

## PROPOSED AMENDMENT TO RENT CONTROL LAW SECTION 1805(b)

### Section 1805. Individual and General Adjustment of Ceilings on Allowable Rents.

- (a) GENERAL ADJUSTMENT: The Board may, after holding those public hearings prescribed by Section 1803(g), set and adjust upward or downward the rent ceiling for all controlled rental units in general and/or for particular categories of controlled rental units deemed appropriate by the Board. Such an adjustment, however, need not take effect immediately, and the Board may decide that new rent ceilings shall not take effect until some reasonable date after the above-stated time periods.
- (b) ANNUAL GENERAL ADJUSTMENT: Each year the Board shall generally adjust ~~the rents as follows:~~ **ceiling for rental units covered by this Article for which the landlord did not establish an initial rental rate during the year prior to the effective date of the general adjustment. The adjustment shall be in an amount equal to 75% of the increase in the Consumer Price Index for All Urban Consumers (CPI-U) in the Los Angeles-Riverside-Orange County region as reported by the U.S. Department of Labor, Bureau of Labor Statistics for the twelve-month period ending the previous March 31, rounded to the nearest whole dollar. In no event shall the annual adjustment be less than zero percent (0%) or greater than seven percent (7%).**
- ~~(1) Adjust rents upward by granting landlords a utility and tax increase adjustment for actual increases in the City of Santa Monica for taxes and utilities.~~
- ~~(2) Adjust rents upward by granting landlords a maintenance increase adjustment for actual increases in the City of Santa Monica for maintenance expenses.~~
- ~~(3) Adjust rents downward by requiring landlords to decrease rents for any actual decreases in the City of Santa Monica for taxes.~~
- ~~In adjusting rents under this subsection, the Board shall adopt a formula of general application.~~
- (c) PETITIONS: Upon receipt of a petition by a landlord and/or a tenant, the maximum rent of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Section. The petition shall be on the form provided by the Board and shall include a declaration by the landlord that the unit meets all requirements of Section 1805(h). Notwithstanding any other provision of this Section, the Board or hearing examiner may refuse to hold a hearing and/or grant a rent adjustment if an individual hearing has been held and decision made with regard to maximum rent within the previous six months.
- (d) HEARING PROCEDURE: The Board shall enact rules and regulations governing hearings and appeals of individual adjustment of ceilings on allowable rents which shall include the following:
- (1) HEARING EXAMINER: A hearing examiner appointed by the Board shall conduct a hearing to act upon the petition for individual adjustment of ceilings on allowable rents and shall have the power to administer oaths and affirmations.
- (2) NOTICE: The Board shall notify the landlord if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such a petition and a copy thereof.
- (3) TIME OF HEARING: The hearing officer shall notify all parties, as to the time, date and place of the hearing.
- (4) RECORDS: The hearing examiner may require either party to a rent adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing

examiner shall conduct a current building inspection and/or request the city to conduct a current building inspection if the hearing examiner finds good cause to believe the Board's current information does not reflect the current condition of the controlled rental unit. The tenant may request the hearing examiner to order such an inspection prior to the date of the hearing. All documents required under this Section shall be made available to the parties involved prior to the hearing at the office of the Board. In cases where information filed in a petition for rent ceiling adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.

- (5) OPEN HEARINGS: All rent ceiling adjustment hearings shall be open to the public.
- (6) RIGHT OF ASSISTANCE: All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, recognized tenant organization representatives or any other persons designated by said parties.
- (7) HEARING RECORD: The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions; orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.
- (8) QUANTUM OF PROOF AND NOTICE OF DECISION: No individual adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceeding shall also be notified of their right to any appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 1808 of this Article.
- (9) CONSOLIDATION: All landlord petitions pertaining to tenants in the same building will be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.
- (10) APPEAL: Any person aggrieved by the decision of the hearing examiner may appeal to the Board. On appeal, the Board shall affirm, reverse or modify the decision of the hearing examiner. The Board may conduct a de novo hearing or may act on the basis of the record before the hearing examiner without holding a hearing.
- (11) FINALTY OF DECISION: The decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the Board on appeal reverses or modifies the decision of the hearing examiner, the landlord, in the case of an upward adjustment in rent, or the tenant, in the case of a downward adjustment of rent, shall be ordered to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the Board.
- (12) TIME FOR DECISION: The rules and regulations adopted by the Board shall provide for final action on any individual rent adjustment petition within one-hundred and twenty (120) days, following the date of filing of the individual rent adjustment petition.

