

Chapter 6

RENT STABILIZATION, PART II

4-6-0: DEFINITIONS:

- A. Context: For the purposes of this chapter, the words and phrases shall be defined as set forth herein, unless the context clearly indicates a different meaning is intended.
- B. Words Not Defined: Words and phrases used in this chapter which are not specifically defined shall be construed according to their context and the customary usage of the language.

C. Words Defined:

APARTMENT RENTAL AGREEMENT: An agreement, oral, written, or implied, between a landlord and tenant for the use or occupancy of an apartment unit and for housing services.

APARTMENT UNIT: Any dwelling unit in the city of Beverly Hills rented or offered for rent for human habitation, together with the land and accessory structures appurtenant thereto, and all housing services supplied in connection with the use or occupancy thereof, which is not exempted under section [4-6-1](#) of this chapter.

DISABLED PERSON: Any person who is receiving benefits from a federal, state, or local government, or from a private entity on account of a permanent disability that prevents the person from engaging in regular, full time employment.

HOUSING SERVICES: All services connected with the use or occupancy of an apartment unit, including, but not limited to, repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitor service, refuse removal, furnishings, telephone, off street parking, and any other benefits, privileges, or facilities.

LANDLORD: An owner, lessor, sublessor, or any person, firm, corporation, partnership, or other entity entitled to receive rent for the use of any apartment unit or the agent, representative, or successor of any of the foregoing.

MINOR: Any person younger than eighteen (18) years of age.

RENT: The consideration, including any bonus, benefits, or gratuity demanded or received, for or in connection with the use or occupancy of an apartment unit, including, but not limited to, monies demanded or paid for parking, for furnishings, for housing services of any kind, or for subletting.

TENANT: A tenant, subtenant, lessee, sublessee, or any other person entitled to the use or occupancy of any apartment unit.

VACANCY: The departure from an apartment unit of all of the tenants. For purposes of this definition, the term "tenant" shall not include persons who took possession of an apartment unit as

sublessees or assignees after January 1, 1999, if the rental agreement restricts or prohibits subletting or assignment, and the restriction has not been satisfied or the prohibition has not been waived.

VOLUNTARILY VACATED: The vacancy of an apartment unit by all of the tenants. "Voluntarily vacated" does not include a vacancy: 1) that is the result of a constructive eviction of the tenant, which was caused by the landlord; 2) when the previous tenancy was terminated by the landlord by notice pursuant to Civil Code section 1946; or 3) when the previous tenancy was terminated due to a change in the terms of the tenancy noticed pursuant to Civil Code section 827, except a change permitted by law in the amount of rent or fees. (Ord. 17-O-2729, eff. 5-5-2017)

4-6-1: APPLICATION:

The provisions of this chapter are applicable to all multiple residential dwellings consisting of two (2) or more units with the exception of those units that are subject to the existing rent stabilization provisions of [chapter 5](#) of this title; those units excluded under subsections 4-5-102A through E of this title; and units in a building that has a certificate of occupancy issued after February 1, 1995. (Ord. 17-O-2729, eff. 5-5-2017)

4-6-2: BASE RENT:

Except as provided in sections [4-6-4](#) and [4-6-5](#) of this chapter, the maximum rent which an apartment owner may charge for any dwelling unit regulated by this chapter is the monthly rental charged for such unit on April 30, 1986, plus any rental increases permitted by section [4-6-3](#) of this chapter. (1962 Code § 12-1.02; amd. 1988 Code)

4-6-3: RENTAL INCREASES:

An increase in rental above the base rental specified in section [4-6-2](#) of this chapter is permissible for any dwelling unit regulated by this chapter, subject to each of the following limitations:

- A. Only one increase shall be permissible within any twelve (12) month period; provided, further, that a twelve (12) month period shall have elapsed since the last increase.

- B. Such increases shall not exceed the greater of: 1) three percent (3%) of the rental rate then in effect, or 2) the percentage equal to the percentage increase, if any, of the consumer price index for the Los Angeles/Riverside/Orange County area, as published by the United States department of labor, bureau of labor statistics between May 1 of the then current year and May 1 of the immediately preceding year.

