CITY AND COUNTY OF SAN FRANCISCO

RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD

RULES AND REGULATIONS

* *

Amended: February 1, 2012
Amending Section 12.20

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The Rent Board has a 24-hour automated information line available to answer over 80 of the most frequently asked questions. You can also fax a copy of the text you hear to your fax machine or be connected to a counselor during counseling hours (9 am – Noon & 1 – 4 pm). You can listen to and/or fax any topic in Spanish or Chinese.

SAN FRANCISCO RENT BOARD

LIST OF RECENT AMENDMENTS TO THE RULES AND REGULATIONS — 02/12

Following is a list of recent amendments to the Rent Board's Rules and Regulations:

1. 2009 Amendments to the Rules and Regulations

EFFECTIVE DATE	RULES & REGULATIONS SECTION	AMENDMENT
02/17/09	1.19	Amends the definition of Tenant's Utilities by deleting reference to Pacific Gas and Electric Company as the only provider of natural gas and electricity.
8/4/09	6.16	Clarifies that the filing by a tenant of a hardship application stays payment of the utility passthrough until the hardship claim is decided by an Administrative Law Judge after a hearing.
Amended 9/8/09, to be effective 11/01/09	12.16	Establishes a time frame for temporarily displaced tenants to reoccupy the unit after completion of capital improvement work.

2. 2011 Amendment to the Rules and Regulations

EFFECTIVE DATE	RULES & REGULATIONS SECTION	AMENDMENT
12/14/11	12.20	Provides that a tenant may not be evicted for violation of a unilaterally imposed change in the terms of a tenancy unless the tenant accepted the newly imposed term in writing or the newly imposed term is authorized by the Rent Ordinance. Also provides that a landlord's inability to evict a tenant for violation of a unilaterally imposed term shall not constitute a decrease in house service under the Rent Ordinance as to any other tenant.

3. 2012 Amendment to the Rules and Regulations

EFFECTIVE DATE	RULES & REGULATIONS SECTION	AMENDMENT
2/1/12	12.20	Allows a landlord to make a unilateral change in the terms of a tenancy where such change is required by law.

SAN FRANCISCO RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD

RULES AND REGULATIONS

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PART I DEFINITIONS

Section 1.10 Alternates

"Alternate" means an alternate member of the Rent Stabilization and Arbitration Board. An alternate who is present at a meeting of the Board shall act as member for all purposes except election of officers whenever the member for whom the alternate serves as alternate is not present or has been excused from considering or voting on any matter, unless the alternate is also excused.

Section 1.11 Anniversary Date

(Amended March 11, 1986; Subsection (a) renumbered and Subsection (b) added December 20, 1994; Subsection (b) repealed and adopted April 25, 1995; effective February 1, 1995)

(a) The anniversary date is the date on which the tenant's current rent became effective except in the case of certified capital improvements, rehabilitation, and/or energy conservation work which, when granted, do not affect or change the anniversary date. The next allowable rent increase shall take effect no less than one year from the anniversary date, but when imposed after one year, shall set a new anniversary date for the imposition of future rent increases.

(b) For Newly Covered Units, the first anniversary date shall be the date of the last lawful and effective rent increase imposed on or before May 1, 1994 or the date the tenancy commenced, whichever occurred later. The next allowable rent increase shall take effect no less than one year from the anniversary date, but, if it takes effect after more than one year, its effective date shall be the new anniversary date for purposes of future rent increases.

Section 1.12 Annual Rent Increase

(Amended February 21, 1984; effective March 1, 1984; amended December 8, 1992; Subsection (b) amended August 20, 1996; amended June 10, 2008)

(a) Where a landlord is entitled to an annual rent increase to be effective from December 8, 1992 through February 28, 1993, the allowable amount of increase is 1.6%. Thereafter, the annual allowable increase determined by the Board shall become effective each March 1, and shall be no more than 60% of the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose region as

published by the U.S. Department of Labor for the 12 month period ending October 31. In determining the allowable percentage rent increase, numbers of .04 and below shall be rounded down to the nearest tenth decimal place, and numbers of .05 and above shall be rounded up to the nearest tenth decimal place. In no event, however, shall the allowable annual increase be greater than seven percent (7%). The Rent Board shall publish the annual allowable increase amount on or about January 1. The published increase shall be determined only once for each 12 month period and shall remain in effect until the next scheduled recalculation.

(b) Where a landlord was entitled to an annual rent increase between March 1, 1992 and December 7, 1992, the allowable amount of increase is 4%. If a landlord did not impose the 4% increase to which the landlord was entitled during the period March 1, 1992 to December 7, 1992, the landlord may impose the increase at any time, even if two years have not elapsed since the effective date of the last annual increase.

(c) Where a landlord is entitled to an annual rent increase to be effective from December 8, 1992 through February 28, 1993, the allowable amount of increase is 1.6%. Any notice of rent increase which imposes only a 4% or less annual increase effective during the above period is lawful in the amount of 1.6%, and only that portion of the increase above 1.6% is null and void, provided that the increase is given in good faith without knowledge of the effective date of Proposition H. Nothing in this Regulation shall affect any banking rights that the landlord may have.

(d) For rent increases effective during the period December 8, 1992 through February 28, 1993, where a tenant has received a notice of increase in excess of the allowable amount but has not yet paid the requested amount, the notice shall be null and void. Nothing in this Regulation shall affect any banking rights that the landlord may have.

Section 1.13 <u>Capital Improvements</u>
(Amended February 28, 1989)

"Capital Improvements" means those improvements which materially add to the value of the property, appreciably prolong its useful life, or adapt it to new uses, and which may be amortized over the useful life of the improvement of the building. Capital Improvements do not

include normal routine maintenance and repair. (For example, the patching of a roof is not a capital improvement while the partial or complete replacement of the old roof is; repair of a foundation is considered a capital improvement and not a repair.) Repairs which are incidental to a capital improvement project, or replacement of an item normally considered a capital improvement, are also defined as capital improvements. Capital Improvements otherwise eligible are not eligible if the landlord charges a use fee such as where the tenant must deposit coins to use a landlord-owned washer and dryer.

Section 1.14 <u>Energy Conservation</u>

Work performed pursuant to the requirements of Article 12 of the San Francisco Housing Code.

Section 1.15 <u>Newly Covered Unit</u>
(Adopted April 25, 1995, effective February 1, 1995)

"Newly Covered Unit" shall mean a Rental Unit that became subject to the Rent Ordinance on December 22, 1994 as a result of the passage of Proposition I in November 1994 because, as of that date, the unit was located in a building containing four Rental Units or less, and an owner (who held in good faith at least a fifty percent (50%) recorded fee interest) had occupied the building as a principal place of residence for at least six continuous months.

Section 1.16 <u>Proposition I Affected Unit</u>
(Adopted April 25, 1995, effective February 1, 1995)

"Proposition I Affected Unit" shall mean a Newly Covered Unit, as well as a unit that would have been subject to the Rent Ordinance on December 22, 1994 regardless of the passage of Proposition I at the November 1994 election, but that would have become exempt within a reasonable period of time thereafter if Proposition I had not passed. If the unit is not a Newly Covered Unit, the landlord must have:

(a) resided in the building prior to November 9, 1994;

(b) initiated renovations on a unit in the same building prior to November 9, 1994 for the purpose of residing in that unit, and at the conclusion of the renovations the landlord must have resided in that unit;

(c) served an eviction notice pursuant to Section 37.9(a)(8) prior to November 9, 1994 and some time thereafter the landlord must have resided in the building;

(d) initiated renovations (with all necessary permits) prior to November 9, 1994, which renovations were ordered by a governmental agency in order to reduce the total number of units in the building to four or less; or

(e) did any of the above within three months of becoming owner of record of the unit if the landlord was not owner of record prior to November 9, 1994, but had entered into an agreement to purchase the unit which agreement became non-contingent on or after September 1, 1993 and prior to November 9, 1994.

Section 1.17 <u>Rental Units</u>
(Subsection (e) amended February 21, 1989; Subsection (c) amended February 14, 1995; Subsection (e) deleted March 7, 1995; Renumbered effective February 1, 1995; Amended subsection (g) and added (h) March 11, 1997; Subsection (i) added May 18, 1999)

"Rental Unit" means a residential dwelling unit, regardless of zoning or legal status, in the City and County of San Francisco and all housing services, privileges, furnishings (including parking facilities supplied in connection with the use or occupancy of such unit), which is made available by agreement for residential occupancy by a tenant in consideration of the payment of rent. The term does not include:

(a) Housing accommodations in hotels, motels, inns, tourist homes, rooming and boarding houses, provided that at such time as an accommodation has been occupied by a tenant for thirty-two (32) continuous days or more, such accommodation shall become a rental unit;

(b) dwelling units in a non-profit cooperative owned, occupied, and controlled by a majority of the residents;

(c) housing accommodations in any hospital, convent, monastery, extended care facility, asylum, residential care or adult day health care facility for the elderly which must be operated pursuant to a license issued by the California Department of Social Services, as required by California Health and Safety Chapters 3.2 and 3.3, or in dormitories owned and

operated by an institution of higher education, a high school, or an elementary school;

(d) dwelling units whose rents are controlled or regulated by any government unit, agency, or authority excepting those unsubsidized and/or unassisted units which are insured by the United States Department of Housing and Urban Development;

(e) newly constructed rental units for which a certificate of occupancy was first issued after June 13, 1979;

(f) dwelling units in a building which has undergone substantial rehabilitation completed after June 13, 1979; provided, however, that RAP rental units are not subject to this exemption;

(g) live/work units in a building where all of the following conditions have been met: (1) a lawful conversion to commercial/dwelling use occupancy has occurred; (2) a Certificate of Occupancy has been issued by the San Francisco Department of Building Inspection after June 13, 1979; and (3) there has been no residential tenancy in the building of any kind between June 13, 1979 and the date of issuance of the Certificate of Occupancy;

(h) commercial space where there is incidental and infrequent residential use;

(i) a residential unit, wherein at the inception of the tenancy there was residential use, there is no longer residential use and there is a commercial or other non-residential use. The presumption shall be that the initial use was residential unless proved otherwise by the tenant.

Section 1.18 <u>Substantial Rehabilitation</u>
(Amended August 29, 1989; September 5, 1989; September 26, 1989; June 18, 1991; renumbered effective February 1, 1995; amended February 4, 2003.)

"Substantial rehabilitation" means the renovation, alteration or remodeling of a building containing essentially uninhabitable residential rental units of 50 or more years of age which require substantial renovation in order to conform to contemporary standards for decent, safe and sanitary housing in place of essentially uninhabitable buildings. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to extensive improvements that cure substantial deferred maintenance. Cosmetic improvements alone such as painting, decorating and minor repairs, or other work which can be performed safely without having the

units vacated, do not qualify as substantial rehabilitation.

Improvements will not be deemed substantial unless the cost of the work for which the landlord has not been compensated by insurance proceeds equals or exceeds seventy-five percent (75%) of the cost of newly constructed residential buildings of the same number of units and type of construction, excluding land costs and architectural/engineering fees. The determination of the cost of newly constructed residential buildings shall be based upon construction cost data reported by Marshall and Swift, Valuation Engineers, as adapted for San Francisco and posted in January and June of each year in the Department of Building Inspection for purposes of determining permit fees. The schedule in effect on the date of the Notice of Completion of the improvements shall apply. Where the landlord is seeking to recover possession of a rental unit under Section 37.9(a)(12) of the Rent Ordinance, improvements will not be deemed substantial unless the estimated cost of the proposed work for which the landlord will not be compensated by insurance proceeds equals or exceeds seventy-five percent (75%) of the cost of newly constructed residential buildings of the same number of units and type of construction, excluding land costs and architectural/engineering fees, based upon construction cost data reported by Marshall and Swift. For purposes of such evictions under 37.9(a)(12) of the Rent Ordinance, there shall be a rebuttable presumption that the cost stated for the work in the applicable approved construction permits is the estimated cost of the proposed work. For purposes of determining whether improvements are substantial under Section 37.9(a)(12), the determination of the cost of newly constructed residential buildings shall be based upon construction cost data reported by Marshall and Swift, Valuation Engineers, as adopted for San Francisco. The schedule in effect on the date the notice to quit is served shall apply. Where the landlord is seeking to recover possession of several units in the same building under Section 37.9(a)(12) of the Rent Ordinance for one proposed substantial rehabilitation project, the schedule posted and in effect on the date of service of the first notice of termination shall apply. A landlord who recovers possession of a rental unit under Section 37.9(a)(12) must file a petition with the Rent Board for exemption based on substantial rehabilitation within the earlier of: (i) two years following recovery of possession of the rental unit; or (ii) one year following completion of

the work. A landlord who fails to file a petition within such time and thereafter obtain a determination of exempt status from the Board shall be rebuttably presumed to have wrongfully recovered possession of the tenant's rental unit in violation of Section 37.9(f).

Section 1.19 Tenant's Utilities
(Renumbered effective February 1, 1995; amended August 24, 2004; amended February 17, 2009)

For the purpose of Ordinance Section 37.2(q) and Sections 4.11 and 6.16 of these Rules, "Tenant's Utilities" means charges for natural gas or electricity provided directly to the unit occupied by the tenant or to the building in which the unit is located and benefiting the tenant, whether paid by the tenant alone, by the landlord alone, or part by the tenant and part by the landlord.

Section 1.20 Wrongful Eviction
(Renumbered effective February 1, 1995)

"Wrongful Eviction" means the serving of a notice to quit a rental unit, the making of a demand for possession of a rental unit, or the prosecution of an Unlawful Detainer action in violation of the Ordinance.

Section 1.21 Tenant In Occupancy
(Effective June 5, 2001; amended for clarification December 3, 2002)

A tenant in occupancy is an individual who otherwise meets the definition of tenant as set forth in Ordinance Section 37.2(t), and who actually resides in a rental unit or, with the knowledge and consent of the landlord, reasonably proximate rental units in the same building as his or her principal place of residence. Occupancy does not require that the individual be physically present in the unit or units at all times or continuously, but the unit or units must be the tenant's usual place of return. When considering whether a tenant occupies one or more rental units in the same building as his or her "principal place of residence," the Rent Board must consider the totality of the circumstances, including, but not limited to the following elements:

(1) the subject premises are listed as the individual's place of residence on any motor vehicle registration, driver's license, voter registration, or with any other public agency, including Federal, State and local taxing authorities;

(2) utilities are billed to and paid by the individual at the subject premises;

(3) all of the individual's personal possessions have been moved into the subject premises;

(4) a homeowner's tax exemption for the individual has not been filed for a different property;

(5) the subject premises are the place the individual normally returns to as his/her home, exclusive of military service, hospitalization, vacation, family emergency, travel necessitated by employment or education, or other reasonable temporary periods of absence; and/or

(6) Credible testimony from individuals with personal knowledge or other credible evidence that the tenant actually occupies the rental unit or units as his or her principal place of residence.

