

RENTAL HOUSING COMMITTEE  
RESOLUTION NO. RHC - \_\_  
SERIES 2020

A RESOLUTION OF THE RENTAL HOUSING COMMITTEE OF MOUNTAIN VIEW  
ADOPTING AMENDMENTS TO REGULATIONS  
CHAPTER 6: UPWARD ADJUSTMENT REGULATIONS

WHEREAS, CSFRA sections 1707(d) and 1709(d) authorize the Rental Housing Committee to establish rules and regulations for administration and enforcement of the CSFRA; and

WHEREAS, the Rental Housing Committee has held a publicly noticed meeting and solicited input on amendments to Chapter 6 of the Regulations to allow for upward adjustments for specified capital improvements to allow landlords to maintain a fair rate of return;

NOW, THEREFORE, BE IT RESOLVED by the Rental Housing Committee that the amendments to the Chapter 6 Upward Adjustment Regulations, as set forth in Exhibit A, is hereby adopted.

-----

Community Stabilization and Fair Rent Act

CHAPTER 6  
UPWARD ADJUSTMENT REGULATIONS

Table of Contents

	<u>Page</u>
A. Statement of Purpose .....	1
B. Fair Return Standard .....	1
C. Definitions.....	1
D. Calculation of Gross Income .....	4
E. Calculation of Operating Expenses.....	4
F. Capital Improvements Amortization.....	7
G. Base Year Rebuttable Presumption .....	7
H. Estimation of Base Year Operating Expenses in the Absence of Base Year Operating Expense Records .....	12
I. Retention of Base Year Records .....	12
J. Allocation of Upward Adjustment of Rents .....	13
K. Specified Capital Improvement Temporary Upward Adjustment Petition Process .....	13
L. Tenant Hardship.....	17
M. PARTIAL INVALIDITY [Previously Adopted as Section K.].....	19

## **A. Statement of Purpose**

### 1. Authority.

Section 1700 of the Community Stabilization and Fair Rent Act (“Act”) states that one purpose of the voter-approved initiative is to control “excessive rent increases and arbitrary evictions to the greatest extent allowable under California law, while ensuring Landlords a fair and reasonable return on their investment.” Subsections (d)(1), (d)(2), and (e) of Section 1709, and subsection (a) of Section 1710 of the Act provide that the Rental Housing Committee has the authority to adopt and shall establish regulations to further the purposes of the Act.

### 2. Constraints.

Subsection (a) of Section 1710 of the Act authorizes petitions for upward adjustments of rents necessary to provide a Landlord with a fair rate of return. Subsections (a)(2) and (a)(3) define relevant factors that must be included and excluded from consideration when ensuring a fair rate of return.

### 3. Purpose.

The purpose of this Chapter 6 is to implement the purposes of the Act by detailing the method of ensuring Landlords may earn a fair and reasonable rate of return on their investment. Nothing in these regulations shall be interpreted to prohibit a Hearing Officer or the Rental Housing Commission from granting an individual Rent Adjustment that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair rate of return.

## **B. Fair Return Standard**

A Landlord’s fair rate of return on investment for a property containing a Covered Rental Unit for the Petition Year is (a) the “Adjusted Net Operating Income” or (b) the recovery of the cost of Specified Capital Improvements as described below. If the Landlord’s actual Net Operating Income for a property in the Petition Year is less than the Adjusted Net Operating Income, then the Landlord shall be entitled to an Upward Adjustment of Rents for that property sufficient to provide a Net Operating Income equal to the Adjusted Net Operating Income. Additionally, if the Landlord completes Specified Capital Improvements, as defined below, the Landlord shall be entitled to a Specified Capital Improvement Temporary Upward Adjustment in order to ensure that the Landlord maintains a Fair Rate of Return.

## **C. Definitions**

For purposes of Chapter 6, the following definitions apply; all other capitalized terms are defined by the Act or these Regulations:

1. Adjusted Net Operating Income. Adjusted Net Operating Income equals the Net Operating Income for the Base Year adjusted by the percentage increase or decrease in the Consumer Price Index between the Base Year and the Petition Year.
2. Base Year. The Base Year is calendar year 2015.
3. Capital Improvement. Capital Improvement means additions to or modifications of a physical feature of a Covered Rental Unit or of a building or property containing a Covered Rental Unit. To qualify as a Capital Improvement, the addition or modification must:
  - i. Be necessary to bring the property or Covered Rental Unit into compliance, or to maintain compliance, with applicable building or housing codes, including, without limitation, additions or modifications made to prevent the occurrence of conditions listed in Mountain View City Code Section 25.58, the International Property Maintenance Code as incorporated by reference into the Mountain View City Code, and/or California Green Building Standards as codified in Chapter 4 (Residential Mandatory Measures) of Part 11 of Title 24 of the California Code of Regulations and any required seismic upgrades required by local or state codes, as each may be amended or revised; and
  - ii. Primarily benefit the Tenant, rather than the Landlord; and
  - iii. Have useful life of more than one (1) year; and
  - iv. Be permanently fixed in place or relatively immobile (for example, roofs, foundations, and window replacements may qualify in whole or in part as Capital Improvements).

The following are not eligible as Capital Improvements:

- v. Costs of additions or modifications of a physical feature, or portions of additions or modifications, that could have been avoided by the Landlord's exercise of reasonable diligence in maintaining and making timely repairs after the Landlord knew or should reasonably have known of the problem that caused the damage leading to the addition or modification; or
- vi. Use or installation of a Landlord's personal appliances, furniture, etc., or those items inherited or borrowed; or
- vii. Ordinary or routine repair, replacement, or maintenance to a Covered Rental Unit or property containing a Covered Rental Unit; or
- viii. Over improvements (for example, replacing a standard bathtub with a Jacuzzi bathtub), unless the Tenant approved the improvement in writing, the improvement brought the Covered Rental Unit up to current building or housing codes, the

improvement was necessary to meet California Green Building Standards, or the improvement did not cost more than a substantially equivalent replacement.

