RENT ADJUSTMENT PROGRAM REGULATIONS

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8.22.020 DEFINITIONS.

"Additional Occupancy Level" means a number equal to the total number of occupants minus the base occupancy level, as defined by O.M.C 8.22.020 and Regulation 8.22.020.

"Base occupancy level" means the number of tenants occupying the covered unit as principal residence as of June 16, 2020, with the owner's knowledge, or allowed by the lease or rental agreement effective as of June 16, 2020, whichever is greater, except that, for units that had an initial rent established on or after June 17, 2020, "base occupancy level" means the number of tenants allowed by the lease or rental agreement entered into at the beginning of the current tenancy. When there is a new lease or rental agreement solely as a result of adding one or more additional occupants to the lease or rental agreement, the "beginning of the current tenancy" refers to the tenancy existing prior to the new lease or rental agreement regarding the additional occupant(s).

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

"Initial Base Rent" means the monthly rental rate during the initial term of tenancy. If the rental agreement provides for a period of "free" or discounted rent within its initial term, the initial base rent shall account for the "free" or discounted period. Notwithstanding any agreement to the contrary, the "rental rate" is the total lawful consideration (excluding the security deposit) charged by the owner in the initial term of the lease divided by the number of months in the lease term.

"Landlord": For the purpose of these rules, the term "landlord" will be synonymous with owner or lessor of real property that is leased or rented to another and the representative, agent, or successor of such owner or lessor.

"Manager": A manager is a paid (either salary or a reduced rental rate) representative of the landlord.

"Petitioner": A petitioner is the party (landlord or tenant) who first files an action under the ordinance.

"Primary tenant" means a tenant who resides in a covered unit, is not an owner of record of the property, and charges rent to or receives rent from one or more subtenants in the covered unit.

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"Principal Residence" means the one dwelling place where an individual primarily resides. Such occupancy does not require that the individual be physically present in the

dwelling place at all times or continuously, but the dwelling place must be the individual's usual or intended place of return. A Principal Residence is distinguishable from one kept primarily for secondary residential occupancy, such as a pied-a-terre or vacation home, or non-residential use, such as storage or commercial use. A determination of Principal Residence shall be based on the totality of circumstances, which may include, but are not limited to, the following factors: (1) whether the individual carries on basic living activities at the subject premises; (2) whether the individual maintains another dwelling and, if so, the amount of time that the individual spends at each dwelling place and indications, if any, that residence in one dwelling is temporary; (3) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities; (4) utilities are billed to and paid by the individual at the subject premises; (5) all or most of the individual's personal possessions have been moved into the subject premises; (6) a homeowner's tax exemption for the individual has not been filed for a different property; (7) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, incarceration, or other reasonable temporary periods of absence.

"Respondent": A respondent is the party (landlord or tenant) who responds to the petitioner.

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

"Subtenant," for purposes of Regulation 8.22.025, means a tenant who resides with and pays rent to one or more primary tenants, rather than directly to the owner to whom the primary tenant(s) pay rent, for the housing services provided to the subtenant.

8.22.025 SUBLEASES.

A. Maximum rent for subtenants

Where one or more primary tenants reside with one or more subtenants in a covered unit, the maximum rent that a primary tenant may charge a subtenant is no more than the proportional share of the total current rent paid to the owner by the tenants for the housing and housing services to which the subtenant is entitled under the sublease. The allowable proportional share of total rent may be calculated based upon the square footage shared with and/or occupied exclusively by the subtenant; or an amount substantially proportional to the space occupied by and/or shared with the subtenant (e.g. three persons splitting the entire rent in thirds) or any other method that allocates the rent such that the subtenant pays no more to the primary tenant than the primary tenant pays to the Owner for the housing and housing services to which the subtenant is entitled under the sublease. In establishing the proper initial base rent that the subtenant is charged, additional housing services (such as utilities) provided by, or any special obligations of, the primary tenant, or evidence of the relative amenities or value of rooms, may be considered by the parties or the Rent Adjustment Program when deemed appropriate. Any methodology that shifts the rental burden such that the subtenant(s) pays substantially more than their square footage portion, or substantially more than the proportional share of the total

rent paid to the Owner, shall be rebuttably presumed to be in excess of the lawful limitation.

B. Petitions

Subtenants in covered units may petition the Rent Adjustment Program to contest overcharges in violation of this section, as if the primary tenant were the Owner. Such petitions are not subject to the timing requirements of OMC 8.22.090.A.2. Any restitution awards for subtenant overcharges are limited to the period of three years preceding the the filing of the subtenant's petition, except that no restitution shall be awarded for any period prior to May 4, 2021. This section shall not apply to agreements between primary tenants and subtenants that terminated prior to May 4, 2021.

8.22.030 EXEMPTIONS.

A. Dwelling Units That Are Not Covered Units

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

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

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

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

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

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

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

B. Types of Dwelling Units Exempt

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

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

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

i. Garages;

ii. Attics;

iii. Basements;

iv. Spaces that were formerly entirely commercial.

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

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

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

ii. Common area converted to a separate dwelling unit.

3. Reserved.

4. Dwelling Units Exempt Under Costa-Hawkins. Costa-Hawkins addresses dwelling units that are exempt under state law. The Costa Hawkins exemptions are contained at California Civil Code Section 1954.52.

C. Certificates of Exemption

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

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

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

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

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

2. In the event that a previously issued Certificate of Exemption is found to have been issued based on fraud or mistake, or is no longer valid due to an intervening material change in law or circumstances, and thereby rescinded, the Staff shall record a rescission of the Certificate of Exemption against the affected real property with the County Recorder.

