant to replace one of the occupants of the unit, the rent shall be decreased by the same percentage as the percentage reduction in number of occupants. For example, if the base amenity is two occupants, and the landlord refuses to allow replacement of one of the occupants, the decrease shall be 50% of the maximum allowable rent; if the base amenity is three occupants, and the landlord refuses to allow replacement of one of the occupants, the decrease shall be 33% of the maximum allowable rent.

[4200 Adopted 4/23/83; Effective 5/15/83]

[4200 Amended 10/27/83; Effective 11/5/83]

[4200 Amended 12/17/98; Effective 1/1/99]

[4200(d)(1) through (24),(h) Amended 10/03/02; Effective 10/12/02]

[4200(i) Adopted 10/03/02; Effective 10/12/02]

4201. Prospective Effect of Amendments

Unless otherwise expressly provided herein, additions and amendments to the provisions of this Chapter shall be prospective in operation, and will, therefore, be applicable only to petitions received for filing on or after the effective dates of the additions or amendments. The effective date of the amendments to this Chapter adopted December 17, 1998 is January 1, 1999.

[4201 Adopted 5/8/86; Effective 5/23/86]

[4201 Amended 12/17/98; Effective 1/1/99]

4202. Rounding

Decrease amounts shall be given in whole dollars. In restoring decrease amounts under Regulation 4038, when general adjustments have intervened between the issuance of the decrease and the date of compliance, hearing examiners shall round the restored amount to the nearest dollar. Rounding shall occur by calculating the amount to two decimal places. Any fraction of a dollar equal to or less than 49 cents shall be dropped off and any fraction of a dollar equal to or more than 50 cents shall be rounded up to the next dollar.

[4202 Adopted 3/12/87; Effective 3/19/87]

[4202 Amended 12/17/98; Effective 1/1/99]

INTERIOR REPLACEMENT PILOT PROGRAM

4300. Purpose

Repealed

[4300 Adopted 2/14/85; Effective 2/28/85]

[4300 Repealed 10/03/02; Effective 10/12/02]

4301. Duration of Program

Repealed

[4301 Adopted 2/14/85; Effective 2/28/85]

[4301 Amended 5/29/86; Effective 6/13/86]

[4301 Repealed 10/03/02; Effective 10/12/02]

4302. Conditions on Rent Increases Under This Program

Repealed

[4302 Adopted 2/14/85; Effective 2/28/85]

[4302 Repealed 10/03/02; Effective 10/12/02]

4303. Definitions

Repealed

[4303 Adopted 2/14/85; Effective 2/28/85]

[4303 Repealed 10/03/02; Effective 10/12/02]

4304. Determining the Amount of Allowable Increase

Repealed

[4304 Adopted 2/14/85; Effective 2/28/85]

[4304 Repealed 10/03/02; Effective 10/12/02]

4305. Procedures

Repealed

[4305 Adopted 2/14/85; Effective 2/28/85]

[4305 Repealed 10/03/02; Effective 10/12/02]

4306. Responsibility For Satisfactory Performance of Agreement

Repealed

[4306 Adopted 2/14/85; Effective 2/28/85]

[4306 Repealed 10/03/02; Effective 10/12/02]

4307. Maintenance of Interior Replacements

Repealed

[4307 Adopted 2/14/85; Effective 2/28/85]

[4307 Repealed 10/03/02; Effective 10/12/02]

4400. Rent Decreases for Construction Impacts

- (a) Purpose. The purpose of this regulation is to provide for decreases in rent to tenants of buildings undergoing substantial repairs, rehabilitation, and/or upgrades, for interference with the occupancy of their units, disruptions, and loss of housing services caused by the construction. The intent of the regulation is to provide a decrease remedy for all significant impairments or impacts of the construction for the full time period the condition is in existence, except for unavoidable impacts or impairments caused by reasonably necessary repair or maintenance, performed in a reasonable manner, to existing amenities or housing services of a unit.
- (b) When Rent Decreases Authorized. Rent decreases are authorized under this regulation if construction at the property significantly impacts the habitability of a unit, interferes with the tenant(s)' occupancy of their unit, or reduces or removes the housing services of a unit for a period exceeding twenty-four hours, except as provided in subdivision (ii) below.
 - (i) In determining whether a construction rent decrease is authorized under this section, the hearing examiner or Board shall consider the extent, duration, and quality of the particular construction impact or impairment for which a decrease is sought.