4. Gross Income. Gross Income is defined and shall be calculated as stated in Section D of this Chapter 6.
5. Consumer Price Index. Consumer Price Index is the Consumer Price Index - All Urban Consumers in San Francisco Oakland Hayward region (currently designated as Series ID: CUURs49BSA0 by the U.S. Department of Labor, Bureau of Labor Statistics.
  - a. Base Year Consumer Price Index. The Consumer Price Index for the Base Year shall be the annual average of the Consumer Price Index for 2015 (258.572, unless revised by the Bureau of Labor Statistics).
  - b. Petition Year Consumer Price Index. The Consumer Price Index for the Petition Year shall be the Consumer Price Index that was most recently published as of the date a Petition for Upward Adjustment of Rent is submitted.
6. Net Operating Income. Net Operating Income is the Gross Income from one property that contains one or more Covered Rental Units, less Operating Expenses.
7. Operating Expense. Operating Expense is defined and shall be calculated as stated in Section (E) of this Chapter 6.
8. Petition Year. The Petition Year shall be defined as the calendar year for which the most recent Consumer Price Index data was published for the San Francisco-Oakland-Hayward area prior to acceptance of a Petition for Upward Adjustment of rent. If actual data for the completion Petition year is not available, Net Operating Income shall be estimated in accordance with the calculation defined in subsection (C)(6) of this Chapter 6 using the methods for calculating Gross Income (subsection (D)) and Operating Expenses (subsection (E)) in accordance with the provisions of this Chapter.
9. Specified Capital Improvements. Specified Capital Improvement shall be limited to the following Capital Improvements that meet the requirements of subsection (C)(3) above and that are also meet one of the following requirements:
  - i. Capital Improvements that improve environmental sustainability and that do not result in a net increase in utility costs to the Tenant;
  - ii. Capital Improvements that are necessary to significantly extends the useful life of the Covered Rental Unit or Property, but excluding the costs of any additions or modifications that could have been avoided by the exercise of reasonable diligence in maintaining and making timely repairs to the Covered Rental Unit

and/or Property. Appendix B sets forth the Specified Capital Improvements that can be considered to meet the criteria set forth in this subsection (C)(9)(ii).

10. Specified Capital Improvement Temporary Upward Adjustment. The temporary upward adjustment obligating the Tenant to of Covered Rental Units to pay a portion of the costs of Specified Capital Improvements as determined by a Hearing Officer's Decision issued in accordance with Section (K) below.

#### **D. Calculation of Gross Income**

Gross Income shall equal the total of the following:

1. Gross Rents lawfully collectible from each Rental Unit located on the property, calculated on the basis of one hundred percent (100%) rental occupancy for twelve (12) months; and
2. The imputed rental value of any owner-occupied Rental Unit or Rental Units; and
3. Income from coin-operated laundry facilities, vending machines, and similar income (but excluding rents and other income from any commercial space located on the property, if applicable); and
4. Interest from security, cleaning, and any other deposits received from Tenants (except to the extent paid to Tenants); and
5. All other income or consideration received or receivable in connection with the use or occupancy of the Rental Units and Housing Services; and
6. Less uncollected Rents due to vacancy and uncollectable debts, to the extent that the same are beyond the Landlord's good-faith efforts to ensure each Rental Unit is occupied and debts are paid. Any uncollected Rents due to vacancy are to be calculated at the Rent for the most recent tenancy. Any uncollected Rents in excess of three percent (3%) of Gross Income are presumed to be unreasonable unless established otherwise.

#### **E. Calculation of Operating Expenses**

1. Included Items. Operating Expenses shall include the following expenses to the extent they are incurred in connection with the operation of a property containing one or more Covered Rental Units:
  - a. The portion of annual fees assessed under Section 1709(j)(1) of the Community Stabilization and Fair Rent Act that is not allowed to be directly passed through to Tenants; and
  - b. Business license fees; and

- c. Real property taxes; and
- d. Utility costs paid by the Landlord, to the extent that such costs are not passed through to Tenants; and
- e. Insurance; and
- f. Reasonable costs for ordinary or routine repair, replacement, and maintenance of one or more Covered Rental Units and the property containing Covered Rental Units. Repair, replacement, and maintenance costs shall include, but not be limited to, building maintenance, including carpentry, painting, plumbing and electrical work, supplies, equipment, refuse removal, and security services or systems, cleaning, fumigation, landscaping, and repair or replacement of furnished appliances, drapes, and carpets; and
- g. Reasonable management expenses (contracted or owner-performed), including necessary and reasonable advertising, accounting, or other managerial expenses. Management expenses are presumed to be six percent (6%) of Gross Income, unless established otherwise. Management expenses in excess of six percent (6%) of Gross Income are presumed to be unreasonable and shall not be allowed unless it is established that such expenses do not exceed those ordinarily charged by commercial management firms for similar residential rental properties; and
- h. Reasonable Capital Improvement costs, as calculated in accordance with Section (F) of this Chapter 6; and
- i. Attorneys' fees and costs that are:
  - Incurred in connection with successful, good-faith attempts to recover Rents owed or with successful, good-faith unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from Tenants;
  - Legal expenses that are necessarily incurred in dealings with respect to the normal operation of the Covered Rental Units or property containing Covered Rental Units, to the extent such expenses are not recovered from adverse or other parties;
  - Reasonable costs incurred in obtaining an upward adjustment of Rent pursuant to the Act, including administrative or judicial proceedings in connection with the Act, except where the pass-through of such expenses is prohibited by the Rental Housing Committee or would constitute a violation of public policy;

- Any attorneys' fees and costs included in Operating Expenses pursuant to this subsection shall be amortized over a period of five (5) years, unless it is demonstrated that an alternate amortization period would be more reasonable.