8.22.040 THE BOARD.

A. Meetings

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

Ordinance (OMC Chapter 2.20).)

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

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

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

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

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

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

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

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

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

11. Alternate Board Members. Alternate board members may participate in discussion and deliberations, but will only be allowed to vote when filling in for a regular member who is not present or who has been excused from consideration of or voting on a matter by the Board.

B. Quorum and Voting

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

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

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

4. Special voting requirements for Just Cause for Eviction regulations enacted as part of partial settlement of *Kim v. City of Oakland*, Alameda County Superior Court Case No. RG03081362 (the "Settlement Regulations").

a. The special voting requirements set out in this subsection apply only to the Just Cause for Eviction regulations set out in Exhibit A.

b. The Settlement Regulations may be amended only by affirmative vote of at least five (5) members of the Rent Board, provided that at least one member from each class of Rent Board members (homeowner, landlord, and tenant) affirmatively votes to modify the Settlement Regulations.

c. Before the Board adopts any amendments to the Settlement Regulations, the Board must introduce the proposed amendments at a meeting, hold a public hearing at which members of the public and interested organizations, including the Rental Housing Association of Northern Alameda County, Inc. and Just Cause Oakland, are noticed, and the amendments can only be considered for adoption at a subsequent meeting.

d. After the introduction of proposed amendments to the Settlement Regulations, if the Board decides to further consider the adoption of the regulations and sets a public hearing to do so, the Board must also transmit the proposed amendments to the appropriate committee of the City Council so the City Council may have the option of commenting on or holding its own hearing before the Rent Board votes to adopt or reject the proposed amendments. If the Council elects not to comment on the proposed amendments or does not comment on them within 90 days after transmittal of the proposed amendments by the Rent Board, the Rent Board may proceed to vote on the proposed amendments.

C. Officers

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

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

in the Chair's absence.

3. The Officers shall serve one-year terms.

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

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

D. Standing Committees

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

1. The staffing costs for the committee; and

2. The costs of complying with meeting noticing requirements.

8.22.050 SUMMARY OF NOTICES REQUIRED BY OMC CHAPTER 8.22.

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

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

A. Providing Notice in Multiple Languages

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

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

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

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

or

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

8.22.065 RENT ADJUSTMENTS IN GENERAL.

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

8.22.070 RENT ADJUSTMENTS FOR OCCUPIED COVERED UNITS.

A. Purpose

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

B. CPI and Banking Rent Adjustments

1. If a landlord chooses to increase rents less than the annual CPI Adjustment [formerly Annual Permissible Increase] permitted by the Ordinance, any remaining CPI Rent Adjustment may be carried over to succeeding twelve (12) month periods ("Banked"). However, the total of CPI Adjustments imposed in any one Rent increase, including the current CPI Rent Adjustment, may not exceed three times the allowable CPI Rent Adjustment on the effective date of the Rent Increase notice.

2. Banked CPI Rent Adjustments may be used together with other Rent justifications, except Increased Housing Service Costs and Fair Return, because these justifications replace the current year's CPI increase.

3. In no event may any banked CPI Rent Adjustment be implemented more than ten years after it accrues.

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

The justifications for a Rent increase in excess of the CPI Rent Adjustment or Banking are capital improvement costs; uninsured repair costs; increased housing service costs; the rent increase is necessary to meet constitutional or fair return requirements; additional occupant as defined by OMC 8.22.020; and Tenant does not reside in the unit as their principal residence.

a. Capital Improvement Costs: Capital Improvement Costs are those improvements which materially add to the value of the property and appreciably prolong its useful life or adapt it to new building codes. Those improvements primarily must benefit the tenant rather than the landlord.

(1) Credit for capital improvements will only be given for those improvements which have been completed and paid for within the twenty-four (24) month period prior to the date the petition for a rent increase based on the improvements is filed.

(2) Eligible capital improvements include, but are not limited to, the following items:

1. Those improvements which primarily benefit the tenant rather than the landlord. (For example, the remodeling of a lobby would be eligible as a capital improvement, while the construction of a sign advertising the rental complex would not be eligible). However, the complete painting of the exterior of a building, and the complete interior painting of internal dwelling units are eligible capital improvement costs.

2. In order for equipment to be eligible as a capital improvement cost, such equipment

must be permanently fixed in place or relatively immobile (for example, draperies, blinds, carpet, sinks, bathtubs, stoves, refrigerators, and kitchen cabinets are eligible capital improvements. Hot plates, toasters, throw rugs, and hibachis would not be eligible as capital improvements).