- C. The tenant shall be given written notice of any such increase in accordance with the requirements of state law and the terms of any written lease or rental agreement applicable to the tenancy prior to the effective date of such increase. (1962 Code § 12-1.03; amd. Ord. 04-O-2449, eff. 6-18-2004; Ord. 17-O-2725, eff. 1-24-2017; Ord. 17-O-2728, eff. 2-21-2017; Ord. 17-O-2729, eff. 5-5-2017)

4-6-4: WAIVER OF PROVISIONS OF THIS CHAPTER PROHIBITED:

- A. Any provision of an apartment rental agreement or lease, or any other agreement between a landlord and a tenant, which waives any provision of this chapter relating to the maximum amount of rent to be paid for an apartment unit, shall be deemed to be against public policy and shall be void, unless expressly authorized by state law.
- B. This amended section is applicable to any apartment rental agreement, lease, amendment or extension, that is subject to the provisions of this chapter and that is executed on or after December 29, 2000. This section, as it existed on December 29, 2000, shall continue to govern any apartment rental agreement, lease, amendment or extension, that is subject to the provisions of this chapter, and that was executed prior to December 29, 2000. (1962 Code § 12-1.04; amd. Ord. 01-O-2371, eff. 3-30-2001)

4-6-5: VACANCIES:

- A. Any dwelling unit regulated by this chapter that is: 1) "voluntarily vacated" by all tenants of that unit, as defined in section 4-5-202 of this title, or 2) vacated because the tenants are evicted for the reasons specified under section 4-5-502, 4-5-503, 4-5-504, 4-5-505, 4-5-507 or 4-5-508 of this title, may be subsequently rented at any amount mutually agreed upon by the landlord and the new tenant. The monthly amount agreed upon for the commencement of the tenancy shall be the base rental, and any subsequent rental increases shall be subject to the provisions of section [4-6-3](#) of this chapter.
- B. At least twenty four (24) hours prior to the execution of a lease or rental agreement by a tenant, the landlord shall provide written notice to the prospective tenant, in the form and languages required by the city: 1) of the provisions of this chapter, including the amount of the annual rent increase that is allowed by this chapter; 2) of any parking restrictions in the area adjacent to the apartment building; 3) that at the termination of the lease agreement, unless the lease is extended or a new lease is entered into, a month to month tenancy will be created if the tenant holds over and the landlord accepts rent from the tenant; 4) that the month to month tenancy can be terminated at any time, if the landlord provides written notice to the tenant in accordance with the requirements of all applicable laws; 5) of the city's home occupation requirements; and 6) of state laws that establish certain rights and responsibilities of landlords and tenants. The landlord shall provide notice in a

manner so that the prospective tenant receives the notice at least twenty four (24) hours prior to the execution of the lease or rental agreement. When the landlord provides the notice required by this subsection to the prospective tenant, the landlord shall have the prospective tenant acknowledge in writing that the tenant received the written notice, as required by this subsection. The landlord shall retain written documentation of compliance with this provision for the duration of the tenancy. There shall be a rebuttable presumption that the landlord did not provide the written notice to the tenant that is required by this section, if the landlord fails to produce said written documentation upon request.

- C. In addition to any other remedy for a violation of this code, if a landlord fails to provide the written notice required by subsection B of this section to the tenant, the landlord shall be subject to an administrative penalty pursuant to title 1, chapter 3, article 3 of this code in the amount of five hundred dollars (\$500.00). The provisions of this subsection shall not be applicable to a lease or rental agreement that is entered into within six (6) months of the effective date hereof, or December 18, 2004. (1962 Code § 12-1.05; amd. Ord. 01-O-2371, eff. 3-30-2001; Ord. 04-O-2449, eff. 6-18-2004)

4-6-6: INVOLUNTARY TERMINATION OF TENANCIES BY LANDLORDS:

Written notice provided in accordance with state law shall be given to any tenant in order for a landlord to terminate the tenancy of a rental unit subject to this chapter. (1962 Code § 12-1.06; amd. Ord. 04-O-2449, eff. 6-18-2004)

4-6-7: WATER SERVICE PENALTY SURCHARGE:

- A. In addition to the rent otherwise permitted by this chapter, the landlord may pass through to the tenant of an apartment unit regulated by this chapter ninety percent (90%) of the cost of any water service penalties and/or surcharges imposed by the city pursuant to the water rate schedule established by resolution of the city council provided that the landlord installs water conservation plumbing fixtures in such unit in accordance with the requirements of title 9, chapter 4, article 1 of this code or voluntarily installs, at the landlord's expense, low flow toilets or such other water saving toilets approved by the director of public works, showerhead restrictors and faucet aerators in such unit. If the landlord does not install such water conservation plumbing fixtures, the landlord shall be liable for and pay without any pass through to the tenant all penalties and/or surcharges imposed by the city on the landlord's apartment units.
- B. In order to qualify for the pass through authorized by subsection A of this section, the landlord shall:
1. Notify all tenants, in a form required by the rent stabilization office, by registered or certified mail, of the provisions of this section and any other information required to be given by the rent stabilization office; and

2. Provide all affected tenants with copies of the water bill for the applicable billing period and the basis for the calculation of the pass through. (Ord. 91-O-2118, eff. 5-24-1991)

4-6-8: REFUSE FEE SURCHARGE:

- A. In addition to the rent otherwise permitted by this chapter, the landlord may pass through to the tenant of an apartment unit regulated by this chapter the cost of any refuse fee imposed by the city pursuant to a resolution or ordinance of the city council.
- B. In order to qualify for the pass through authorized by subsection A of this section, the landlord shall:
 1. Provide written notice, by registered or certified mail, to all tenants thirty (30) days in advance of the imposition of the pass through, of the provisions of this section, that the pass through is not part of the base rent, that the refuse fee may be increased by the city, and any other information required to be given by the rent stabilization office.
 2. Provide all tenants with a copy of the landlord's utility bill which sets forth the appropriate refuse fee and the basis for the calculation of the pass through. (Ord. 91-O-2135, eff. 1-9-1992)

4-6-9: RELOCATION FEE:

- A. When Fee Is Required: If a landlord brings an action to recover the possession of an apartment unit that is subject to the provisions of this chapter for any of the reasons set forth in section 4-5-502, 4-5-503, 4-5-504, 4-5-505, 4-5-507 or 4-5-508 of this title, the landlord is not required to pay a relocation fee to the tenant residing in the unit. However, if a landlord serves a notice of eviction on a tenant for any other reason, or for no specified reason, the landlord shall pay to such tenant a relocation fee in accordance with the provisions of this section. The relocation fee shall be due and payable to the tenant, regardless of whether the landlord actually utilizes the apartment unit for the purposes stated in the notice of eviction, unless the landlord notifies the tenant in writing of the withdrawal of the notice of eviction prior to such time as the tenant has given the landlord notice of his or her last date of occupancy, or has vacated the unit, if a notice of the last date of occupancy is not given by the tenant. The landlord also shall file a copy of the notice of eviction with the community development department within one week after serving the notice on the tenant.
- B. Payment Upon Vacation: The relocation fee or pro rata share thereof shall be paid to any tenant who vacates the apartment unit at the time he or she vacates it. If the landlord cannot in good faith determine if the tenant is entitled to receive the relocation fee, it shall be deposited in escrow in accordance with subsection D of this section.

C. To Whom Paid: The entire fee shall be paid to a tenant who is the only tenant in an apartment unit. Where an apartment unit is occupied by two (2) or more tenants, payment may be prorated among the tenants, or payment may be made to one tenant, provided all the adult occupants of the apartment unit concur with the allocation or have signed a stipulation to judgment as described in subsection D of this section. In no event shall a landlord be liable to pay a total amount that exceeds the fee required by subsection E of this section.