2. Excluded Items. Operating Expenses shall not include:

- a. Costs for additions or modifications or portion of an addition or modification that could have been avoided by the Landlord's exercise of reasonable diligence in making timely repairs after the Landlord knew or should reasonably have known of the problem that caused the damage leading to the repair; or
- b. Income taxes; or
- c. Costs arising from circumstances that arose before the current tenancy began; or
- d. Any costs or expenses for which the Landlord has been or was eligible for reimbursement by another party, whether or not reimbursement was actually received, including reimbursements, rebates, or discounts offered by a government or utility (for example, incentives for alternative energy generation and energy-efficient appliances), security deposits, insurance proceeds, judgments for damages, settlements, or any other method or device; or
- e. Debt service, including mortgage interest and principal payments for the acquisition, improvement, or maintenance of Covered Rental Units and property containing Covered Rental Units; or
- f. Any costs or expense incurred in conjunction with the purchase, sale, lease (excluding individual Rental Housing Agreements), financing, or refinancing of a Covered Rental Unit or property containing one or more Covered Rental Units, including, but not limited to, origination fees, credit enhancements, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.; or
- g. Fees, other than fees expressly authorized by the Act or by the Regulations; or
- h. Penalties, fees, or interest imposed for violation of the Act, the Regulations, or any other law; or
- i. Legal expenses, other than those expressly authorized by the Act, or by the Regulations; or



- j. Contributions to lobbying efforts or organizations which advocate on behalf of apartment owners on local, State, or Federal legislative issues; or
  - k. Depreciation; or
  - l. Any other expense that does not benefit the Covered Rental Units or the property containing the Covered Rental Units, including, but not limited to, the cost of forming or maintaining a corporation, partnership, or other entity or buying out a stockholder or partner of the Landlord.
3. Adjustments. The Hearing Officer shall have the discretion to reasonably adjust Operating Expenses for years with unusually high or unusually low Operating Expenses.

#### **F. Capital Improvements Amortization**

For purposes of calculating annual Operating Expense pursuant to subsection (E)(1)(h) of this Chapter 6, the reasonable cost of each qualifying Capital Improvement plus any interest paid by the Landlord to finance such Capital Improvements, shall be divided by the useful life of that Capital Improvement, as defined in the amortization schedule attached as Appendix A.

#### **G. Base Year Rebuttable Presumption**

1. It is presumed that the Net Operating Income produced by a property during the Base Year provided a fair return on investment for the property. Landlords shall be entitled to maintain their Net Operating Income from year to year in accordance with this Chapter 6.
2. The Landlord, in a Petition for Upward Adjustment of Rents, may rebut the presumption that the Net Operating Income produced by a property during the Base Year provided a fair return on investment for the property by demonstrating peculiar circumstances unique to the property that caused either the Gross Income or Operating Expenses during the Base Year to differ significantly from either the Gross Income or Operating Expenses of other properties of similar size, quality, and conditions.
3. Optional Vega Adjustment Standard.
  - a. Purpose. Subsections (G)(1) and (G)(2) of this Chapter 6 presume that the Net Operating Income produced by a property during the Base Year provided a fair return, and allow a Landlord to demonstrate that the Net Operating Income produced by a property during the Base Year did not provide for a fair return, respectively. This subsection (G)(3) of Chapter 6 creates an optional method through which a Landlord may demonstrate that Base Year Net Operating Income does not provide for a fair return. This subsection (G)(3) identifies a threshold: if average monthly Rent received in the Base

Year for a Rent Stabilized Unit is above the threshold, a Landlord retains the burden of proof to demonstrate that Base Year Net Operating Income is unusually low due to peculiar circumstances; if average monthly Rent received in the Base Year for a Rent Stabilized Unit is below the threshold, then it is presumed that the Landlord has met the burden of proof identified in subsection (G)(2) and a responding Tenant shall have the burden of proof to demonstrate that the average monthly Rent earned in the Base Year (and, therefore, the Net Operating Income) reasonably reflected general market conditions as applied to the Rent Stabilized Unit and property based on its physical location, condition, and amenities relative to similarly situated rental units and/or properties.

- b. Presumptive Threshold Defining Unreasonably Low Base Year Gross Income. The Landlord, in a Petition for Upward Adjustment of Rents, will be presumed to have rebutted the presumption that the Net Operating Income produced by a property during the Base Year provided a fair return on investment for the property if the average monthly Rent received in the Base Year for an individual Rent Stabilized Unit in the property was unusually low as defined in this subsection. For purposes of this subsection (G)(3), unusually low means that the average monthly Rent received for the occupancy and use of the Rent Stabilized Unit was less than the fair market rents published by the U.S. Department of Housing and Urban Development for Fiscal Year 2015 for Santa Clara County as replicated in the table below (“HUD Rents”), for the most similar unit type based on the number of bedrooms.

<b>Efficiency</b> \$1,213	<b>1-Bedroom</b> \$1,419	<b>2-Bedroom</b> \$1,809	<b>3-Bedroom</b> \$2,551	<b>4-Bedroom</b> \$2,892
------------------------------	-----------------------------	-----------------------------	-----------------------------	-----------------------------

- c. Calculating the Average Monthly Rent Received in the Base Year for an Individual Rent Stabilized Unit. To calculate the average monthly Rent received in the Base Year for purposes of this subsection (G)(3), divide the sum of all Rent received that relates to one Rent Stabilized Unit subject to the petition by the number of months for which Rent was received for that unit, regardless of the number of tenants occupying, or the number of tenancies for, that Rent Stabilized Unit in the Base Year. (See example h.i, below).
- d. Presumptive Recalculation of Base Year Gross Income. If the average monthly Rent received for an individual Rent Stabilized Unit in the property during the Base Year was less than the HUD Rents (noted in subsection (b) of this Section G(3) above) and that Rent Stabilized Unit is subject to a Petition for Upward Adjustment, then the Base Year Gross Income for the property shall presumptively be recalculated for purposes of determining the Base Year Net Operating Income by: (i) subtracting the actual Rent received from such Rent Stabilized Unit(s) for which the average monthly Rent

received was unusually low in the Base Year; and (ii) replacing the actual Rent received for such unit(s) with the HUD Rent for the most similar unit type and for the same dates of occupancy in the Base Year. (See example h.ii, below.)