3. Except as set forth in subsection 4, repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements.

4. The following may not be considered as capital improvements:

a. Repairs for code violations may not be considered capital improvements if the Tenant proves the following:

i. That a repair was performed to correct a Priority 1 or 2 Condition from the list set forth in Subsection (8), below, that was not created by the Tenant, which may be demonstrated by any of the following:

(a) the condition was cited by Code Enforcement Services in a notice of violation; or

(b) the Tenant produces factual evidence to show that had the property or unit been inspected, Code Enforcement Services would have issued a notice of violation. The Hearing Officer may determine that in order to decide if a condition is a Priority 1 or 2 Condition expert testimony is required, in which case the Hearing Officer may require such testimony.

ii. That the tenant

(a) informed the Owner of the condition in writing;

(b) otherwise proves that the landlord knew of the conditions, or

(c) proves that there were exceptional circumstances that prohibited the tenant from submitting needed repairs in writing; and

iii. That the Owner failed to repair the condition within a reasonable time after the Tenant informed Owner of the condition or the Owner otherwise knew of the condition.

iv. A reasonable time is determined as follows:

(a) If the condition was cited by a City Building Services Inspector and the Inspector required the repairs to be performed within a particular time frame, or any extension thereof, the time frame set out by the Inspector is deemed a reasonable time; or

(b) Ninety (90) days after the Owner received notice of the

condition or otherwise learned of the condition is presumed a reasonable time unless either of the following apply:

(1) the violation remained unabated for ninety (90) days after the date of notice to the Owner and the Owner demonstrates timely, good faith efforts to correct the violation within the ninety the (90) days but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause; or

(2) the Tenant demonstrated that the violation was an immediate threat to the health and safety of occupants of the property, [in which case] fifteen (15) business days is presumed a reasonable time unless:

(i) the Tenant proves a shorter time is reasonable based on the hazardous nature of the condition, and the ease of correction, or

(ii) the Owner demonstrates timely, good faith efforts to correct the violation within the fifteen (15) business days after notice but such efforts were unsuccessful due to the nature of the work or circumstances beyond the Owner's control, or the delay was attributable to other good cause.

(c) If an Owner is required to get a building or other City permit to perform the work, or is required to get approval from a government agency before commencing work on the premises, the Owner's attempt to get the required permit or approval within the timelines set out in (i) and (ii) above shall be deemed evidence of good faith and the Owner shall not be penalized for delays attributable to the action of the approving government agency.

b. Deferred Maintenance. Costs for work or portion of work that could have been avoided by the landlord's exercise of reasonable diligence in making timely repairs after the landlord knew or should reasonably have known of the problem that caused the damage leading to the repair claimed as a capital improvement.

i. Among the factors that may be considered in determining if the landlord knew or should reasonably have known of the problem that caused the damage:

(a) Was the condition leading to the repairs outside the tenant's unit or inside the tenant's unit?

(b) Did the tenant notify the landlord in writing or use the landlord's procedures for notifying the landlord of conditions that might need repairs?

(c) Did the landlord conduct routine inspections of the property?

(d) Did the tenant permit the landlord to inspect the interior of the unit?

ii. Examples:

(a) A roof leaks and, after the landlord knew of the leak, did not timely repair the problem and leak causes ceiling or wall damage to units that could have been avoided had the landlord acted timely to make the repair. In this case, replacement of the roof would be a capital improvement, but the repairs to the ceiling or wall would not be.

(b) A problem has existed for an extended period of time visible outside tenants' units and could be seen from a reasonable inspection of the property, but the landlord or landlord's agents either had not inspected the property for an unreasonable period of time, or did not exercise due diligence in making such inspections. In such a case, the landlord should have reasonably known of the problem. Annual inspections may be considered a reasonable time period for inspections depending on the facts and circumstances of the property such as age, condition, and tenant complaints.

iii. Burden of Proof

(a) The tenant has the initial burden to prove that the landlord knew or should have reasonably known of the problem that caused the repair.

(b) Once a tenant meets the burden to prove the landlord knew or should have reasonably known, the burden shifts to the landlord to prove that the landlord exercised reasonable diligence in making timely repairs after the landlord knew or should have known of the problem.

c. "Gold-plating" or "Over-improvements"

i. Examples:

(a) A landlord replaces a Kenmore stove with a Wolf range. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

(b) A landlord replaces a standard bathtub with a jacuzzi bathtub. In such a case, the landlord may only pass on the cost of the substantially equivalent replacement.

ii. Burden of Proof

(a)The tenant has the initial burden to prove that the improvement is greater in character or quality than existing improvements.

(b) Once a tenant meets the burden to prove that the improvement is greater in character or quality than existing improvements, the burden shifts to the landlord to prove that the tenant approved the improvement in writing, the improvement brought the unit up to current building or housing codes, or the improvement did not cost more than a substantially equivalent replacement.

d. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.

e. Normal routine maintenance and repair of the rental unit and the building is not a capital improvement cost, but a housing service cost. (For example: while the replacement of old screens with new screens would be a capital improvement).

f. Costs for which an Owner is reimbursed (e.g., insurance, court awarded damages, subsidies, tax credits, and grants) are not capital improvement costs.

(3) Rent Increases for Capital Improvement costs are calculated according to the following rules:

1. For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to landlord-occupied dwellings (i.e., exclusion of landlord's unit).

2. Items determined to be capital improvements pursuant to Section 10.2.2. shall be amortized over the useful life of the improvement as set out in the Amortization Schedule attached as Exhibit 1 to these regulations and the total costs shall be amortized over that time period, unless the Rent increase using this amortization would exceed the Rent increase limits provided by O.M.C. 8.22.070 A2 or 3. Whenever a Capital Improvement Rent increase alone or with any other Rent increases noticed at the same time for a particular Unit exceeds the limits set by O.M.C. 8.22.070 A2 or 3, if the Owner elects to recover the portion of the Capital Improvement that causes the Rent Increase to exceed the limits set by O.M.C. 8.22.070 A2 or 3, the excess can only be recovered by extending the Capital Improvement’s amortization period in yearly increments sufficient to cover the excess, and complying with any requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement increase. The dollar amount of the rent increase justified by Capital Improvements shall be removed from

the allowable rent at the end of the amortization period.