- (ii) No rent decrease is authorized under this regulation for unavoidable impacts or impairments caused by reasonably necessary repair or maintenance to existing amenities or housing services of a unit, if the impacts or impairments do not substantially interfere with the right to occupy the premises as a residence, except in the following circumstances: (1) the repair or maintenance work is carried out in an unreasonable manner; or (2) the repair or maintenance work takes an unreasonably long time to complete.
- (c) Notice Requirement. Within five working days of receipt of information that substantial repairs, rehabilitation, or upgrades are planned or in progress at a rent-controlled property, the Board shall mail the landlord(s) notice that rent decreases may be granted for significant disturbances, interference with the occupancy of a unit, and loss of housing services caused by the construction. The notice shall inform the landlord(s) that decreases may be awarded for the entire time-period that such impacts or impairments are in existence, from the date of the notice. In addition, the notice shall inform the landlord(s) and tenants at the property of the availability of mediation services to assist them in developing an agreement regarding the construction impacts. The Board shall also mail to tenants of all units on the property a copy of the notice sent to the landlord(s). Because rent decreases under this regulation are limited to construction-caused impairments and disruptions, which are within the knowledge and under the control of the landlord(s), the notice provided in this subsection is the only notice required to be given prior to the filing of a petition for construction-related decreases. The notice shall be liberally construed.
- (d) Mediation. Any tenant or landlord of a building may request a mediation conference with a Board mediator. The purpose of the mediation is to provide a prompt and informal mechanism for the parties to come to an agreement regarding mitigation of the problems and impacts caused by the construction.
 - (1) No attorney may participate in a mediation on behalf of a party. All parties must appear individually, except that a representative other than an attorney may appear on behalf of a landlord who is a business entity and not an individual.
 - (2) No record shall be made of any act, statement, or occurrence during the mediation process, other than any agreement entered into by the parties and a list of the unresolved issues.
- (e) Petitions for Construction-Related Decreases. Construction decrease petition forms shall be provided by the agency. Any tenant seeking a rent decrease for interference with the occupancy of his or her unit, disruptions, or loss of housing services due to construction at the property must do so on the form provided by the agency.
 - (1) The petitioner must submit the original petition, which will be filed when a Board staff member determines that it is complete. Within ten working days of filing, the Board shall mail a copy of the petition to the landlord(s) and tenant(s) of each affected rental unit.
 - (2) If the parties have not yet had a mediation conference when the construction decrease petition is filed, at the discretion of the Board Administrator or Hearings Department Supervisor, a mediation may be scheduled prior to a hearing on the matter.
 - (3) If a petition for construction decreases is submitted concerning conditions common to two or more units at a property, the Board Administrator may, when appropriate, file a petition for decrease placing at issue decreases for all affected units at the property for which no petition has previously been filed. All petitions concerning a property will, whenever possible, be heard and determined concurrently.

- (4) Petitions for construction decreases may be amended prior to or at the hearing of the petition to include impacts and impairments caused by the construction which arose after the petition was filed.
- (f) Hearing and Appeal Procedures. A construction decrease petition shall be heard and decided pursuant to the procedures set forth in regulations 4007 through 4029. The hearing examiner or any party may subpoena witnesses under Chapter 15 of Board regulations.
- (g) Decrease Ranges. The monthly construction decreases granted shall be based upon the degree of impairment, degree of loss of housing service, and degree of interference with the occupancy of the unit caused by the construction. In determining the amount of the decreases, the impact on the tenant's normal use of his or her unit (e.g., whether the tenant works at home or remains at home during the day, tenants with children at home during the day, tenants' health conditions) shall be considered. In addition, mitigating actions taken by the landlord shall be considered.
- (1) The decreases shall be within the following limits for each item:

	<u>Category</u>	<u>Range of Monthly Rent Decreases</u>
(i)	Noise, vibrations	10-50% of rent
(ii)	Odors, dust, ventilation	10-75% of rent
(iii)	Safety (e.g. compromised security, gas leaks, fire hazards, significant trip and fall hazards, asbestos, lead paint, interference with ingress and egress, etc.)	10-100% of rent
(iv)	Utility shutoffs	10-75% of rent
(v)	Inadequate construction management (significant debris, work done outside of permitted hours, etc.)	10-75% of rent
(vi)	Other interference with occupancy of unit caused by construction (substantial holes in floors, walls, or ceiling, water leakage, etc.)	10-50% of rent
(vii)	Loss or reduction of parking	\$20-\$250 per month
(viii)	Loss or reduction of storage	\$5-\$100 per month
(ix)	Loss or reduction of security gates, doors, fencing	\$20-\$120 per month
(x)	Loss or reduction of laundry facilities	\$20-\$80 per month
(xi)	Loss or reduction of recreation facilities	\$10-\$80 per month