D. Deposit Of Relocation Fee Into Escrow:

1. When the apartment unit has not been vacated, the relocation fee shall be deposited in escrow if the tenant has furnished the landlord with the tenant's notarized stipulation to judgment in favor of the landlord for the repossession of the apartment unit by the landlord within sixty (60) days after the payment of the relocation fee to such tenant. The fee shall be released from escrow to the tenant on the day the tenant vacates the apartment unit. Nothing in this subsection shall be deemed to require any tenant to vacate any apartment unit before the expiration of the full notice time to which such tenant is entitled. The sixty (60) day period referred to in this subsection D1 shall not apply to any eviction where the eviction notice was given by the landlord to the tenant on or before January 20, 2017.
2. If the landlord in good faith is unable to determine which persons are entitled to receive the relocation fee, the landlord shall deposit the relocation fee into escrow. The landlord shall give written notice of such deposit to each person, including the tenant and any occupant other than the tenant, who in the landlord's good faith judgment may be entitled to receive the relocation fee. Upon agreement by all persons so notified, the escrow holder may distribute the relocation fee in the manner agreed upon. If such parties cannot reach agreement within thirty (30) days after the date the notice of deposit is given, the division and distribution of the relocation fee shall be determined by the hearing officer following a hearing on the matter. No distribution from an escrow may occur until the tenant who is to receive the relocation fee has signed a notarized stipulation to judgment pursuant to subsection D1 of this section if the tenant still occupies the apartment unit.
3. All the costs of an escrow opened pursuant to the provisions of this section shall be borne by the landlord.

E. Amount Of Relocation Fees: The amount of the relocation fee payable to a tenant entitled to such fee pursuant to the provisions of this section shall be determined as follows:

Apartment Size	Relocation Fee
Studio	\$ 6,193 .00
1 bedroom	9,148 .00
2 or more bedrooms	12,394 .00

Provided further, those households that include a senior, disabled person, or a minor shall be entitled to an additional relocation fee in the amount of two thousand dollars (\$2,000.00).

Any tenant whose occupancy of the apartment unit began after the date when the required notice of termination was given shall not be entitled to any relocation fee.

Commencing July 1, 2018, and on July 1 of each year thereafter, the amounts of the relocation fees set forth above shall be increased annually by a percentage equal to the percentage increase, if any, of the consumer price index for the Los Angeles/Riverside/Orange County area, as published by the United States department of labor, bureau of labor statistics between May 1 of the then current year and May 1 of the immediately preceding year.

F. Relocation Of Tenant: In lieu of the relocation fee required by subsection E of this section, the landlord, at his or her option, may relocate the tenant into a comparable replacement apartment unit satisfactory to the tenant, in which event the landlord shall be liable only for the actual costs of relocating the tenant, up to the maximum as set forth in subsection E of this section per apartment unit. A tenant shall not unreasonably withhold the approval of a replacement apartment unit offered by the landlord. For the purposes of this paragraph only, comparability shall be determined from the following factors: size, price, location, proximity to medical and recreational facilities, parks, community centers, shops, transportation, schools, churches, and synagogues, amenities, and, if the tenant desires, the location of the apartment unit in the city.

G. Waiver Of Relocation Fee:

1. If a tenant who has received a thirty (30) day notice to vacate premises does not vacate the apartment unit within such time, and the landlord thereafter files a complaint for writ or judgment restoring possession, and the court orders such tenant to vacate the apartment unit, such tenant shall be deemed to have waived all rights to any relocation benefit to which he or she is otherwise entitled pursuant to this section and shall return to the landlord any relocation fee or other benefit so received, plus interest at the rate allowed by law.
2. After the required notice period has passed, if a tenant has signed a stipulation for judgment and received a relocation fee, whether directly or as the result of the distribution of a deposit, and does not vacate the apartment unit within sixty (60) days after such receipt, the tenant shall be deemed to have waived all rights to any relocation benefits to which he or she is otherwise entitled pursuant to this section, and the tenant shall be obligated to return to the landlord any relocation fee or other benefit so received, plus interest at the rate allowed by law. (Ord. 17-O-2729, eff. 5-5-2017)

4-6-10: REGISTRATION OF RENTAL UNITS:

A. Initial Registration: A landlord must register every rental unit that is subject to the provisions of this chapter within thirty (30) days of receipt of notice from the city that registration is required, unless the rental unit is specifically exempt under this chapter. Registration is complete only when all required information has been provided to the city and all outstanding fees and penalties have been paid.