A compilation of these elements lends greater credibility to the finding of "principal place of residence" whereas the presence of only one element may not support such a finding.

PART II BOARD ORGANIZATION AND PROCEDURES

Section 2.10 Election of Officers
(Amended February 21, 1989)

The members of the Board, including alternates, shall elect from among themselves a President and Vice-President for a term not to exceed one year. The election of each officer shall require a vote of the majority of the members. At the end of his or her one year term, neither the President or Vice-President will be eligible to hold the same office until at least one year after the expiration of their term.

The election of officers may be held at a regular or special meeting of the Board, provided notice of such an election is mailed to the members and alternates at least ten (10) days prior to the meeting at which the election will be held. The President or any two members may call a special meeting for the election of officers, if needed, or call for such an election at a regular Board meeting, provided the notice required in this section is given.

Section 2.11 Board Alternates
(Amended February 21,1989)

Alternates may participate in discussion and deliberations and may preside over appeal hearings, but will only be allowed to vote when the member for whom the alternate serves as alternate is not present or has been excused from consideration of or voting on a matter by the Board.

Section 2.12 Decisions by the Board

A decision of the Board shall require a majority of all the members of the Board. All decisions of the Board shall be recorded by roll call vote and a record of such actions shall be available to the public. Each member present at a meeting shall vote either for or against any question put to a vote, unless excused from voting by a motion adopted by a majority of the members present.

Section 2.13 Board Meetings
(Amended June 17, 1986; June 18, 1991; January 18, 1994;
new section (e) added; amended March 23, 2004)

(a) The Board shall meet on the first Tuesday of each month at 6:00 p.m. at Room

70, Lower Level, 25 Van Ness Avenue, San Francisco, California, 94102 except (i) when that day falls on a legal holiday or election day, the meeting shall be held on the next Tuesday which is neither a legal holiday nor an election day, or (ii) when the Board designates an alternate date or place for the meeting, the meeting shall be held on the designated date and at the designated place.

(b) The Board shall meet at such other times as necessary to stay current with the workload or tend to administrative matters.

(c) Special meetings may be held any time, upon compliance with Charter provision 3.500.

(d) Meetings shall be open to the public, except that any member may require that matters for which meetings in executive session are allowed by law be discussed and considered in executive session, provided all votes of the members shall be matters of public record.

(e) For purposes of testimony at Public Hearings before the Board, members of the public shall be limited to testimony of three minutes duration. The Board shall have the authority to waive this limitation at its discretion.

Section 2.14 <u>Agenda</u>

Except for meetings in executive session, the agenda for each meeting of the Board shall be sent to each member and alternate with notice of the meeting. Notices of meetings and agendas shall be prepared and filed with the Public Library in the manner and within the times required by law. Matters on any meeting's agenda may be considered and decided out of the order on which they appear on the agenda upon approval of the members present. Except where prohibited by public notice requirements, the Board may, at any meetings, consider and decide matters not on the agenda for that meeting if the members present unanimously approve.

Section 2.15 <u>Per Diem Compensation</u>
(Amended September 21, 1999; amended March 23, 2004;
amended August 24, 2004)

Each member shall receive $75.00 for each Board meeting attended if the meeting lasts

for six hours or more in a single twenty-four hour period, and $70.00 if the meeting lasts less than six hours in a single twenty-four hour period. If a member or the alternate is not in attendance for an entire meeting, compensation shall be determined by reference to the actual aggregate time the member was in attendance in proportion to the total time of the meeting.

Section 2.16 Financial Disclosure and Conflict of Interest Statement

Pursuant to the conflict of interest code adopted by the Board pursuant to Government Code Section 87300 and approved by the Board of Supervisors, all members shall disclose all present holdings and interests in real property, including interests in corporations, trusts, or other entities with real property holdings, in accordance with applicable state law.

Section 2.17 Conflict of Interest

No member of the Board or member of the staff of the Board may participate in the consideration or decision of any case in which such person has any personal interest, including an equity interest, an interest as a landlord, tenant or management person, or is related by blood or marriage or adoption to a landlord or tenant involved.

Section 2.18 Waiver of Regulations
(Amended August 29, 1989; September 27, 1994)

The Board may grant exception to these regulations for good cause shown in the interest of justice or to prevent hardship. If a majority of the board votes to accept a landlord or tenant appeal on the basis of financial hardship, they may delegate their authority to hear and decide such a claim to an Administrative Law Judge, subject to the right of appeal to the board.

Section 2.19 Advisory Opinions

No advisory opinion, oral or written, shall be given by the Board, or any of its members, except upon the vote of a majority of the Board.

Section 2.20 Index of Decisions

The Board shall establish and continuously maintain a file of decisions and opinions issued by Administrative Law Judges and the Board, properly indexed as to subject matter and available for public inspection in the Board office between the hours of 9 a.m. - 5 p.m. on

weekdays, excluding holidays. Copies of decisions and opinions may be reproduced at the expense of the person requesting the copies, at a price equal to the cost of such reproduction to the Board, as determined by the Executive Director. Funds so received shall be deposited with the Controller.

PART III FEES

Section 3.10 Amount of Fees
(Amended December 16, 1986; February 10, 1987; September 19, 1989)

For each building for which the landlord seeks to pass on the cost of capital improvements, rehabilitation, and/or energy conservation work, or substantial rehabilitation certification, there shall be deposited with the Rent Board by the landlord an amount which shall cover the cost of hiring an estimator. This cost shall be based on the actual cost of hiring the estimator. These costs shall be posted at the Rent Board. If an estimator is not used, this portion of the fee shall be returned to the applicant.

Section 3.11 Waiver of Fees
(Deleted September 19, 1989)

Section 3.12 Deposit of Estimator Fees
(Amended September 19, 1989)

Estimator fees shall be paid by check or money order payable to the Residential Rent Stabilization and Arbitration Board. Fees collected by the Rent Board shall be deposited with the Controller and credited to the appropriate fund.

PART IV RENT INCREASES NOT REQUIRING APPROVAL BY THE RENT BOARD

Section 4.10 Notice
(Amended February 21, 1984, effective March 1, 1984; amended August 29, 1989; June 18, 1991; Subsection (d) added on January 31, 1995 and February 14, 1995; repealed April 25, 1995, effective February 1, 1995; amended September 21, 1999)

(a) Those landlords not seeking a rental increase which exceeds the limitations set forth in Section 37.3 of the Rent Ordinance shall inform the tenant in writing on or before the date the notice is given of the following:

(1) Which portion of the rent increase reflects the annual increase, and/or banked amount, if any;

(2) which portion of the rent increase reflects the costs of capital improvements, rehabilitation, and/or energy conservation work which have been certified;

(3) which portion of the rent increase reflects the passthrough of charges for gas and electricity, which charges shall be explained;

(4) which portion of the rent increase reflects the amortization of a RAP loan.

(b) Any rent increase which does not conform with the provisions of this Section shall render the entire rent increase null and void, unless the amount requested equals no more than the allowable annual and banked rent increase(s), provided, however, that in the event such increases are given in a good faith effort to comply with the Ordinance and Regulations and do not exceed limitations by more than one-half of one percent of the prior base rent, Administrative Law Judges shall readjust the base rent to reflect the proper percentage increase.

(c) To be effective, any rent increase notices given on or after March 1, 1984 must conform with the provisions of 4.10(a). If, however, the landlord serves a notice of rent increase prior to March 1, 1984 and it takes effect on or after that day, the following rules shall apply:

(1) Notices which requested an increase above seven percent (7%) without filing a landlord's petition will remain null and void in their entirety;

(2) if the landlord has filed a petition for an amount above seven percent (7%) based on Parts 6, 7, or 8 of these Rules, the correct annual increase will be effective as of the date the notice given was to become effective; and,

(3) notices which request an increase of seven percent (7%) or less without filing a landlord's petition, will only be null and void as to that portion which exceeds the allowable annual rent increase.

Section 4.11 <u>Computation of Passthrough of Gas and Electricity</u>
(Amended June 17, 1986; amended August 24, 2004)

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served prior to or on November 1, 2004, except that with respect to such utility passthroughs, the passthrough shall be discontinued twelve months after it was imposed or by December 31, 2004, whichever is later.

(a) No landlord may pass through any increase in the cost of the utilities to a tenant until the tenant has occupied one or more units in the subject building for one continuous year. Each utility passthrough may be charged to the tenant only at the time of an annual rent increase.

(b) Where a landlord pays for gas, electricity, and/or steam and seeks to recover the increase in the cost of these utilities from tenants, the landlord shall calculate the amount of such increase by using either of the following two methods, both of which should always yield the same results:

(1) <u>Method 1</u>: Compile the utilities receipts for the two calendar years preceding the first noticing of the utility passthrough. The calendar year immediately preceding the noticing shall be referred to as the "comparison year;" the calendar year preceding the "comparison year" shall be referred to as the "base year." The base year will remain the same for all future calculations, except where the pass through is discontinued pursuant to subsection (c) below. Different tenants in the same building may have different base years depending on when they moved into the building and when utility increases were first passed through to them.

(i) Calculate the total utility cost for the comparison year and the total utility cost for the base year.

(ii) Subtract the total base year utility cost from the total comparison year utility cost. If there is no increase or if there has been a decrease, no pass through for the

current calendar year is allowed and any increase levied in a prior year must be discontinued.

(iii) Divide the resulting figure, if greater than zero, by 12 to determine the average monthly utility increase or decrease for the entire building.

(iv) Divide the average monthly utility increase or decrease by the number of rooms in the building. For the purposes of this section the number of rooms in a building shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on.

(v) If a utility pass through has been instituted, subsequent passthroughs shall be determined for the immediately following year by calculating the utility cost for the calendar year preceding the noticing of the passthrough. This amount shall become the updated comparison year figure. The passthrough shall then be calculated in accordance with Rules and Regulations Sections 4.11(b)(1)(ii) through 4.11(b)(1)(iv).

(2) Method 2: Alternatively, the landlord may choose, in subsequent years, to use the prior year's "comparison year" as the current base year and subtract the updated base year amount from the new comparison year total utility cost. The resulting amount would be added to the prior year's total utility passthrough. The passthrough shall then be calculated in accordance with Rules and Regulations Sections 4.11(b)(1)(iii) through 4.11(b)(1)(v).

(c) Until such time as an annual rent increase is noticed the current pass through shall remain in effect. However, if a landlord does not recalculate and re-notice the pass through at the subsequent annual rent increase, the entire pass through is discontinued until recalculated and re-noticed. At such time as a new pass through is calculated and noticed, a new base year is established which shall be the calendar year preceding the new comparison year.

(d) In the event that more than one year has passed since the imposition of the last PG&E pass through, the landlord must adjust for any increases or decreases that have occurred since the last pass through was implemented, so that the tenant receives the benefit of any utility decrease that occurred in the intervening period.

(e) Nothing in this section or in these Rules and Regulations shall be interpreted as

requiring any landlord to pass through any utility increase or to raise any tenant's rent. However, where the utility costs decrease in years subsequent to the passing through of an increase, the tenant must be given the benefit of such decrease calculated in the same manner as any increase passed through under Ordinance Section 37.2(n). A tenant may petition the Board for an arbitration hearing whenever a pass through charge has been noticed or is in effect and the tenant protests the amount being charged or the calculation procedure being used by the landlord. If the comparison year utility costs fall below the base year costs, the landlord shall not be required to reduce the rent beyond eliminating any utility pass through made in prior years.

(f) If the methods set forth for an increase (or decrease) in utilities in subsection (b) of this Section cannot be applied for reasons beyond the control of the landlord, and in the absence of a relevant agreement between the landlord and the tenant, the landlord may petition the Board for an arbitration hearing to establish an appropriate alternative method, which shall be used for all following years unless another method is approved by the Board.

(g) The amount of rent due from the tenant for any utility pass through shall be due on the same date as a rent payment normally would be due.

(h) No amount passed through to the tenant as a utility increase shall be included in the tenant's base rent for purposes of calculation of the amount of rent increases allowable under the Ordinance and these Rules and Regulations.

(i) The provisions of this Section shall be deemed a part of every rental agreement or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the landlord and the tenant agree that the landlord will not pass through any utility increases, in which case such agreement will be binding on the landlord and on any successor owner of the building, unless such agreement is changed in accordance with applicable law.

(j) Where a utility increase has been lawfully passed through to the tenant, a change in the ownership of the building in which the tenant's unit is located will not affect the tenant's liability to pay the amount passed through or the tenant's entitlement to the benefit of decreases in the utilities costs.

Section 4.12 <u>Banking</u>
(Amended May 6, 1986; August 29, 1989; June 18, 1991; September 21, 1999)

(a) A landlord who refrains from imposing an annual rent increase, or any portion thereof, may accumulate said increase and impose that amount on or after the tenant's subsequent rent increase anniversary date; however, the rent may be increased only one time every twelve (12) months. This banked amount may only be given at the time of an annual increase. Only those increases which could have been imposed on, or subsequent to, April 1, 1982, may be accumulated. A full 12 months must have elapsed from the date that an annual rent increase, or a portion thereof, could have been imposed before this banking section becomes applicable. Banked increases shall not be compounded and shall not be rounded up; provided, however, that in the event that a banked rent increase exceeds limitations by no more than one-half of one percent of the prior base rent and such increase was given in a good faith effort to comply with the Ordinance and Regulations, Administrative Law Judge shall readjust the base rent to reflect the proper banked amounts.

(b) In order to impose an accumulated rent increase the landlord shall: (1) inform the tenant, on or before the date upon which the landlord gives the tenant legal notice, which portion of the rent increase reflects banked amount, and (2) the dates upon which said banked amount is based; provided, however, that failure to include such information shall not render the increase null and void.

