

Rent Program Reg. ARP-R05 (2023.01.26)

Date Adopted: February 15, 2023

Last Amended:



Rent Program Regulations

Article 4 Proceedings

I. Explanation of Key Terms.

A. Rent Program Proceeding.

1. A “Rent Program Proceeding,” or “Proceeding,” is an administrative process to resolve issues raised by a Petition and to determine rights and obligations of Tenants and Landlords under the Rent Stabilization Ordinance.

2. Overview. A Rent Program Proceeding has four stages:

Stage One: Proceeding Initiated. A Petitioner initiates Proceeding by properly filing the Petition with City Clerk. The Petitioner also serves a copy of the Petition on the opposing party, the Respondent, who then has 30 days to file a Response to the Petition.

Stage Two: Petition Completed. The Petition is deemed complete on the 31st day after the Respondent (or all Respondents, if there are more than one) was served with the Petition. The parties may voluntarily come to an agreement on the resolution of the issues in the Petition, which must be approved in an Order Approving Joint Resolution Agreement to have effect. The Hearing Officer will hold at least one Prehearing Meeting to explain the process and consider preliminary matters.

Stage Three: Hearing Conducted. A Hearing Officer conducts a Hearing in which the Petitioner presents evidence to support the claims in the Petition, and the Respondent presents evidence supporting the Response. The Hearing is recorded. In some cases, the Hearing will be held by written submission without an in-person proceeding.

Stage Four: Decision Issued. After consideration of all of the evidence and applicable laws, the Hearing Officer issues a Decision granting or denying the Petition and ordering relief where appropriate.

3. Duration. A Proceeding begins when a Petition is “properly filed” and ends when one of the following events occur:

- (a) The Hearing Officer issues a Decision;
 - (b) The Petitioner voluntarily terminates the Proceeding by written notice to the City and Opposing Party; or
 - (c) The City administratively terminates the Proceeding, as permitted by these Regulations.
- B. “Petition” means all forms and documents associated with a Petition for Reduction of Rent, Petition to Determine Compliance, and any Fair Return Petition. Petition includes the cover form, petition attachment, and all supporting documentation that is filed with the City pursuant to Article 2 of these Regulations.
 - C. “Response” means all forms and documents filed pursuant to Article 2 of these Regulations by a Landlord or Tenant whose rights would be affected by a Petition.
 - D. “Petitioner” means the Landlord or Tenant who files a Petition. Where the appropriate authority has been delegated pursuant to Article 2 of these Regulations, “Petitioner” includes a Petitioner’s Designated Representative.
 - E. “Respondent” means the Landlord or Tenant whose rights would be affected by a Petition and who files a Response. Where the appropriate authority has been delegated pursuant to Article 2 of these Regulations, “Respondent” includes a Respondent’s Designated Representative.
 - F. “Designated Representative” means an individual authorized by a Landlord or Tenant pursuant to Article 2 of these Regulations to appear and/or act on behalf of the authorizing party to the extent expressly authorized in writing.
 - G. “Hearing Officer” means a person designated by the City Attorney to hear and decide petitions under the Rent Stabilization Ordinance and these Regulations, which decisions are binding subject only to judicial review.
 - H. A period of time expressed in “days” means calendar days unless otherwise specified.

II. Proceeding Initiated.

A. Proper Filing.

- 1. A Petitioner initiates a Proceeding by “properly filing” a Petition. A Petition that is acceptable is deemed properly filed on the date it is received by the City. A Petitioner is solely responsible for proper filing, and a Petition that is not properly filed will not be considered.

2. A Petition is not acceptable if it is not signed by the Petitioner, illegible, incomprehensible, erroneously completed, or incomplete, or if the required fees have not been paid, or if it otherwise does not conform to the requirements of Article 2 of these Regulations.
3. In addition to the above, a Fair Return Petition is not acceptable if the Rental Unit for which an additional Rent increase is requested is not properly registered pursuant to Article 1.
4. Prior to commencement of a Hearing pursuant to Section IV, below, if a defect in the Petition is discovered and the Petitioner fails to correct the defect within fourteen (14) days of notice by the City of the defect, the City may rescind a determination that a Petition is properly filed and terminate the Proceeding.

