



Rent Program Regulations

Article 5
Additional Rent Increases

I. Fair Return Standard.

- A. Right to Fair Return. As acknowledged by § 11-1.05 of the Rent Stabilization Ordinance, a Landlord has the right to obtain a constitutionally required fair and reasonable return on property.
- B. Presumption of Fair Base Year NOI. It is presumed that the net operating income ("NOI") received by the Landlord in the Base Year provided a fair and reasonable return.
- C. Presumption of MNOI as Fair Return. Fair return is not determined solely by the application of a fixed or mechanical accounting formula. However, it is presumed that maintenance of net operating income for the Base Year, as adjusted by 60% of CPI over time, provides a Landlord with a fair return on property ("Maintenance of Net Operating Income" or "MNOI").

II. Definitions. For purposes of this Article 5, the following definitions apply. All other capitalized terms are defined by the Rent Stabilization Ordinance or these Rent Program Regulations:

- A. Additional Rent Increase. "Additional Rent Increase" means a Rent increase in excess of the increase permitted by § 11-1.04 of the Rent Stabilization Ordinance that is ordered by a Hearing Officer pursuant to these Regulations.
- B. Adjusted NOI. "Adjusted Net Operating Income" or "Adjusted NOI" means the NOI for the Base Year adjusted by 60% of the percentage increase or decrease in the CPI between the Base Year and the Petition Year.
- C. Base Year.
 - 1. For the purposes of making fair return determinations pursuant to this Article 5, "Base Year" means calendar year 2022 unless Section II.C.2 is applicable.
 - 2. In the event that a Hearing Officer orders an Additional Rent Increase and a subsequent Petition is filed, "Base Year" means the Petition Year used in the Petition that resulted the Additional Rent Increase.

D. Capital Improvement.

1. "Capital Improvement" means an addition to, or modification of, a physical feature of a Rental Unit, or building or property containing a Rental Unit, that meets all of the following criteria:
 - (a) The addition or modification is necessary to bring the property or Rental Unit into compliance, or to maintain compliance, with applicable building or housing codes;
 - (b) The addition or modification primarily benefits the Tenant, rather than the Landlord;
 - (c) The addition or modification has a useful life of at least five (5) years; and
 - (d) The addition or modification is permanently fixed in place.
2. Exclusions. The following are excluded from the term "Capital Improvements" and are not eligible grounds for an Additional Rent Increase based on Capital Improvement costs:
 - (a) 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
 - (b) Use or installation of a Landlord's personal appliances, furniture, or similar items, or items that were inherited or borrowed; or
 - (c) Ordinary or routine repair, replacement, or maintenance to a Rental Unit or property containing a Rental Unit; or
 - (d) Over-improvements (for example, replacing a standard bathtub with a Jacuzzi bathtub), unless at least one of the following are true:
 - (i) A Hearing Officer first approves a written request from the Tenant pursuant to Section VI of this Regulation;
 - (ii) The improvement was necessary to gain compliance with current building or housing codes; or
 - (iii) The improvement replaced an existing improvement at a substantially equivalent cost.

3. CPI. “Consumer Price Index” or “CPI” is the Consumer Price Index for All Urban Consumers, not seasonally adjusted, in the San Francisco-Oakland- Hayward Area published by the Bureau of Labor Statistics using a base point of 1982-84 = 100

- (a) *Base Year CPI*. The CPI for the Base Year is the published Annual Average CPI for 2022 (____*, unless revised by the Bureau of Labor Statistics). However, if Section II.C.2 is applicable, the CPI should be calculated using the methodology provided for the Petition Year CPI.

Note: This Regulation will be updated to reflect the Annual Average CPI for 2022 after it is published in mid-January 2023.

- (b) *Petition Year CPI*. The CPI for a Petition Year that is based on a calendar year is the published Annual Average CPI for that calendar year. The CPI for a Petition Year that is based on a City fiscal year is the average of the two Semi-Annual Averages (H2 and H1) comprising the Petition Year. (See Section II.D.5.)

4. NOI. “Net Operating Income” or “NOI” means is the Annual Income less Annual Operating Expenses for one property that contains one or more Rental Units.

5. Petition Year.

- (a) If a Petition is filed on a date in January through June, “Petition Year” means the calendar year (January 1 through December 31) that precedes the year in which the Petition is filed.

Note: For example, if a Petition is filed on May 9, 2024, the Petition Year will be calendar year 2023 (January 1, 2023 through December 31, 2023).

- (b) If a Petition is filed on a date in July through December, “Petition Year” means the City fiscal year (July 1 through June 30) that precedes the City fiscal year in which the Petition is filed.