- (13) BOARD ACTION IN LIEU OF REFERENCE TO HEARING EXAMINER: The Board, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for rent adjustment without the petition first being heard by a hearing examiner.
- (14) Decisions decreasing rents shall remain in effect until the Board finds that the landlord has corrected the defect warranting the decrease. The Board shall, by regulation, establish procedures for making prompt compliance determinations. Upon a determination of compliance the landlord shall be entitled to reinstatement of the prior rent level, retroactive to the date that the landlord corrected the defect which warranted the decrease.
- (e) In making individual and general adjustments of the rent ceiling, the Board shall consider the purposes of this Article and the requirements of law. The Board may adopt as its fair return standard any lawful formula, including but not limited to one based on investment or net operating income. The Board shall consider all factors relevant to the formula it employs; such factors may include: increases or decreases in operating and maintenance expenses, the extent of utilities paid by the landlord, necessary and reasonable capital improvement of the controlled rental unit as distinguished from normal repair, replacement and maintenance, increases or decreases in living space, furniture, furnishings, equipment, or services, substantial deterioration of the controlled rental unit other than as a result of ordinary wear and tear, failure on the part of the landlord to provide adequate housing services or to comply substantially with applicable housing, health and safety codes, federal and state income tax benefits, the speculative nature of the investment, whether or not the property was acquired or is held as a long term or short term investment, the landlord's rate of return on investment, the landlord's current and base date Net Operating Income, and any other factor deemed relevant by the Board in providing the landlord a fair return.
- (f) No rent increase shall be authorized by this Article because a landlord has a negative cash flow as the result of refinancing the controlled rental unit if at the time the landlord refinanced the landlord could reasonably have foreseen a negative cash flow based on the rent schedule then in existence within the one year period following refinancing. This paragraph shall only apply to that portion of the negative cash flow reasonably foreseeable within the one year period following refinancing of the controlled rental unit and shall only apply to controlled rental units refinanced after the date of adoption of this Article.
- (g) No rent increase shall be authorized by this Article because a landlord has a negative cash flow if at the time the landlord acquired the controlled rental unit, the landlord could reasonably have foreseen a negative cash flow based on the rent schedule then in existence within the one year period following acquisition. This paragraph shall only apply to that portion of the negative cash flow reasonably foreseeable within the one year period following acquisition of a controlled rental unit and shall only apply to controlled rental units acquired after the date of adoption of this Article.
- (h) No landlord shall increase rent under this Article if the landlord:
- (1) Has failed to comply with any provisions of this Article and/or regulations issued thereunder by the Board, including the provisions requiring the payment of registration fees and registration penalties.
  - (2) Has failed to comply substantially with any applicable state or local housing, health or safety law. No landlord shall increase rent unless the notice increasing rent contains a statement in substantially the following form: "The undersigned (landlord) certifies that this unit and common areas are not subject to any uncorrected citation or notices of violation of any state or local housing health, or safety laws issued by any government official or agency." If a landlord fails to comply with this subsection, the tenant may refuse to pay the improperly noticed increase, may seek administrative or civil remedies under this Article, and may raise the landlord's noncompliance as an affirmative defense in any resulting unlawful detainer action.

- (i) The Board may, in its discretion, enact regulations to provide for increases of rents on units voluntarily vacated after the effective date of this subsection in properties where the landlord has dedicated a percentage of units to be rented to persons of very low or low income at affordable rents. The Board may enact procedures and other regulations governing determination of the conditions upon which such increases will be permitted, the extent of the increases, the required mix of affordable units to be provided, ways to ensure the continued provision of affordable housing under this subsection, the terms and conditions applicable when landlords cease to participate or when tenants vacate or cease to qualify for units dedicated to affordable housing, and other measures it deems necessary.

If the Board enacts regulations under this subsection, it shall provide for the following:

- (1) That a property shall not be eligible for this program unless a specified percentage of all units on the property, no less than fifteen (15) percent, will be occupied by tenants of very low or low income and the rent on each unit so occupied does not exceed a specified percentage, no greater than thirty (30) percent, of such tenants' income.
- (2) That tenants of very low or low income occupying units maintained at affordable rent levels under this program are protected if the landlord elects not to participate further in the program. Such protection shall include, at a minimum, a provision prohibiting the rent of such tenants from being increased by a percentage greater than the general annual adjustment allowed by the Board even if the resulting rent is below the maximum allowable rent and the landlord has lowered the rent for other units on the property.