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# OAKLAND CITY COUNCIL

RESOLUTION No. 715 18 C. M. S.

**AMENDED**

12-12-94

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

RESOLUTION AMENDING RESOLUTION NO. 63429 C.M.S., WHICH APPROVED THE RESIDENTIAL RENT ARBITRATION BOARD RULES AND PROCEDURES, AND APPROVING AMENDMENTS TO CLARIFY DEFINITIONS, TO AMEND THE APPEAL HEARING PROCESS, TO CLARIFY CALCULATION OF CAPITAL IMPROVEMENT COSTS, TO CLARIFY NOTICE PROCEDURES TO TENANTS, AND OTHER TECHNICAL CHANGES

WHEREAS, the City Council, by the Residential Rent Arbitration Ordinance No. 9980 C.M.S., amended by Ordinance No. 10402 C.M.S., adopted November 1, 1983; and other subsequent amendments, hereafter the "Ordinance", requires that the Residential Rent Arbitration Board Rules and Procedures hereafter "Rules and Procedures" be approved by the City Council; and

WHEREAS, the Rules and Procedures have not been amended since 1985 by Resolution No. 63429 C.M.S.; and

WHEREAS, various clarifications are necessary to update sections to clarify the wording and provisions; and

WHEREAS, to assure consistency with the Ordinance; now, therefore, be it

RESOLVED: That the Residential Rent Arbitration Board Rules and Procedures are amended to read as follows:

## RESIDENTIAL RENT ARBITRATION BOARD

### RULES AND PROCEDURES

#### 1.0 GENERAL PURPOSE

- 1.1 The purpose of these Rules and Procedures is to serve as a cataloged list of rules which provide a detailed interpretation of this Ordinance. The Rules and Procedures were originally adopted by the RRAB and approved by the City Council on August 4, 1981. They were revised on August 1, 1985, unless otherwise noted.

2.0 DEFINITIONS

- 2.1 Base Rent: The monthly rental rate before the latest proposed increase.
- 2.2 Current Rent: To keep current means that the tenant is paid up to date on rental payments at the base rental rate.
- 2.3 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 ~~will refer to the owner or the owner's authorized representative~~ the representative, agent, or successor of such owner or lessor.
- 2.4 Manager: A manager is a paid (either salary or a reduced rental rate) representative of the landlord.
- 2.5 Petitioner: A petitioner is the party (landlord or tenant) who first files an action under the ordinance.
- 2.6 Respondent: A respondent is the party (landlord or tenant) who responds to the petitioner.
- 2.7 Priority 1 Condition: The City of Oakland Housing Code Enforcement Inspector determine housing condition(s)/repair(s) as a "Priority 1" condition when housing condition(s)/repair(s) are identified as major hazardous or inhabitable condition(s). A "Priority 1" condition must be abated immediately by correction, removal or disconnection. A Notice to Abate will always be issued.
- 2.8 Priority 2 Condition: The City of Oakland Housing Code Enforcement Inspector determine housing condition(s)/repair(s) as a Priority 2 condition when housing condition(s)/repair(s) are identified as major hazardous or inhabitable condition(s) that may be deferred by an agreement with the Housing Code Enforcement Section.

2.9

The following conditions 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, bath rooms
- 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. Insanitary, 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 injury - immediate
- 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, leaking 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. Applies to three or more stories, apartments and hotels; will be priority 2.

## V. OTHER

### Priority 1

- A. Wet garbage, rodent infestation, fecal materials on surface
- 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

Questions concerning permits, repairs and compliance schedules should be referred to Code Enforcement Office of the City of Oakland - (510) 238-3381

## 3.0 LANDLORD/TENANT COOPERATION

3.1 Beyond its role in formulating policies and procedures, the Board believes it has a civic responsibility to foster a climate of better understanding between landlords and tenants and not to polarize these two important segments. Landlords and tenants are encouraged to communicate openly with each other on the conditions and terms of rent increases allowed under these guidelines.

3.2 Landlords are not required to obtain the tenant's permission before making ~~improvements~~ capital improvements that will result in a rent increase. However, landlords should be aware that these Rules and Procedures establish the principle that only those ~~improvements~~ capital improvements which benefit the tenant(s) may be used as a justification for a proposed rent increase (as defined in Section 10.2 of these Rules and Procedures).

3.3 With the exception of security deposit disputes in Section 9.1, once a decision is rendered by the Hearing Officer and/or the Board, it is the responsibility of the landlord and the tenant(s) to determine the terms under which the decision is carried out. For example, in a situation where a decision is retroactive and results in money being owed to the landlord by the tenant, or vice versa, it is up to the tenant and the landlord to determine the method of payment.

## 4.0 JURISDICTION OF THE BOARD

4.1 The function and responsibility of the Board is to hear appeals from the decisions of the Hearing Officer(s). An appeal may be filed by either party to the action (i.e., tenant or landlord) or a Hearing Officer. ~~The Board, at its discretion, may elect to hear an appeal if it~~

~~determines that the Hearing Officer's decision was inconsistent with prior decisions of the Board or it involves a new policy question or issue.~~

4.2 The Board has the flexibility to interpret the provisions of the Ordinance to the extent necessary to expeditiously perform its arbitration duties.

4.3 The Board may add, delete, or modify the RRAB's Rules and Procedures in order to make them consistent with prior decisions or to describe new policy interpretations. The RRAB Rules and Procedures may be amended by a majority vote of the Board and upon approval of the City Council.

5.0 GENERAL BOARD PROCEDURES

5.1 The Board shall hold a regular meeting on the second and fourth Thursday of each month at 7:00 pm. Unless otherwise designated, the meetings are to be held at ~~City Hall, Room 115, One City Hall Plaza, The Lakeside Garden Center, 666 Bellevue Avenue~~, Oakland, CA 94612. The City Council, City Manager, and the City Clerk shall be informed of the regular schedule of meetings and an agenda of each regular meeting shall be posted at least 72 hours before a regular meeting in a location that is freely accessible to the members of the public.

5.2 A meeting may be adjourned to a time and place to complete the agenda if voted by the Board members present. 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, a rescheduled meeting may be held. Absent Board members, Councilmembers, Hearing Officers, City Manager, and City Clerk are to be notified of change of meeting time and/or place.

5.3 Meetings called by the Mayor or City Manager, or meetings scheduled for a time and place other than regular business are to be designated Special Meetings. Written notice and the agenda of such meetings shall be given to the Board members, Councilmembers, Hearing Officers, City Manager, City Clerk, and to each local newspaper of general circulation, radio or television station that has requested notice in writing at least twenty-four hours before the meeting is scheduled to convene. The agenda of such meeting shall be restricted to those matters stated in the "Call."