Note: For example, if a Petition is filed on November 4, 2023, the Petition Year will be City fiscal year 2022-2023 (July 1, 2022 through June 30, 2023).

6. Temporary Additional Rent Increase. “Temporary Additional Rent Increase” means a Rent increase in excess of the increase permitted by § 11-1.04 of the Rent Stabilization Ordinance that is of finite duration and that is ordered by a Hearing Officer pursuant to these Regulations to pay for a portion of the costs of a Capital Improvement, legal services, or other amortized expense.

III. Maintenance of Net Operating Income.

A. Calculation of Annual Income.

1. Included Amounts. Annual Income is the total amount of income received from the following sources during the applicable year:
 - (a) Gross Scheduled Rental Income, as defined in Section III.A.2;
 - (b) Fees, including late fees and fees collected for services and amenities other than utilities that are not included in Rent, and deposits that were retained and used;
 - (c) Interest from security, cleaning, and any other deposits received from Tenants, except to the extent paid to Tenants, and other interest and investment income arising from the residential rental use of the property;
 - (d) Passed-through payments for sub-metered utilities; and
 - (e) Income from any other source pertaining to the Rental Unit(s).
2. Gross Scheduled Rental Income. “Gross Scheduled Rental Income” means the total amount of actual and imputed Rent income calculated based on 100% occupancy of rental units on the property, including units that are exempt from the Rent Stabilization Ordinance, plus all other income or consideration received or in connection with the use or occupancy of the Rental Unit, except as excluded below.
 - (a) *Increase or Decrease In Units.* To facilitate a fair NOI comparison, the number of rental units used to calculate Annual Income of the Petition Year must be the same as the number of Rental Units used to calculate the Annual Income of the Base Year. If the number of rental units on the property has increased since the Base Year, the number of units added to the property should be added to the number of rental units used to calculate the Gross Scheduled Rental Income for the Base Year. If the number of rental units on the property has decreased, the number of rental units removed from the property should be added to the number of Rental Units used to calculate the Gross Scheduled Rental Income for the Petition Year.
 - (b) *Imputed Rent Amount.* Imputed Rent amounts should fairly reflect the income generated as if all units were occupied during the applicable year using the actual Rent charged or, where applicable, the average Rent of comparable units on the property that were most recently rented. If no comparable units on the property were rented within the last two years, initial rents for comparable units on the property may be used. If there are no comparable units on the

property, initial rents for comparable units in the City may be used if there is no other basis to calculate imputed Rent amounts. The Hearing Officer may adjust imputed Rent amounts if necessary to more fairly reflect the income that would be generated if the unit was rented under normal conditions.

- (c) *Fees; Utilities.* Gross Scheduled Rental Income includes payments for utilities that are master metered or otherwise not segregable from uses other than the subject Rental Units but does not include fees and passed-through utility payments.

B. Calculation of Annual Operating Expenses.

1. Included Amounts. Annual Operating Expenses is the total of the following costs to the extent each cost is incurred in connection with the operation of a property containing one or more Rental Units, except as excluded by these Regulations or where the pass-through of the expense would constitute a violation of public policy:
 - (a) Government exactions arising from the property and its residential rental use, such as assessments, real property taxes, and business license fees;
 - (b) Insurance;
 - (c) Reasonable costs for professional services, excluding legal services (see Section III.C.1);
 - (d) Reasonable costs for management services;
 - (e) Reasonable costs for security services and/or systems;
 - (f) Reasonable costs for ordinary or routine repair, replacement, and maintenance of one or more Rental Units and the property containing Rental Units, including, but not limited to, building maintenance (such as carpentry, painting, plumbing and electrical work), supplies, equipment, cleaning, fumigation, landscaping, and repair or replacement of furnished appliances, drapes, and carpets;
 - (g) Utility costs paid by the Landlord, including refuse removal, unless the utility costs cannot be segregated from uses other than the residential rental units included in the calculation of Gross Scheduled Rental Income; and
 - (h) Other recurring costs necessary for the operation of the Rental Unit(s).