- B. After Terminated Exemption: When a rental unit that was exempt from this chapter becomes governed by this chapter for the first time, the landlord must register the unit with the city within thirty (30) days after the exemption ends.

- C. Reregistration: When a rental unit is rerented after a vacancy, the landlord must reregister the unit with the city within thirty (30) days after the rerental.

- D. Registration Amendment: A landlord must file a registration amendment with the city within thirty (30) days of a change in a rental unit's ownership or management, or a change in the owner's or manager's contact information. (Ord. 17-O-2729, eff. 5-5-2017)

4-6-11: RENT ADJUSTMENTS UPON APPLICATION:

- A. Basis For Application: A landlord may file a rent adjustment application with the city for all rental units in the landlord's rental complex to achieve a just and reasonable return based on net operating income principles as set forth in subsection B of this section, or on any other ground authorized by this chapter or by regulations adopted by the city council.
 - 1. Application: An application for a rent adjustment pursuant to this chapter shall be filed upon a form prescribed by the city and shall be accompanied by the payment of a fee as determined by resolution of the city council. If no fee has been established at the time of application, the applicant shall pay a fee within thirty (30) days of the date the fee is established. The applicant shall produce at the request of the hearing officer any records, receipts, reports or other documents in the applicant's possession, custody or control that the hearing officer may deem appropriate to make a determination whether a rent adjustment should be approved. The application shall be made under penalty of perjury and supporting documents shall be certified or verified as requested. Once the registration process is established by the city, no application from a landlord shall be accepted unless the building in which the unit is located is registered and any registration fees have been paid. If a landlord is seeking an adjustment pursuant to subsection B1g(2) of this section the application shall not be filed with or accepted by the city unless the landlord provides any and all documents and information on which the landlord relies to establish that the base date rent was disproportionately low.
 - 2. Incomplete Applications: The city shall determine whether said application is complete within ten (10) business days of filing of the application by the landlord. If it is determined that an application is not complete, the applicant shall be notified in writing as to what additional information is required. In the event the applicant notifies the hearing officer that the requested information is unavailable, the hearing officer shall proceed with scheduling a hearing as though the application is complete. Notice that an application has been filed shall be sent to the landlord and all affected tenants by the hearing officer; said notice shall invite submittal of evidence from all concerned parties.
 - 3. Hearing Date: The hearing officer shall hold a hearing on said application within sixty (60) days after the application is determined to be complete. Notice of the time, date, and place of the hearing shall be mailed to the applicant and the affected parties at least ten (10) business days prior to date of the hearing. The notice of the hearing also shall be delivered to the affected

parties by posting the notice at the property at least ten (10) business days prior to date of the hearing. The notice to the affected parties shall include a brief summary of the stated justification for the rent increase application and shall state that all submitted documents and materials as well as any report prepared by the hearing officer or staff will be available for public review prior to the hearing.