5.4 All meetings shall be open to the public in accordance with the ~~Ralph M. Brown Act (California State Law)~~ (Government Code Sections 54950 et. seq.), except when the discussion is to be concerning a recommendation

~~dealing with is in regards to personnel matters, or for any other legal reason according to the Brown Act.~~

5.5 The order of business at all regular meetings shall be as follows:

1. Call to order.
2. Roll call.
3. Approval of minutes.
4. Special call.
5. Old Business.
6. New Business.
7. Consideration of appeals.
8. Appeal hearings.
9. Staff Reports.
10. Communications.
11. Adjournment.

5.6 The meetings shall be conducted in accordance with "Robert's Rules of Order (Revised)."

5.7 The Board year shall commence annually on ~~October 7 and conclude on October 6~~ January 1 and conclude on December 31 of the following year. At the first regular meeting of the Board year, the Board shall elect a Chairperson from one of the five neutral Board members. If the Chairperson is absent, the Board shall elect a Chairperson Pro Tem from one of the remaining four neutral Board members. The presence of four Board members constitutes a quorum, and any decision by the Board shall require a majority of those members present.

5.8 The position of Secretary to the Rent Arbitration Board was established by Ordinance No. 9980 C.M.S., as amended. The duties of the Secretary to the Board are to process all petitions for review submitted by tenants and/or landlords, schedule hearings, and perform general administrative duties.

6.0 RULES FOR PROCESSING PETITIONS AND RESPONSES

6.1 Filing Fees: Each petition shall be accompanied by the required filing fee or a signed fee waiver form of indigence, as specified in the Master Fee Schedule.

6.2 Tenant Petition and Response Requirements: Before accepting a petition from a tenant or accepting a response from a tenant, the following determinations must be made:

- a) The fee has been paid or the fee waiver form has been signed by the tenant.
- b) The proposed rent increase is in excess of that which is allowed under Section 5 of the Ordinance.
- c) The tenant's rent is current at the time a petition or response is filed and throughout the appeal process. However, if a tenant is lawfully withholding rent due to Health and Safety Code violations or a breach of habitability, his/her rent will be considered as current for administrative purposes of the RRAB.

6.3 The dwelling unit under consideration meets the definition of a rental unit as defined in Section 2(i) of the Ordinance.

6.4 ~~Addendum Notice: Landlords are required to provide a written notice (referred to as an "addendum notice") to all tenants notifying them of the existence of the Residential Rent Arbitration Board. If an addendum notice is not provided, a tenant may file a petition for any rent increase in violation of Section 5 of the Ordinance that occurred on or after May 6, 1980, at any time during his/her tenancy. If the Addendum notice is provided, the tenant must file a petition within 30 days after receipt of a notice of a proposed rent increase or 30 days after receipt of the addendum notice.~~

Notice: Landlords are required to provide a written form provided by the City, to all tenants translated in the following languages; English, Spanish, Cantonese, Vietnamese, Cambodian, and Tagalog, notifying them of the existence of the Ordinance as follows:

Notice is hereby given of the existence of the City of Oakland's Residential Rent Arbitration Office, located at

1333 Broadway, 4th Floor, Oakland, CA 94612 - (510) 238-3721.

Rent Ordinance No. 9980 C.M.S., as amended (the "Ordinance") provides that a landlord may increase a continuing tenant's rent at the annual rate set by the Ordinance within any consecutive twelve months without justification. A tenant may be able to dispute any rental increase that is above the annual rate. In addition, if a unit is involuntarily vacated, a landlord may only increase the rent amount for a new tenant by a percentage equal to twice the annual allowable rent increase of the prior rental amount. A landlord may justify a rent increase above the set annual rate upon one or more of the following grounds: Capital Improvement Costs, Uninsured Repair Costs, Increased Housing Service Costs, Debt Service Costs, Rental History/Banking, and other factors as described in the Ordinance.

6.4.1

If the landlord has not given proper notice as prescribed in Section 6.4, the effective date of any rental increase otherwise permitted by the Ordinance will be forfeited for six months.

Landlords must provide documentation and/or proof that the required notice has been given to all tenants to the Residential Rent Arbitration staff.

6.5

Landlord's Rent Increase Application and Response Requirements: Before accepting an application for a rent increase from a landlord, or a response from a landlord, the following determinations must be made:

- a) The fee has been paid or the fee waiver form has been signed by the landlord.
- b) The landlord has paid his/her Oakland Business License tax.
- c) The landlord has notified all tenants in the building under consideration of the existence of the RRAB as required by Section 5(d) of the Ordinance.

6.6

The filing date of a petition from a tenant for rent increase is considered to be the date that the petitioner has submitted the following:

- a) The appropriate form has been completed and signed (tenant petition);



- b) All fees have been paid or waived;
- c) The documentation has been provided:
  - 1. Current rent receipt or statement;
  - 2. Residential Rental Agreement/Lease;
  - 3. All documentation pertaining to the issues have been provided.

6.6.1 Rent increases that are either approved or denied as a result of a tenant's petition will apply only to the units listed in the petition(s).

6.7 The filing date of a landlord's application for rent increase is considered to be the date that the petitioner has submitted the following:

- a) The appropriate form has been completed and signed (landlord petitioner);
- b) All fees have been paid or waived;
- c) All documentation has been provided;
- d) Addendum notices have been given to all tenants; and
- e) Appropriate business license fees have been paid.

6.7.1 Rent increases that are either approved or denied as a result of the landlord's application will apply to all tenants in the building.

6.8 Landlords and tenants may designate others to represent them. If they do so and if the addresses are provided, then the representatives will be sent the same documents as are sent to the people they represent.

6.9 Tenants will be notified of the prehearing conference with the landlord and will be given the choice to attend or not.

6.10 Continuance may be granted to either party for up to an additional 30 days, which would bring the total time to 60 days from filing date to hearing date. If the petitioner is the party requesting the continuance, the case will be closed if the petition requires more than the additional 30 days. If the respondent is the party requesting the continuance, the case will be heard by the

hearing officer at the end of 60 days, regardless if the respondent is prepared.

6.11 Petitioner or respondent fees may be waived by staff if the party requests a fee waiver because of indigence.

6.12 The anniversary date upon which annual rate increases or rental history will be calculated in the following order of preference:

1. The date the tenant moved into the building.
2. For tenants with no rent increase since May 1980, use May 1980.
3. In buildings where all rent increases are made in the same month, and the tenant(s) in question is(are) receiving an increase in less than twelve months from his/her move-in month, then the anniversary date may be either:
  - a) The move-in month; or
  - b) The same month as the other tenants, and the annual increase is prorated.
4. For a tenant with no documented move-in date and a history of rent increases, use the first increase after May 6, 1980.
5. In all other cases, use the date of the proposed increase for the yearly anniversary date.