- (i) Reasonable Capital Improvement costs, as defined by Section II.D and provided in Section III.C.2
- 2. Excluded Amounts. Annual Operating Expenses **does not** include:
 - (a) Capital Improvement costs;
 - (b) Income taxes;
 - (c) Utility costs that cannot be segregated from uses other than the residential rental units included in the calculation of Gross Scheduled Rental Income;
 - (d) Legal expenses;
 - (e) Costs arising from circumstances that arose before the current tenancy began;
 - (f) Any costs or expenses for which the Landlord has been or was eligible for reimbursement by another party or nonpayment, 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;
 - (g) Debt service, including mortgage interest and principal payments for the acquisition, improvement, or maintenance of Rental Units and property containing Rental Units;
 - (h) Any costs or expense incurred in conjunction with the purchase, sale, lease (excluding lease of a Rental Unit to a Tenant), financing, or refinancing of a Rental Unit or property containing one or more Rental Units, including, but not limited to, origination fees, credit enhancements, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.;
 - (i) Depreciation;
 - (j) Penalties, fees, or interest imposed for violation of the Rent Stabilization Ordinance, these Regulations, or any other law;
 - (k) Contributions to lobbying efforts or organizations that advocate on local, State, or Federal legislative issues;
 - (l) Any other expense that does not benefit the Rental Units or the property containing the 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; or

- (m) Any unreasonable costs, including unreasonable increases in costs since the Base year, and costs that could have been avoided by the Landlord's exercise of reasonable diligence.

C. Amortized Operating Expenses. Nonrecurring expenses, including the categories listed below, will be considered separate from Annual Operating Expenses and are eligible only for a Temporary Additional Rent Increase unless the Hearing Officer determines the totality of the circumstances supports a permanent Rent increase.

1. Legal Expenses.

- (a) Attorneys' fees and costs may be included as amortized operating expenses only to the extent the expense is one of the following:
 - (i) Incurred in connection with a successful effort made in good faith to recover Rent owed, to the extent the expense could not reasonably be recovered from the Tenant(s);
 - (ii) Incurred in connection with a successful unlawful detainer action made in good faith and not in violation of applicable law, to the extent the expense could not reasonably be recovered from the Tenant(s); or
 - (iii) Necessarily incurred in the course of normal operation of the Rental Unit(s) or property containing a Rental Unit, to the extent such expenses could not reasonably be recovered from adverse or other parties;
- (b) A Landlord may include as amortized expenses the reasonable costs incurred in obtaining an Additional Rent Increase pursuant to the Rent Stabilization Ordinance, including related administrative or judicial proceedings, to the extent permitted by the Order granting the Additional Rent Increase and except where the pass-through of the expense would violate public policy.
- (c) Except where an Order of a Hearing Officer or court provides otherwise, any legal expenses included in the calculation of Annual Operating Expenses pursuant to this Section III.C.1 must be amortized over a period of five (5) years unless it is demonstrated that an alternate amortization period would be more reasonable or would better further the purpose of the Rent Stabilization Ordinance.

2. Capital Improvement Costs. The costs of a Capital Improvement, as defined in Section II.D, may be included as amortized operating expenses as follows:

(a) The total cost of the Capital Improvement, including interest paid to finance the Capital Improvement, must be amortized over a period of five years or the useful life of the Capital Improvement, whichever is longer. However, if the total cost of the Capital Improvement does not exceed \$200 for any single Rental Unit and \$1,500 for the entire property and its expected life is less than five years, the Hearing Officer may spread the costs over a shorter period of time.

(b) Capital Improvement costs incurred prior to, or within one year after, the commencement of a tenancy are not grounds for an Additional Rent Increase unless the Hearing Officer finds the Capital Improvement was not reasonably foreseeable at the time the initial Rent was set for the tenancy.

D. Temporary Additional Rent Increase. A Hearing Officer may grant a Temporary Additional Rent Increase as provided by these Regulations.

E. Establishing Base Year Expenses. If records demonstrating all or a portion of alleged Annual Operating Expenses for a property that were incurred during the Base Year are unavailable, a Hearing Officer has the discretion to consider other available information and records supporting an expense estimate. Notwithstanding the foregoing, the Landlord retains the burden of proving Annual Operating Expenses. All Landlords subject to the Rent Stabilization Ordinance should retain all financial records that may be necessary to establishing Annual Income and Annual Operating Expenses for the Base Year.

IV. Allocation of Increase.

A. Presumption. Additional Rent Increases will be allocated equally among all Rental Units on the property except where a Hearing Officer determines, in the interest of justice, that the Additional Rent Increases should be allocated in another manner necessary to ensure fairness and further the purposes of the Rent Stabilization Ordinance.

B. Guidance for Application of Presumption.

1. Relative Unit Size. Generally, allocations of Additional Rent Increases 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 Additional Rent Increases generally should be lower for smaller Rental Units with fewer or no bedrooms than Rents for larger Rental Units with a greater number of

bedrooms. The condition of the Rental Units, including the state of repair, refurbishment, renovation, or rehabilitation may impact the application of this general guidance.

2. Recent Tenancies. Generally, an Additional Rent Increase should not be allocated to tenancies commenced within six (6) months of the completion of a Petition ("Recent tenancy") because the Rent of such Rental Units is considered to be the maximum Rent for a Rental Unit of similar size and amenities on the same property. Consequently, an Additional Rent Increase allocated to a Rental Unit should not result in a total Rent that is greater than that of a Recent Tenancy of similar size and amenities.