3. A monthly Rent increase for a Capital Improvement is determined as follows:

a. A maximum of seventy percent (70%) of the total cost for the Capital Improvement (plus imputed interest calculated pursuant to the formula set forth in Regulation 8.22.020) may be passed through to the Tenant;

b. The amount of the Capital Improvement calculated in a. above is then divided equally among the Units that benefit from the Capital Improvement;

c. The monthly Rent increase is the amount of the Capital Improvement that may be passed through as determined above, divided by the number of months the Capital Improvement is amortized over for the particular Unit.

4. If a unit is occupied by an agent of the landlord, this unit must be included when determining the average cost per unit. (For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any capital improvement would have to divided by ten (10), not nine (9), in determining the average rent increase). This policy applies to all calculations in the financial statement which involve average per unit figures.

5. Undocumented labor costs provided by the landlord cannot exceed 25% of the cost of materials.

6. Equipment otherwise eligible as a Capital Improvement will not be considered if a "use fee" is charged (i.e., coin-operated washers and dryers).

7. Where a landlord is reimbursed for Capital Improvements (i.e., insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units. For each improvement listed on a petition, the landlord must state whether a reimbursement or tax credit is or will be received for that improvement.

(4) In some cases, it is difficult to separate costs between rental units; common vs. rental areas; commercial vs. residential areas; or housing service costs vs. Capital Improvements. In these cases, the Hearing Officer will make a determination on a case-by-case basis.

(5) Interest on Failure to Reduce Capital Improvement Increase After End of Amortization Period.

1. If an Owner fails to reduce a Capital Improvement Rent increase in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Rent increase after the end of the amortization period, the Tenant may recover interest on the amount overpaid.

2. The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgments pursuant to California Constitution, Article XV and any legislation adopted thereto and shall be calculated at simple interest.

(6) Documentation of improvement costs with proof of payment (i.e., invoices, receipts, and/or canceled checks) must be presented for all costs which are being used for justification of the proposed rent increase.

(7) Amortization of Capital Improvements. The following schedule shall be used to determine the amortization period of the capital improvement:

IMPROVEMENT	YEARS
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

IMPROVEMENT	YEARS
Structural Repair and Retrofitting	
Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Install	10
Seismic Retrofit	25
Electrical Wiring	10
Elevator	20
Fencing and Security	
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

IMPROVEMENT	YEARS
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

IMPROVEMENT	YEARS
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	5
Paving	
Asphalt	10
Cement	10
Decking	10
Plastering	10
Pumps- Sump	10
Railing	10
Roofing	
Shingle/Asphalt	10
Built-Up, Tar, and Gravel	10

IMPROVEMENT	YEARS
Tile and Linoleum	10
Gutters/Downspout	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

(8) The following describe five major hazard conditions classified as Priorities 1 & 2:

I. MECHANICAL

Priority 1

A. Unvented heaters
B. No combustion chamber, fire or vent hazard
C. Water heaters in sleeping rooms, bathrooms
D. Open gas lines, open flame heaters

Priority 2

A. Damaged gas appliance
B. Flame impingement, soot
C. Crimped gas line, rubber gas connections
D. Dampers in gas heater vent pipes, no separation or clearance, through or near combustible surfaces
E. Water heater on garage floor

II. PLUMBING

Priority 1

A. Sewage overflow on surface

Priority 2

A. Open sewers or waste lines
B. Unsanitary, inoperative fixtures; leaking toilets
C. T & P systems, newly or improperly installed

III. ELECTRICAL

Priority 1

A. Bare wiring, open splices, unprotected knife switches, exposed energized electrical parts
B. Evidence of overheated conductors including extension cords
C. Extension cords under rugs

Priority 2

A. Stapled cord wiring; extension cords
B. Open junction boxes, switches, outlets
C. Over-fused circuits
D. Improperly added wiring

IV. STRUCTURAL

Priority 1

A. Absence of handrail, loose, weakly-supported handrail
B. Broken glass, posing potential immediate injury
C. Hazardous stairs
D. Collapsing structural members

Priority 2

A. Garage wall separation
B. Uneven walks, floors, tripping hazards
C. Loose or insufficient supporting structural members
D. Cracked glass, leaky roofs, missing doors (exterior) and windows
E. Exit, egress requirements; fire safety

Note: Floor separation and stairway enclosures in multi-story handled on a case basis.

V. OTHER

Priority 1

A. Wet garbage
B. Open wells or unattended swimming pools
C. Abandoned refrigerators
D. Items considered by field person to be immediate hazards

Priority 2

A. Broken-down fences or retaining walls
B. High, dry weeds, next to combustible surfaces
C. Significant quantity of debris
D. Abandoned vehicles

b. Uninsured Repair Costs: Uninsured Repair Costs are costs for work done by a landlord or tenant to a rental unit or to the common area of the property or structure containing a rental unit which is performed to secure compliance with any state or local law as to repair damage resulting from, fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds

(1) Uninsured Repair Costs are those costs incurred as a result of natural causes and casualty claims; it does not include improvement work or code correction work. Improvements work or code correction work will be considered either capital improvements or housing services, depending on the nature of the improvement.

(2) Increases justified by Uninsured Repair Costs will be calculated as Capital Improvement costs.

c. Increased Housing Service Costs: Increased Housing Service Costs are services provided by the landlord related to the use or occupancy of a rental unit, including, but not limited to, insurance, repairs, replacement maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service and employee services. Any repair cost that is the result of deferred maintenance, as defined in 8.22.070.C.1.a(2)(4)(b), cannot be considered a repair for calculation of Increased Housing Service Costs. Property tax is not considered a housing service cost.