Section 4.13 <u>Charges Related to Excess Water Use</u>
(Adopted June 18, 1991)

(a) A landlord may impose increases not to exceed fifty percent of the excess use charges (penalties) levied by the San Francisco Water Department on a building for use of water in excess of Water Department allocations upon compliance with the provisions of Ordinance Section 37.3(a)(5) as follows:

(1) The landlord shall provide the tenant(s) with written certification that the following have been installed in all units:

(i) permanently-installed retrofit devices designed to reduce the amount of water used per flush or low-flow toilets (1.6 gallons per flush);

(ii) low-flow showerheads which allow a flow of no more than 2.5 gallons per minute; and

(iii) faucet aerators (where installation on current faucets is physically feasible); and

(2) The landlord shall provide the tenant(s) with written certification that no known plumbing leaks currently exist in the building and that any leaks reported by tenants in the future will be promptly repaired; and

(3) The landlord shall provide the tenant(s) with a copy of the water bill for the period in which the penalty was charged. Only penalties billed for a service period which begins after April 20, 1991 may be passed through to tenants.

(b) The landlord shall calculate the amount of such passthrough as follows:

(1) Divide the excess water use penalty charge by 2 in order to obtain the total amount permitted to be passed through to qualified tenants in the building.

(2) Divide the penalty amount determined in number (1) above by the total number of rooms in the building to obtain the allowable passthrough per room. For the purposes of this section the number of rooms in a building shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on. Living rooms, dining rooms and other rooms of at least 70 square feet may be counted. Kitchens count as a room in all cases.

(3) Multiply the figure calculated in number (2) above by the number of rooms in each unit to obtain the allowable passthrough per unit.

(c) Only those tenants in residency during the billing period in which the penalty was incurred may be assessed the passthrough.

(d) The amount due from the tenant for any excess water use passthrough shall be due on the same date as a rent payment normally would be due.

(e) These are one-time, non-recurring charges unless a new excess use charge is applied on the next water bill, which would require new calculations and a new passthrough amount.

(f) No amount passed through to the tenant as a water use penalty charge shall be included in the tenant's base rent for purposes of calculation of the amount of rent increases allowable under the Ordinance and these Rules and Regulations.

(g) The tenant's failure to pay the demanded amount is not a just cause for eviction, as the passthrough is not defined as a rent increase under Section 37.2(o) of the Rent Ordinance. The owner must seek relief for non-payment in a court of competent jurisdiction or through an arbitration/mediation service.

(h) Nothing in this section or in these Rules and Regulations shall be interpreted as requiring any landlord to pass through any increase related to excess water use charges. However, the provisions of this Section shall be deemed a part of every rental agreement or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the landlord and tenant agree that the landlord will not pass through any excess water use penalty charges, in which case such agreement will be binding on the landlord and on any successor owner of the building, unless such agreement is changed in accordance with applicable law.

(i) Where an excess water use penalty charge has been lawfully demanded of a tenant, a change in the ownership of the building in which the tenant's unit is located will not affect the tenant's liability to pay the amount passed through.

(j) Up to 60 days following receipt by the tenant of a notice of an excess use charge passthrough, a tenant may object to the passthrough on the following grounds:

(1) The landlord has not provided written certification that the required water conservation measures have been installed;

(2) The landlord has not provided written certification that no known plumbing leaks exist;

(3) The landlord has not provided a copy of the bill for the period of the penalty charge;

(4) The penalty was incurred during a service period that began prior to April 20, 1991;

(5) The tenancy began after the period of the billing charges accrued;

(6) The landlord has failed to appeal an allotment based on an occupancy level that has changed after March 1, 1991, after having been requested to do so;

(7) The penalty reflects a 25% or more increase in consumption over the prior billing period, unrelated to increased occupancy or other known use and the property has not been inspected by a licensed plumber or the Water Department; and/or

(8) The passthrough is calculated using an incorrect room count.

(k) In order to object to the imposition of a water penalty charge passthrough, the tenant shall follow the below procedure:

(1) A complaint shall be filed on a form supplied by the Board

(2) The Board shall request that the landlord provide certification of compliance with the requirements of Ordinance Section 37.3(a)(5). If the landlord is alleged not to have implemented required water conservation measures, the landlord shall be required to provide certification from a licensed plumber or the San Francisco Water Department.

(3) Based on documentation provided by the landlord, the Rent Board shall approve or deny the passthrough and notify both parties of the determination.

(4) The Board's determination is not subject to appeal to the Rent Board Commissioners.

(5) The filing of a complaint by a tenant does not relieve the tenant of his or her obligation to pay the passthrough pending a final determination.

Section 4.14 <u>Water Revenue Bond Passthrough</u>
(Effective July 20, 2005)

(a) A landlord may pass through fifty percent (50%) of the water bill charges attributable to water rate increases resulting from issuance of Water System Improvement Revenue Bonds authorized at the November 5, 2002 election (Proposition A), to any unit that is in compliance with any applicable laws requiring water conservation devices. The landlord is not required to file a petition with the Board for approval of a water revenue bond passthrough.

(b) The landlord shall give the tenant(s) legal notice of any water revenue bond passthrough.

(1) The notice shall specify the dollar amount of the monthly passthrough, the period of time covered by the water bill(s) that are used to calculate the passthrough and the number of months that the tenant is required to pay the passthrough.

(2) The notice shall explain that the passthrough is based on increased water bill charges attributable to water rate increases resulting from issuance of water revenue bonds authorized at the November 2002 election.

(3) The charges and the calculation of the passthrough shall be explained in writing on a form provided by the Board, which form shall be attached to the notice.

(4) The notice shall state that the tenant is entitled to receive a copy of the applicable water bill(s) from the landlord upon request.

(5) The notice shall state that the unit is in compliance with any applicable laws requiring water conservation devices.

(c) The landlord shall calculate the amount of the water revenue bond passthrough as follows:

(1) Step 1: Compile the water bill(s) to be included in the calculation of the water revenue bond passthrough. The landlord may base the calculation on a single water bill or, in the alternative, on all of the water bills for any calendar year. Where the landlord elects to calculate the passthrough based on calendar year, the passthrough shall be based on actual costs incurred by the landlord during the relevant calendar year(s), regardless of when the water bills were received or paid.

(2) Step 2: Add up the water bill charges attributable to water rate increases resulting from issuance of Water System Improvement Revenue Bonds authorized at the November 5, 2002 election. These charges are listed as a separate line item on the water bill. Divide that figure by two (since a 50% passthrough is permitted) in order to obtain the total amount permitted to be passed through to tenants in the building.

(3) Step 3: Divide the amount determined in Step 2 above by the total number of units covered by the water bill(s), including commercial units, to obtain the allowable passthrough per unit.

(4) Step 4: Divide the amount determined in Step 3 above by the number of months covered by the water bill(s) to determine the monthly passthrough amount for each unit covered by the water bill(s).

(d) The monthly passthrough amount determined in Step 4 can be imposed only for the same number of months covered by the water bills that are used in the passthrough calculation. For example, if the landlord imposes a water revenue bond passthrough based on a single water bill with a two-month bill cycle, the monthly passthrough remains in effect for two months only. If the landlord imposes a water revenue bond passthrough based on water bills for charges incurred during an entire calendar year, the monthly passthrough remains in effect for twelve months. If the landlord imposes a water revenue bond passthrough based on water bills for charges incurred during two calendar years, the monthly passthrough remains in effect for twenty-four months.

(e) Where the landlord elects to calculate the water revenue bond passthrough based on a single water bill, the passthrough may be imposed at any time, provided that the landlord serves notice of such passthrough within sixty (60) days of receipt of the water bill. Where the landlord elects to calculate the water revenue bond passthrough based on water bills for charges incurred during an entire calendar year, the passthrough may be imposed at any time, provided that the landlord serves notice of such passthrough to be effective on the tenant's anniversary date.

(f) Only those tenants in residency during the billing period(s) in which the water bill charges were incurred may be assessed the passthrough.

(g) The amount due from the tenant for any water revenue bond passthrough shall be due on the same date as a rent payment normally would be due.

(h) The water revenue bond passthrough shall not be included in the tenant's base rent for purposes of calculation of the amount of rent increases allowable under the Ordinance and these Rules and Regulations.

(i) Nothing in this section or in these Rules and Regulations shall be interpreted as requiring any landlord to pass through any water rate increases resulting from issuance of Water

System Improvement Revenue Bonds authorized at the November 5, 2002 election. However, the provisions of this Section shall be deemed a part of every rental agreement or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the landlord and tenant agree that the landlord will not pass through any charges based on water rate increases resulting from issuance of Water System Improvement Revenue Bonds authorized at the November 5, 2002 election, in which case such agreement will be binding on the landlord and on any successor owner of the building, unless such agreement is changed in accordance with applicable law.

(j) Where a water revenue bond passthrough has been lawfully demanded of a tenant, a change in the ownership of the building in which the tenant's unit is located will not affect the tenant's liability to pay the amount passed through.

(k) Where a tenant alleges that the landlord has imposed a water revenue bond passthrough that is not in compliance with Ordinance Section 37.3(a)(5)(B) and Rules and Regulations Section 4.14, the tenant may petition for a hearing under the procedures provided in Ordinance Section 37.8. In such a hearing, the landlord shall have the burden of proof. Any tenant petition challenging such a passthrough must be filed within one year of the effective date of the challenged water revenue bond passthrough. The filing of a petition by a tenant does not relieve the tenant of his or her obligation to pay the passthrough pending a final determination. Grounds for challenging a water revenue bond passthrough are set forth in Section 10.14 of these Rules and Regulations.

(l) A tenant may file a hardship application with the Board requesting relief from all or part of a water revenue bond passthrough. Any hardship application must be filed within one year of the effective date of the water revenue bond passthrough(s). Payment of the water revenue bond passthrough(s) set forth in the hardship application shall be stayed until a decision is made by the Administrative Law Judge after a hearing on the tenant’s hardship application. Appeals of decisions on a tenant’s hardship application shall be governed by Ordinance Section 37.8(f).

Section 4.15 <u>Effect of Vacancy</u>
(Added April 25, 1995, effective February 1, 1995; renumbered July 20, 2005)

In accordance with Section 37.3(a) of the Rent Ordinance, the Rent Ordinance does not regulate initial rent levels for a new tenancy. The Rent Board does not interpret anything in Section 37.12 of the Rent Ordinance to alter this general principle. However, the Rent Board does find in the spirit of Section 37.12 an intent to preclude a landlord from setting a new Base Rent when that landlord served an eviction notice on or after May 1, 1994 and before December 22, 1994 (the "Transition Period") and the eviction would not have been permissible under Section 37.9 of the Rent Ordinance. Thus, for Newly Covered Units, if there was a proper termination of tenancy during the Transition Period, then the landlord was/is free to set a new Base Rent without limitation upon reletting the unit, and any rents paid by the new tenant that exceed the initial base rent (as defined in Section 37.12(a) of the Rent Ordinance) need not be refunded to the new tenant. If there was not a proper termination of tenancy during the Transition Period, then the landlord was/is not entitled to set a new Base Rent, and the landlord shall be required to refund any overpayments of rent in accordance with Section 37.12(b) of the Rent Ordinance. A proper termination of tenancy occurs when the tenant:

(a) terminates the tenancy voluntarily;

(b) vacates the unit as a result of an eviction that would have been permissible under Section 37.9 of the Rent Ordinance; or

(c) vacates the unit as a result of a notice of eviction served prior to May 1, 1994.

PART V LANDLORD PETITION FOR ARBITRATION

Section 5.10 Who must file
(Amended June 5, 2001)

Landlords who seek to impose rent increases which exceed the rent increase limitations set forth in Section 4 above, must petition for an arbitration hearing. Landlords who seek a determination that a tenant is not a tenant in occupancy pursuant to Section 1.21 above must petition for an arbitration hearing prior to issuing a notice of rent increase on such grounds. Any petition seeking a determination that a tenant is not a tenant in occupancy shall be expedited.

Section 5.11 Information to Accompany Landlord Petition

Petitions shall be filed on a form supplied by the Board. The petitions shall be accompanied by: 1) a statement as to why the landlord believes a rent increase should be allowed, together with supporting documentation; 2) the landlord shall also submit sufficient copies of the petition for distribution to each tenant.

Section 5.12 Time of Filing Petition

The landlord must file a petition before giving legal notice of a rent increase which exceeds the limitations set forth in Part 4 above. The notice shall be in conformance with the requirements set forth in Section 4.10 and shall further include the dollar amount requested which exceed those limitations. The petition may be filed at any time during the calendar year.

Section 5.13 Imposition of Rent Increases Granted by the Administrative Law Judge
(Subsection (a) renumbered April 25, 1995, effective February 1, 1995;
Subsection (b) added April 25, 1995, effective February 1, 1995)

(a) Once a completed petition has been filed, the landlord may serve a legal notice of the proposed rent increase. That portion of the requested rental increase which exceeds the limitations set forth in Section 4 above shall be inoperative until a decision by the Administrative Law Judge is rendered. A landlord may choose instead not to serve legal notice of a proposed rent increase until after the decision of the Administrative Law Judge is rendered. In any event, except in extraordinary circumstances as determined by the Board, no rent increase granted by the Administrative Law Judge shall become effective until the tenant's anniversary date. For

example:

(1) Tenant's anniversary date is June 1, landlord seeks to impose a rent increase exceeding the limitations set forth in Part 4 above on that date. Landlord files a petition during the month of April and on May 1, gives tenant legal notice of the rent increase. That portion of the increase which exceeds the limitations is inoperative until the Administrative Law Judge renders his or her decision on June 15. The requested increase is granted effective as of June 1. The tenant is ordered to pay the increase as well as the amount owing, on July 1.

(2) Tenant's anniversary date is June 1, and on that date, tenant received a 4 percent rent increase. On August 10, landlord files a petition seeking approval to impose a rent increase based upon increased costs. A hearing is held October 1, and the requested increase is approved on October 15, landlord gives legal notice on April 1, of the approved rent increase to take effect on June 1.

(b) The landlord need not impose a rent increase (including a certified capital improvement) on the first opportunity after it is granted. Rather, the landlord may impose all or a portion of any such rent increase at a later date upon giving proper notice.

Section 5.14 <u>Administrative Dismissal</u>
(Added July 15, 1997)

Notwithstanding the acceptance of a petition, if any of the following conditions exist, the Board shall dismiss the landlord's petition for arbitration without prejudice and shall not schedule a hearing. Prior to dismissal of a petition, the Board shall mail to the petitioner a written notice of intention to dismiss stating the specific applicable reason(s) for such dismissal. The petitioner shall have thirty (30) days from the date of mailing of the notice to cure the defects in the petition prior to dismissal.