B. Preliminary Review.

1. City staff will make a preliminary review of each Petition upon filing to determine whether it conforms with City regulations.
2. If a Petition is found unacceptable in its current form, the City will mail notice of this finding and an explanation of the defects to the Petitioner within twenty-one (21) days of receipt of the Petition, with a copy to each Respondent.
3. A Petitioner may refile a corrected Petition at any time. However, the City will administratively terminate the Proceeding if the Petition is not corrected or otherwise refiled properly within fourteen (14) days of the date of the City notice that the Petition was not accepted.

Note: Acceptance of a Petition by the City does not mean that the Petitioner has submitted adequate documentation to support a decision in the Petitioner's favor.

4. If the Petition is accepted, the City will mail notice as follows:
 - (a) Notice to the Petitioner, with a copy to each Respondent, that:
 - (i) The Petition was accepted;
 - (ii) The Petitioner has thirty (30) days of the date of the notice to serve the Petition on each Respondent if it has not yet been served; and
 - (iii) The Petitioner is required to notify the City and each Respondent of any material change in the information set forth in the Petition, as required by Section II.C of this Article 4 of the Regulations.

(b) Notice to the Respondent, with a copy to the Petitioner, that:

- (i) Information about the Petition and Rent Program Proceeding is available on the Rent Program website and from the City upon request;
- (ii) The Respondent has a right to respond to the Petition within thirty (30) days of the date the Petition was/is served on the Respondent;
- (iii) The Respondent is required to provide the Petitioner with a copy of any response and to file the response and a Proof of Service with the City;
- (iv) The failure to respond to the Petition may constitute a waiver of the Respondent's right to a Hearing on the Petition;
- (v) The failure to respond to the Petition may result in an increase (or decrease) in the Rent on the applicable Rental Unit based on the information in the Petition and in City files; and
- (vi) The Respondent is required to notify the City and the Petitioner of any material change in the information provided in response to the Petition, as required by Section II.C of this Article 4 of the Regulations.

5. The City may administratively terminate a Proceeding if a Proof of Service of each Respondent is not filed within (30) days of the date of the notice provided to the Petitioner pursuant to this Section II.B. The City may grant an extension for good cause upon written request by the Petitioner.

C. Supplemental Information.

- 1. The Petitioner is required to notify the City and each Respondent of any material change in the information set forth in the Petition, especially a change in the identity of any Respondent, as soon as reasonably possible prior to the Hearing.
- 2. When there is a change in the Respondent, the Petitioner is required to serve the new party and provide proof of service pursuant to Article 2 of these Regulations. The City will provide notice to the new party pursuant to Section II.B.4(b) of this Regulation.
- 3. Changes in, or additions to, the information provided in the Petition may be grounds for a continuance and may constitute good cause for the Hearing Officer to delay the Hearing or Decision.

4. The Respondent is required to notify the City and the Petitioner of any material change in the information provided in response to the Petition, including grounds for disputing the Petition, as soon as reasonably possible prior to the Hearing.

D. Confidentiality.

1. Documents filed in connection with a Petition pursuant to these Regulations are public records unless a party receives a determination by the Hearing Officer that a particular document is confidential.
2. A request for determination of must demonstrate that the document is exempt under the California Public Records Act (Government Code Section 7920.000 *et seq*) either because of a specific exemption or because the public interest served by not making the document public clearly outweighs the public interest served by disclosure of the document. Unless otherwise specified by the Hearing Officer, documents determined to be confidential will be available for inspection by the opposing party but not by the general public.
3. At the time a document is filed, offered as evidence, or otherwise required to be produced, a party may make a written request to the Hearing Officer for a determination that a particular document is confidential and will be protected under this Section II.D.
4. The Hearing Officer may determine that only a portion of the document is to be treated as confidential and may make determinations regarding disclosure to both the opposing party and the general public as are consistent with this Regulation.
5. The party request and the Hearing Officer determination are part of the administrative record of the Proceeding.