6.13 The case files are public and may be inspected by anyone during normal business hours. It is recommended that the requesting party contact the Residential Rent Arbitration staff for an appointment or scheduling of time.

7.0 ROLES, GUIDELINES AND JURISDICTION OF THE HEARING OFFICER

7.1 A Hearing Officer shall conduct hearings at which parties can present information and at which testimony and information is secured in order to prepare to render decisions about allowable rent, etc.

7.2 A Hearing Officer must foster an atmosphere in the hearing to resolve the issue(s), and to improve the relationships between the parties. Prior to closing the hearing the Hearing Officer should give both parties (tenant and landlord) equal time for a closing statement.

If there is an objection to admission of any document as evidence or the taking of certain testimony, the rules of evidence and procedure applicable in administrative hearings shall prevail.

The Hearing Officer can question each witness and opposing parties can cross-examine each witness. Cross-examination allows for disclosure of important facts that may not have been stated in direct testimony and allows for placing the facts in a wider perspective.

- 7.3 Parties have the right to appoint any person to represent them. There is no requirement that the representative be a lawyer or other legally trained individual or the party may represent him or herself.

The authorized representative may act on behalf of his/her client in all aspects of the hearing.

- 7.4 No rent adjustment above the limits set forth in the Ordinance shall be granted by the Hearing Officer unless it is supported by a preponderance of evidence based on one or more of the following grounds, pursuant to these Rules and Procedures:

- a) Increased Housing Service Costs
- b) Capital Improvement Costs
- c) Uninsured Repair Costs
- d) Debt Service Costs
- e) Past history of rent increases
- f) Other factors consistent with the spirit of the Ordinance the Hearing Officer and/or the Board deems relevant

- 7.5 The Hearing Officer may interpret the provisions of the Ordinance to the extent necessary to expeditiously perform his/her arbitration duties. However, if said interpretation involves new policy questions, the Hearing Officer must appeal that resulting decision to the Board.

- 7.6 If health and safety Oakland Housing Code violations, that are defined as "Priority One" or "Priority Two" items by the City of Oakland's Housing Compliance Office, exist in a building, the Hearing Officer has the discretion to make any rent increase contingent upon the correction of such violations. The Hearing Officer's decision must be supported by a City Housing Inspector's

Notice to Abate. The rent increase shall become effective upon receipt of the Verification of Abatement. Once the RRAB office has received the Verification of Abatement, a final written decision must be sent to the Landlord (Agent) and Tenant(s).

8.0 CONDUCT OF HEARINGS BY THE HEARING OFFICER

8.1 All hearings will be conducted by the Hearing Officer in public session.

8.2 ~~Petitioners or respondents who do not speak or are not comfortable with English must provide their own translators. Interpreters will be required to take an oath that requires them to translate fully and to the best of their ability.~~

Petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. Interpreters will be required to take an oath that they are fluent in both English and the relevant foreign language, that they will fully and to the best of their ability translate the proceedings.

~~8.3 Either party may be assisted by any person(s) they designate. Such person(s) may be an attorney.~~

8.3 Written notification of the Hearing Officer's decision and a copy of the information on appeal procedures will be sent to both parties within seven (7) calendar working days of the conclusion of the hearing.

8.4 The Hearing Officer should not have communications with one side when the other party is not present. This prohibition against ex parte communications applies at all times before the hearing. If only one side is present at the hearing, the Hearing Officer will continue to hear the case and render a decision. After the hearing decision has been rendered, the Hearing Officer may communicate with the parties.

8.5 Witnesses should be identified for the record and qualified on the facts they will present. The Hearing Officer can question each witness and opposing parties can cross examine.

8.6 Petitioners, respondents, and witnesses should generally be permitted to make their statements without interruption. The Hearing Officer should limit rambling, irrelevant, or repetitive statements.

8.7

Hearing Procedures: Each hearing will be conducted in the following order:

1. The hearing officer will read an oral statement describing the hearing purpose and procedures.
2. Petitioner(s), respondent(s), and witnesses sworn to tell the truth.
  - a. Translators sworn to be fair and accurate.
3. Summary of ~~staff report~~ case summary read.
4. Petitioner may respond to ~~staff report~~ case summary.
5. Respondent may respond to ~~staff report~~ case summary.
6. Petitioner may make opening statement.
7. Respondent may make opening statement.
8. Petitioner presents his/her case.
9. Respondent may cross examine.
10. Respondent presents his/her case.
11. Petitioner may cross examine.
12. Petitioner may make a closing statement.
13. Respondent may make a closing statement.
14. Closing statement by the Hearing Officer.

8.8

If the Hearing Officer determines that a rent increase which is more than was requested is justified, the landlord may not increase the rent beyond the requested amount without a new 30-day notice. This additional amount cannot be retroactive.

9.0

RENT, SECURITY DEPOSITS, AND INCOME

9.1

Security Deposits: In security deposit disputes, the Hearing Officer shall use Section 1950.5 of the California Civil Code as a guide in determining the proper security deposit.

- 9.2 The Hearing Officer shall further use his/her discretion in creating a reasonable payment plan for monies owed if Section 1950.5 has been violated.
- 9.3 All sources of income derived from the subject property shall be considered. Income sources include the total scheduled rents of all units (including manager's apartments), other tenant charges (i.e., parking fees), and any other income derived from the operation of the building (i.e., laundry, cigarette machines, etc.). In the event that there were vacant units within the time period under consideration, the rental fee for the previous tenant shall be used in calculations.
- 9.4 Current rent: To keep rent current means that the tenant is paid up to date on rental payments at the base rental rate. The base rental is the monthly rent before the latest proposed increase.
- 9.5 If the manager lives in one of the units, the gross income includes the manager's unpaid portion of the rent plus the amount the manager pays for rent. The unpaid portion of the rent is listed as the manager's salary when listing operating expenses.
- 9.6 If there is no written agreement between the landlord and the manager which establishes the manager's rent and salary, then calculate the rent for the manager's unit:
1. Add the base rents for all units, excluding the manager's and divide by the total square footage of all the units, excluding the manager's unit.
  2. Multiply the square footage of the manager's unit times the average cost per square foot of the other units.
  3. If the square footage figures are not available, then average the rents of comparable units in this building.
- 9.7 Separate rental fees charged for parking in conjunction with a rental unit shall be governed by the Ordinance in the same manner as other rental increases subject to the Ordinance.

10.0 JUSTIFICATION FOR ADDITIONAL RENT INCREASES

10.1 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.