If the petitioner fails to cure the defects in a timely and proper manner, and the petition is administratively dismissed, the petitioner may file an appeal to the Board or file a new petition for arbitration. Appeals shall be governed by the applicable provisions of Ordinance Section 37.8(f).

The filing of a new petition shall be in accordance with the Procedure for Landlord Petitioners set forth in Ordinance Section 37.8(c), including the requirement that a new notice of

rent increase must be mailed or delivered to the tenants after the new petition is filed. Any previous notice of rent increase, or portion thereof, based on a landlord's petition that was administratively dismissed, shall be null and void as to that portion of the rent increase notice only; other lawful portions of the rent increase notice which were not related to the landlord's dismissed petition shall remain valid.

A petition may be administratively dismissed in the following circumstances:

(a) Operating and Maintenance Expense Petitions

(1) Where all required pages of the petition have not been submitted or filled out properly;

(2) Where the documents submitted are not clearly divided into two groups, one representing the Year 1 documents and one representing the Year 2 documents;

(3) Where the documents within each year are not grouped together according to the categories listed in the landlord petition form;

(4) Where the documents submitted do not clearly show the time period covered and/or the expense being claimed and no written explanation of the missing information is provided with the documentation;

(5) Where necessary documents are omitted or missing and there is no written explanation of what attempts were made to obtain the omitted or missing documents and why the documents could not be submitted;

(6) Where the petitioner submits complete documentation for only one or two categories to the exclusion of the other categories;

(7) Where the total amounts claimed for each category in each year do not correspond to the evidence submitted.

(b) Comparable Rent Petitions

(1) Where all required pages of the petition have not been submitted or filled out properly;

(2) Where an adequate explanation of the situation justifying the petition (e.g., extraordinary circumstances) is not provided;

(3) Where evidence establishing that the rent for the unit is significantly below those of comparable units in the same general area is not provided;

(4) Where evidence of reasonably "comparable" units is not provided (i.e., length of occupancy of the current tenant, size and physical condition of the unit and building, and services paid by the tenant).

PART VI RENT INCREASE JUSTIFICATIONS

Section 6.10 Operating and Maintenance Expenses

(Subsection (a) amended effective February 28, 1989; Subsections (b), (c) and (d) amended February 21, 1989; Subsections (e) and (g) amended February 28, 1989; Subsection (f) renumbered February 28, 1989; Subsections (a) and (b) amended and Subsection (h) added May 24, 1994; Subsection (i) added January 31, 1995; amended March 14, 1995; repealed and adopted April 25, 1995, effective February 1, 1995; entire Section renumbered and/or amended in its entirety effective June 6, 1995; Section 6.10(b)(5) amended effective June 20, 1995; entire Section renumbered and/or amended in its entirety effective June 18, 1996; Subsection(e) amended effective March 19, 2002)

Except in extraordinary circumstances, the following guidelines shall apply to increases based upon Operating and Maintenance Expenses:

(a) A rent increase may be considered justified if it is found that the aggregate cost of Operating and Maintenance Expenses (including but not limited to real estate taxes, business registration and license fees, insurance, routine maintenance and repairs, water, sewer service charge, janitorial service, refuse removal, elevator service, security system and debt service) has increased over a 12-month period preceding the date of filing the petition ("Year 2"), compared to the Operating and Maintenance Expenses incurred in the 12 months prior to Year 2 ("Year 1"), in a percentage amount of the tenant's rent above the percentage amount equal to the allowable annual rent increase. Alternatively, the immediately preceding two calendar years may be used. Use of a particular calculation period in order to create exaggerated results is disfavored. To determine the per unit rent increase, this cost increase is divided by 12 months, then divided by the number of units in the building. Only those tenants in residence during Year 1 may be assessed a rent increase based on an increase in Operating and Maintenance Expenses, except in cases of change of ownership following commencement of tenancy.

(b) Operating and Maintenance Expense increases shall be based on actual costs incurred by the landlord, prorated on a monthly basis where appropriate, allocated over the period of time the services were substantially rendered and/or the costs were substantially incurred in a manner that allows a fair comparison between Year 1 and Year 2. For example, the cost of refuse removal shall be allocated to the time periods when refuse removal occurred, the cost of insurance premiums shall be allocated to the period of coverage, the cost of repair work

shall be allocated to the time when the work was performed, and the cost of property taxes, including supplemental taxes, shall be allocated to the applicable tax year (regardless of when the tax bill was received or paid). Proof of payment shall be required, and prospective increases shall not be considered, except that property taxes based upon supplemental tax bills not yet received and/or due and payable by the landlord shall be taken into account.

(c) In the event that Operating and Maintenance Expenses have increased (as set forth above), a rent increase based on these expenses will be allowed only if the per unit increase amount exceeds that which has already been allowed by the annual rent increase, in which event only the amount over the annual rent increase amount will be allowed. If the per unit increase does not exceed the amount allowed by the annual rent increases, then only the annual rent increases will be allowed.

(d) If the amount justified per unit exceeds the tenant's annual rent increase, an additional increase may be allowed. In no event shall this additional increase allowed for Operating and Maintenance Expenses result in an increase which exceeds the tenant's base rent by more than an additional 7% beyond the annual allowable increase.

(e) If a building is refinanced or there is a change in ownership resulting in increased debt service and/or property taxes, only the landlord who incurred such expenses may file a petition under this Section, and only one rent increase per unit based upon increases in debt service and/or property taxes shall be allowed for each such refinance or transfer, except in extraordinary circumstances or in the interest of justice. In no event shall the petition be denied solely due to the subsequent transfer of the property, unless the successor in interest declines to substitute in as the petitioner.

(f) However, when the unit is purchased after June 13, 1979, and this purchase occurs within two (2) years of the date of purchase of the unit by the seller of the unit to the landlord, consideration shall not be given to the portion of increased debt service which results from a selling price which exceeds the seller's purchase price by more than the percentage increase in the CPI between the date of previous purchase and the date of current sale plus the cost of capital improvements, rehabilitation and/or energy conservation work made or performed

by the seller.

(g) Generally, an increase in debt service to obtain funds in excess of existing financing, will only be considered as a justification for a rent increase if the proceeds of the borrowing are or have been reinvested in the building for purposes of needed repairs and maintenance, or capital improvements. If any of the proceeds are, however, used for capital improvements, the limitations set forth in Part 7 below shall apply to that portion.

(h) Landlords of Proposition I Affected Units may petition the Board for a rent increase based on increased operating and maintenance expenses in accordance with, and subject to, Section 6.10 of these Rules and Regulations and Section 37.8 of the Rent Ordinance. Events before the unit was subject to the Rent Ordinance may be considered. Petitions for Proposition I Affected Units based upon increased operating and maintenance expenses that are pending as of, or filed within six months of, April 25, 1995 may, at the request of the landlord, be treated as if filed on any day that the landlord designates on or after May 1, 1994 and before April 25, 1995; provided, however, that the actual date of filing shall be used to determine the effective date of any rent increase pursuant to Sections 5.12 and 5.13 above.

Section 6.11 <u>Comparables</u>
(Amended February 28, 1984; August 9, 1989; August 29, 1989; Section 6.11(d) added January 31, 1995, effective February 1, 1995; amended February 7, February 14 and March 7, 1995; deleted and adopted April 25, 1995, effective February 1,1995; amended February 17, 2004)

A rent increase may be granted pursuant to this section 6.11 only one time during the life of the unit, and Sections 6.11(a) and 6.11(b) are each mutually exclusive of the other; however, a landlord may petition for an increase under both Sections 6.11(a) and 6.11(b) in the alternative.

(a) <u>Petition Based on Extraordinary Circumstances</u>

(1) The provisions of this Section 6.11(a) shall apply only in the following situations:

(A) where, because of a special relationship between the landlord and tenant, or due to fraud, mental incompetency, or other extraordinary circumstances unrelated to

market conditions, the initial rent on a unit was set very low or the rent was not increased or was increased only negligible amounts during the tenancy; or

(B) where the landlord became owner of record of a Proposition I Affected Unit between September 1, 1993 and December 22, 1994, or where the landlord entered into an agreement to purchase a Proposition I Affected Unit which agreement became non-contingent on or after September 1, 1993 and before November 9, 1994, and, in becoming owner of record or entering into the purchase agreement, the landlord relied on the ability to increase rents without limitation from the Rent Ordinance.

Passage of Proposition I at the November 1994 election does not in and of itself satisfy this Section 6.11(a)(1), though it may be considered.

(2) A rent increase during a tenancy may be considered justified, even in the absence of an increase in costs of operating and maintenance expenses as limited in Section 6.10 above, if it is established that the rent for the unit is significantly below those of comparable units in the same general area as defined in Section 6.11(a)(3) below. If a rent increase is granted pursuant to this Section 6.11(a), the increase shall preclude the imposition of all annual rent increases, banked increases, and operating and maintenance increases that the landlord could have imposed prior to the filing of the petition. Petitions for Proposition I Affected Units based upon comparable rents that are pending as of, or filed within six months of, April 25, 1995 may, at the request of the landlord, be treated as if filed on May 1, 1994, in which case rents for comparable units as of May 1, 1994 shall be used for comparison; provided, however, that the actual date of filing shall be used to determine the effective date of any rent increase pursuant to Sections 5.12 and 5.13 above. For purposes of the preceding sentence, the landlord may establish rents of comparable units as of May 1, 1994 by presenting evidence of current rents of comparable units, in which case rent on May 1, 1994 may be presumed to equal 98.9% of current rent.

(3) The length of occupancy of the current tenant, size and physical condition of the unit and building, and services paid for by the tenant are important factors (though not the exclusive ones) in determining whether or not a unit is "comparable" to another, as the term

"comparable" is used in the Rent Ordinance and in these Rules. Evidence of reasonably comparable units is required; however, "perfect" comparability is not required. The issue of "rent for comparable units" may be raised by a landlord or a tenant.

(4) For Proposition I Affected Units, when determining the length of occupancy of the current tenant, occupancy before April 15, 1979 need not be considered if it appears from both the landlord's and the tenant's evidence that it is impractical to do so under the circumstances; however, occupancy before the unit most recently became subject to rent regulation shall not be considered when:

(A) the requirements of Section 6.11(a)(1)(A) are satisfied, and the rent at the time the unit most recently became subject to rent regulation was not arrived at through arm's length negotiations due to a special relationship, fraud, mental incompetency, or some other reason; or

(B) the requirements of Section 6.11(a)(1)(B) are satisfied, and an additional rent increase is necessary to relieve the landlord from hardship, also taking into consideration tenant hardship if raised and if not inconsistent with the constitutional rights of the landlord. The landlord may not assert hardship pursuant to this Section unless the landlord has completed a hardship application (which can be obtained from the Rent Board), and filed the hardship application along with the landlord's petition for a rent increase. If the landlord asserts hardship pursuant to this Section, then Rent Board staff shall mail to the tenant a blank hardship application at least twenty days prior to the hearing on the landlord's petition. The tenant may not assert hardship pursuant to this Section unless the tenant has completed the hardship application and mailed it (or delivered it) to the landlord and to the Rent Board at least ten day prior to the hearing on the landlord's petition. The landlord shall have the burden of proving landlord hardship, and the tenant shall have the burden of proving tenant hardship. Except on remand from the Rent Board or pursuant to this Section, the Administrative Law Judge may not consider the hardship of either party.

(b) <u>Petition Based on the Past Rent History of a Proposition I Affected Unit</u>

(1) The provisions of this Section 6.11(b) shall apply only to Proposition I

Affected Units.

(2) A landlord may petition for only one of the following increases:

(A) A 7.2% rent increase during a tenancy may be considered justified, even in the absence of an increase in costs of operating and maintenance expenses as limited in Section 6.10 above, if it is established that no Rent Increases (as defined in Section 37.2(o) of the Rent Ordinance) were in effect between May 2, 1991 and May 1, 1994;

(B) An 11.2% rent increase during a tenancy may be considered justified, even in the absence of an increase in costs of operating and maintenance expenses as limited in Section 6.10 above, if it is established that no Rent Increases (as defined in Section 37.2(o) of the Rent Ordinance) were in effect between May 2, 1990 and May 1, 1994; or

(C) A 15.2% rent increase during a tenancy may be considered justified, even in the absence of an increase in costs of operating and maintenance expenses as limited in Section 6.10 above, if it is established that no Rent Increases (as defined in Section 37.2(o) of the Rent Ordinance) were in effect between May 2, 1989 and May 1, 1994.

(3) By executing a waiver form which can be obtained from the Rent Board, a tenant may waive the right to a hearing on a petition for increase brought under this Section 6.11(b), in which case the Administrative Law Judge shall issue a determination based on the facts as alleged in the petition.

Section 6.12 <u>Defenses</u>

(a) A rental increase may be considered not justified if it is found that the tenant has requested the landlord to perform ordinary repair, replacement, and maintenance in compliance with applicable state and local law and the landlord has failed to perform such work.

(b) Where the Board or its Administrative Law Judges find that the landlord has imposed a rent increase in violation of Section 37.3 of the Ordinance, the increase so imposed shall be denied.

Section 6.13 Prohibition Against Agreements to Pay Additional Rent for Additional Occupants
(Adopted April 8, 1986; Amended for Clarification March 24, 1998)

No extra rent may be charged solely for an additional occupant to an existing tenancy (including a newborn child), regardless of the presence of a rental agreement or lease which specifically allows for a rent increase for additional tenants. Such provisions in written or oral rental agreements or leases are deemed to be contrary to public policy.

Section 6.14 Establishing Rental Rates for Subsequent Occupants
(Added March 7, 1989; amended August 29, 1989; Subsection (e) added February 14, 1995; repealed and adopted April 25, 1995, effective February 14, 1995; Subsections (a), (b), (c), (d) and (e) amended and renumbered July 2, 1996; amended and renumbered April 25, 2000)

(a) Definitions. The following terms have the following meaning for purposes of this Section 6.14:

(1) "Original occupant(s)" means one or more individuals who took possession of a unit with the express consent of the landlord at the time that the base rent for the unit was first established with respect to the vacant unit.

(2) "Subsequent occupant" means an individual who became an occupant of a rental unit while the rental unit was occupied by at least one original occupant.

(3) "Co-occupant" for purposes of this Section 6.14 only, is a subsequent occupant who has a rental agreement directly with the owner.