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| (xii) | Loss or reduction of yards, patios, balconies, or play areas | \$10-\$80 per month |
| (xiii) | Loss or reduction of elevator service | \$20-\$120 per month |

- (2) The above categories are not exclusive and are not intended to exclude rent decreases for other conditions or loss or reduction of other housing services caused by the construction.
- (3) Decreases in amounts above or below the ranges set forth in subsection (g)(1) above may be granted upon clear and convincing proof that, under the circumstances of a particular case, a decrease within the range would be inadequate or excessive.

(h) Discretion of Hearing Examiner and Board. If, at the time of the construction decrease hearing(s), the tenant(s) are paying lower rent than the maximum allowable rent of the unit, the hearing examiner and/or the Board shall have the discretion to subtract the total monthly decrease awarded from the rental amount actually paid by the tenant(s) rather than from the maximum allowable rent. That rent shall become the maximum allowable rent of the unit during the pendency of the construction rent decrease.

(i) Duration of Construction Rent Decreases. Decreases under this regulation shall be determined from the later of the following times: (1) the date of notice of potential decreases provided pursuant to subsection (c) above; or (2) the initial date of the onset of the condition for which decreases are awarded.

(j) Computation of Construction Rent Decreases. To the extent possible, the hearing examiner and/or the Board shall determine in the original decision rent decreases for all past, present, and future disruptions and impairments caused by the construction.

(1) Decreases for construction-caused impacts and impairments which have already been corrected at the time of the hearing(s) shall be calculated as follows: multiply the percentage of impact or impairment under the ranges set forth in subsection (g)(1) above by either the rent ceiling in effect at the time of the impact/impairment or the actual rent paid at that time. Divide that result by 30 and multiply by the number of days the impact or impairment was in existence.

(2) Decreases for construction-caused impacts and impairments which are in existence at the time of hearing(s) shall be calculated as follows: multiply the percentage of impact or impairment under the ranges set forth in subsection (g)(1) above by either the rent ceiling in effect at the time of the impact/impairment or the actual rent paid at that time. Divide that result by 30. Add together the number of days the impact or impairment has been in existence and the number of days it is reasonably estimated to continue in existence and multiply that total by the figure resulting from the division of the monthly decrease amount by 30.

(3) Decreases for future construction-caused impacts and impairments: multiply the percentage of impact or impairment under the ranges set forth in subsection (g)(1) above by either the rent ceiling in effect at the time of the impact/impairment or the actual rent paid at that time. Divide that result by 30 and multiply by the number of days the impact or impairment is reasonably estimated to be in existence.

(4) The result of the calculations determined according to (j)(1), (2), and (3) above shall be totaled and divided by the total number of months the construction is anticipated to take. This figure shall constitute the monthly decrease awarded and shall go into effect at the first rental payment after issuance of the decision, remaining in effect for the same number of months by which the total of (j)(1), (2), and (3) was divided. The hearing

examiner and/or Board shall have the discretion to divide the result of the calculations determined according to (j)(1), (2), and (3) above by a number other than the duration of the construction period if a different number is more reasonable under the circumstances of the particular case.

(k) Procedures to Reopen Hearing. Any party may file a request to reopen the case during the pendency of the construction in any of the following circumstances: (i) if a new construction-related impact or impairment arises which was not considered in the decrease decision; (ii) if a condition for which a decrease is in effect is materially different in degree of impact or impairment than contemplated by the decrease awarded; (iii) if an impact or impairment for which a decrease was awarded fails to occur and will not occur at a later time in the construction; or (iv) if a construction-related impact or impairment, for which no decrease was awarded in the original decision due to insufficient evidence or information, arises after the issuance of the original decision.

(1) The request to reopen shall be on a form provided by the agency. It shall describe the construction-related impact or impairment for which the additional decrease is sought and the date the condition arose; describe the impact or impairment for which a decrease was awarded which did not occur; or, if the reopened hearing is sought because of a materially different impact or impairment than that forming the basis of the decrease awarded, the request shall describe the difference between the basis of the decrease award and the actual impact or impairment.