- 10.1.1 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.
- 10.1.2 Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement.
- 10.1.3 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).
- 10.1.4 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.
- 10.1.5 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.
- 10.1.6 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.

- 10.1.7 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 costs (for example, 8% cannot be applied to 1980 and not 1981).
- 10.1.8 A decrease in housing service costs (i.e., any items originally included as housing service 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). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.
- 10.1.9 The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.
- 10.1.10 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. Splitting the cost of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of P. G. & E. 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 himself/-herself and build the cost into the rent.
- 10.2 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.
- 10.2.1 Credit for capital improvements will only be given for those improvements which have been completed and paid for within the ~~12~~ twenty-four (24) month period prior to the date of the proposed rent increase. However, no more than twelve (12) months of capital improvement costs may be passed on to a tenant in any twelve (12) month period.
- For example: In year one a landlord makes a capital improvement by replacing a roof. In year two the landlord makes another capital improvement by painting the exterior of the building. The landlord would not be able to pass on the roof and exterior painting capital improvement costs during the same year, but would have to pass them on in separate years, subject to the twenty-four (24) month time limitations.



10.2.2 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, the complete painting of the common interior areas, 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. Repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements. If the repairs are considered as "Priority 1 or 2" condition(s) as defined in this resolution, then the repairs may not be considered as capital improvement.
4. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.
5. 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.)

10.2.3. 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 defined as capital improvements will be given a useful life period of five (5) years or sixty (60) months and shall be amortized over that time period. The dollar amount of the rent increase justified by Capital Improvements shall be reduced from the allowable rent in the sixty-first month.
3. A monthly rent increase of 1/60th of the average per unit capital improvement cost is allowable; that is, the landlord may divide the total cost of the capital improvement by 60 and then divide this monthly increase equally among the units which benefited from the improvement (i.e., a roof benefits all units).
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 be 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. If the capital improvements are financed with a loan to make capital improvements which term exceeds five (5) years (sixty [60] months), the following formula for the allowable increase is: monthly loan payment divided by number of units.
8. 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.

10.2.4 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.

- 10.3 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.
- 10.3.1 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. Improvement work or code correction work will be considered either capital improvements or housing services, depending on the nature of the improvement.
- 10.3.2 Increases justified by uninsured repair costs will be calculated as capital improvement costs.
- 10.4 Debt Service Costs: Debt Service Costs are the monthly principal and interest payments on the deed(s) of trust secured by the property.
- 10.4.1 An increase in rent based on debt service costs will only be considered in those cases where the total income is insufficient to cover the combined housing service and debt service costs after a rental increase as specified in Section 5 of the Ordinance. The maximum increase allowed under this formula shall be that increase that results in a rental income equal to the total housing service costs plus the allowable debt service costs.
- 10.4.2 No more than 95% of the eligible debt service can be passed on to tenants. The eligible debt service is the actual principal and interest. ~~or that which is derived from a conventional financing analysis, which ever is the lesser of the two.~~
- ~~10.4.3 If the property contains one (1) to four (4) units, the debt service will be based on the assumption that the property was purchased with a minimum down payment of twenty percent (20%), is amortized over a period of thirty (30) years, and the interest costs do not exceed those reported by the Real Estate Research Council of Northern California for the month in which the debt was incurred.~~
- ~~10.4.4 If the property contains five (5) or more units, the debt service will be based on the assumption that the property was purchased with a minimum down payment of twenty-five~~

~~percent (25%), is amortized over a period of twenty-five (25) years, and the interest costs do not exceed those reported by the Real Estate Research Council of Northern California for the month in which the debt was incurred.~~

~~10.4.4.1 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of sixty (60) months or more, one hundred percent (100%) of the pre-tax negative cash flow may be basis for determining the rent increase.~~

~~10.4.4.2 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than sixty (60) months but more than twelve (12) months, the percentage of pre-tax negative cash flow that may be justified in determining the rent increase shall be determined by a factor of .0167 per month for each month between the time the property was owned by the immediate previous landlord and the proposed rent increase.~~

10.4.3 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than twelve (12) months, no consideration will be given for debt service.

10.4.4 If a property has changed title through probate and has been sold to a new owner, debt service will be allowed. However, if the property has changed title and is inherited by a family member, there will be no consideration for debt service unless due to hardship.

10.4.5 If the rents have been raised prior to a new landlord taking title, or if rents have been raised in excess of the percentage allowed by the Ordinance in previous 12-month periods without tenants having been notified pursuant to Section 5(d) of the Ordinance, the debt service will be calculated as follows:

1. Base rents will be considered as the rents in effect prior to the first rent increase in the immediate previous 12-month period.
2. The new landlord's housing service costs and debt service will be considered. The negative cash flow will be calculated by deducting the sum of the housing service costs plus 95% of the debt service from the adjusted operating income amount.
3. The percentage of rent increase justified will then be applied to the base rents (i.e., the rent prior to the first rent increase in the 12-month

period, as allowed by Section 5 of the Ordinance).

10.4.6 ~~Refinancing and second mortgages, will not be considered as a basis for a rent increase under the debt service category. Such refinancing will only be considered when the equity derived from the refinancing except those second mortgages obtained in connection with the acquisition of the property, will not be considered as a basis for a rent increase under the debt service category. Notwithstanding this provision, such refinancing or second mortgage will be considered as a basis for a rent increase when the equity derived from such refinancing or second mortgage is invested in the building under consideration in a manner which directly benefits the tenant (i.e., capital improvements or housing services such as maintenance and repairs) or if the refinancing was a requirement of the original purchase.~~

10.4.7 As in housing service costs, a new landlord is allowed up to 8% of the gross operating income for unspecified expenses.

#### 10.5 Rental History/"Banking"

10.5.1 ~~If a landlord chooses not to increase rents in excess of the amounts allowed by the Ordinance in the maximum amount permitted by the Ordinance since May 6, 1980, the remaining allowable percentage increase may be carried over to succeeding twelve (12) month periods. However, any such carry over increase may not exceed three times the then current allowable annual rate in any given twelve month period and in no event may any such increase be carried forward for more than ten years. As used in this section, the term "carry over increase" shall be defined as any percentage increase in rent permitted under the Ordinance for prior years not yet passed on to the tenant and shall not include any percentage increase in rent permitted for the current year.~~

~~10.5.2 As banking applies from May 6, 1980, forward a rental history may be used to reflect rental activity or the lack thereof prior to May 6, 1980.~~

#### 11.0 APPEAL PROCEDURES

11.1 The Board will consider each appeal. ~~in a two-phase process:~~

~~11.1.1 A deliberation session in which the Board will determine whether the appeal raises a new policy question and/or the decision of the Hearing Officer is consistent with previous rulings of the Board.~~

**SECTION 14. APPLICABILITY/EFFECTIVE DATE OF ORDINANCE.**

This ordinance shall take effect according to the Oakland City Charter, Section 216. Unless, otherwise specifically provided for herein, this ordinance applies to petitions filed on or after the effective date of this ordinance. This ordinance is not retroactive and does not apply to petitions filed prior to the effective date of this ordinance.