(b) Subsequent Occupants who commenced occupancy before January 1, 1996; Co-occupants who commenced occupancy before, on or after January 1, 1996. When all original occupant(s) no longer permanently reside in the rental unit, the landlord may raise the rent of any subsequent occupant who resided in the unit prior to January 1, 1996, or of any subsequent occupant who is a co-occupant and who commenced occupancy before, on or after January 1, 1996, without regard to the limitations set forth in Section 37.3(a) of the Rent Ordinance if the landlord served on the subsequent occupant(s), within a reasonable time of actual knowledge of occupancy, a written notice that when the last of the original occupant(s) vacates the premises, a new tenancy is created for purposes of determining the rent under the Rent Ordinance. Failure to give such a notice within 60 days of the landlord's actual knowledge of the occupancy by the

subsequent occupant(s) establishes a rebuttable presumption that notice was not given within a reasonable period of time. If the landlord has not timely served such a notice on the subsequent occupant(s), a new tenancy is not created for purposes of determining the rent under the Rent Ordinance when the last of the original occupant(s) vacates the premises.

(c) Subsequent Occupants who are not Co-occupants and who commenced occupancy on or after January 1, 1996, where the last Original Occupant vacated on or after April 25, 2000. When all original occupant(s) no longer permanently reside in a rental unit, and the last of the original occupants vacated on or after April 25, 2000, the landlord may establish a new base rent of any subsequent occupant(s) who is not a co-occupant and who commenced occupancy of the unit on or after January 1, 1996 without regard to the limitations set forth in Section 37.3(a) of the Rent Ordinance unless the subsequent occupant proves that the landlord waived his or her right to increase the rent by:

(1) Affirmatively representing to the subsequent occupant that he/she may remain in possession of the unit at the same rental rate charged to the original occupant(s); or

(2) Failing, within 90 days of receipt of written notice that the last original occupant is going to vacate the rental unit or actual knowledge that the last original occupant no longer permanently resides at the unit, whichever is later, to serve written notice of a rent increase or a reservation of the right to increase the rent at a later date; or

(3) Receiving written notice from an original occupant of the subsequent occupant's occupancy and thereafter accepting rent unless, within 90 days of said acceptance of rent, the landlord reserved the right to increase the rent at a later date.

Where the landlord has waived the right to increase the rent under subsection (c)(1) or (c)(3) above, the subsequent occupant to whom the representation was made or from whom the landlord accepted rent shall thereafter have the protection of an original occupant as to any future rent increases under this Section 6.14. Where the landlord has waived the right to increase the rent under subsection (c)(2) above, any subsequent occupant who permanently resides in the rental unit with the actual knowledge and consent of the landlord (if the landlord's consent is required and not unreasonably withheld) at the time of the waiver shall thereafter

have the protection of an original occupant as to any future rent increases under this Section 6.14.

(d) Subsequent Occupants who are not Co-occupants and who commenced occupancy on or after January 1, 1996, where the last Original Occupant vacated prior to April 25, 2000. When all original occupants no longer permanently reside in a rental unit and the last of the original occupants vacated prior to April 25, 2000, the landlord may establish a new base rent for any subsequent occupants who are not co-occupants and who commenced occupancy of the unit on or after January 1, 1996 without regard to the limitations set forth in Section 37.3(a) of the Rent Ordinance if:

(1) The landlord served on the subsequent occupant(s), within a reasonable time of actual knowledge of occupancy, a written notice that when the last of the original occupants vacates the premises, the new tenancy is created for purposes of determining the rent under the Rent Ordinance. Failure to give such a notice within 60 days of the landlord's actual knowledge of the occupancy by the subsequent occupant(s) establishes a rebuttable presumption that notice was not given within a reasonable period of time; or

(2) The landlord is entitled to establish a new base rent under the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.53(d), even if no notice was served on the subsequent occupant(s) pursuant to subsection (d)(1) above.

(e) Subsequent Occupants of Proposition I Affected Units. When all original occupant(s) no longer permanently reside in a Proposition I Affected Unit, the landlord may raise the rent of any subsequent occupant who resided in the unit prior to February 15, 1995 without regard to the limitations set forth in Section 37.3(a) of the Rent Ordinance if the landlord served on the subsequent occupant(s), on or before August 15, 1995, a written notice that when the last of the original occupant(s) vacates the premises, a new tenancy is created for purposes of determining the rent under the Rent Ordinance. If the landlord has not timely served such a notice on the pre-February 15, 1995 subsequent occupant(s) of the Proposition I Affected Unit, a new tenancy is not created for purposes of determining the rent under the Rent Ordinance when the last of the original occupant(s) vacates the premises. For subsequent occupants who

commenced occupancy in a Proposition I Affected Unit on or after February 15, 1995, the provisions of subsections (a) through (d) above apply.

(f) This Section 6.14 is intended to comply with Civil Code Section 1954.50 et seq. and shall not be construed to enlarge or diminish rights thereunder.

Section 6.15 Subletting and Assignment
(Effective March 24, 1998, except paragraphs (a) and (f) which are effective May 25, 1998; amended and renumbered December 21, 1999)

Section 6.15A Subletting and Assignment—Where Rental Agreement Includes an Absolute Prohibition Against Subletting and Assignment
(Amended March 29, 2005)

This Section 6.15A applies only when a lease or rental agreement includes an absolute prohibition against subletting and assignment.

(a) For agreements entered into on or after May 25, 1998, breach of an absolute prohibition against subletting or assignment may constitute a ground for termination of tenancy pursuant to, and subject to the requirements of, Section 37.9(a)(2) and subsection (b) below, only if such prohibition was adequately disclosed to and agreed to by the tenant at the commencement of the tenancy. For purposes of this subsection, adequate disclosure shall include satisfaction of one of the following requirements:

(1) the prohibition against sublet or assignment is set forth in enlarged or boldface type in the lease or rental agreement and is separately initialed by the tenant; or

(2) the landlord has provided the tenant with a written explanation of the meaning of the absolute prohibition, either as part of the written lease or rental agreement, or in a separate writing.

(b) If the lease or rental agreement specifies a number of tenants to reside in a unit, or where the open and established behavior of the landlord and tenants has established that the tenancy includes more than one tenant (exclusive of any additional occupant approved under Ordinance Section 37.9(a)(2)(B)), then the replacement of one or more of the tenants by an equal number of tenants, subject to subsections (c) and (d) below, shall not constitute a breach of the lease or rental agreement for purposes of termination of tenancy under Section 37.9(a)(2)

of the Ordinance.

(c) If the tenant makes an initial written request to the landlord for permission to sublease in accordance with Section 37.9(a)(2), and the landlord fails to respond in writing within fourteen (14) days of actual receipt of written notice, the subtenancy is deemed approved pursuant to Ordinance Section 37.9(a)(2).

(d)(1) The tenant's inability to obtain the landlord's consent to subletting or assignment shall not constitute a breach of the lease or rental agreement for purposes of eviction under Section 37.9(a)(2), where the subletting or assignment is deemed approved pursuant to subsection (c) above or where the landlord has unreasonably withheld consent to such change. Withholding of consent by the landlord shall be deemed to be unreasonable if the tenant has met the following requirements:

(i) The tenant has requested in writing the permission of the landlord to the sublease or assignment prior to the commencement of the proposed new tenant's or new subtenant's occupancy of the unit;

(ii) The proposed new tenant or new subtenant, if requested by the landlord, has completed the landlord's standard form application, or, in the event the landlord fails to provide an application or has no standard form application, the proposed new tenant or new subtenant has, upon request, provided sufficient information to allow the landlord to conduct a typical background check, including credit information, income information, references, and background information;

(iii) The tenant has provided the landlord five (5) business days to process the proposed new tenant's or new subtenant's application;

(iv) The proposed new tenant or new subtenant meets the regular reasonable application standards of the landlord;

(v) The proposed new tenant or new subtenant has agreed to sign and be bound by the current rental agreement between the landlord and the tenant;

(vi) The tenant has not, without good cause, requested landlord consent to a new tenant or new subtenant more than one time per existing tenant residing in the

unit during the previous 12 months;

(vii) The tenant is requesting replacement of a departing tenant or tenants with an equal number of new tenants.

(2) This subsection (d) shall not apply to assignment of the entire tenancy or subletting of the entire unit.

(e) Where a lease or rental agreement specifies the number of tenants to reside in a unit, or where the open and established behavior of the landlord and tenants has established that the tenancy includes more than one tenant, failure of the landlord to consent to the replacement of one or more of the tenants by an equal number of tenants, subject to subsection (d)(1) above, may constitute a decrease in housing services pursuant to Section 10.10 of these Regulations.

(f) Nothing in this Section shall prevent the landlord from providing a replacement new tenant or new subtenant with written notice as provided under Section 6.14 that the tenant is not an original tenant as defined in Section 6.14(a) and that when the last of the tenant(s) who meet the latter definition vacates the premises, a new tenancy is created for purposes of determining the rent under the Rent Ordinance.

Section 6.15B <u>Subletting and Assignment—Where Rental Agreement Contains a Clause Requiring Landlord Consent to Subletting and Assignment</u>
(Amended March 29, 2005)

This Section 6.15B applies only when a lease or rental agreement includes a clause requiring landlord consent to assignment or subletting.

(a) If the lease or rental agreement specifies a number of tenants to reside in a unit, or where the open and established behavior of the landlord and tenants has established that the tenancy includes more than one tenant (exclusive of any additional occupant approved under Ordinance Section 37.9(a)(2)(B)), then the replacement of one or more of the tenants by an equal number of tenants, subject to subsection (b) below, shall not constitute a breach of the lease or rental agreement for purposes of termination of tenancy under Section 37.9(a)(2) of the Ordinance.

(b)(1) The Tenant's inability to obtain the landlord's consent to subletting or assignment shall not constitute a breach of the lease or rental agreement for purposes of eviction under Section 37.9(a)(2), where the landlord has unreasonably withheld consent to such change. Withholding of consent by the landlord shall be deemed to be unreasonable if the tenant has met the following requirements:

(i) The tenant has requested in writing the permission of the landlord to the sublease or assignment prior to the commencement of the proposed new tenant's or new subtenant's occupancy of the unit;

(ii) The proposed new tenant or new subtenant, if requested by the landlord, has completed the landlord's standard form application, or, in the event the landlord fails to provide an application or has no standard form application, the proposed new tenant or new subtenant has, upon request, provided sufficient information to allow the landlord to conduct a typical background check, including credit information, income information, references, and background information;

(iii) The tenant has provided the landlord five (5) business days to process the proposed new tenant's or new subtenant's application;

(iv) The proposed new tenant or new subtenant meets the regular reasonable application standards of the landlord;

(v) The proposed new tenant or new subtenant has agreed to sign and be bound by the current rental agreement between the landlord and the tenant;

(vi) The tenant has not, without good cause, requested landlord consent to a new tenant or new subtenant more than one time per existing tenant residing in the unit during the previous 12 months;

(vii) The tenant is requesting replacement of a departing tenant or tenants with an equal number of new tenants.

(2) This subsection (b) shall not apply to assignment of the entire tenancy or subletting of the entire unit.

(c) Where a lease or rental agreement specifies the number of tenants to reside in a

unit, or where the open and established behavior of the landlord and tenants has established that the tenancy includes more than one tenant, failure of the landlord to consent to the replacement of one or more of the tenants by an equal number of tenants, subject to subsection (b) above, may constitute a decrease in housing services pursuant to Section 10.10 of these Regulations.

(d) Nothing in this Section shall prevent the landlord from providing a replacement new tenant or new subtenant with written notice as provided under Section 6.14 that the tenant is not an original tenant as defined in Section 6.14(a) and that when the last of the tenant(s) who meet the latter definition vacates the premises, a new tenancy is created for purposes of determining the rent under the Rent Ordinance.

Section 6.15C **Master Tenants**
(Subsections (3)(a) through (f) added August 21, 2001; Subsection (3) amended April 16, 2002)

(1) For any tenancy commencing on or after May 25, 1998, a landlord who is not an owner of record of the property and who resides in the same rental unit with his or her tenant (a "Master Tenant") may evict said tenant without just cause as required under Section 37.9(a) only if, prior to commencement of the tenancy, the Master Tenant informs the tenant in writing that the tenancy is not subject to the just cause provisions of Section 37.9. A landlord who is an owner of record of the property and who resides in the same rental unit with his or her tenant is not subject to this additional disclosure requirement.

(2) In addition, for any tenancy commencing on or after May 25, 1998, a Master Tenant shall disclose in writing to a tenant prior to commencement of the tenancy the amount of rent the Master Tenant is obligated to pay to the owner of the property.

(3) Partial Sublets. In the event a Master Tenant does not sublease the entire rental unit, as anticipated in Section 37.3 (c), then the Master Tenant may charge the subtenant(s) no more than the subtenant(s) proportional share of the total current rent paid to the landlord by the Master Tenant for the housing and housing services to which the subtenant is entitled under the sub-lease. A master tenant's violation of this section shall not constitute a basis for eviction

under Section 37.9.

(a) The allowable proportional share of total rent may be calculated based upon the square footage shared with and/or occupied exclusively by the subtenant; or an amount substantially proportional to the space occupied by and/or shared with the subtenant (e.g. three persons splitting the entire rent in thirds) or any other method that allocates the rent such that the subtenant pays no more to the Master Tenant than the Master Tenant pays to the landlord for the housing and housing services to which the subtenant is entitled under the sublease. In establishing the proper initial base rent, additional housing services (such as utilities) provided by, or any special obligations of, the Master Tenant, or evidence of the relative amenities or value of rooms, may be considered by the parties or the Rent Board when deemed appropriate. Any methodology that shifts the rental burden such that the subtenant(s) pays substantially more than their square footage portion, or substantially more than the proportional share of the total rent paid to the landlord, shall be rebuttably presumed to be in excess of the lawful limitation.

(b) The Master Tenant or subtenant(s) may petition the Board for an adjustment of the initial rent of the subtenant.

(c) If a portion of a capital improvement passthrough or a utility increase is allocated to a subtenant, it must be separately identified and not included in the subtenant's base rent. Such amounts are subject to the rules herein and must be discontinued or recalculated pursuant to the applicable rules. Any amount that is improperly calculated or not properly discontinued shall be disallowed.

(d) In the event of any dispute regarding any allowable increase, or allocation, or any rental amount paid that is not rent, the subtenant may file a claim of unlawful rent increase to have the matter resolved between the subtenant and Master Tenant, as if the Master Tenant were the owner of the building. Disallowed or improper increases shall be null and void.