III. **Petition Completed.**

A. Operative Date. A Petition is deemed complete on the date both of the following have occurred:

1. The Petitioner has filed a Petition that is acceptable to the City; and
2. The Petitioner has served the Petition on each Respondent and filed a Proof of Service of each service with the City.

B. Response to Petition.

1. Time to Respond. Any Response to a Petition by a Respondent must be served on the Petitioner and filed with the City with proof of service within thirty (30) days of the date the Petition is deemed complete.

Failure to file a timely response may constitute a waiver of the right to a Hearing.

2. Late Response. The City may receive a late response if a proof of service is filed with the response. However, the Hearing Officer will determine whether the response is accepted, whether the Respondent has waived their right to a Hearing as a result of the failure to file a timely response, and whether the Petitioner will be prejudiced by the late response.
3. Response to Rent Reduction Petition. In response to a Rent Reduction Petition, a Landlord may defend as to the issue of the Rent being charged the Tenant but may not file a Fair Return Petition as a response. Any Fair Return Petition filed after initiation of a Proceeding by a Tenant will be the subject of a separate Proceeding.

C. Hearing Officer.

1. Designation; Delivery of Filings. Within fourteen (14) days of the date the Petition is deemed complete, the City will designate a Hearing Officer. The City will deliver the Petition and any related filings to the Hearing Officer within a reasonable time. Any additional filings received by the City will be delivered to the Hearing Officer within a reasonable time after receipt.
2. Schedule. After conferring with the Hearing Officer, the City will set the date, time, and location of a Prehearing Meeting and the Hearing and provide notice to the Hearing Officer and parties. The City or Hearing Officer may change the date, time, and/or location of the Prehearing Meeting and Hearing by providing notice at least fourteen (14) days in advance. Any party may request a continuance pursuant to Section IV.E.2, below.
3. Prehearing Meeting. After the Petition is deemed complete and prior to the Hearing, the Hearing Officer will conduct at least one Prehearing Meeting to explain procedures, request additional information concerning the Petition and Response, request or discuss request for building inspection, consider requests for continuances, consider requests for confidentiality, and other procedural matters, as applicable. The Prehearing Meeting will be by teleconference unless the Hearing Officer and parties consent to meet in person.
4. Disqualification.
 - (a) A Hearing Officer is prohibited from taking part in any Rent Program Proceeding in which the Hearing Officer has a personal financial interest in the outcome (such as being the Landlord of, or a Tenant

residing in, the property that is involved in the petition), or a personal bias for or against any party.

- (b) The Hearing Officer's general status as a landlord or tenant, or political or philosophical beliefs, does not constitute personal bias as used in this Regulation.
- (c) A Hearing Officer is required to disclose to all parties any prior communication with a party to the Proceeding that concerned the subject of the Petition. A Hearing Officer is also required to disclose to all parties any possible or apparent personal financial interest or personal bias.
- (d) A Hearing Officer may disqualify themselves at any time.
- (e) Any party may file a written request for disqualification of the designated Hearing Officer with the City Attorney. The request for disqualification must state the grounds for disqualification. The request for disqualification must be received by the City Attorney at least seventy-two (72) hours prior to the Hearing. If the identity of the Hearing Officer is not known more than seventy-two (72) hours in advance of the Hearing, the request must be made as soon as reasonably possible and in no event later than the introduction or taking of evidence at the Hearing. The City Attorney, or their designee, must issue a decision on the request for disqualification prior to the introduction or taking of any evidence at the Hearing.

5. Ex Parte Communication.

- (a) Except as provided in Section III.C.5(c), below, every *ex parte* communication is prohibited.
- (b) An *ex parte* communication is a communication in any form between the Hearing Officer assigned to the Proceeding and any party, or representative or witness thereof, to the Proceeding that occurs outside of the Hearing at any point prior to the issuance of a Decision in the Proceeding.
- (c) The following communications are permitted:
 - (i) Oral communications regarding requests for continuances, building inspections, or determinations of confidentiality, if each party, or their representative, has an opportunity to be present;
 - (ii) Written communications regarding requests for continuances, building inspections, or determinations of confidentiality, if duplicate copies are timely delivered to each party, or their representative; and

(iii) Communications during a Prehearing Meeting; and

(iv) Orders by the Hearing Officer to produce evidence;

(d) Nothing in these Regulations is intended to restrict communications between a Hearing Officer and City staff on any matter.