(1) In determining whether there has been an increase in housing service costs, consider the annual operating expenses for the previous two years. (For example: if the rent increase is proposed in 1993, the difference in housing service costs between 1991 and 1992 will be considered.) The average housing service cost percentage (%) increase per month per unit shall be derived by dividing this difference by twelve (12) months, then by the number of units in the building and finally by the average gross operating income per month per unit (which is determined by dividing the gross monthly operating income by the number of units). Once the percentage increase is determined the percentage amount must exceed the allowable rental increase deemed by City Council. The total determined percentage amount is the actual percentage amount allowed for a rental increase.

(2) Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement. However, any repair cost that is not eligible as a capital improvement because it is deferred maintenance pursuant to 8.22.070.C.1.a(2)(4)(b)), may not be considered a repair for purposes of calculating Increased Housing Service Costs.

(3) Any item which has a useful life of one year or less, or which is not considered to be a capital improvement, will be considered a housing service cost (i.e., maintenance and repair).

(4) Individual housing service cost items will not be considered for special consideration. For example, PG&E increased costs will not be considered separately from other housing service costs.

(5) Documentation (i.e., bills, receipts, and/or canceled checks) must be presented for all

costs which are being used for justification of the proposed rent increase.

(6) Landlords are allowed up to 8% of the gross operating income of unspecified expenses (i.e., maintenance, repairs, legal and management fees, etc.) under housing service costs unless verified documentation in the form of receipts and/or canceled checks justify a greater percentage.

(7) If a landlord chooses to use 8% of his/her income for unspecified expenses, it must be applied to both years being considered under housing service cost (for example, 8% cannot be applied to 1980 and not 1981).

(8) An Increased Housing Service Costs increase may not be taken in the same year as a CPI increase because it replaces the current year's CPI increase.

d. "Fair Return"

(1) Owners are entitled to the opportunity to receive a fair return. Ordinarily, a fair return will be measured by maintaining the net operating income (NOI) produced by the property in a base year, subject to CPI related adjustments. Permissible rent increases will be adjusted upon a showing that the NOI in the comparison year is not equal to the base year NOI.

(2) Maintenance of Net Operating Income (MNOI) Calculations

1. The base year shall be the calendar year 2014.
    a. New owners are expected to obtain relevant records from prior owners.
    b. Hearing officers are authorized to use a different base date, however, if an owner can demonstrate that relevant records were unavailable (e.g., in a foreclosure sale) or that use of base year 2014 will otherwise result in injustice.

2. The NOI for a property shall be the gross income less the following: property taxes, housing service costs, and the amortized cost of capital improvements. Gross income shall be the total of gross rents lawfully collectible from a property at 100% occupancy, plus any other consideration received or receivable for, or in connection with, the use or occupancy of rental units and housing services. Gross rents collectible shall include the imputed rental value of owner-occupied units.

3. When an expense amount for a particular year is not a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with the expense level for that item for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.

(3) Owners may present methodologies alternative to MNOI for assessing their fair return if they believe that an MNOI analysis will not adequately address the fair return

considerations in their case. To pursue an alternative methodology, owners must first show that they cannot get a fair return under an MNOI analysis. They must specifically state in the petition the factual and legal bases for the claim, including any calculations.

e. Additional Occupants

As provided by O.M.C. 8.22.020, "Additional occupant," the addition of occupants above the base occupancy level, as defined by the Rent Adjustment Ordinance, allows an owner to petition to increase the rent by an amount up to 5% for each occupant above the base occupancy level. Such petitions must be filed within ninety (90) days of approval, or deemed approval as provided by O.M.C. 8.22.360.A.2.b, of the tenant's written request to add the occupant. No rent increase shall be granted for an additional occupant who is the spouse, registered domestic partner, parent, grandparent, child, adopted child, foster child, or grandchild of an existing tenant, or the legal guardian of an existing tenant's child or grandchild who resides in the unit, or a caretaker/attendant as required for a reasonable accommodation for an occupant with a disability.

Such rent increases must be reversed by the Owner if the additional occupancy level decreases, beginning with the most recently granted increase. Once a tenant provides written notice to the Owner of a decrease in the additional occupancy level and lists all current occupants, the Owner must provide written notice within fifteen (15) days to the tenant of the applicable reduced rent, effective as of the next regular rent due date occurring no sooner than thirty (30) days after the tenant's written notice.

If there are changes in occupancy following a tenant's request to add an occupant and, prior to the Owner's 15-day rent reduction notice deadline and the Owner issuing the notice, the additional occupancy level remains the same (e.g., a departing occupant is replaced), the Owner need not issue the rent reduction notice and the rent increase granted due to the prior additional occupant shall remain in effect, until and unless the additional occupancy level decreases. When the additional occupancy level remains the same following a change in occupancy, the Owner may not be granted a new additional occupant rent increase for any additional occupant that is added. The number of rent increases for additional occupants that currently apply to the rent may not exceed the additional occupancy level.

f. Tenant Not Residing in Unit as Principal Residence [Added May 5, 2021, but does not take effect until 3 months after the Local Emergency regarding the COVID-19 pandemic declared on March 9, 2020, is terminated by the City Council]

An Owner who seeks to impose a rent increase without limitation because the Tenant is not residing in the unit as their principal residence must petition for approval of the unrestricted rent increase based on a determination made pursuant to a hearing that the Tenant does not reside in the unit as their principal residence as of the date the petition is filed. The Hearing Officer shall not consider evidence in support of a petition that is obtained in violation of California Civil Code Section 1954 or the Oakland Tenant Protection Ordinance.