AND BE IT FURTHER ORDAINED THAT; This ordinance shall be reviewed by the Residential Rent Arbitration Board twelve (12) months from the date this ordinance is finally approved by the City Council.

IN COUNCIL, OAKLAND, CALIFORNIA, **DEC 06 1994**, 19 \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES— BAYTON, DE LA FUENTE, JORDAN, MILEY, MOORE, OGAWA, SPEES, WOODS-JONES, and PRESIDENT HARRIS, **CHANG - 7**

NOES— **Moore/Spees - 2**

ABSENT— ☐

ABSTENTION— ☐

ATTEST.



CEDA FLOYD

City Clerk and Clerk of the Council  
of the City of Oakland, California

COW

**OAKLAND CITY COUNCIL**  
**RESOLUTION NO. 71518 C. M. S.**

**AMENDED**  
12-12-94

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

RESOLUTION AMENDING RESOLUTION NO. 63429 C.M.S., WHICH APPROVED THE RESIDENTIAL RENT ARBITRATION BOARD RULES AND PROCEDURES, AND APPROVING AMENDMENTS TO CLARIFY DEFINITIONS, TO AMEND THE APPEAL HEARING PROCESS, TO CLARIFY CALCULATION OF CAPITAL IMPROVEMENT COSTS, TO CLARIFY NOTICE PROCEDURES TO TENANTS, AND OTHER TECHNICAL CHANGES

WHEREAS, the City Council, by the Residential Rent Arbitration Ordinance No. 9980 C.M.S., amended by Ordinance No. 10402 C.M.S., adopted November 1, 1983; and other subsequent amendments, hereafter the "Ordinance", requires that the Residential Rent Arbitration Board Rules and Procedures hereafter "Rules and Procedures" be approved by the City Council; and

WHEREAS, the Rules and Procedures have not been amended since 1985 by Resolution No. 63429 C.M.S.; and

WHEREAS, various clarifications are necessary to update sections to clarify the wording and provisions; and

WHEREAS, to assure consistency with the Ordinance; now, therefore, be it

RESOLVED: That the Residential Rent Arbitration Board Rules and Procedures are amended to read as follows:

RESIDENTIAL RENT ARBITRATION BOARD

RULES AND PROCEDURES

1.0 GENERAL PURPOSE

- 1.1 The purpose of these Rules and Procedures is to serve as a cataloged list of rules which provide a detailed interpretation of this Ordinance. The Rules and Procedures were originally adopted by the RRAB and approved by the City Council on August 4, 1981. They were revised on August 1, 1985, unless otherwise noted.

2.0 DEFINITIONS

- 2.1 Base Rent: The monthly rental rate before the latest proposed increase.
- 2.2 Current Rent: To keep current means that the tenant is paid up to date on rental payments at the base rental rate.
- 2.3 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.
- 2.4 Manager: A manager is a paid (either salary or a reduced rental rate) representative of the landlord.
- 2.5 Petitioner: A petitioner is the party (landlord or tenant) who first files an action under the ordinance.
- 2.6 Respondent: A respondent is the party (landlord or tenant) who responds to the petitioner.
- 2.7 Priority 1 Condition: The City of Oakland Housing Code Enforcement Inspector determine housing condition(s)/repair(s) as a "Priority 1" condition when housing condition(s)/repair(s) are identified as major hazardous or inhabitable condition(s). A "Priority 1" condition must be abated immediately by correction, removal or disconnection. A Notice to Abate will always be issued.
- 2.8 Priority 2 Condition: The City of Oakland Housing Code Enforcement Inspector determine housing condition(s)/repair(s) as a Priority 2 condition when housing condition(s)/repair(s) are identified as major hazardous or inhabitable condition(s) that may be deferred by an agreement with the Housing Code Enforcement Section.



The following conditions 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, bath rooms
- D. Open gas lines, open flame heaters

##### Priority 2

- A. Damaged gas appliances
- B. Flame impingement, soot
- C. Crimped gas line, rubber gas connections
- D. Damper 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. Inoperative, 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 overloaded conductors, including extension cords
- C. Extension cords under rugs

##### Priority 2

- A. Strapped, 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 injury - immediate
- C. Hazardous stairs
- D. Collapsing structural members

##### Priority 2

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

NOTE: Floor separation and stairway enclosures in multi-story buildings on a case basis. Applies to three or more stories, apartments and hotels; will be priority 2.

V. OTHER

Priority 1

- A. Wet garbage, rodent infestation, fecal materials on surface
- 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

Questions concerning permits, repairs and compliance schedules should be referred to Code Enforcement Office of the City of Oakland - (510) 238-3381

3.0 LANDLORD/TENANT COOPERATION

3.1 Beyond its role in formulating policies and procedures, the Board believes it has a civic responsibility to foster a climate of better understanding between landlords and tenants and not to polarize these two important segments. Landlords and tenants are encouraged to communicate openly with each other on the conditions and terms of rent increases allowed under these guidelines.

3.2 Landlords are not required to obtain the tenant's permission before making capital improvements that will result in a rent increase. However, landlords should be aware that these Rules and Procedures establish the principle that only those capital improvements which benefit the tenant(s) may be used as a justification for a proposed rent increase (as defined in Section 10.2 of these Rules and Procedures).

3.3 With the exception of security deposit disputes in Section 9.1, once a decision is rendered by the Hearing Officer and/or the Board, it is the responsibility of the landlord and the tenant(s) to determine the terms under which the decision is carried out. For example, in a situation where a decision is retroactive and results in money being owed to the landlord by the tenant, or vice versa, it is up to the tenant and the landlord to determine the method of payment.

4.0 JURISDICTION OF THE BOARD

4.1 The function and responsibility of the Board is to hear appeals from the decisions of the Hearing Officer(s). An appeal may be filed by either party to the action (i.e., tenant or landlord) or a Hearing Officer.