4. **Hearing Rules:** At the hearing, the parties may offer any documents, testimony, written declarations, or other evidence that is relevant to the requested rent adjustment. Formal rules of evidence shall not be applicable to such proceedings.
5. **Conduct Of Hearing:** The hearing officer shall control the conduct of the hearing and rule on procedural requests. The hearing shall be conducted in the manner deemed by the hearing officer to be most suitable to secure that information and documentation that is necessary to render an informed decision, and to result in a fair decision without unnecessary delay.
6. **Ex Parte Communications:** There shall be no oral communication outside the hearing between the hearing officer and any party or witness. All discussion during the hearing shall be recorded. All written communication from the hearing officer to a party after the hearing has commenced shall be provided to all parties.
7. **Order Of Proceedings:** The hearing shall ordinarily proceed in the following manner, unless the hearing officer determines that some other order of proceedings would better facilitate the hearing:
 - a. A brief presentation by or on behalf of landlord, if landlord desires to expand upon the information contained in or appended to the petition for rent adjustment, including presentations of any other affected parties and witnesses in support of the application.
 - b. A brief presentation of the results of any investigations or staff reports by staff in relation to the petition.
 - c. A brief presentation by or on behalf of opponents to the petition, including presentations of any other affected parties and witnesses in opposition to the application.
 - d. Rebuttal by landlord.
 - e. The hearing officer shall establish equitable time limits for presentations at a hearing, subject to adjustments for translation and reasonable accommodation.
 - f. The hearing officer shall maintain an official hearing record, which shall constitute the exclusive record for decision.
8. **Right Of Assistance:** All parties to a hearing shall have the right to seek assistance in developing their positions, preparing their statements, and presenting evidence from an attorney, tenant organization representative, landlord association representative, translator, or any other person designated by said parties to a hearing.
9. **Reopening Of Hearing:** The hearing officer may reopen the hearing record when he or she believes that further evidence should be considered to resolve a material issue, when the hearing has been closed, and when a final decision has not been issued by the hearing officer. In such circumstances, the parties may waive a further hearing by agreeing in writing to allow additional exhibits into evidence.
10. **Hearing Decision:** Within thirty (30) days after the hearing is closed, the hearing officer shall issue a decision, with written findings in support thereof, approving, partially approving or

disapproving a rent adjustment.

11. Notice Of Decision: A written notice of decision on a rent adjustment application shall be mailed to the applicant and all affected tenants within one day of the issuance of the decision by the hearing officer. Such notice shall be accompanied by a copy of the hearing decision.
12. Decision Subject To Review: Any final decision of the hearing officer is subject to judicial review pursuant to California Code Of Civil Procedure section 1094.5 and must be filed in accordance with the time periods specified therein.

B. Substantive Grounds For A Rent Increase Application: A rent adjustment shall be approved in order to provide a just and reasonable return and maintain net operating income in accordance with the following criteria:

1. Fair Net Operating Income: Fair return applications shall be considered according to the following guidelines:
 - a. Net Operating Income: Net operating income equals gross income minus operating expenses.
 - b. Gross Income: Gross income equals the following:
 - (1) Gross rents, computed on the basis of one hundred percent (100%) occupancy, using current rent levels, including the current year annual general adjustment. To the extent that the annual general rent adjustment was not fully implemented or received during the entire current year, it shall be annualized to reflect the total annual gross rents to which the property owner is already entitled, plus
 - (2) Interest from security and cleaning deposits (except to the extent that said interest is payable to the tenants), plus
 - (3) Income from services, garage and parking fees, plus
 - (4) All other income or consideration received or receivable for or in connection with the use or occupancy of rental units and housing services, minus
 - (5) Uncollected rents due to vacancy and bad debts, to the extent that the same are beyond the landlord's control. Uncollected rents in excess of five percent (5%) of gross rents shall be presumed to be unreasonable and shall not be deducted from gross rents unless it is established that they result from circumstances that are likely to continue to exist in future years.
 - c. Operating Expenses; Inclusions: Operating expenses shall include the following:
 - (1) Rent increase application filing fees (if the application is found to be meritorious);
 - (2) Annual registration fees to the extent that they cannot be passed through to tenants, pursuant to resolution of the city council;
 - (3) License fees, real property taxes, utility costs, insurance;
 - (4) Normal and reasonable repair and maintenance expenses for rental units and the building or complex of buildings of which the building is a part, including common areas, which shall include, but not be limited to, painting, normal cleaning, fumigation, landscaping, repair and replacement of all standard services, including electrical, plumbing, carpentry, furnished

appliances, drapes, carpets and furniture. Owner performed labor shall be counted at reasonable rates established by the cost of obtaining similar services in and around the city, provided the applicant submits documentation showing the date, time, and nature of the work performed by the property owner;