D. Rent Adjustment Based on Decreased Housing Services

1. A decrease in housing services ~~costs~~ (i.e., any items originally included as housing services ~~costs~~ such as water, garbage, etc.) is considered to be an increase in rent and will be calculated as such (i.e., the average cost of the service eliminated will be considered as a percentage of the rent).

2. Where the unit is separately or individually metered, t~~T~~he transfer of utility costs to the tenant by the landlord is considered a decrease in housing services, unless the tenant agreed to the transfer at the inception of the tenancy or is designated in the original rental agreement to be the party responsible for such costs.

3. When more than one rental unit shares any type of utility bill with another ~~rental~~ unit, it is illegal to divide up the bill between units. The best way to remedy the bill is to install individual meters. If this is too expensive, then the property owner should pay the utility bill and build the cost into the initial rent.

8.22.080 RENT INCREASES FOLLOWING VACANCIES.

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

8.22.090 PETITION AND RESPONSE FILING PROCEDURES.

A. Filing Deadlines

1. In order for a document to meet the filing deadlines prescribed by OMC Chapter 8.22.090, documents must be received by the Rent Adjustment Program offices no later than 5 PM on the date the document is due. A postmark is not sufficient to meet the requirements of OMC Chapter 8.22.090. ‘

2. Electronically filed documents must be received by the Rent Adjustment Program no later than 11:59 PM on the date the document is due.

B. Subtenant Petitions

1. Primary tenant responses to subtenant petitions described by Regulation 8.22.025 are not subject to the Owner response requirements in this section.

C. Supporting Documentation

1. Petitions and responses are not considered filed until all filing requirements have been met, including the requirement to submit organized documentation justifying a rent increase or exemption. Petitions and responses that are submitted without necessary documentation may be dismissed.

2. Any additional documentation not submitted together with the petition or response must be filed and served on the other party at least seven (7) days prior to the scheduled hearing.

D. Designation of Representative

Parties have the right to be represented by the person of their choice. A Representative does not have to be a licensed attorney. Representatives must be designated in writing by the party. Notices and correspondence from the Rent Adjustment Program will be sent to representatives as well as parties so long as a written Designation of Representative has been received by the Rent Adjustment Program at least ten (10) days prior to the mailing of the notice or correspondence. Parties are encouraged to designate their representatives at the time of filing their petition or response whenever possible.

8.22.100 MEDIATION OF RENT DISPUTES.

A. Availability of Mediation

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

B. Procedures

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

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

a. Participation in a mediation session is voluntary;

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

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

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

e. Absence Of Parties If either party fails to appear for a properly noticed mediation, the Hearing Officer will refer the matter to the Rent Adjustment Program for administrative review or hearing on the petition, whichever is appropriate.

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

a. Participation in a mediation session is voluntary;

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

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

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

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

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

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

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

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

C. Postponements of Mediations Before Hearing Officers

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

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

a. Verified illness of a party an attorney or other authorized representative of a party or

material witness of the party;

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

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

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

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

8.22.110 HEARING PROCEDURE.

A. Postponements

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

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

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

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

B. Absence Of Parties

1. If a petitioner fails to appear at a properly noticed hearing, the Hearing Officer may, in the Hearing Officer’s discretion, dismiss the case, subject to the petitioner showing good cause for the failure to appear.

a. Any excuse for failing to appear, along with supporting documentation, must be submitted to the Hearing Officer within ten (10) days of service of the hearing decision.

b. The Hearing Officer will determine if the excuse constitutes a prima facie case of good cause based on the standards for failing to appear at a hearing and any Board decisions interpreting good cause for failure to appear.

c. If the Hearing Officer determines that the petitioner's excuse establishes a prima facie case of good cause, the Hearing Officer may schedule a new hearing on good cause and on the petition.

d. If the petitioner submits a timely application under subsection (a), the time to appeal the Hearing Decision is extended until fifteen (15) days after service of the Hearing Officer's decision denying good cause for failure to appear.

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

C. Record Of Proceedings

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

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

D. Translation

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

E. Conduct Of Hearings Before Hearing Officers

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

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

3. Each party shall have these rights:

a. To call and examine witnesses;

b. To introduce exhibits, provided that the party provides the exhibits to the Rent Adjustment Program and serves copies to the other party not less than seven (7) days before the hearing unless the party has good cause for late filing;

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

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

e. To rebut the evidence against him or her;

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

g. A party who fails to file a timely response to a petition is prohibited from calling or examining witnesses or introducing oral or written evidence and is limited to cross-examination, unless the party has good cause for failing to file a response.

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

F. Decisions Of The Hearing Officer

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

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

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

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

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

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

c. If the underpayment or overpayment is 75% of the Rent or less, the Rent will be

adjusted over 9 months;

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

5. For Rent overpayments based on an Owner's failure to reduce Rent after the expiration of the amortization period for a Capital Improvement, the decision shall also include a calculation of any interest that may be due pursuant to Reg. 8.22.070.C.1.a(5).

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

G. Administrative Decisions

For rent increase petitions based on one or more additional occupants, if there is no genuine dispute regarding any material fact, the petition may be decided as a matter of law, and the tenant waives their right to a hearing in writing on a form provided by the Rent Adjustment Program, the Hearing Officer shall issue a decision without a hearing.