- 4.2 The Board has the flexibility to interpret the provisions of the Ordinance to the extent necessary to expeditiously perform its arbitration duties.
- 4.3 The Board may add, delete, or modify the RRAB's Rules and Procedures in order to make them consistent with prior decisions or to describe new policy interpretations. The RRAB Rules and Procedures may be amended by a majority vote of the Board and upon approval of the City Council.
- 5.0 GENERAL BOARD PROCEDURES
- 5.1 The Board shall hold a regular meeting on the second and fourth Thursday of each month at 7:00 pm. Unless otherwise designated, the meetings are to be held at The Lakeside Garden Center, 666 Bellevue Avenue, Oakland, CA 94612. The City Council, City Manager, and the City Clerk shall be informed of the regular schedule of meetings and an agenda of each regular meeting shall be posted at least 72 hours before a regular meeting in a location that is freely accessible to the members of the public.
- 5.2 A meeting may be adjourned to a time and place to complete the agenda if voted by the Board members present. 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, a rescheduled meeting may be held. Absent Board members, Councilmembers, Hearing Officers, City Manager, and City Clerk are to be notified of change of meeting time and/or place.
- 5.3 Meetings called by the Mayor or City Manager, or meetings scheduled for a time and place other than regular business are to be designated Special Meetings. Written notice and the agenda of such meetings shall be given to the Board members, Councilmembers, Hearing Officers, City Manager, City Clerk, and to each local newspaper of general circulation, radio or television station that has requested notice in writing at least twenty-four hours before the meeting is scheduled to convene. The agenda of such meeting shall be restricted to those matters stated in the "Call."
- 5.4 All meetings shall be open to the public in accordance with the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) , except when the discussion is in regards to personnel matters, or for any other legal reason according to the Brown Act.

- 5.5 The order of business at all regular meetings shall be as follows:
1. Call to order.
  2. Roll call.
  3. Approval of minutes.
  4. Special call.
  5. Old Business.
  6. New Business.
  7. Consideration of appeals.
  8. Appeal hearings.
  9. Staff Reports.
  10. Communications.
  11. Adjournment.
- 5.6 The meetings shall be conducted in accordance with "Robert's Rules of Order (Revised)."
- 5.7 The Board year shall commence annually on January 1 and conclude on December 31 of the following year. At the first regular meeting of the Board year, the Board shall elect a Chairperson from one of the five neutral Board members. If the Chairperson is absent, the Board shall elect a Chairperson Pro Tem from one of the remaining four neutral Board members. The presence of four Board members constitutes a quorum, and any decision by the Board shall require a majority of those members present.
- 5.8 The position of Secretary to the Rent Arbitration Board was established by Ordinance No. 9980 C.M.S., as amended. The duties of the Secretary to the Board are to process all petitions for review submitted by tenants and/or landlords, schedule hearings, and perform general administrative duties.

6.0

RULES FOR PROCESSING PETITIONS AND RESPONSES

6.1

Filing Fees: Each petition shall be accompanied by the required filing fee or a signed fee waiver form of indigence, as specified in the Master Fee Schedule.

6.2

Tenant Petition and Response Requirements: Before accepting a petition from a tenant or accepting a response from a tenant, the following determinations must be made:

- a) The fee has been paid or the fee waiver form has been signed by the tenant.
- b) The proposed rent increase is in excess of that which is allowed under Section 5 of the Ordinance.
- c) The tenant's rent is current at the time a petition or response is filed and throughout the appeal process. However, if a tenant is lawfully withholding rent due to Health and Safety Code violations or a breach of habitability, his/her rent will be considered as current for administrative purposes of the RRAB.

6.3

The dwelling unit under consideration meets the definition of a rental unit as defined in Section 2(i) of the Ordinance.

6.4

Notice: Landlords are required to provide a written form provided by the City, to all tenants translated in the following languages; English, Spanish, Cantonese, Vietnamese, Cambodian, and Tagalog, notifying them of the existence of the Ordinance as follows:

Notice is hereby given of the existence of the City of Oakland's Residential Rent Arbitration Office, located at 1333 Broadway, 4th Floor, Oakland, CA 94612 - (510) 238-3721.

Rent Ordinance No. 9980 C.M.S., as amended (the "Ordinance") provides that a landlord may increase a continuing tenant's rent at the annual rate set by the Ordinance within any consecutive twelve months without justification. A tenant may be able to dispute any rental increase that is above the annual rate. In addition, if a unit is involuntarily vacated, a landlord may only increase the rent amount for a new tenant by a percentage equal to twice the annual allowable rent increase of the

prior rental amount. A landlord may justify a rent increase above the set annual rate upon one or more of the following grounds: Capital Improvement Costs, Uninsured Repair Costs, Increased Housing Service Costs, Debt Service Costs, Rental History/Banking, and other factors as described in the Ordinance.

- 6.4.1 If the landlord has not given proper notice as prescribed in Section 6.4, the effective date of any rental increase otherwise permitted by the Ordinance will be forfeited for six months.

Landlords must provide documentation and/or proof that the required notice has been given to all tenants to the Residential Rent Arbitration staff.

- 6.5 Landlord's Rent Increase Application and Response Requirements: Before accepting an application for a rent increase from a landlord, or a response from a landlord, the following determinations must be made:

- a) The fee has been paid or the fee waiver form has been signed by the landlord.
- b) The landlord has paid his/her Oakland Business License tax.
- c) The landlord has notified all tenants in the building under consideration of the existence of the RRAB as required by Section 5(d) of the Ordinance.

- 6.6 The filing date of a petition from a tenant for rent increase is considered to be the date that the petitioner has submitted the following:

- a) The appropriate form has been completed and signed (tenant petition);
- b) All fees have been paid or waived;
- c) The documentation has been provided:
  - 1. Current rent receipt or statement;
  - 2. Residential Rental Agreement/Lease;
  - 3. All documentation pertaining to the issues have been provided.

- 6.6.1 Rent increases that are either approved or denied as a result of a tenant's petition will apply only to the units listed in the petition(s).
- 6.7 The filing date of a landlord's application for rent increase is considered to be the date that the petitioner has submitted the following:
- a) The appropriate form has been completed and signed (landlord petitioner);
  - b) All fees have been paid or waived;
  - c) All documentation has been provided;
  - d) Addendum notices have been given to all tenants; and
  - e) Appropriate business license fees have been paid.
- 6.7.1 Rent increases that are either approved or denied as a result of the landlord's application will apply to all tenants in the building.
- 6.8 Landlords and tenants may designate others to represent them. If they do so and if the addresses are provided, then the representatives will be sent the same documents as are sent to the people they represent.
- 6.9 Tenants will be notified of the prehearing conference with the landlord and will be given the choice to attend or not.
- 6.10 Continuance may be granted to either party for up to an additional 30 days, which would bring the total time to 60 days from filing date to hearing date. If the petitioner is the party requesting the continuance, the case will be closed if the petition requires more than the additional 30 days. If the respondent is the party requesting the continuance, the case will be heard by the hearing officer at the end of 60 days, regardless if the respondent is prepared.
- 6.11 Petitioner or respondent fees may be waived by staff if the party requests a fee waiver because of indigence.
- 6.12 The anniversary date upon which annual rate increases or rental history will be calculated in the following order of preference:
1. The date the tenant moved into the building.