V. Adjustment of Base Year NOI. A Hearing Officer may adjust the Base Year NOI where a Landlord rebuts the presumption that the Base Year provided a reasonable and fair rate of return.

A. Exceptionally High or Low Expenses.

1. A Landlord may rebut the Base Year presumption by establishing the existence of exceptionally high or exceptionally low expenses during the Base Year in comparison to other years.
2. A claim adjustment of the Base Year NOI pursuant to this section may be based on one or more of the following factors:
 - (a) Expenses for necessary maintenance and repairs during the Base Year were exceptionally high;
 - (b) Expenditures for maintenance and repairs during the Base year were so exceptionally low that maintenance was inadequate and/or there was a significant deterioration in the quality of services provided; or
 - (c) Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.
3. A claim for adjustment of Base Year NOI must be made on the form provided by the City and proven by supporting documentation and other evidence.

B. Exceptional Circumstances Affecting Income.

1. A Landlord may rebut the Base Year presumption by establishing the existence of exceptional circumstances that caused the rental income that year to be disproportionately low.

2. A claim adjustment of the Base Year NOI pursuant to this section may be based on one or more of the following factors:
 - (a) The gross income during the base year was lower than it might have been because at least 20% of the tenants were charged reduced rent;
 - (b) The gross income during the base year was significantly lower than normal because of the destruction of the premises and/or temporary relocation of tenants for construction or repairs;
 - (c) The history of rent increases in the years prior to the base year was less than 60% of the percentage changes in the CPI;
 - (d) Base year rents were disproportionately low in comparison to the base year rents of comparable rental units in the City of Antioch; or
 - (e) Other exceptional circumstances.
3. A claim for adjustment of Base Year NOI must be made on the form provided by the City and proven by supporting documentation and other evidence.

C. Additional Factors. In deciding a claim for adjustment of the Base Year NOI, a Hearing Officer may consider the following factors:

1. The Rent for other comparable units in the property or in other comparable properties;
2. 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);
3. Shared services and amenities available to tenants of the unit(s), such as elevator(s) and laundry or recreational facilities and equipment;
4. The location of the property relative to other properties and/or community assets; and
5. Any other relevant information that may impact the Rent received or receivable for one or more units on the property during the Base Year.

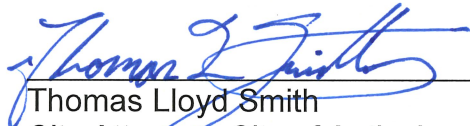
VI. Joint Requests—New or Additional Housing Services.

- A. Upon a written request of a Tenant filed with the City, a Hearing Officer may authorize an Additional Rent Increase or a one-time payment, capped at 5% of the monthly Rent, to recover costs associated with the any of the following:
1. New or additional Housing Services that are not included in the written Tenant's written lease, including new or additional pets, additional parking, or storage spaces.
 2. Improvements or modifications to the Covered Rental Unit as requested by the Tenant, such as new flooring, paint, and appliances. The costs of such modifications or improvements shall either be amortized over the useful life of the improvement as a Temporary Additional Rent Increase, or the Tenant and the Landlord may agree to a one-time payment for the Tenant's share of the cost of the improvement or modification.
 3. The addition of an occupant, other than a family member, who is not replacing a current or former roommate. Only a Temporary Additional Rent Increase may be awarded, which will terminate in the event the additional occupant vacates the Rental Unit.
- B. An Additional Rent Increase granted pursuant to this Section VI may not exceed 5% of the Tenant's Rent, or 5% of one month of the Tenant's Rent if a one-time payment.
- C. An Additional Rent Increase may not be granted pursuant to this Section VI if the Landlord has repeatedly failed to comply with the Rent Stabilization Ordinance, these Regulations, or any Order of a Hearing Officer, 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.

VII. Interpretation.

- A. Purpose. The purpose of this Article 5 is to implement the purposes of the Rent Stabilization Ordinance by detailing the method of ensuring Landlords may earn a fair and reasonable rate of return on their investment. Nothing in these Regulations should be interpreted to prohibit a Hearing Officer from granting an additional Rent increase that is demonstrated by the Landlord to be necessary to provide the Landlord with a fair rate of return.
- B. Severability. Each provision of these Rent Program Regulations is severable and should remain in effect in the event any other provision of these Regulations, or the application thereof to any person or circumstance, is held invalid. Each Regulation should be liberally construed to achieve the purposes of the Rent Stabilization Ordinance.

Adopted this 6th day of January, 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
City Attorney, City of Antioch