

## RENT ADJUSTMENT BOARD REGULATIONS

### APPENDIX A

EXCERPTS FROM OAKLAND CITY COUNCIL RESOLUTION NO.  
71518 (SUPERSEDED)

RESIDENTIAL RENT ARBITRATION BOARD RULES AND  
REGULATIONS SECTIONS 2.0 AND 10.0 (all other section omitted,  
pages 1, 5-13, 21 omitted)

#### 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 Inspectors determine housing condition(s)/repair(s) as a "Priority 1" condition when housing condition (s)/repair(s) are identified as a 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 Inspectors determine housing condition(s)/repair(s) as a Priority 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, 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 injury immediate
- C Hazardous stairs
- D Collapsing structural members

note: floor separation and stairway enclosures in multi-story handled on a case basis. Applies to three or more stories, apartments and hotels; will priority

##### 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

#### IV. 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

Questions concerning permits, repairs and compliance schedules should be referred to code enforcement office of the city of Oakland -- (510) 238-3381.

## 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 cost (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 costs of utilities among tenants who live in separate units is prohibited by the Public Utilities Commission Code and Rule 18 of PG&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 appreciable 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, 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. 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  $1/60^{\text{th}}$  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. Improvements 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.
- 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 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 Rent History/"Banking"

10.5.1 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.

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

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