2. For tenants with no rent increase since May 1980, use May 1980.
3. In buildings where all rent increases are made in the same month, and the tenant(s) in question is(are) receiving an increase in less than twelve months from his/her move-in month, then the anniversary date may be either:
  - a) The move-in month; or
  - b) The same month as the other tenants, and the annual increase is prorated.
4. For a tenant with no documented move-in date and a history of rent increases, use the first increase after May 6, 1980.
5. In all other cases, use the date of the proposed increase for the yearly anniversary date.

6.13 The case files are public and may be inspected by anyone during normal business hours. It is recommended that the requesting party contact the Residential Rent Arbitration staff for an appointment or scheduling of time.

7.0 ROLES, GUIDELINES AND JURISDICTION OF THE HEARING OFFICER

7.1 A Hearing Officer shall conduct hearings at which parties can present information and at which testimony and information is secured in order to prepare to render decisions about allowable rent, etc.

7.2 A Hearing Officer must foster an atmosphere in the hearing to resolve the issue(s), and to improve the relationships between the parties. Prior to closing the hearing the Hearing Officer should give both parties (tenant and landlord) equal time for a closing statement.

If there is an objection to admission of any document as evidence or the taking of certain testimony, the rules of evidence and procedure applicable in administrative hearings shall prevail.

The Hearing Officer can question each witness and opposing parties can cross-examine each witness. Cross-examination allows for disclosure of important facts that may not have been stated in direct testimony and allows for placing the facts in a wider perspective.



7.3 Parties have the right to appoint any person to represent them. There is no requirement that the representative be a lawyer or other legally trained individual or the party may represent him or herself.

The authorized representative may act on behalf of his/her client in all aspects of the hearing.

7.4 No rent adjustment above the limits set forth in the Ordinance shall be granted by the Hearing Officer unless it is supported by a preponderance of evidence based on one or more of the following grounds, pursuant to these Rules and Procedures:

- a) Increased Housing Service Costs
- b) Capital Improvement Costs
- c) Uninsured Repair Costs
- d) Debt Service Costs
- e) Past history of rent increases
- f) Other factors consistent with the spirit of the Ordinance the Hearing Officer and/or the Board deems relevant

7.5 The Hearing Officer may interpret the provisions of the Ordinance to the extent necessary to expeditiously perform his/her arbitration duties. However, if said interpretation involves new policy questions, the Hearing Officer must appeal that resulting decision to the Board.

7.6 If health and safety Oakland Housing Code violations, that are defined as "Priority One" or "Priority Two" items by the City of Oakland's Housing Compliance Office, exist in a building, the Hearing Officer has the discretion to make any rent increase contingent upon the correction of such violations. The Hearing Officer's decision must be supported by a City Housing Inspector's Notice to Abate. The rent increase shall become effective upon receipt of the Verification of Abatement. Once the RRAB office has received the Verification of Abatement, a final written decision must be sent to the Landlord (Agent) and Tenant(s).

#### 8.0 CONDUCT OF HEARINGS BY THE HEARING OFFICER

8.1 All hearings will be conducted by the Hearing Officer in public session.

- 8.2 Petitioners and respondents who do not speak or are not comfortable with English must provide their own translators. Interpreters will be required to take an oath that they are fluent in both English and the relevant foreign language, that they will fully and to the best of their ability translate the proceedings.
- 8.3 Written notification of the Hearing Officer's decision and a copy of the information on appeal procedures will be sent to both parties within seven (7) working days of the conclusion of the hearing.
- 8.4 The Hearing Officer should not have communications with one side when the other party is not present. This prohibition against ex parte communications applies at all times before the hearing. If only one side is present at the hearing, the Hearing Officer will continue to hear the case and render a decision. After the hearing decision has been rendered, the Hearing Officer may communicate with the parties.
- 8.5 Witnesses should be identified for the record and qualified on the facts they will present. The Hearing Officer can question each witness and opposing parties can cross examine.
- 8.6 Petitioners, respondents, and witnesses should generally be permitted to make their statements without interruption. The Hearing Officer should limit rambling, irrelevant, or repetitive statements.
- 8.7 Hearing Procedures: Each hearing will be conducted in the following order:
1. The hearing officer will read an oral statement describing the hearing purpose and procedures.
  2. Petitioner(s), respondent(s), and witnesses sworn to tell the truth.
    - a. Translators sworn to be fair and accurate.
  3. Summary of case summary read.
  4. Petitioner may respond to case summary.
  5. Respondent may respond to case summary.
  6. Petitioner may make opening statement.
  7. Respondent may make opening statement.

8. Petitioner presents his/her case.
9. Respondent may cross examine.
10. Respondent presents his/her case.
- ~~11. Petitioner may cross examine.~~
12. Petitioner may make a closing statement.
13. Respondent may make a closing statement.
14. Closing statement by the Hearing Officer.

8.8 If the Hearing Officer determines that a rent increase which is more than was requested is justified, the landlord may not increase the rent beyond the requested amount without a new 30-day notice. This additional amount cannot be retroactive.

9.0 RENT, SECURITY DEPOSITS, AND INCOME

9.1 Security Deposits: In security deposit disputes, the Hearing Officer shall use Section 1950.5 of the California Civil Code as a guide in determining the proper security deposit.

9.2 The Hearing Officer shall further use his/her discretion in creating a reasonable payment plan for monies owed if Section 1950.5 has been violated.

9.3 All sources of income derived from the subject property shall be considered. Income sources include the total scheduled rents of all units (including manager's apartments), other tenant charges (i.e., parking fees), and any other income derived from the operation of the building (i.e., laundry, cigarette machines, etc.). In the event that there were vacant units within the time period under consideration, the rental fee for the previous tenant shall be used in calculations.

9.4 Current rent: To keep rent current means that the tenant is paid up to date on rental payments at the base rental rate. The base rental is the monthly rent before the latest proposed increase.

9.5 If the manager lives in one of the units, the gross income includes the manager's unpaid portion of the rent plus the amount the manager pays for rent. The unpaid portion of the rent is listed as the manager's salary when listing operating expenses.

9.6

If there is no written agreement between the landlord and the manager which establishes the manager's rent and salary, then calculate the rent for the manager's unit:

1. Add the base rents for all units, excluding the manager's and divide by the total square footage of all the units, excluding the manager's unit.
2. Multiply the square footage of the manager's unit times the average cost per square foot of the other units.
3. If the square footage figures are not available, then average the rents of comparable units in this building.

9.7

Separate rental fees charged for parking in conjunction with a rental unit shall be governed by the Ordinance in the same manner as other rental increases subject to the Ordinance.