(2) The Hearings Department Supervisor shall have the discretion to determine if the request to reopen sets forth grounds sufficient to reopen the hearing and may reject for filing any request to reopen which does not do so. The party submitting the request to reopen may appeal the denial to the Board under the procedures set forth in Board regulations 4021 through 4029. At the discretion of the Hearings Department Supervisor, a mediation may be scheduled prior to the reopened hearing.

(3) Within five working days of filing, the Board shall mail a copy of the request to reopen to the landlord(s) and tenant(s) of each affected unit at the property.

(4) Re-opened cases shall be heard and decided pursuant to the procedures set forth in regulations 4007 through 4020. Supplemental decisions may be appealed to the Board pursuant to the procedures set forth in regulations 4021 through 4029. The hearing examiner or any party may subpoena witnesses under Chapter 15 of Board regulations.

(l) Addendum. During the time a decrease schedule remains in effect, an owner may request an addendum to modify the decrease schedule if a portion of the work for which decreases were granted is completed in less time than reflected in the schedule. The addendum request must be filed within 30 days after completion of the work for which the decrease was granted.

If, at the end of the construction decrease schedule, one or more construction-caused impacts for which decreases were awarded remain unabated, a party may request an addendum to the decision. The addendum may extend the decreases for the unabated conditions until the agency finds they have been corrected.

(1) Addendum determinations under this subsection shall be made according to the procedures set forth in regulation 4038(c).

(2) With regard to those construction-caused impacts or impairments for which decreases were awarded still remaining in effect at the time of the request for addendum, the addendum may extend decreases for the unabated impacts or impairments. The decrease extension will go into effect at the next rental payment after the addendum and remain in effect until the hearing examiner finds that the landlord has corrected the

impact or impairment. Compliance addenda with regard to these ongoing decreases shall be determined according to Board regulation 4038.

- (m) Non-Exclusive Remedy. Rent decreases authorized under this regulation are not intended as a substitute for and in no way diminish the right of any tenant to other remedies provided by law or available in any other forum. Specifically, this regulation provides for adjustments in rents and is not intended to authorize the award of damages.
- (n) Effective Date. This regulation shall be effective as of October 1, 1999.

[4400 Adopted 9/23/99; Effective 10/1/99]

[Chapter 4 Adopted 7/28/79; Effective 8/2/79]
[Chapter 4 Amended 5/8/86; Effective 5/23/86]
[Chapter 4 Amended 5/14/92; Effective 6/3/92]
[Chapter 4 Amended 3/24/94; Effective 4/7/94]
[Chapter 4 Amended 4/28/94; Effective 5/11/94]
[Chapter 4 Amended 5/26/94; Effective 6/9/94]
[Chapter 4 Amended 10/6/94; Effective 10/15/94]
[Chapter 4 Amended 1/5/95; Effective 1/14/95]
[Chapter 4 Amended 5/11/95; Effective 5/21/95]
[Chapter 4 Amended 6/29/95; Effective 7/6/95]
[Chapter 4 Amended 7/13/95; Effective 7/26/95]
[Chapter 4 Amended 3/7/96; Effective 3/16/96]
[Chapter 4 Amended 7/31/97; Effective 8/10/97]
[Chapter 4 Amended 12/17/98; Effective 1/1/99]
[Chapter 4 Amended 9/23/99; Effective 10/1/99]
[4030 Amended 11/09/2000; Effective 11/25/2000]
[4031 through 4034 Repealed 11/09/2000; Effective 11/25/2000]
[4042(d) Adopted 10/03/02; Effective 10/12/02]
[4101(b),4101(b)(1)(4),4101(c)(vi),4101(e) Amended 10/03/02; Effective 10/12/02]
[4101(b)(1)(ii)(A)(B)(C)(aa)(bb) Adopted 10/03/02; Effective 10/12/02]
[4106 Amended 10/03/02; Effective 10/12/02]
[4109 Repealed 10/03/02; Effective 10/12/02]
[4113 Repealed 10/03/02; Effective 10/12/02]
[4113A Repealed 10/03/02; Effective 10/12/02]
[4200(d)(1) through (24),(e)(f)(h)(i) Amended 10/03/02; Effective 10/12/02]
[4300 through 4307 Repealed 10/03/02; Effective 10/12/02]
[4003 Amended 05/10/07; Effective 05/17/07]