D. Consolidation.

1. In the discretion of the City or the Hearing Officer, Petitions pertaining to separate buildings on the same property or to separate properties of the same Landlord may be consolidated for Hearing.
2. In the discretion of the Hearing Officer, all Landlord Petitions pertaining to Tenants in the same building, and all Petitions filed by Tenants occupying the same building, may be consolidated for Hearing unless there is a showing of good cause not to consolidate the Petitions.

E. Prehearing Agreements.

1. Proposal By City.

- (a) At any time prior to commencement of the Hearing, the City Attorney, or their designee, may contact the parties to assist in clarifying the issues and/or to facilitate reaching an agreement on the issues raised in the Petition. No agreement waiving rights under the Rent Stabilization Ordinance will be effective unless approved by Order of the Hearing Officer pursuant to this Section III.E.
- (b) The Hearing Officer will consider the proposal at a recorded Prehearing Meeting or at the Hearing. The Hearing Officer will read the terms of the agreement to the parties and ask each party to state that they understand the terms of the agreement, that they do not want a Hearing on the Petition, that they understand that they are waiving their right to a Hearing on the Petition, and that they voluntarily agree to the terms of the Joint Resolution Agreement.
- (c) Following the Prehearing Meeting or Hearing, the Hearing Officer will deliver to each party to the Proceeding and to the City an Order, with written findings supporting the determination, that approves or rejects the Joint Resolution Agreement.
- (d) The City will administratively terminate the Proceeding seven (7) days after the date of the Order Approving Joint Resolution Agreement.

2. Written Proposal By Parties.

- (a) At any time prior to the issuance of a Decision, the parties may reach an agreement on the issues raised in the Petition. The proposed written agreement must clearly state that each party does not want a Hearing on the Petition, understands they are waiving their right to a Hearing on the Petition, and voluntarily agrees to the terms of the Joint Resolution Agreement. No agreement waiving rights under the Rent Stabilization Ordinance will be effective unless approved by Order of the Hearing Officer pursuant to this Section III.E.
 - (b) Upon reaching a tentative agreement, the parties may file a proposed written agreement with the City Clerk, who will deliver the proposed agreement to the Hearing Officer.
 - (c) The Hearing Officer may, but is not required to, hold a Prehearing Meeting to clarify the parties' understanding or intent of the proposed agreement and its impacts and to present initial findings.
 - (d) Following the Prehearing Meeting, if held, or upon consideration of the written proposed agreement, the Hearing Officer will deliver to each party to the Proceeding and to the City an Order, with written findings supporting the determination, that approves or rejects the Joint Resolution Agreement.
 - (e) The City will administratively terminate the Proceeding seven (7) days after the date of the Order Approving Joint Resolution Agreement.
3. Effect of Agreement. Upon agreement of the parties and approval of the agreement by the Hearing Officer, each party to a Joint Resolution Agreement is deemed to have waived their right to a Hearing on the Petition. A joint Resolution Agreement may be withdrawn only by consent of the parties or by Order of the Hearing Officer upon request by a party and a finding of fraud, willful misrepresentation, undue influence, or other circumstances in which the interests of justice require withdrawal.

IV. **Hearing Conducted.**

- A. Due Process. It is the policy of the City that all Petitions and Responses be decided on their merits, consistent with due process of law and orderly administrative procedures. The Regulations of this Article are intended to ensure that each party is provided notice of the grounds for a Petition and Response(s) in advance of the Hearing, so that all parties will be prepared to present their case at the Hearing. For this reason, the Hearing will be limited to the issues raised by the Petition and Response(s), unless the Hearing Officer determines that, in the interest of fairness, additional issues

or objections should be considered, and the Hearing Office takes all necessary steps to ensure that all parties have a full and fair opportunity to respond to new issues, objections or evidence.