10.0

#### JUSTIFICATION FOR ADDITIONAL RENT INCREASES

10.1

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.

10.1.1

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.

- 10.1.2 Any major or unusual housing service costs (i.e., a major repair which does not occur every year) shall be considered a capital improvement.
- 10.1.3 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).
- 10.1.4 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.
- 10.1.5 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.
- 10.1.6 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.
- 10.1.7 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 costs (for example, 8% cannot be applied to 1980 and not 1981).
- 10.1.8 A decrease in housing service costs (i.e., any items originally included as housing service 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). If a landlord adds service (i.e., cable TV, etc.) without increasing rent or covers costs previously paid by a tenant, this is considered to be a rent decrease and will be calculated as such.
- 10.1.9 The transfer of utility costs to the tenant by the landlord is not considered as part of the rent increase unless the landlord is designated in the original rental agreement to be the party responsible for such costs.
- 10.1.10 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. Splitting the cost of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of P. G. & E. 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 himself/herself and build the cost into the rent.

10.2 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.

10.2.1 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 of the proposed rent increase. However, no more than twelve (12) months of capital improvement costs may be passed on to a tenant in any twelve (12) month period.

For example: In year one a landlord makes a capital improvement by replacing a roof. In year two the landlord makes another capital improvement by painting the exterior of the building. The landlord would not be able to pass on the roof and exterior painting capital improvement costs during the same year, but would have to pass them on in separate years, subject to the twenty-four (24) month time limitations.

10.2.2 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, the complete painting of the common interior areas, 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. Repairs completed in order to comply with the Oakland Housing Code may be considered capital improvements. If the repairs are considered as "Priority 1 or 2" condition(s) as defined in this resolution, then the repairs may not be considered as capital improvement.
4. Use of a landlord's personal appliances, furniture, etc., or those items inherited or borrowed are not eligible for consideration as capital improvements.
5. 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.)

10.2.3. 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 defined as capital improvements will be given a useful life period of five (5) years or sixty (60) months and shall be amortized over that time period. The dollar amount of the rent increase justified by Capital Improvements shall be reduced from the allowable rent in the sixty-first month.
3. A monthly rent increase of 1/60th of the average per unit capital improvement cost is allowable; that is, the landlord may divide the total cost of the capital improvement by 60 and then divide this monthly increase equally among the units which benefited from the improvement (i.e., a roof benefits all units).
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 be 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. If the capital improvements are financed with a loan to make capital improvements which term exceeds five (5) years (sixty [60] months), the following formula for the allowable increase is: monthly loan payment divided by number of units.
8. 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.

10.2.4 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.

10.3 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.

10.3.1 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. Improvement work or code correction work will be considered either capital improvements or housing services, depending on the nature of the improvement.

10.3.2 Increases justified by uninsured repair costs will be calculated as capital improvement costs.

10.4 Debt Service Costs: Debt Service Costs are the monthly principal and interest payments on the deed(s) of trust secured by the property.



- 10.4.1 An increase in rent based on debt service costs will be considered in those cases where the total income is insufficient to cover the combined housing service and debt service costs after a rental increase as specified in Section 5 of the Ordinance. The maximum increase allowed under this formula shall be that increase that results in a rental income equal to the total housing service costs plus the allowable debt service costs.
- 10.4.2 No more than 95% of the eligible debt service can be passed on to tenants. The eligible debt service is the actual principal and interest.
- 10.4.3 If the property has been owned by the current landlord and the immediate previous landlord for a combined period of less than twelve (12) months, no consideration will be given for debt service.
- 10.4.4 If a property has changed title through probate and has been sold to a new owner, debt service will be allowed. However, if the property has changed title and is inherited by a family member, there will be no consideration for debt service unless due to hardship.
- 10.4.5 If the rents have been raised prior to a new landlord taking title, or if rents have been raised in excess of the percentage allowed by the Ordinance in previous 12-month periods without tenants having been notified pursuant to Section 5(d) of the Ordinance, the debt service will be calculated as follows:
1. Base rents will be considered as the rents in effect prior to the first rent increase in the immediate previous 12-month period.
  2. The new landlord's housing service costs and debt service will be considered. The negative cash flow will be calculated by deducting the sum of the housing service costs plus 95% of the debt service from the adjusted operating income amount.
  3. The percentage of rent increase justified will then be applied to the base rents (i.e., the rent prior to the first rent increase in the 12-month period, as allowed by Section 5 of the Ordinance).
- 10.4.6 Refinancing and second mortgages, except those second mortgages obtained in connection with the acquisition of the property, will not be considered as a basis for a rent increase under the debt service category. Notwithstanding

this provision, such refinancing or second mortgage will be considered as a basis for a rent increase when the equity derived from such refinancing or second mortgage is invested in the building under consideration in a manner which directly benefits the tenant (i.e., capital improvements or housing services such as maintenance and repairs) or if the refinancing was a requirement of the original purchase.

10.4.7 As in housing service costs, a new landlord is allowed up to 8% of the gross operating income for unspecified expenses.

10.5 Rental History/"Banking"

10.5.1 If a landlord chooses not to increase rents maximum amount permitted by the Ordinance since May 6, 1980, the remaining allowable percentage increase may be carried over to succeeding twelve (12) month periods. However, any such carry over increase may not exceed three times the then current allowable annual rate in any given twelve month period and in no event may any such increase be carried forward for more than ten years. As used in this section, the term "carry over increase" shall be defined as any percentage increase in rent permitted under the Ordinance for prior years not yet passed on to the tenant and shall not include any percentage increase in rent permitted for the current year.

11.0 APPEAL PROCEDURES

11.1 The Board will consider each appeal.

After conducting an appeal hearing and considering all of the relevant evidence, the Board shall make a decision whether or not to confirm the decision of the Hearing Officer. The Board shall make written findings and issue a written decision.

11.2 In the event of a tie vote by the Board, the Hearing Officer's decision shall be upheld.

12.0 RETALIATORY EVICTIONS

12.1 If a tenant states that he/she was evicted in retaliation for any actions the tenant took regarding the Ordinance, then the tenant will be referred to Section 10 of the Ordinance. While no legal advice will be given to the tenant, he/she may be given information about legal service agencies.

AND IT BE FURTHER RESOLVED THAT; This resolution shall be reviewed by the Residential Rent Arbitration Board twelve (12) months from the date this resolution is finally approved by the City Council.

I certify that the foregoing is a full, true and correct copy of a Resolution passed by the City Council of the City of Oakland, California.

**DEC 06 1994**

on

CEDA FLOYD

City Clerk and Clerk of the Council

Per

Onetha Middleton

Deputy