8.22.120 APPEALS.

A. Statement of Grounds for Appeal and Supporting Documentation

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

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

3. A party responding to an appeal must file any response to the appeal and any supporting documentation and serve it on the opposing party within thirty (30) days of the service of the appeal along with a proof of service on the opposing party.

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

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

B. Grounds for Appeal

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

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

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

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

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

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

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

7. The decision denies the Owner a fair return.

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

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

C. Postponements

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

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

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

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

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

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

D. Procedures at Appeal Hearings

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

2. Unless the Board or Appeal Panel votes otherwise, or the Appeal Body Chair establishes an alternate time limit prior to the first appeal being heard by the Appeal Body, each party will have six (6) minutes to present argument on or in opposition to the appeal. This time includes opening argument and any response.

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

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

E. Record Of Proceedings

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

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

F. Evidentiary Hearings

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

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

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

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

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

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

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

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

G. Appeal Decisions

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

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

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

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

c. Final decision.

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

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

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

e. Staff shall serve decisions on the parties.

H. Dismissal of Appeal

1. Untimely appeal filing.

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

b. Within ten (10) days following Staff's notice of the dismissal, the party filing the

late appeal may submit a written statement explaining any good cause for the late filing.

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

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

2. Failing to adequately state grounds for appeal.

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

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

I. Failure to Appear

1. Appellant. If an appellant fails to appear at an appeal hearing, the Board or Appeal Panel decide the appeal on the record as submitted, unless the Board or Appeal Panel votes to postpone the appeal to a future meeting.

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

8.22.130 RETALIATORY EVICTIONS.

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

8.22.140 VOLUNTARY MEDIATION OF EVICTIONS.

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

8.22.150 GENERAL REMEDIES.

A. Administrative Citation

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

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

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

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

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

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

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

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

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

3. Procedures for Issuing Administrative Citation.

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

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

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

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

ii. Personal delivery; or

iii. Certified mail with return receipt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

subject to a separate violation.

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

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

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

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

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

5. Hearing on Administrative Citation.

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

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

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

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

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

6. Appeal.

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

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

B. Administrative Assessment of Civil Penalties

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

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

2. Amount of Civil Penalties.

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

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

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

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

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

8.22.160 COMPUTATION OF TIME.

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

8.22.170 SEVERABILITY.

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

8.22.180 NONWAIVERABILITY.

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

8.22.190 APPLICABILITY—EFFECTIVE DATE OF CHAPTER.

A. Effective Date of Regulations

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

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

a. Rent adjustments:

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

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

b. Terminations of Tenancy

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

8.22.500 RENT PROGRAM SERVICE FEE.

A. Payment of Fee After Loss of Exemption

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

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

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

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

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

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

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

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

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

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

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

C. Fee is not a Housing Service Cost

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

D. Fees and Delinquencies Payable by Successor to Owner

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

E. Fee Regulations Repealed if Fee Sunsets

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

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

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

8.22.510 - Annual registration and reporting obligations.

A Rental Property Owner shall be found in substantial compliance with Registration requirements when: (1) the Rental Property Owner has made a good faith effort to comply with the Registration Requirement in OMC 8.22.510; and (2) the Rental Property Owner has cured any defect in compliance in a timely manner after receiving notice of a deficiency from the Rent Adjustment Program. An owner who cures a defect within the time period indicated in the notice of deficiency shall have complied in timely manner.

If certain information is unknown to a Rental Property Owner, and the Rental Property Owner is not able to ascertain exact information through legal means and reasonable efforts (including, but not limited to, inquiring existing tenants and requesting City records, as applicable), the Rental Property Owner may report requested information on information and belief, or note that information provided is approximate, or state that the requested information is unknown. A Rental Property Owner who reports the required information in accordance with the foregoing shall be deemed to have substantially complied with the reporting requirements of OMC 8.22.510.

Accordingly, when a Rental Property Owner reports information required by OMC 8.22.510 under penalty of perjury, such information shall be considered to be reported on information and belief where the owner does not have direct, firsthand knowledge of the requested information, and an owner or manager shall not be penalized for failure to report information accurately or stating it is unknown, so long as they have reported the requested information "to the best of the owner's or manager's knowledge."

The form of certification under penalty of perjury shall be as follows:

> I have used all reasonable diligence in preparing this statement. I have reviewed the statement, and, to the best of my knowledge, the information contained herein is true and complete. To the extent I was unable, despite the use of reasonable diligence, to ascertain the exact information to be reported, I have provided the most accurate approximation possible based on information and belief where possible or, where such approximation is not feasible, I have stated that the information is unknown. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

ATTACHMENT A

Amendments to Just Cause for Eviction Regulations Pursuant to Partial Settlement of *Kim v. City of Oakland* (Alameda County Superior Court Case No. RG03081362)

O.M.C. 8.22.360A *Good Cause Required For Eviction* [Just Cause Ordinance Section 6]

Ord. 8.22.360A.2. *The tenant has continued, after written notice to cease, to substantially violate a material term of the tenancy other than the obligation to surrender possession on proper notice as required by law, provided further that notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord.*