e. Challenging a Presumptive Recalculation of Base Year Gross Income.

i. Burden on Respondents. One or more Respondents/Tenants may challenge, contest, or dispute any presumptive recalculation of the Base Year Gross Income for purposes of determining the Base Year Net Operating Income applicable to a Landlord's Petition for Upward Adjustment of Rent. A Respondent/Tenant must demonstrate by a preponderance of the evidence that an amount less than the HUD Rent (such as the actual monthly Rent received) reasonably reflected general market conditions applicable to the Rent Stabilized Unit(s) based on the physical location, physical condition, and/or amenities of the unit or property during all, or a portion, of the Base Year. (See example in subsection (h)(iii), below).

ii. Factors. The Hearing Officer shall weigh the following factors in determining whether and to what extent a Respondent/Tenant successfully challenged a presumptive recalculation of Base Year Gross Income:

- The Rent for other comparable units on the property or in other comparable properties;
- The physical condition of the unit(s), relative to other units on the property and/or comparable properties, which physical condition may reference the age, state of repair, or functionality of the structure, including walls, flooring, and ceilings, the relative size and number of rooms in the unit(s) relative to other units on the property or comparable properties, unit appliances and amenities such as heating, air conditioning, and ventilation, laundry facilities, cooking and food preparation facilities, windows and screens, electrical and plumbing systems, security, the relative location of the unit(s) on the property, and any other physical aspect of the unit(s);
- Shared services and amenities available to tenants of the unit(s) such as elevator(s), laundry or recreational facilities and equipment;
- The location of the property relative to other properties and/or community assets; and

- Any other relevant information that may impact the Rent received or receivable for one or more units on the property during the Base Year.
- f. Hearing Officer Discretion Limited. A Hearing Officer may conclude any of the following four outcomes applies to one or more of the units subject to a Petition for Upward Adjustment using this subsection (G)(3) of Chapter 6.
- i. No Presumptive Recalculation. If the average monthly Rent received for a Rent Stabilized Unit in the Base Year equals or exceeds the HUD Rent for the most similar unit type based solely on number of bedrooms, then there will be no presumptive recalculation of Base Year Gross Income.
  - ii. Presumptive Recalculation Applicable. The presumptive recalculation shall be applied without modification if average monthly Rent for a Rent Stabilized Unit in the Base Year is less than the HUD Rent for the most similar unit type based solely on number of bedrooms, and a preponderance of the evidence supports a conclusion that the HUD Rent more reasonably reflects general market conditions applicable to the unit and/or property. (See example h.ii, below.)
  - iii. Presumptive Recalculation Reduced. The presumptive recalculation shall be reduced if average monthly Rent for a Rent Stabilized Unit in the Base Year is less than the HUD Rent for the most similar unit type based solely on number of bedrooms, but a preponderance of the evidence supports a conclusion that an amount less than the HUD Rent (such as the actual Rent received) more reasonably reflects general market conditions applicable to the unit and/or property. (See example h.iii, below.)
  - iv. Presumptive Recalculation Increased. If a dispute exists whether the HUD Rent for the most similar unit type is an efficiency or one-bedroom unit, then the presumptive recalculation may be increased up to the average of the efficiency unit and one-bedroom unit HUD Rents, if a preponderance of the evidence supports a conclusion that an amount greater than the efficiency unit HUD Rent more reasonably reflects general market conditions applicable to the unit and/or property. (See example h.iv, below.)
- g. Written Decision. Any Decision for a Petition for Upward Adjustment of Rent that utilizes this subsection (G)(3) must expressly discuss:
- i. Optional Vega Adjustment Standard, Step 1. Whether average monthly Rent received for a Rent Stabilized Unit subject to the

Petition was less than the HUD Rent for the most similar unit type based solely on the number of bedrooms; and, if so,

- ii. Optional Vega Adjustment Standard, Step 2. Whether a preponderance of the evidence supports either using the presumptive recalculation of Base Year Gross Income (as described in subsection (G)(3)(f)(ii)), or revising the presumptive recalculation (as described in subsections (G)(3)(f)(iii) and (iv)), to ensure that Base Year Gross Income reasonably reflects the general market conditions applicable to the unit(s) and property in the Base Year. Any revision to the presumptive recalculation of Base Year Gross Income, as authorized by subsection (G)(3)(f), must discuss which factors support modification of the presumptive recalculation of Base Year Gross Income and include appropriate references to specific evidence in the record.
  
- h. Examples.
  - i. Calculating Base Year Average Monthly Rent. If Unit X is an efficiency and was occupied from January 2015 through June 2015 for \$1,000 per month, was vacant in July 2015, and was occupied from August 2015 through December 2015 for \$1,110 per month, then the average monthly Rent received in the Base Year for Unit X would be \$11,550 divided by 11 months of occupancy. This equals the average monthly Rent of \$1,050 received in the Base Year.
  
  - ii. Presumptive Recalculation of Base Year Gross Income. Following Example (i), the average monthly Rent received for efficiency Unit X in the Base Year was unusually low because \$1,050 is less than \$1,213. Accordingly, for purposes of determining Base Year Net Operating Income for the property, \$11,550 would be subtracted from Base Year Net Operating Income; then the HUD Rent for the most similar unit type would be multiplied by the dates of occupancy (\$1,213 times 11 months equals \$13,343) and the sum would be presumptively added to Base Year Net Operating Income for a net increase of \$1,793.
  