B. Rights of Parties.

1. Every party to the Hearing has the right to appear at the Hearing and present evidence and argument in person and to designate a representative pursuant to Article 2 of these Regulations to appear and advocate on the party's behalf.
2. Every party to the Hearing has the right to call, examine, and cross-examine witnesses, to make requests to the Hearing Officer for the issuance of orders or subpoenas for witnesses or evidence, and to exercise any other rights conferred by the Rent Stabilization Ordinance and these Rent Program Regulations.

C. Time to Act.

1. Unless otherwise specified by these Regulations, or by an Order of the City Attorney or their designee, or by an Order of the Hearing Officer, any period of notice is automatically extended by five (5) days if the notice was delivered by mail. Similarly, any right or duty to do any act on or before a date certain after service of a document is automatically extended by five (5) days if document was served by mail.
2. The City or Hearing Officer may relieve a party of the consequences of a failure to perform an act on or before a date certain and allow additional time to perform the act where the party demonstrates that there was a good cause for the failure. Application for this relief is required to be made within a reasonable time and in no case more than thirty (30) days after the date certain. The application for relief must be accompanied by a sworn declaration attesting to the facts alleged to constitute the good cause.

D. Powers of Hearing Officer. The Hearing Officer has and may exercise all express and implied powers granted by the Rent Stabilization Ordinance and these Regulations. These powers include the following with respect to Rent Program Proceedings:

1. To administer oaths and affirmations;
2. To grant requests for subpoenas and to order the production of evidence;
3. To rule upon offers of proof and receive evidence;

4. To regulate the course of the hearing and rule upon requests for continuances;
5. To call, examine, and cross-examine witnesses, and to introduce evidence into the record;
6. To decide a Petition administratively without a hearing if the Respondent fails to timely file a Response, the Petitioner does not request a Hearing, and the record is sufficient to render a decision on the petition without hearing live testimony;
7. To make and file Decisions on Petitions in accordance with this Article;
8. To take any other action that is authorized by this Chapter or other regulations implementing the Ordinance.

E. Time of Hearing.

1. Notice. Notice of the time, date and place of hearing shall be mailed by the City to all parties no later than fourteen (14) days before the scheduled date of the hearing.
2. Continuance.
 - (a) *Order of Continuance.* A Hearing Officer may order a continuance of the date and time of the Hearing upon a finding of good cause stated into the record or upon consent of all parties. If a continuance is ordered, the Hearing Officer will notify the parties of the date, time, and place of the rescheduled hearing.
 - (b) *Denial of Request.* The Hearing Officer may deny a request for a continuance if it has not been made in compliance with these Regulations, or where a continuance has previously been granted to the requesting party in the same Proceeding, or where no good cause is found, or where the Hearing Officer determines denial of the request is in the interest of fairness.
 - (c) *Good Cause.* Good cause may include, but is not limited to the failure of a party to receive notice, the illness of a party or witness or other emergency which makes it impossible for a party or witness to appear on the scheduled date, or the failure of a party to provide the Hearing Officer with required pertinent information in a timely manner. Mere inconvenience or difficulty in appearing does not constitute good cause.
 - (d) *Time of Request.* A request for continuance is required to be made as soon as reasonably possible. A request for continuance made less than seventy-two (72) hours before the Hearing, including

requests made during the Hearing, must be supported by good cause for the late request.

- (e) *Manner of Request.* Except for requests made during the Hearing, the request must be made in writing, served on each opposing party, and filed with proof of each service pursuant to Section V.C of Article 2 of these Regulations. A written request must include proposed alternative dates and a description of the efforts made to obtain the consent of the other parties.

F. Conduct of Hearing.

1. Hearing Officer. The Hearing Officer will conduct the Hearing to determine whether the Petition is proven by evidence and supports granting the relief sought in the Petition.
2. Open to Public. All Hearings held pursuant to these Regulations are open to the public.
3. Audio Recording. All Hearings held pursuant to these Regulations will be audio recorded.
4. Standard of Proof. A Hearing Officer may grant relief sought in a Petition if supported by the preponderance of the evidence presented in the Petition or supporting documents, or at the Hearing.
5. Rules of Evidence.
 - (a) The Hearing Officer is not required to conduct the Hearing according to technical courtroom rules of evidence. Instead, the Hearing Officer may consider any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of business regardless of any common law or statutory rule which might exclude such evidence in court proceedings.
 - (b) The Hearing Officer may exclude unduly repetitious or irrelevant evidence.
6. Subpoenas.
 - (a) The Hearing Officer may by Order or subpoena require any party or other person to provide any books, records, papers, or other evidence deemed pertinent to the Petition. All documents required under this provision shall be made available to the parties at least fourteen (14) days prior to the hearing, at the office of the Hearing Officer.