Reg. 8.22.360A.2

A.2. a. A "material term of the tenancy" of the lease includes obligations that are implied by law into a residential tenancy or rental agreement and are an obligation of the tenant. Such obligations that are material terms of the tenancy include, but are not limited to:

i. Nuisance. The obligation not to commit a nuisance. A nuisance, as used in these regulations, is any conduct that constitutes a nuisance under Code of Civil Procedure § 1161(4). Provided that a termination of tenancy for any conduct that might be included under O.M.C. 8.22.360 A4 (causing substantial damage), A5 (disorderly conduct), or A6 (using premises for illegal purpose) and which might also be considered a nuisance, can follow the requirements of those sections in lieu of this section (O.M.C 8.22.360 A2). Nuisance also includes conduct by the tenant occurring on the property that substantially interferes with the use and enjoyment of neighboring properties that rises to the level of a nuisance under Code of Civil Procedure § 1161(4). **[revised reg.]**

ii. Waste. The obligation not to commit waste, as the term waste may be applicable to a residential tenancy under California Code of Civil Procedure § 1161. Waste, as used in these regulations, is any conduct that constitutes waste under Code of Civil Procedure § 1161(4). Provided that a termination of tenancy for any conduct that falls under O.M.C. 8.22.360 A4 (causing substantial damage) and might also be considered waste can follow the requirements of that section in lieu of this section (O.M.C 8.22.360 A2). **[revised reg.]**

b. Repeated violations for nuisance, waste or dangerous conduct. **[new reg.]**

i. Repeating the same nuisance, waste, or dangerous conduct within 12 months. The first time a tenant engages in conduct that constitutes nuisance, waste or is dangerous to persons or property within any 12 month period, the landlord must give the tenant a warning notice to cease and not repeat the conduct. If the tenant repeats the same or substantially similar nuisance, waste or dangerous conduct within 12 months after the landlord served the prior notice to cease, the landlord need not serve a further notice to cease, but may give a notice pursuant to Code of Civil Procedure § 1161 for the repeated conduct.

ii. Repeating different nuisance or waste conduct within 24 months. The first two times a tenant engages in different conduct that constitutes waste or a nuisance that interferes with the right of quiet enjoyment of other tenants at the property, the landlord must give the tenant a warning notice to cease and not repeat the conduct. If within 24 months after the landlord served the first of the two notices to cease for the waste or nuisance conduct, the tenant again engages conduct that constitutes waste or a nuisance that interferes with the right of quiet enjoyment of other tenants at the property, the landlord need not serve a further notice to cease, but may give a notice pursuant to Code of Civil Procedure § 1161 for the third incident of waste or nuisance conduct.

d. By giving a tenant a notice that the tenant has violated a material term of the tenancy, the landlord is not precluded from also noticing a possible eviction for the same conduct under a separate subsection of O.M.C. 8.22.360 so long as the notices are not contradictory or conflicting. **[existing reg. renumbered]**

Ord. 8.22.360A.4. *The tenant has willfully caused substantial damage to the premises beyond normal wear and tear and, after written notice, has refused to cease damaging the premises, or has refused to either make satisfactory correction or to pay the reasonable costs of repairing such damage over a reasonable period of time.*

Reg. 8.22.360A.4. [new reg.]

A notice that the tenant has willfully caused substantial damage must give the tenant at least 45 days after service of the notice to repair the damage or pay the landlord for the reasonable cost of repairing such damage.

Ord. 8.22.360A.5. *The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants at the property.*

Reg. 8.22.360A.5. [new reg.]

Destroying the peace and quiet of other tenants at the property is conduct that substantially interferes with the peace, quiet, and enjoyment of other tenants at the property.

Ord. 8.22.360A.6. *The tenant has used the rental unit or the common areas of the premises for an illegal purpose including the manufacture, sale, or use of illegal drugs.*

Reg. 8.22.360A.6.

a. For purposes of Subparagraph O.M.C. 8.22.360 A.6 a person who illegally sell a controlled substance upon the premises or uses the premises to further that purpose is deemed to have committed the illegal act on the premises, in accordance with California Code of Civil Procedure § 1161(4). **[existing reg.]**

b. Using the premises for an unlawful purpose is any conduct that constitutes using the premises for an unlawful purpose under Code of Civil Procedure 1161(4). **[new reg.]**

Ord. 8.22.360B.4 *Any written notice as described in Subsection 6(A)(2, 3, 4, 5, 7) [8.22.360 A.2, 3, 4, 7] shall be served by the landlord prior to a notice to terminate tenancy and shall include a provision informing tenant that a failure to cure may result in the initiation of eviction proceedings.*

Reg. 8.22.360B.4.

g. A Notice to Cease pursuant to Sections 8.22.360A 2, 4, 5 and 7 must give the tenant at least 7 days after service to cure the violation. If the violation presents an immediate and substantial danger to persons or the property the landlord may give the tenant a notice that the violation must be corrected within 24 hours after service of the notice. **[new reg.]**

h. Appendix A provides forms of notices to cease that are the preferred forms that landlords may use where notices to cease are required by Section 8.22.360. Nothing herein precludes the use of a different notice to cease form, so long as it provides the information required by law. **[new reg.]**

Ord. 8.22.380 ***Non-waiverability.*** *The provisions of this chapter may not be waived, and any term of any lease, contract, or other agreement which purports to waive or limit a tenant's substantive or procedural rights under this ordinance are contrary to public policy, unenforceable, and void.*

Reg. 8.22.380 Non-Waiverability. [new reg.]

Nothing in the Ordinance is intended to prevent or interfere with parties entering into knowing, voluntary agreements for valuable consideration to settle disputes regarding possession of rental units. Any provision in a rental agreement or any amendment thereto which waives or modifies any provision of the Ordinance is contrary to public policy and void.