  - iii. Challenging Presumptive Recalculation. Following Examples (i) and (ii), Respondent/Tenant demonstrates by a preponderance of the evidence that efficiency Unit X was significantly rehabilitated by replacing chipped paint, worn flooring, and functionally obsolete appliances with new paint, new flooring, and new appliances in July 2015, and so the \$1,000 monthly Rent received from January through June 2015 for Unit X might reasonably reflect general market conditions as applied to that unit. Therefore, the presumptive recalculation of Base Year Gross Income might only apply to the

dates of occupancy after Unit X had been significantly rehabilitated. Therefore, Base Year Gross Income might be recalculated by subtracting actual Rent received from August through December 2015 ( $\$1,110 \times 5 = \$5,550$ ) and replaced with HUD Rents for that time ( $\$1,213 \times 5 = \$6,065$ ) for a net increase in Base Year Gross Income of \$515 (by subtracting \$5,550 actually received and then adding \$6,065 HUD Rent valuation to Base Year Gross Income).

- iv. Hearing Officer Decision Regarding Presumptive Recalculation. Petitioner/Landlord demonstrates by a preponderance of the evidence that the property subject to a Petition contains three types of units: efficiency units comprised of 400 square feet of livable space, junior one-bedroom units comprised of 600 square feet of livable space, and one-bedroom units comprised of 800 square feet of livable space. Hearing Officer acknowledges that junior one-bedroom units are most similar to efficiencies based solely on the number of bedrooms, but concludes that the Base Year Gross Income should be increased for the junior one-bedroom units beyond the HUD Rent for efficiency units based on the relative square footage of the three unit types. Accordingly, the presumptive recalculation of Base Year Gross Income for junior one-bedroom units in the property may be calculated as the average between the HUD Rents for efficiency and one-bedroom unit types. Therefore, monthly Rent for a junior one-bedroom may presumptively be calculated as  $\$1,316$  ( $\$1,213 + \$1,419 / 2$ ).

#### **H. Estimation of Base Year Operating Expenses in the Absence of Base Year Operating Expense Records**

If records demonstrating all or a portion of Base Year Operating Expenses for a property are unavailable, a Hearing Officer shall use the best information available to estimate any reasonable Operating Expenses for which reliable records are unavailable. The best information available may include reliable records from the property for another year, data or rate information or other sources of cost information may be considered in estimating the level of particular Operating Expenses in the Base Year. A Landlord, Tenant, the Rental Housing Committee, and/or a Hearing Officer may introduce information to estimate any reasonable Operating Expenses for which reliable records are unavailable, including increases or decreases in Operating Expenses between the Base Year and the Petition Year.

#### **I. Retention of Base Year Records**

Landlords are required to keep all financial records for the Base Year that may be necessary to confirm the Gross Income, or Operating Expenses, or both, for purposes of calculating the Net Operating Income for the property. Failure to retain Base Year records confirming Gross Income, or Operating Expenses, or both, for the Base Year shall not, of itself, rebut the presumption that the Net Operating Income produced by a property during the Base Year provided a fair return on investment for the property. Failure to retain Base Year records

may require estimation to calculate Base Year Net Operating Income as defined in Section (E) of this Chapter.

## **J. Allocation of Upward Adjustment of Rents**

1. Presumption. Upward Adjustments of Rents authorized by Hearing Officers and/or the Rental Housing Committee shall be allocated equally among all Rental Units in the property, subject to the condition that in the interests of justice, a Hearing Officer and/or the Rental Housing Committee may allocate Rent increases in another manner necessary to ensure fairness and further the purposes of the Act.
2. Guidance for Application of Presumption.
  - a. Relative Unit Size. Generally, allocations of Upward Adjustments of Rents granted pursuant to a Petition should result in total Rents for individual Rental Units that reflect the relative size and amenities in the Rental Units as compared to other Rental Units in the same property. Specifically, Rent after allocation of any Upward Adjustments of Rents should generally be lower for smaller Rental Units with fewer or no bedrooms than Rents for larger Rental Units with a greater number of bedrooms. However, the condition of the Rental Units, including the state of repair, refurbishment, renovation, or rehabilitation may impact the application of this general guidance.
  - b. Recent Tenancies. Generally, tenancies commenced within six (6) months of the acceptance of a Petition for Upward Adjustment should not be allocated any increase in Rent pursuant to the Petition. Generally, the Rent applicable to a tenancy commenced within six (6) months of the acceptance of a Petition for Upward Adjustment should be considered the maximum Rent for a Rental Unit in the same property of similar size and amenities. Specifically, any allocation of Upward Adjustment should not result in a total Rent for a Rental Unit that is greater than the Rent applicable to a tenancy commenced within six (6) months for a similarly sized unit with similar amenities.

## **K. Specified Capital Improvement Temporary Upward Adjustment Petition Process**

1. Specified Capital Improvement Petition Process Authorized. The procedures set forth in this Section (K) create an expedited review of Specified Capital Improvement Petitions, by which Landlords may obtain approval for a Specified Capital Improvement Temporary Upward Adjustment. A Landlord may use the Specified Capital Improvement Petition to obtain an upward adjustment to recover the costs of Specified Capital Improvements. All other Capital Improvement costs must be addressed via a Fair Return Petition. This expedited procedure does not preclude a Landlord from submitting a fair return Petition and including Specified Capital Improvements or other Capital Improvements within the fair return Petition. Any Specified Capital Improvement Temporary Upward Adjustment granted pursuant to this Section (K) will be considered in a determination of a fair return in any subsequent fair return Petition. Landlords may request approval of a Specified

Capital Improvement Temporary Upward Adjustment prior to installation of the Specified Capital Improvement, provided that any Specified Capital Improvement Temporary Upward Adjustment shall not be effective until the Hearing Officer is provided evidence of completion of the Specified Capital Improvement and the final costs of such Specified Capital Improvement.