- (5) Allowable legal expenses, and management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting, other managerial expense. Management expenses are presumed to be six percent (6%) of gross income, unless established otherwise. Management expenses in excess of eight percent (8%) 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 properties;
- (6) Attorney fees and costs incurred in connection with successful good faith attempts to recover rents owing and successful good faith unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from tenants;
- (7) Building improvements, the cost of any improvement mandated by any government statute, rule or regulation enacted after January 1, 2017, major repairs, replacement and maintenance, except to the extent such costs are compensated by insurance proceeds, subject to the condition that said improvements shall be amortized in years according to the schedule below, provided that the hearing officer may use seven (7) years for unlisted items, or such other period of time as is determined by the hearing officer to be reasonable.

Improvement	Years
Air conditioner	10
Appliances, major (other than those specifically listed)	7
Cabinets	10
Dishwasher	7
Doors	10
Dryer	7
Drywall	10
Electric wiring	15
Elevator	20
Fencing	10
Fire alarm system	10
Fire escape	10
Flooring	7
Garbage disposal	7
Gates	10

Gutters	10
Heating	10
Insulation	10
Locks	7
Paving	10
Plumbing	10
Pumps	10
Refrigerator	10
Roofing	10
Security system	10
Stove	10
Washing machine	7
Water heater	7

(8) Reasonable expenses, fees and other costs for professional services reasonably incurred in the course of successfully pursuing or defending rights under or in relationship to this chapter.

d. Excluded From Operating Expenses: Operating expenses shall not include:

- (1) Maintenance and repair work that resulted from the intentional deferral of other repairs or work, which deferral caused significant deterioration of housing services, the building or individual units (if the time since the work was performed significantly exceeds the amortization periods established in subsection B1c(7) of this section, it shall be presumed that it was intentionally deferred);
- (2) Avoidable and unnecessary expense increases since the base year;
- (3) Mortgage interest and principal payments; fees, other than fees expressly authorized by subsection B1c of this section;
- (4) Penalties and interest awarded for violation of this or any other law; or legal fees, except as provided in this section;
- (5) Depreciation;
- (6) Any expenses for which the landlord has been reimbursed by any utility rebate or discount, security deposit, insurance settlement, judgment for damages, or settlement;
- (7) Any expense that has been passed through lawfully to tenants pursuant to the provisions of this chapter.

e. Base Year: Base year for the purpose of this chapter shall be 2016. Landlords are required to keep all financial records for 2016, which may be necessary for making a net operating income determination. In the event that an owner for good cause cannot produce base year

income and expense information, the hearing officer may use a different base period or estimate base year income and expenses.

- f. **Presumption Of Fair Base Year Net Operating Income:** Except as provided in subsection B1g of this section, it shall be presumed that the net operating income produced by the property during the base year provided a fair return (fair net operating income). Landlords shall be entitled to earn a just and reasonable return and to maintain and increase their base year net operating income in accordance with subsection B1h of this section.
- g. **Rebutting The Presumption:** It may be determined that the base year net operating income yielded other than a fair return, in which case, the base year net operating income may be adjusted accordingly. In order to make such a determination, the hearing officer must make at least one of the following findings:
- (1) The landlord's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating such expenses so that the base year operating expenses reflect average expenses for the property over a reasonable period of time. In considering whether the base year net operating income yielded more or less than a fair net operating income the hearing officer shall consider the following factors:
- (A) The landlord made substantial capital improvements during the base year, which were not reflected in the base year rent levels;
- (B) Substantial repairs were made due to damage caused by uninsured disaster or vandalism;
- (C) Maintenance and repair were below accepted standards or resulted from the intentional deferral of other repairs or work, which deferral caused significant deterioration of housing services, the building or individual units. If the time since the deferred work was performed significantly exceeds the amortization periods established in subsection B1c(7) of this section, it shall be presumed that it was intentionally deferred;
- (D) Other expenses were unreasonably high or low, notwithstanding prudent business practice.
- (2) The rent in the base year was disproportionately low due to the fact that it was not established in an arms length transaction or other peculiar circumstances. To establish peculiar circumstances, the landlord must prove one or more of the following: there existed between the tenant and the owner a family or close friend relationship; the rent had not been increased for three (3) years prior to the base year; the tenant performed services for the owner; there was low maintenance of the property by the owner in exchange for low rent increases or no rent increases; or any other special circumstances which affected the rent level outside of market factors.
- h. **Fair Net Operating Income:** If the hearing officer adjusts the base year rents, then the hearing officer shall permit rent increases in the maximum allowable rent such that the landlord's net operating income shall be increased by one hundred percent (100%) of the percentage increase in the consumer price index between the base year and the current year. Unless the hearing officer selects a base period other than the year 2016, the base year CPI shall be 240.007. For the purposes of this chapter, the current CPI shall be the CPI last reported as of the date of the application. A rent increase granted pursuant to this chapter shall not exceed the increase requested in the application.