(e) For any sublease entered into on or before August 22, 2001, where the sublease rent was not calculated as provided for herein, the Master Tenant shall have six months from the effective date of this regulation to notice an adjusted proper rent and refund any

overpayments paid after the effective date of this section. No petitions alleging overpayments may be filed during this time.

(f) For any sublease entered into after August 22, 2001, where the sublease rent was not calculated as provided for herein, the portion of the subtenant's rent that is in excess of the amount allowed pursuant to this Section 6.15C(3) shall be null and void.

Section 6.15D **Additional Family Members—Where Rental Agreement Limits the Number of Occupants or Limits or Prohibits Subletting**
(Added March 29, 2005)

(a) This Section 6.15D applies when a lease or rental agreement includes a clause limiting the number of occupants or limiting or prohibiting subletting or assignment, and a tenant who resides in the unit requests the addition of the tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or the domestic partner (as defined in Administrative Code Sections 62.1 through 62.8) of such relatives, or the spouse or domestic partner of the tenant.

(b) If the tenant makes an initial written request to the landlord for permission to add a person specified in subsection 6.15D(a) above, and the landlord fails to respond in writing within fourteen (14) days of actual receipt of written notice, the tenant's request for the additional person is deemed approved pursuant to Ordinance Section 37.9(a)(2)(B).

(c) The tenant's inability to obtain the landlord's consent to the addition of a person specified in subsection 6.15D(a) above shall not constitute a breach of the lease or rental agreement for purposes of eviction under Section 37.9(a)(2), where the additional person is deemed approved pursuant to subsection (b) above or where the landlord has unreasonably withheld consent to such additional person. Withholding of consent by the landlord shall be deemed to be unreasonable if the tenant has notified the landlord of the addition of a minor child, or if the additional person is not a minor child, the tenant has met the following requirements:

(i) The tenant has requested in writing the permission of the landlord to the additional person's occupancy of the unit, and stated the relationship of the person to the tenant;

(ii) The additional occupant, if requested by the landlord, has completed the

landlord's standard form application or provided sufficient information to allow the landlord to confirm the relationship of the person to the tenant and to conduct a typical background check, including references and background information; provided, however, the landlord may request credit or income information only if the additional person will be legally obligated to pay some or all of the rent to the landlord;

(iii) The tenant has provided the landlord five (5) business days to process the additional occupant's application;

(iv) The additional occupant meets the regular reasonable application standards of the landlord, except that creditworthiness may be the basis for refusal of the tenant's request for an additional occupant only if and when the additional occupant will be legally obligated to pay some or all of the rent to the landlord;

(v) The additional occupant, if requested by the landlord, has agreed in writing to be bound by the current rental agreement between the landlord and the tenant.

(vi) With the additional occupant, the total number of occupants does not exceed the lesser of (a) two persons per studio rental unit, three per one-bedroom unit, four per two-bedroom unit, six per three-bedroom unit or eight per four-bedroom unit, or the number of occupants permitted under state law and/or other local codes (e.g., Planning, Housing, Fire and Building Codes).

(d) Nothing in this Section shall prevent the landlord from providing an additional occupant with written notice as provided under Section 6.14 that the occupant is not an original tenant as defined in Section 6.14(a) and that when the last original tenant vacates the premises, a new tenancy is created for purposes of determining the rent under the Rent Ordinance.

(e) A landlord's unreasonable refusal to consent to a tenant's written request for the addition to the unit of a tenant's child, parent, grandchild, grandparent, brother or sister, or the spouse or domestic partner (as defined in Administrative Code Sections 62.1 through 62.8) of such relatives, or the spouse or domestic partner of a tenant, subject to subsections 6.15D(c)(i)-(vi) above, may constitute a decrease in housing services pursuant to Section 10.10 of these Regulations.

(f) In the event the landlord withholds consent to a tenant's request for an additional person under subsections 6.15D(c)(i)-(vi) above, either the landlord or the tenant may file a petition with the Board to determine if the landlord's withholding of consent was reasonable.

(g) Any petition filed under subsection 6.15D(e) or (f) shall be expedited.

Section 6.16 Utility Passthrough
(Added August 24, 2004; Subsection (i) amended September 21, 2004; Amended December 16, 2008, effective January 1, 2009; Subsection (g)(iii) amended August 4, 2009)

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after November 1, 2004:

(a) Where a landlord pays for gas, electricity and/or steam provided directly to the unit occupied by the tenant and/or to the common areas of the property in which the unit is located, and seeks to recover the increase in the cost of these utilities from the tenant, the landlord may pass through the increased costs of the utilities between the "base year" and the comparison year, as set forth below.

(b) Determination of Initial "Base Year"

(i) For all tenancies existing on December 31, 2003, the initial "base year" for purposes of this section shall be calendar year 2002 with the following exception:

(A) For utility passthrough petitions filed prior to January 1, 2009, where a utility passthrough was in effect for a tenancy on November 1, 2004, the landlord could elect to use calendar year 2002 as the initial "base year" or elect to continue to use the earlier "base year", provided that the landlord petitioned the Board for approval of the earlier "base year" and the Board determined that the earlier "base year" was proper under Section 4.11 of these Rules.

(B) For utility passthrough petitions and Utility Passthrough Calculation Worksheets filed on or after January 1, 2009, the initial "base year" for all tenancies with an approved earlier "base year" shall be calendar year 2003.

(ii) For all new tenancies commencing after December 31, 2003, the initial "base year" shall be the calendar year immediately preceding the year of the inception of the

tenancy.

(iii) A landlord may petition the Board for approval of an alternate "base year" if the landlord became an owner of record after December 31, 2002 and demonstrates a good faith, but unsuccessful, effort to obtain the utility bills from the former landlord and/or the utility company that are necessary to establish the "base-year" utility costs required by subsections (b)(i) or (b)(ii). The Board will not approve an alternate "base year" that creates exaggerated results unless the proposed alternate "base year" coincides with the landlord's first full calendar year of ownership.

(c) Subsequent Adjustments to Initial "Base Year"

Different tenants in the same property may have different initial "base years" depending on when they moved into the property or whether the Board has approved use of an earlier "base year" pursuant to subsection (b)(i) above or use of an alternate "base year" pursuant to subsection (b)(iii) above. The initial "base year" utility costs shall be adjusted every five years as follows:

A new "base year" is established at the end of every fifth calendar year after the initial "base year". For example, where the initial "base year" is 2002, the new "base year" shall be 2007 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2009 and December 31, 2013. If the tenancy continues for an additional five years, the "base year" will become 2012 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2014 and December 31, 2018, and so on. For another example, where the initial "base year" is 2003, including those tenancies that had an earlier "base year" prior to January 1, 2009, the new "base year" shall be 2008 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2010 and December 31, 2010. If the tenancy continues for an additional five years, the "base year" will become 2013 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2015 and December 31, 2019, and so on. For another example, where the initial "base year" is 2004, the new "base year" shall be 2009 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2011 and December 31, 2015. If the tenancy continues for an additional five years, the "base year" will

become 2014 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2016 and December 31, 2020.

(d) Determination of "Comparison Year"

For purposes of this section, the "comparison year" in all cases shall be the calendar year immediately preceding the filing of the landlord's Utility Passthrough Calculation Worksheet or Petition for Approval of Utility Passthrough.

(e) Petition Required for Certain Utility Passthroughs

Effective January 1, 2009, the landlord is required to file a Petition for Approval of Utility Passthrough when using a comparison of utility costs for the prior two calendar years (e.g. 2007/2008 in 2009, 2008/2009 in 2010, 2009/2010 in 2011, etc.). The petition shall be on a form prescribed by the Board. The petition shall specify the units on the property that are subject to the petition. The petition will be decided without a hearing unless the Administrative Law Judge determines that a hearing is required.

(f) Where the landlord is required to file a Petition for Approval of Utility Passthrough, the landlord must file the petition before giving legal notice of a rent increase for a utility passthrough. The petition must be filed no more than twelve months after the "comparison year" listed in the petition. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. This increase for the utility passthrough shall be inoperative unless and until the petition is approved by the Administrative Law Judge. Any amounts approved by the Administrative Law Judge shall relate back to the effective date of the legal notice, if given. A landlord may choose instead not to serve legal notice of a proposed utility passthrough until after the decision of the Administrative Law Judge is rendered. In any event, no rent increase approved by the Administrative Law for a utility passthrough shall become effective until the tenant's anniversary date.

(g) Petition Not Required for Certain Utility Passthroughs

Effective January 1, 2009, the landlord is not required to file a Petition for Approval of Utility Passthrough using a comparison of costs for years other than the prior two calendar

years. For example, in 2009, pursuant to subsection (e) above, the landlord must file a petition for "base year" 2007 and "comparison year" 2008 in order to impose a utility passthrough, but need not file a petition for "base years" 2003, 2004, 2005 or 2006 and "comparison year" 2008. However, in order to impose a utility passthrough where a petition is not required under subsection (e), the landlord must comply with the following requirements:

(i) For each year that the landlord seeks to impose a utility passthrough where a petition is not required under subsection (e), the landlord shall file one Utility Passthrough Calculation Worksheet with the Rent Board for each "base year" used, on a form prescribed by the Board, that shows how the passthrough was calculated. The Worksheet shall be filed within twelve months of the "comparison year" used in calculating the amount of the passthrough. The Rent Board shall review ten percent (10%) of all Worksheets filed with the Board. In addition, if there is no prior utility passthrough petition on file for a property for which a Worksheet is filed, the Rent Board shall review at least one Worksheet for that property. In conducting a Worksheet review, the Board may take whatever action the Board deems necessary including, but not limited to, requiring the landlord to file evidence to support the calculations in the Worksheet, requiring the landlord to file a Petition for Approval of Utility Passthrough, scheduling a hearing, or reviewing additional Utility Passthrough Calculation Worksheets.

(ii) The landlord must file the Worksheet with the Board before giving legal notice of a rent increase for a utility passthrough. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. The landlord must provide the tenant with a file-stamped copy of the Utility Passthrough Calculation Worksheet at the time of service of the notice of rent increase.

(iii) A tenant who receives a utility passthrough under this subsection (g) may file a hardship application with the Board within one year of the effective date of the passthrough, and may be granted relief from all or part of such passthrough based on hardship. Payment of the utility passthrough set forth in the hardship application shall be stayed until a decision is

made by the Administrative Law Judge after a hearing on the tenant's hardship application. Appeals of decisions on a tenant's hardship application shall be governed by Ordinance Section 37.8(f).

(h) Laundry Facilities

Where the utility bills include the cost of gas and/or electricity for laundry facilities and the landlord charges a user fee for the laundry facilities, the landlord may not pass through any increase in the building's cost of utilities unless the landlord complies with one of the following subsections:

(i) where the laundry facilities are separately metered in both the "base year" and "comparison year", the landlord shall not include the utility costs for the laundry facilities in the utility passthrough calculation; or

(ii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct the income actually received by the landlord from the third party vendor from the total utility costs for the building; or

(iii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is not a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct 50% of the user fees actually collected by the landlord from the total utility costs for the building; or

(iv) where the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord shall deduct the actual costs of utilities that serve such laundry facilities, using a methodology that has been approved by the Rent Board.

(i) Where the utility bills include the cost of gas and/or electricity for laundry facilities and the laundry facilities are not available to or operated for the benefit of the tenant, and the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord may not pass through to that tenant any increase in the building's cost of utilities.

(j) Calculation of the Utility Passthrough

The landlord shall calculate the amount of the utility passthrough as follows:

(i) Compile the utility bills for the "base year" and the "comparison year" as defined in subsections (b), (c) and (d) above. The utility passthrough shall be based on actual costs incurred by the landlord during the relevant calendar years, regardless of when the utility bill was received or paid.

(ii) Calculate the total utility cost for the "base year" and the total utility cost for the "comparison year".

(iii) Where the laundry facilities are not separately metered in both the "base year" and the "comparison year", compile evidence of and calculate the actual cost of utilities that serve the laundry facilities in the "base year" and the "comparison year".

(A) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and a third party vendor collects the user fees from the laundry facilities, compile evidence of and calculate the income actually received by the landlord from the third party vendor for the use of the laundry facilities in the "base year" and the "comparison year".

(B) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and the landlord collects the user fees from the laundry facilities, compile evidence of the user fees actually collected by the landlord for the use of the laundry facilities in the "base year" and the "comparison year" and calculate 50% of the amount collected.

(iv) Where the laundry facilities are not separately metered in both the "base year" and the "comparison year", subtract the utility costs for the laundry facilities, as calculated in subsection (iii) above, from the total utility cost for the "base year" and the total utility cost for the "comparison year".

(v) Subtract the total "base year" utility cost (excluding utility costs for the laundry facilities) from the total "comparison year" utility cost (excluding utility costs for the laundry facilities) to get the utility cost increase. If there is no increase or if there has been a decrease, no passthrough is allowed.

(vi) Divide the resulting figure, if greater than zero, by twelve (12) to determine

the average monthly utility increase for the entire property.

(vii) Divide the average monthly utility increase by the number of rooms in the property to get the amount of the utility passthrough that may be imposed for each room. For purposes of this section, the number of rooms in a property shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on. Each parking space and garage space in the building which is included in a tenant's rental or for which a user fee is charged shall be counted as one room. Areas used for commercial purposes but for which no user fee is charged to the tenants, including but not limited to management offices and retail space, shall be included in the room count in a manner that most reasonably takes into account the size of the space and its utility usage.

(viii) To get the monthly utility passthrough for a unit, add the number of rooms in the unit to the number of rooms for parking and/or garage spaces included in the tenant's rental or for which a user fee is paid by the tenant, and multiply that total number of rooms by the monthly utility increase per room.

(k) No landlord may pass through any increase in the cost of utilities to a tenant until the tenant has occupied the unit in the subject property for one continuous year.

(l) Each utility passthrough shall apply only for the twelve-month period after it is imposed.

(m) Nothing in this section or in these Rules and Regulations shall be interpreted as requiring any landlord to pass through any utility increase or to increase any tenant's rent.

(n) The amount of rent due from the tenant for any utility passthrough shall be due on the same date as a rent payment normally would be due.

(o) A utility passthrough may be imposed only at the time of an annual rent increase. However, no amount passed through to the tenant as a utility increase shall be included in the tenant's base rent for purposes of calculation of the amount of rent increases allowable under the Ordinance and these Rules and Regulations.