2. Properties Ineligible for Any Specified Capital Improvement Temporary Upward Adjustment. No Specified Capital Improvement Temporary Upward Adjustment will be awarded if the Landlord has continued to fail to comply with the any provisions of the CSFRA or these regulations after order of the RHC or has failed to maintain the Rental Unit in compliance with Civil Code Sections 1941.1 et seq. and Health and Safety Code Sections 17920.3 and 17920.10.
3. Petition Filing Required. A Landlord seeking a Specified Capital Improvement Temporary Upward Adjustment may file a Specified Capital Improvement Petition on a form provided by the Rental Housing Committee which shall include, but not be limited to, the following information and supporting documentation:
  - (a) A specific description of the type of Specified Capital Improvement(s) for which an upward adjustment is requested, identifying the applicable amortization period from Appendix B to these Regulations.
  - (b) The total cost of the Specified Capital Improvement supported by invoices, receipts, contracts or similar supporting documentation. If the Landlord financed the Specified Capital Improvements with a loan and the Landlord is claiming interest as part of the cost of the Specified Capital Improvements, the Landlord shall provide evidence of the loan and the interest rate for the loan such as a signed loan agreement or promissory note. If the Landlord is requesting approval of Specified Capital Improvement Temporary Upward Adjustment in advance of installing the Specified Capital Improvements, the Landlord shall provide a cost estimate for the Specified Capital Improvement from a third party;
  - (c) The number of Covered Rental Units on the Property, the number of bedrooms in each Covered Rental Unit on the Property, the occupancy status of each Covered Rental Unit on the Property including the date each Tenant initially occupied the Covered Rental Unit and the Tenants' initial Rent, and the Rent charged for each Covered Rental Unit on the Property;
  - (d) The Covered Rental Units benefitted by the Specified Capital Improvement and the Covered Rental Units for which the Landlord is seeking a Specified Capital Improvement Temporary Upward Adjustment.
  - (e) The proposed pro rata, amortized cost of the Specified Capital Improvement for each Covered Rental Unit subject to the Petition to be included in the Specified Capital Improvement Temporary Upward Adjustment. Specified



Capital Improvement Temporary Upward Adjustments shall only be imposed on Tenants in Covered Rental Units benefitting from the Specified Capital Improvement.

The Landlord shall comply with Section (I) of Chapter 4 of the Regulations upon submitting the Specified Capital Improvement Petition to the Rental Housing Committee.

4. Petition Process. Upon acceptance, the Rental Housing Committee shall provide a written notice of acceptance to each Tenant potentially affected by the Petition. The written notice of acceptance shall include a copy of the Petition and shall inform the Tenants that Tenants may, within thirty (30) calendar days of acceptance of a Specified Capital Improvement Petition by the Rental Housing Committee request a Hearing before the Hearing Officer on a form provided by the Rental Housing Committee to contest the proposed Specified Capital Improvement Temporary Upward Adjustment. Tenants requesting consideration of a Hardship pursuant to subsection (L) must do so when requesting a hearing.
5. Standards for Specified Capital Improvements Upward Adjustments.
  - (a) Only Pro Rata Costs May Be Included in Specified Capital Improvements Temporary Upward Adjustment. A Specified Capital Improvement Temporary Upward Adjustment shall only include costs for Specified Capital Improvements to the extent that the Tenant benefits from the Specified Capital Improvement. A Hearing Officer will determine the Tenant's pro rata share of the costs of a Specified Capital Improvement based on the extent to which the Tenant benefits from the Specified Capital Improvement, with reference to the extent to the exclusive or shared nature of the benefits of the Specified Capital Improvement.
  - (b) Maximum Amount of Annual Specified Capital Improvement Temporary Upward Adjustment. The maximum amount of any Specified Capital Improvement Temporary Upward Adjustment shall be ten percent (10%) of the Rent for any Covered Rental Unit. If the cost of the Specified Capital Improvement exceeds the amount that can be collected with a 10% Specified Capital Improvement Temporary Upward Adjustment, the Landlord may elect a longer amortization period for the Specified Capital Improvement.
  - (c) Duration of Specified Capital Improvement Temporary Upward Adjustment. Landlords shall cease to collect any Specified Capital Improvement Temporary Upward Adjustment the earlier of (i) the expiration of the amortization period approved in the Decision or (ii) the Covered Rental Unit is vacated by the Tenant that resided in the Covered Rental Unit at the time of the Decision.

(d) Calculation of Specified Capital Improvement Temporary Upward Adjustment. Any Specified Capital Improvement Temporary Upward Adjustment for a Covered Rental Unit shall be calculated as follows:

(i) The total amount of the cost of the Specified Capital Improvement approved shall be divided by the total number of Covered Rental Units benefited from the Specified Capital Improvement.

(ii) The amount derived in (i) above shall be divided by the applicable amortization period for the Specified Capital Improvement.

(iii) The amount derived in (ii) above shall be the amount of the Specified Capital Improvement Temporary Upward Adjustment for each of the Covered Rental Units subject to the Petition, provided such amount does not exceed the limit on Specified Capital Improvement Temporary Upward Adjustments set forth in subsection 5(b) above, provided, however, the Hearing Officer may elect to consider the factors set forth in Section (J) above in allocating the Specified Capital Improvement Temporary Upward Adjustment to the Covered Rental Units.

6. Hearings.

If a Tenant requests a Hearing, the Rental Housing Committee shall schedule a hearing on the Specified Capital Improvement Petition no later than thirty (30) days after the receipt of a request for a Hearing and such Hearing shall be conducted in accordance with the procedures set forth in Chapter 5, Section (E). After closing the Hearing record, the Hearing Officer shall issue a Decision in accordance with subsection (K)(7) below. If no Tenant requests a Hearing, the Hearing Officer shall issue a Decision within thirty (30) days after the Hearing, or if no Hearing is requested, within thirty (30) days after expiration of the thirty (30) day notice period in subsection (K)(4), in accordance with subsection (K)(7) below without a Hearing.