C. Savings Clause: Nothing in this chapter shall be construed to prevent the grant of a rent adjustment upon application by a landlord when required to permit a just and reasonable return to the landlord. This paragraph is a savings clause which provides a basis for a hearing officer to receive relevant evidence demonstrating that a landlord is not receiving a just and reasonable return under the provisions of the net operating income formula, so that the application of the net operating formula may be modified to provide a just and reasonable return to the landlord. (Ord. 17-O-2729, eff. 5-5-2017)

4-6-12: REMEDIES:

A. Illegal Rent Or Withholding Of Relocation Fees:

1. It shall be unlawful for any landlord wilfully to demand, accept, receive, or retain any payment of rent in excess of the maximum lawful rent permitted for an apartment unit by this chapter.
2. It shall be unlawful for any landlord wilfully to fail to provide any tenant with any relocation benefit to which such tenant is entitled.

B. Reduction Of Housing Services: It shall be unlawful for any landlord to reduce housing services with the intent, or for the purpose, of circumventing substantially the requirements and/or provisions or spirit of this chapter. A violation of this section shall be deemed an increase in rent to the extent of the monetary advantage achieved thereby for the landlord or to the extent necessary for the tenant to incur expenses to gain equivalent housing services by other means, whichever is greater. Any such violation shall accordingly be subject to the tenants' remedies prescribed in subsections C and D of this section.

C. Refusal To Comply With Illegal Requests:

1. A tenant may refuse to pay any increase in rent which is in violation of the provisions of this chapter, and such violation shall be a defense in any action brought to recover the possession of an apartment unit or to collect rent.
2. In addition to the remedies set forth in subsection C1 of this section, in any action brought to recover the possession of an apartment unit, the court may consider as grounds for denial of the request for possession any violation of any provision of this chapter. In addition, a court determination that the action was brought in retaliation for the exercise of any right conferred by this chapter shall also be grounds for denial of the request for possession.

D. Civil Remedies: Whenever it is necessary for any tenant to file a court action to recover the payment of rent which was in excess of the maximum lawful rent allowed by the provisions of this chapter, or to collect any relocation fee provided for in this chapter, or whenever it is necessary for the tenant to defend against any wrongful action filed in court against the tenant by the landlord to recover the possession of the tenant's apartment unit, the landlord shall be liable to the tenant for damages in the amount of five hundred dollars (\$500.00) or not more than three (3) times the

amount by which the payment or payments demanded, accepted, received, or retained exceed the lawful amount of rent or relocation fees due to the tenant, whichever is greater. The prevailing party in any such suit shall be entitled to reasonable attorney fees and costs as determined by the court.

- E. Penalties: Any person violating any of the provisions, or failing to comply with any of the requirements, of this chapter shall be subject to the penalties and punishment of [title 1, chapter 3](#) of this code. (Ord. 17-O-2729, eff. 5-5-2017)