(p) The provisions of this Section shall be deemed a part of every rental agreement

or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the landlord and the tenant agree that the landlord will not pass through any utility increases, in which case such agreement will be binding on the landlord and on any successor owner of the property.

(q) Where a utility increase has been lawfully passed through to the tenant, a change in the ownership of the property in which the tenant's unit is located will not affect the tenant's liability to pay the amount passed through.

PART VII LANDLORD PETITIONS FOR CERTIFICATION OF CAPITAL IMPROVEMENTS, REHABILITATION, AND/OR ENERGY CONSERVATION WORK

Section 7.10 Filing

(Amended August 29, 1989 by correction May 1, 1990; June 18, 1991; subsection (d) added on January 31, 1995; amended March 7, 1995; repealed and adopted April 25, 1995; effective February 1, 1995; amended April 1, 2003)

(a) Those landlords who seek to pass through the cost of capital improvements, rehabilitation and/or energy conservation work must file a petition for certification on a form prescribed by the Board. If at any time prior to filing a petition the landlord determines that the total cost of a project for a parcel or a building containing six or more residential units is reasonably expected to exceed $25,000 multiplied by the number of units on the parcel or in the building, the landlord shall immediately inform each tenant and the Rent Board in writing of the anticipated costs of the work. The landlord's notice must occur within 30 days after such determination by the landlord.

(b) Information to Accompany Landlord's Petition

The petition shall be accompanied by: (1) copies of the petition in sufficient number to distribute to each of the tenants named in the petition, plus one additional copy for the estimator; (2) two copies of all claimed invoices, signed contracts, and cancelled checks substantiating the costs for which the landlord has not been compensated by insurance proceeds; (3) if claim is made for uncompensated labor, the petition shall include a copy of a log of dates on which the work was performed; and (4) copies of proof of compliance with the Bureau of Building Inspection for any work claimed for energy conservation measures or other work for which proof of compliance is required by State or local law. For each petition totaling more than $25,000, in addition to the supporting material prescribed by the Board for all petitions, the applicant must either: (1) Provide copies of competitive bids received for work and materials; or, (2) Provide copies of time and materials billing for work performed by all contractors and subcontractors; or (3) The applicant must pay the cost of an estimator hired by the Board.

(c) Time of Filing Petition and Notice

The landlord must file a petition before giving legal notice of a rent increase. The notice

shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested based on the amortization of the work performed. This increase shall be inoperative unless and until the petition is approved by the Administrative Law Judge. Any amounts approved by the Administrative Law Judge shall relate back to the effective date of the legal notice, if given.

If the landlord sends a notice of rent increase based on capital improvements without first filing a petition for certification, the increase shall be null and void. In order to be able to pass through these amounts, a petition must first be filed and then a new notice sent.

(d) Special Provision for Owners of Proposition I Affected Units

Landlords of Proposition I Affected Units may petition the Board to certify the cost of capital improvements, rehabilitation and/or energy conservation work in accordance with, and subject to, the rules and procedures set forth in Part 7 of these Rules and Regulations and Section 37.7 of the Rent Ordinance. Events before the unit was subject to the Rent Ordinance may be considered. Petitions for Proposition I Affected Units based upon capital improvements that are pending as of, or filed within six months of, April 25, 1995 may, at the request of the landlord, be treated as if filed on May 1, 1994; provided, however, that the actual date of filing shall be used to determine the effective date of any rent increase pursuant to Section 7.10(c) above.

(e) Requirements for Certification

The Board and designated Administrative Law Judges may only certify the costs of capital improvements, rehabilitation, energy conservation improvements, and renewable energy improvements, where the following criteria are met:

(1) The landlord completed capital improvements or rehabilitation on or after April 15, 1979, or the landlord completed installation of energy conservation measures on or after July 24, 1982 and has filed a proof of compliance with the Department of Building Inspection in accordance with the requirements of Section 1207(d) of the Housing Code;

(2) The landlord has not yet increased the rent or rents to reflect the cost of said work;

(3) The landlord has not been compensated for the work by insurance proceeds;

(4) The building is not subject to a RAP loan in a RAP area designated prior to July 1, 1977;

(5) The landlord files the certification petition no later than five years after the work has been completed*;*

(6) The cost is not for work required to correct a code violation for which a notice of violation has been issued and remained unabated for 90 days unless the landlord made timely good faith efforts within that 90-day period to commence and complete the work but was not successful in doing so because of the nature of the work or circumstances beyond the control of the landlord. The landlord's failure to abate within the original 90-day period raises a rebuttable presumption that the landlord did not exercise timely good faith efforts.

Section 7.11 <u>Inspection of the Building</u>
(Amended April 1, 2003)

If the Board or its Executive Director determines that inspection by a qualified estimator of the building is necessary to determine whether the petition shall be approved, the landlord and tenants shall provide entry to the Rent Board's representative at a convenient time during normal business hours.

(a) The necessity for use of an estimator in a particular case may be determined after consideration of the following factors, among others:

(1) the cost of the work;

(2) the number of units;

(3) complexity of the work performed;

(4) objections made pursuant to Section 7.15 below.

(5) whether the landlord provided copies of competitive bids or time and materials billings for work performed by all contractors and subcontractors for a petition totaling more than $25,000.

(b) A qualified estimator is a person:

(1) who is not a San Francisco city employee; but

(2) who is selected by the Rent Board or the Executive Director because he or she is qualified and experienced in the area of residential rehabilitation, such as a member of the American Society of Estimators, subscribing to its Code of Professional Ethics and Standards of Professional Conduct. The estimator shall operate under the direction of the Board or its Executive Director.

Section 7.12 <u>Allocation of Cost of Improvements or Work to Individual Units</u>
(Amended March 14, 1989; August 29, 1989; June 18, 1991; Subsection (b) amended October 20, 1998; Amended April 1, 2003)

(a) The cost of capital improvements, rehabilitation, and/or energy conservation work for which the landlord has not been compensated by insurance proceeds shall be allocated to each unit in the building. The method used for cost allocation shall be that which most reasonably takes into account the extent to which each unit benefits from the improvements or work. Methods which may be appropriate, depending on the circumstances, include allocation based on the square footage in each unit, allocation based on the rent paid for each unit, and equal division among all units. Where the improvements do not benefit all units, only those benefitted may be charged the additional rent. For example, if a new roof were installed, the rents of all units in the building may be raised to cover the cost. But if, in addition, a new floor had been installed in one unit, that unit would be charged its proportionate share of the roof cost plus the cost of the new floor. Costs attributable to units where the rent cannot be raised (because of a lease restriction, owner occupancy, or other reason) may not be allocated to the other units. Costs attributable to routine repair and maintenance shall not be certified but shall be considered part of the costs of operating and maintenance.

(b) <u>Effect of Vacancy on Rent Increases Requested for Capital Improvements</u>

If a unit becomes vacant and is rerented after completion of capital improvements, rehabilitation, and/or energy conservation work listed in a petition for certification, no additional rent will be allowed on the unit based on the improvements or work since the landlord has the opportunity to bring the unit up to market rent at the time the unit is rerented. This section also

applies to those units rented during the construction period for the project of which the work is a part, as stated in the permit(s), contract document(s), and/or as shown by other relevant evidence, or rented within six months of the commencement of work for which a petition for certification is filed, provided that ownership has not changed in that period.

(c) Amortization Periods and Cost Allocation

The Board shall apply the amortization periods and cost allocation formulas as set forth below.

(1) Petitions Filed Before November 14, 2002. The following provisions shall apply to all petitions filed before November 14, 2002:

(A) Amortization Periods. Costs shall be amortized on a straight-line basis over a seven or ten-year period, depending upon which category described below most closely relates to the type of work or improvement and its estimated useful life.

(i) Schedule I - Seven-Year Amortization. The following shall be amortized over a seven-year period: Appliances, such as new stoves, disposals, washers, dryers and dishwashers; fixtures, such as garage door openers, locks, light fixtures, water heaters and blankets, shower heads, time clocks and hot water pumps; and other improvements, such as carpeting, linoleum, and exterior and interior painting of common areas. If the appliance is a replacement for which the tenant has already had the benefit, the cost will not be amortized as a capital improvement, but will be considered part of operating and maintenance expenses. Appliances may be amortized as capital improvements when: (1) part of a remodeled kitchen; (2) based upon an agreement between the tenant and landlord; and/or (3) it is a new service or appliance the tenant did not previously have.

(ii) Schedule II - Ten-Year Amortization. The following shall be amortized over a ten-year period: New foundation, new floor structure, new ceiling or walls - new sheetrock, new plumbing (new fixtures, or piping,) weather stripping, ceiling insulation, seals and caulking, new furnaces and heaters, refrigerators, new electrical wiring, new stairs, new roof structure, new roof cover, new window, fire escapes, central smoke detection system, new wood or tile floor cover, new sprinkler system, boiler replacement, air conditioning-central system,

exterior siding or stucco, elevator rebuild, elevator cables, additions such as patios or decks, central security system, new doors, new mail boxes, new kitchen or bathroom cabinets, and sinks.

(B) Allowable Increase. One hundred percent (100%) of the certified costs of capital improvements, rehabilitation, and energy conservation improvements may be passed through to the tenants who benefit from such work and improvements. However no increase under this Subsection 7.12(c)(1) shall exceed, in a twelve-month period, ten percent (10%) of the tenant's base rent at the time the petition was filed or $30.00, whichever is greater. A landlord may accumulate any certified increase which exceeds this amount and impose the increase in subsequent years, subject to this 10% or $30.00 limitation.

(2) Petitions Filed On or After November 14, 2002 For Qualified Energy Conservation Improvements and Renewable Energy Improvements. For Petitions filed on or after November 14, 2002, the following provisions shall apply to certification of costs for qualified energy conservation improvements and renewable energy improvements:

(A) Amortization Periods and Allowable Costs. For purposes of this Subsection, qualified energy conservation improvements and renewable energy improvements are:

(i) 100% of new EPA Energy-Star-compliant refrigerators where the refrigerator replaced is more than five years old and where the unit has separate metering, which costs shall be amortized on straight-line basis over a ten-year period; and,

(ii) Other improvements as may be approved by the Board of Supervisors upon recommendation of the Rent Board, following hearings and development of an Energy Conservation Improvements and Renewable Energy Improvements List of energy conservation improvements and renewable energy improvements that demonstrably benefit tenants in units that have separate electrical and/or natural gas metering by the Commission on the Environment.

(3) Petitions Filed On or After November 14, 2002 For Seismic Work and Improvements Required by Law, and for Work and Improvements Required by Laws Enacted

After November 14, 2002. For petitions filed on or after November 14, 2002, the following provisions shall apply to certification of costs for seismic work and improvements required by law and to costs for capital improvement, rehabilitation, energy conservation, and renewable energy work and improvements required by federal, state, or local laws enacted on or after November 14, 2002:

(A) Amortization Periods. Costs shall be amortized on a straight-line basis over a twenty-year period.

(B) Allowable Increase. One hundred percent (100%) of the certified costs of capital improvement, rehabilitation, energy conservation, and renewable energy work and improvements required by law may be passed through to the tenants who benefit from such work and improvements. Any rent increases under this Subsection 7.12(c)(3) shall not exceed, in a twelve-month period, a total of ten percent (10%) of the tenant's base rent at the time the petition was filed or $30.00, whichever is greater. A landlord may accumulate any certified increase which exceeds this amount and impose the increase in subsequent years, subject to this 10% or $30.00 limitation.

(4) Petitions Filed On or After November 14, 2002 for Other Work and Improvements On Properties With Five Residential Units or Less. For petitions filed on or after November 14, 2002, the following provisions shall apply to certification of all work and improvements for properties containing five residential units or less, with the exception of work and improvements costs certified for passthrough under Subsections 7.12(c)(2) or 7.12(c)(3):

(A) Amortization Periods. Costs shall be amortized on a straight-line basis over a ten, fifteen or twenty-year period, depending upon which category described below most closely relates to the type of work or improvement and its estimated useful life.

(i) Schedule I - Ten-Year Amortization. The following shall be amortized over a ten-year period: New roof structure, new roof cover, electrical heaters, central security system, telephone entry systems, new wood frame windows, new mailboxes, weather-stripping, ceiling insulation, seals and caulking, central smoke detection system, new doors and skylights; appliances, such as new stoves, disposals, refrigerators, washers, dryers and

dishwashers; fixtures, such as garage door openers, locks, light fixtures, water heaters and blankets, shower heads, time clocks and hot water pumps; and other improvements, such as carpeting, linoleum, and exterior and interior painting of common areas. If the appliance is a replacement for which the tenant has already had the benefit, the cost will not be amortized as a capital improvement but will be considered part of operating and maintenance expenses. Appliances may be amortized as capital improvements when: (1) part of a remodeled kitchen; (2) based upon an agreement between the tenant and landlord; (3) it is a new service or appliance the tenant did not previously have**;** and/or (4) it is an appliance certified as a qualified energy conservation improvement or renewable energy improvement pursuant to Subsection 7.12(c)(2).

(ii) Schedule II - Fifteen-Year Amortization. The following shall be amortized over a fifteen-year period: New floor structure, new ceiling or walls - new sheetrock, wood decks, new stairs, new furnaces and gas heaters, new thermal pane windows, new wood or tile floor cover, new sprinkler systems, air conditioning-central system, exterior siding or stucco, elevator rebuild, elevator cables, new kitchen or bathroom cabinets, and sinks.

(iii) Schedule III - Twenty-Year Amortization. The following shall be amortized over a twenty-year period: New foundation, new plumbing (new fixtures or piping), boiler replacement, new electrical wiring, fire escapes, concrete patios, iron gates, sidewalk replacement and chimneys.

(B) Allowable Increase. One hundred percent (100%) of the certified costs of capital improvement, rehabilitation, and energy conservation work and improvements may be passed through to the tenants who benefit from such work and improvements. However, no increase under this Subsection 7.12(c)(4) shall exceed, in a twelve-month period, five percent (5%) of the tenant's base rent at the time the petition was filed or $30.00, whichever is greater. A landlord may accumulate any certified increase which exceeds this amount and impose the increase in subsequent years subject to this 5% or $30.00 limitation.