- (b) The Hearing Officer may by Order or subpoena require any witness appear and testify.
 - (c) Parties to the Hearing have the right to make requests to the Hearing Officer to issue subpoenas on their behalf. However, the requesting party is responsible for service of any subpoena issued by the Hearing Officer. The subpoena must provide notice of the party who requested the subpoena. The subpoena must state that it is issued in the name of the City of Antioch.
- 7. Inspection. If the Hearing Officer finds good cause to believe that the City's current information does not reflect the current condition of the rental unit, the Hearing Officer may order a building inspection. The Order will specify whether the inspection will be conducted by the Hearing Officer or by the City. The Hearing Officer may consider requests from any party to the Hearing to order a building inspection.
- 8. Stipulations. The parties, by written stipulation filed with the Hearing Officer, may agree upon some or all of the facts or evidence involved in the petition or hearing. Stipulations may also be made orally at the hearing. The Hearing Officer may treat any stipulated fact as established by a preponderance of the evidence.
- G. Hearing Record. The Hearing Record is the exclusive administrative record of the Decision on the issues raised during the Hearing.
 - 1. The Hearing Record opens when the Hearing Officer opens or begins the Hearing and closes when the Hearing Officer closes or ends the Hearing. The closure of the Hearing Record is a natural consequence of the end of the Hearing, and no specific statement is necessary to close the Hearing Record. Once closed, the Hearing Record cannot be reopened.
 - 2. A Hearing Officer may order the Hearing Record to remain open for a period not to exceed thirty (30) days after the date of the order to accept additional evidence. Upon a finding of good cause, a Hearing Officer may order the Hearing Record to remain open for a period not to exceed sixty (60) days after the date of the order to accept additional evidence. The order will be stated in the record and delivered to the parties in writing, which will include the basis and duration of the order and the date and time the Hearing Record will close.
 - 3. The City will prepare the Hearing Record and include the following:
 - (a) Audio recording of the Hearing;
 - (b) All exhibits, papers, and documents required to be filed or accepted into evidence during the Hearing;

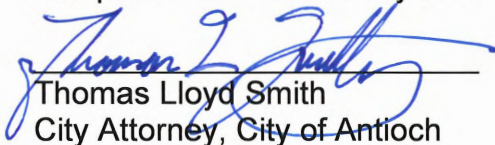
- (c) List of participants of the Hearing;
- (d) Summary of all testimony accepted;
- (e) Statement of all material officially noticed;
- (f) All recommended and final decisions, orders, and/or rulings; and
- (g) Statement of the reasons for each final decision, order and/or ruling.

4. Availability of Record. The City will make the official record available for inspection and copying by any person and provide a copy of all or part of the official record at a reasonable copying cost.

V. Decision Issued.

- A. Notice. After the Hearing Officer issues a Decision, the City will deliver notice of the Decision and a copy of the findings of fact and law supporting the Decision to all parties to the Proceeding. The notice will also include a statement of the parties' right to judicial review of the decision.
- B. Effective Date. The Decision is effective as of the date of the Decision.
- C. Final Decision. The Decision is the final decision of the City.
- D. Waiver of Rights Voidable. Any agreement waiving rights granted, or obligations established or confirmed, by a Hearing Officer in a Decision is voidable as contrary to public policy and does not effect the right of the City to enforce any order of a Decision.
- E. Enforcement. Only a final decision of a Hearing Officer is enforceable as provided by the Rent Stabilization Ordinance and these Regulations.

Adopted this 15th day of February, 2023 pursuant to sections 1-6.01, 11-1.09, and 11-1.13 of the Antioch Municipal Code. This Regulation shall take effect upon adoption and publication on the City of Antioch website.


Thomas Lloyd Smith
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