7. Decision. A Hearing Officer shall review each Specified Capital Improvement petition and provide a written decision describing the following issues:

- (a) Whether the Specified Capital Improvement qualifies as a Specified Capital Improvement and the applicable amortization period;
- (b) Whether the Specified Capital Improvement benefits the Tenant;
- (c) The total cost of the Specified Capital Improvement that may be included in the Specified Capital Improvement Temporary Upward Adjustment for benefitting Tenants;

- (d) The number of Covered Rental Units that benefit from the Specified Capital Improvement;
- (e) The amount of the Specified Capital Improvement Temporary Upward Adjustment per Covered Rental Unit subject to the Petition and amortized over the applicable amortization period set forth in Appendix B that a Landlord may request from a Tenant including the start date for the upward adjustment and the termination date.
- (f) If the petition is requesting approval of a Specified Capital Improvement Temporary Upward Adjustment for Specified Capital Improvements to be installed, the written decision shall specify the documentation required to be submitted by the Landlord to the Hearing Officer upon completion of the Specific Capital Improvement in order for the Specified Capital Improvement Temporary Upward Adjustment to be implemented.

8. Use of Hearing Officer Decision.

- (a) Copy to Tenant Household. A Landlord shall provide a copy of the Decision that authorizes a Specified Capital Improvement Temporary Upward Adjustment to all affected Tenants along with any notice provided pursuant to Civil Code Section 827 implementing the upward adjustment.
- (b) Notice Period. Each initial request for payment of an authorized Specified Capital Improvement Temporary Upward Adjustment must provide the Tenant with no less than the greater of (i) sixty (60) days' notice prior to the due date of the first payment of the Specified Capital Improvement Temporary Upward Adjustment or (ii) the notice period required by Civil Code Section 827 and no Specified Capital Improvement Temporary Upward Adjustment shall be effective until at least 12 months has expired since the last rent increase for the Covered Unit.
- (c) Specified Capital Improvement Temporary Upward Adjustment Separate from Rent. Any Specified Capital Improvement Temporary Upward Adjustment authorized pursuant to this subsection is separate from Rent and shall not be considered part of Rent when determining any Annual General Adjustment authorized pursuant to Section 1707 of the CSFRA.

9. Appeals.

Any Party to a Specified Capital Improvement Petition may appeal the Decision in accordance with Chapter 5, Section (H) of these Regulations.

**L. Tenant Hardship**

- 1. Purpose. While a Landlord's Petition for Upward Adjustment of Rent, including a Specified Capital Improvement Petition, is pending, any Tenant household that may

be affected by the Petition may claim that the proposed upward adjustment would create an undue Tenant hardship, and so request that the Hearing Officer consider a substantiated Tenant hardship as one (1) factor when ensuring that a Landlord may earn a fair return.

2. Procedure.

- a. Prehearing Settlement Conference. Tenants are encouraged to discuss any potential tenant hardship during a Prehearing Settlement Conference, as described in Section (N) of Chapter 3, provided, however, Tenants are required to raise the potential Tenant hardship in requesting a hearing on a Specified Capital Improvement Temporary Upward Adjustment Petition.
- b. Petition. Each claim of a Tenant hardship must be submitted to the Hearing Officer assigned to the Landlord's Petition for Upward Adjustment of Rent or Specified Capital Improvement Petition, with supporting documentation as described in Chapter 7, Subsection (C)(2) of the Regulations.
- c. Petition Due Date. Any claim of a Tenant hardship must be submitted to the Hearing Officer no more than ten (10) days prior to the scheduled Hearing date, in accordance with Chapter 5, Subsection (C)(6), provided however, Tenants must submit a claim of hardship in requesting a hearing on a Specified Capital Improvement Temporary Upward Adjustment Petition. Notwithstanding that subsection, the hardship Petition and supporting documentation must be sent only to the Hearing Officer, with a copy of the Petition submitted to the Landlord; the Tenant's hardship Petition does not need to be sent to other potentially affected Tenants. A redacted copy of the Tenant's hardship Petition and supporting documentation will be made available upon request.
- d. Burden of Proof. Any Tenant household claiming a hardship must demonstrate, by a preponderance of the evidence, the existence of one (1) or more conditions defined as a hardship in Chapter 7, Subsection (C)(2).
- e. Landlord Right to Respond. Each Landlord potentially affected by a claimed Tenant hardship may contest the validity of the claimed hardship and/or propose a means of potential relief for the Tenant household during the Hearing.
- f. Valid Tenant Hardship is One Factor when Deciding a Petition for Upward Adjustment of Rent. Hearing Officers shall consider a valid Tenant hardship as one factor when issuing a Decision regarding a Petition for Upward Adjustment of Rent or Specified Capital Improvement Petition. A valid Tenant hardship may be considered when calculating an upward adjustment and/or when allocating an upward adjustment among Rental Units in accordance with Section (J) of this Chapter 6. The Hearing Officer's

consideration of a valid Tenant hardship shall be included as one component of the written Decision in accordance with Subsection (F)(2)(b) of Chapter 5 or Subsection (K)(7) of this Chapter 6.

**M. PARTIAL INVALIDITY**

If any provision of this Chapter 6, or the application thereof to any person or circumstance, is held invalid, this invalidity shall not affect other provisions or applications of this Chapter 6 or these Regulations that can be given effect without the invalid provision or application, and to this end the provisions of this Regulation are declared to be severable. The Regulation shall be liberally construed to achieve the purposes of the Act.



APPENDIX A
COMMUNITY STABILIZATION AND FAIR RENT ACT (CSFRA)
FAIR RETURN – MAINTENANCE OF NET OPERATING
INCOME (MNOI) PETITION
AMORTIZATION SCHEDULE A

The following schedule determines the amortization period of the capital improvements for the Fair Return - MNOI Upward Adjustment of Rent Petition. The addition or modification of each item may be eligible in whole, or in part, to be a capital improvement. In the event that an addition or modification not listed below is determined to be a capital improvement, the Hearing Officer or Rental Housing Committee shall determine the amortization period.

In order to utilize Schedule A for the associated Petition, capital improvements must meet the following qualifications and categories as outlined in Chapter 6 of the CSFRA Regulations:

Qualifications (See Chapter 6, Subsection C.3 of the Regulations):

- Be necessary to bring the property or Covered Rental Unit into compliance, or to maintain compliance, with applicable building or housing codes; and/or
• Primarily benefit the Tenant, rather than the Landlord; and/or
• Materially adds value to the property; and/or
• Has a useful life of more than one year and is required to be amortized over the useful life of the improvement; and/or
• Be permanently fixed in place or relatively immobile.

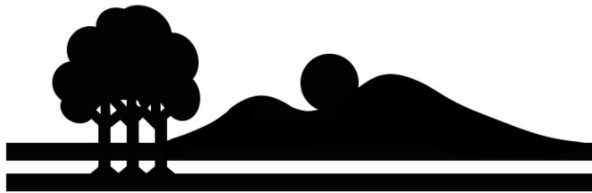
Amortization Schedule A

Table with 2 columns: Item, Years. Rows include ADA Compliance (ADA Driveway Egress, ADA Ramps), Appliances (Refrigerator, Stove, Water Heater), Electrical (Electrical Wiring, Submetering), Elevator (Elevator Repair/Replacement), and Fire Detection and Suppression.

<b>Item</b>	<b>Years</b>
Fire Alarm System	10
Fire Escape	10
Fire Sprinkler / Retardant System	20
<b>Flooring</b>	
Carpet/Carpet Pad	5
Tile/Linoleum	5
Hardwood	10
Subfloor	10
<b>Fencing to Comply with MVMC</b>	
Chain Link	10
Wrought Iron	10
Wood	10
<b>Fumigation</b>	
Tenting	5
<b>Heating/Cooling</b>	
Air Conditioning	10
Central	10
Gas	10
Electric	10
Solar	10
Insulation	10
<b>Lighting</b>	
Exterior	5
Interior	10
<b>Plumbing</b>	
Shower Doors	5
Fixtures	10
Pipe Replacement	10
Submetering	10
Re-pipe Entire Building	20
<b>Roofing</b>	
Built-up, Tar and Gravel	10
Gutters/Downspouts	10
Shingle/Asphalt	10
Tile	10
Roof Replacement	20
<b>Security Systems</b>	
Alarms	10
Entry Telephone Intercom	10
Fencing	10
Gates and Doors	10

Item	Years
<b>Structural Repair and Retrofitting</b>	
Foundation Repair	10
Shear Wall Installation	10
Foundation Replacement	20
Foundation Bolting	20
Masonry-Chimney Repair	20
Soft Story Retrofit	20
<b>Wall Repair/Replacement and Maintenance</b>	
Interior Paint	5
Exterior Paint	5
Dry Wall	10
Plaster	10
Siding	10
<b>Other</b>	
Drought Tolerant Landscaping	5
Windows	5
Locks	10
Sidewalks/Walkways	10
Stairs	10





**APPENDIX B**

**COMMUNITY STABILIZATION AND FAIR RENT ACT (CSFRA)  
FAIR RETURN – SPECIFIED CAPITAL IMPROVEMENT PETITION  
AMORTIZATION SCHEDULE B**

The following schedule determines the amortization period of the capital improvements for the Specified Capital Improvement Temporary Upward Adjustment Petition. The addition or modification of each item may be eligible in whole, or in part, to be a capital improvement. In the event that an addition or modification not listed below is determined to be a Specified Capital Improvement, the Hearing Officer or Rental Housing Committee shall determine the amortization period.

In order to utilize Schedule B and the associated Petition, capital improvements must meet the following qualifications and categories as outlined in Chapter 6 of the CSFRA Regulations:

**Qualifications (See Chapter 6 Subsection C.9 of the Regulations):**

- Be necessary to bring the property or Covered Rental Unit into compliance, or to maintain compliance, with applicable building or housing codes; and/or
- Primarily benefit the Tenant, rather than the Landlord; and/or
- Be permanently fixed in place or relatively immobile; and/or
- Materially adds value to the property; and/or
- Appreciably prolongs the useful life of the property; and/or
- Has a useful life of more than one year and is required to be amortized over the useful life of the improvement; and/or
- Improves the environmental sustainability of the property.

**Categories:**

- New roof covering all or substantially all of a building or a structurally independent portion of a building; and/or
- Significant upgrade of the foundation of all or substantially all of a building or a structurally independent portion of a building, including seismic retrofits; and/or
- New or substantially new plumbing, electrical or heating, ventilation and air conditioning (HVAC) system for all or substantially all of a building; and/or
- Exterior painting or replacement of siding on all or substantially all of a building; and/or
- Repairs reasonably related to correcting and/or preventing the spread of defects which are noted as findings in a Wood Destroying Pest and Organisms Inspection Report; and/or
- Installation of water conservation devices intended to reduce the use of water or energy efficient devices, such as solar roof systems; and/or
- Improvements or upgrades to the Rental Unit or the building/complex that meet or exceed disability/accessibility standards as required by law.

**AMORTIZATION SCHEDULE B**

Item	Years
<b>ADA Compliance</b>	
ADA Driveway Egress	10
ADA Ramps	10
<b>Electrical</b>	
Electrical Wiring	10
Solar Power Panels	10
Submetering	10
<b>Elevator Repair/Replacement</b>	
Elevator Repair	10
Elevator Replacement	20
<b>Fire Detection and Suppression</b>	
Fire Alarm System	10
Fire Escape	10
Fire Sprinkler / Retardant System	20
<b>Flooring</b>	
Subfloor	10
<b>Fumigation</b>	
Tenting	5
<b>Heating/Cooling</b>	
Air Conditioning	10
Central	10
Gas	10
Electric	10
Solar	10
Insulation	10
<b>Plumbing</b>	
Pipe Replacement	10
Submetering	10
Re-pipe Entire Building	20
<b>Roofing</b>	
Roof Replacement	20
<b>Structural Repair and Retrofitting</b>	
Foundation Repair	10
Shear Wall Installation	10
Foundation Replacement	20
Foundation Bolting	20
Masonry-Chimney Repair	20
Soft Story Retrofit	20
<b>Wall Repair/Replacement and Maintenance</b>	
Exterior Paint	5

<b>Item</b>	<b>Years</b>
Plaster	10
Siding	10
<b>Other</b>	
Drought Tolerant Landscaping	5
Windows	5