(5) For Petitions Filed On or After November 14, 2002 for Other Work and Improvements for Properties with Six or more Residential Units. For petitions filed on or after November 14, 2002, the following provisions shall apply to certification of all work and

improvements for properties containing six residential units or more, with the exception of work and improvements certified under Subsections 7.12(c)(2) or 7.12(c)(3):

(A) Amortization Periods. Costs shall be amortized on a straight-line basis over a seven or ten-year period, depending upon which category described below most closely relates to the type of work or improvement and its estimated useful life.

(i) Schedule I - Seven-Year Amortization. The following shall be amortized over a seven-year period: Appliances, such as new stoves, disposals, washers, dryers and dishwashers; fixtures, such as garage door openers, locks, light fixtures, water heaters and blankets, shower heads, time clocks and hot water pumps; and other improvements, such as carpeting, linoleum, and exterior and interior painting of common areas. If the appliance is a replacement for which the tenant has already had the benefit, the cost will not be amortized as a capital improvement, but will be considered part of operating and maintenance expenses. Appliances may be amortized as capital improvements when: (1) part of a remodeled kitchen; (2) based upon an agreement between the tenant and landlord; (3) it is a new service or appliance the tenant did not previously have**;** and/or (4) it is an appliance certified as a qualified energy conservation improvement or renewable energy improvement pursuant to Subsection 7.12(c)(2).

(ii) Schedule II - Ten-Year Amortization. The following shall be amortized over a ten year period: New foundation, new floor structure, new ceiling or walls - new sheetrock, new plumbing (new fixtures, or piping) weather stripping, ceiling insulation, seals and caulking, new furnaces and heaters, refrigerators, new electrical wiring, new stairs, new roof structure, new roof cover, new window, fire escapes, central smoke detection system, new wood or tile floor cover, new sprinkler system, boiler replacement, air conditioning-central system, exterior siding or stucco, elevator rebuild, elevator cables, additions such as patios or decks, central security system, new doors, new mail boxes, new kitchen or bathroom cabinets, sinks, telephone entry system, skylights, iron gates, sidewalk replacement and chimneys. If the refrigerator is a replacement for which the tenant has already had the benefit, the cost will not be amortized as a capital improvement, but will be considered part of operating and maintenance expenses. Refrigerators may be amortized as capital improvements when: (1) part of a

remodeled kitchen; (2) based upon an agreement between the tenant and landlord; (3) it is a new service or appliance the tenant did not previously have; and/or (4) it is an EPA Energy-Star-compliant refrigerator where the refrigerator replaced is more than five years old and where the unit has separate metering.

(B) Allowable Increase.

(i) Only fifty percent (50%) of the costs certified under this Subsection 7.12(c)(5) may be passed through to the tenants who benefit from such work and improvements. However, no increase under this Subsection 7.12(c)(5) shall exceed, in a twelve-month period, ten percent (10%) of the tenant's base rent at the time the petition was filed or $30.00, whichever is greater. A landlord may accumulate any certified increase which exceeds this amount and impose the increase in subsequent years, subject to this 10% or $30.00 limitation.

(ii) In the alternative, a tenant may elect to have one hundred percent (100%) of the costs certified under this Subsection 7.12(c)(5) passed through to the tenant. In that event no increase under this Subsection shall exceed, in a twelve-month period, five percent (5%) of the tenant's base rent at the time the petition was filed, and the total increase for capital improvements elected under this Subsection shall never exceed fifteen percent (15%) of the tenant's base rent. If the total increase for capital improvements elected under this Subsection is less than fifteen percent (15%) of the tenant's base rent at the time the petition was filed, the landlord may impose the remaining percentage in a subsequent petition where the tenant makes an election under this Subsection and the remaining percentage shall be calculated on the tenant’s base rent in effect at the time the new petition is filed. A tenant must elect this alternative by filing such an election with the Board on a form prescribed by the Board. An election may be filed at any time after the petition is filed but no later than fifteen (15) calendar days after the Administrative Law Judge's decision on the petition is mailed to the tenant. After a tenant files an election form, the tenant cannot rescind the election unless either party files an appeal and a new decision is subsequently issued that changes the amount certified for passthrough to the tenant. In that case the tenant will have fifteen (15) calendar days

after the new decision is mailed to the tenant to rescind the previous election or to make a new election under this Subsection even if one had not been made after the first decision was issued. In a unit with multiple tenants, the election form must be signed by a majority (more than 50%) in order for the election to be accepted. If a timely election is made after a decision has been issued, an addendum to the decision will be issued reflecting the tenant's election. The addendum is not subject to appeal.

Section 7.13 Valuation of Uncompensated Labor

Any uncompensated labor (i.e., labor performed for no remuneration of any kind) performed on capital improvements, rehabilitation, or energy conservation work shall be valued at prevailing labor rates. The craft classification to be employed shall be that of laborer unless the uncompensated worker is licensed in the particular craft for which credit is being claimed.

Section 7.14 Allowance of Interest
(Amended October 4, 1994; amended Subsection (b)(2) and adding Subsection (b)(3), January 19, 1999; Amended April 1, 2003)

A landlord who expends funds for capital improvements or rehabilitation work shall be entitled to a reasonable rate of interest. Any allowance of interest, whether imputed or real, in favor of a landlord pursuant to this section shall be limited to no more than ten (10) percent and shall be amortized over a period equal to the amortization period of the improvement. The following rules shall apply to any request for the allowance of interest.

(a) Allowance of Actual Interest Incurred. The landlord has the burden of proof to establish the actual rate of interest. To meet this burden, the landlord must submit, at a minimum, either the applicable loan agreement, promissory note or other admissible documentary evidence substantiating the rate of interest. In addition, the landlord has the burden to show that the actual rate of interest for which an allowance is sought is reasonable under the circumstances.

(b) Allowance of Imputed Interest. In cases where the landlord does not incur or prove in accordance with subsection (a) any actual interest expense on funds used for capital improvements or rehabilitation work, the landlord shall be entitled to an allowance of imputed

interest. The rate of imputed interest shall be determined in accordance with the following rules:

(1) On March 1 of each year, in accordance with subparagraph (b)(2), the Board shall publish four rates of imputed interest. Subject to the ten (10) percent limitation contained in the first paragraph of this rule, the published rates shall constitute the rates of imputed interest to be allowed on petitions filed on or after March 1 through February 28 (or February 29, as the case may be) of the following year.

(2) The first rate shall be the average of the twelve most recent monthly rates (rounded to the nearest tenth) as posted by the Federal Reserve on their Federal Reserve Statistical Release Internet site for seven-year Treasury Securities and shall apply to certified capital improvement costs amortized over a seven-year period in accordance with Section 7.12(c).

The second rate shall be the average of the twelve most recent monthly rates (rounded to the nearest tenth) as posted by the Federal Reserve on their Federal Reserve Statistical Release Internet site for ten-year Treasury Securities and shall apply to certified capital improvement costs amortized over a ten-year period in accordance with Section 7.12(c).

The third rate shall be the average of the twelve most recent monthly rates (rounded to the nearest tenth) as posted by the Federal Reserve on their Federal Reserve Statistical Release Internet site for twenty-year Treasury Securities and shall apply to certified capital improvement costs amortized over a twenty-year period in accordance with Section 7.12(c).

The fourth rate shall be the average of the ten-year and twenty-year rates (rounded to the nearest tenth) and shall apply to certified capital improvement costs amortized over a fifteen-year period in accordance with Section 7.12(c).

(3) These rates shall be calculated by December 15th of each year using the average of the twelve most recent monthly rates posted by the Federal Reserve for seven and ten-year maturity Treasury Securities as of this date.

(c) <u>Government Subsidies or Guarantees</u>. Notwithstanding subparagraphs (a) and (b) of this Section, if the interest is less than 10 percent due to governmental or any other

subsidy or guarantee, the landlord shall only be entitled to the actual rate of interest incurred.

(d) This Section was amended on March 18, 2003 and is effective for petitions filed on or after November 14, 2002. The Board shall publish the applicable rate of interest for petitions filed between November 14, 2002 and February 28, 2003 before February 21, 2003.

Section 7.15 <u>Tenant Objections</u>
(Amended March 21, 1989)

(a) Tenant objections may be on the basis that the work claimed to be performed was not performed, that the work performed was necessitated by the current landlord's deferred maintenance resulting in a code violation, that the costs claimed are not true or reasonable costs, or some other reasons. The tenant shall include as much documentation to support the objection as the tenant has reasonably available.

(b) Allowance for the cost of equipment, fixtures, and improvements in an individual unit shall not be made if the tenant has objected to the installation unless the landlord can establish that the existing equipment, fixtures, or improvements need replacement for reasons of health or safety or because of excessive maintenance cost. The tenant shall have the right to raise these objections at the hearing when the landlord seeks to have the capital improvements certified.

(c) The cost of "luxury" items in common areas of a building shall not be certified where a tenant has objected at the hearing to the installation unless the landlord can establish that the items were required for reasons of health and safety or excessive maintenance costs, that the items needed to be replaced and the replacement items were of equivalent quality to the items being replaced, that the building is and has been a "luxury" market building, or other extraordinary circumstances.

The type of "luxury" items disfavored would be those that are not in keeping with the socioeconomic status of the building's existing tenants and the quality and condition of the building at the time the existing tenants rented their units. Disfavored luxury items would be those that are intended to change the building's style to appeal to a wealthier class of tenants.

Where the Board finds that an item's cost is substantially excessive, but that the item

itself is a reasonable improvement, then the Board shall approve a reduced cost that it finds to be reasonable. The tenant shall have the right to raise these objections at the hearing when the landlord seeks to have the capital improvements certified.

Section 7.16 Base Rent

For purposes of calculating future rent increases, base rent shall not include any costs for capital improvements, rehabilitation, or energy conservation measures which have been certified.

Section 7.17 Administrative Dismissal
(Added March 14, 1989; amended July 15, 1997)

Notwithstanding the acceptance of a petition, if any of the following conditions exist, the Board shall dismiss the petition without prejudice and shall not schedule a hearing. Prior to dismissal of a petition, the Board shall mail to the petitioner a written notice of intention to dismiss stating the specific applicable reason(s) for such dismissal. The petitioner shall have thirty (30) days from the date of mailing of the notice to cure the defects in the petition prior to dismissal.

If the petitioner fails to cure the defects in a timely and proper manner, and the petition is administratively dismissed, the petitioner may file an appeal to the Board or file a new petition for certification of capital improvement costs. Appeals shall be governed by the applicable provisions of Ordinance Section 37.8(f).

The filing of a new petition shall be in accordance with the procedures set forth in Ordinance Section 37.7(f), and shall be subject to the five-year limitation in subsection (2) and the requirement that a new notice of rent increase must be mailed or delivered to the tenants after the new petition is filed. Any previous notice of rent increase, or portion thereof, based on a landlord's petition that was administratively dismissed, shall be null and void as to that portion of the rent increase notice only; other lawful portions of the rent increase notice which were not related to the landlord's dismissed petition shall remain valid.

A petition for certification of capital improvement costs may be administratively dismissed in the following circumstances:

(a) Where the petition submitted fails to clearly itemize costs according to specific improvements categorized by type of improvement; e.g., foundation work, new roof, electrical service, electrical wiring, fire sprinkler system, etc.;

(b) Where the petition submitted for improvements to more than one building does not clearly allocate costs to each building;

(c) Where the petition submitted for improvements to a building with more than one unit fails to clearly distinguish costs of common area improvements from costs of improvements to specific units;

(d) Where the documentation submitted in support of the petition (i.e., bills, canceled checks, etc.) is not clearly marked so as to identify the specific improvement to which it relates;

(e) Where insufficient copies of the petition or supporting documentation have been submitted pursuant to 7.10(b)(1) and 7.10(b)(2) above.

Section 7.18 <u>Repair and Rehabilitation Work Due to Natural Disaster</u>
(Adopted April 17, 1990; amended May 1, 1990, effective for work completed by April 17, 1991)

The cost of natural disaster repair work of a non-structural nature which, in the absence of any accompanying structural work, ordinarily would be considered routine maintenance and repairs, such as plaster patching and painting, may be passed through to the tenants, subject to the following provisions:

(a) <u>Filing</u>: A landlord who seeks to pass through the costs of non-structural disaster repair work must file a petition for certification on a form prescribed by the Board and accompanied by the documentation listed in Sections 7.10(b)(1)(2) and (3) above. A petition for such a passthrough must be filed before giving notice of a rent increase, and any such notices shall be in conformity with the provisions of Section 4.10 and Section 7.10(c) above.

(b) <u>Allowable Costs</u>: Passthroughs of costs for non-structural disaster-related repair work that has not been reimbursed by insurance proceeds shall be limited to seventy-five percent (75%) of all such costs (including interest).

(c) <u>Allocation of Costs</u>: The cost of such repair work shall be allocated to all units in the building, regardless of the extent to which each was damaged. Methods which may be

appropriate – depending on the circumstances – include, but are not limited to, allocation based on the square footage in each unit or equal division among all units. Each unit may only be charged its pro rata share of the costs. Costs attributable to units where the rent cannot be raised may not be allocated to the other remaining units.

(d) Amortization Period: The cost of all such disaster-related repairs shall be amortized over a period of ten years.

(e) Allowance of Interest: Interest on money spent to perform such disaster-related repairs shall be limited to the actual interest paid for such money or to ten percent (10%), whichever is lower, and to 10% if interest is not paid, and shall be amortized over ten years.

(f) Passthrough: The limitation described in Section 7.12(d) above shall apply to passthroughs based on repairs made necessary by natural disaster except under extraordinary circumstances such as:

(1) When the landlord's financial position can not sustain the extended period of recovery resulting from such a limitation without threatening loss of the building, or forcing the landlord to spread performance of the repairs over an extraordinarily long period of time such that tenants could reasonably claim that a "decrease in services" has resulted; or other hardship to the landlord.

(2) When the maximum allowable capital improvement passthrough for a given tenant is already in place at the time repair costs are certified. Under such circumstances, any rent increase based on passthrough of repairs caused by natural disaster shall be limited to an additional 5% or $15.00, whichever is greater, in any twelve-month period. Any certified passthroughs exceeding this amount may be accumulated and imposed in subsequent years subject to this limitation.

(g) Work eligible for passthrough under this Section shall not be considered as an operating and maintenance expense under Section 6.10.

PART VIII LANDLORD APPLICATION FOR CERTIFICATION OF SUBSTANTIAL REHABILITATION

Section 8.10 Who Must File

Landlords who seek to obtain certification of substantial rehabilitation for exemption from Chapter 37 of the San Francisco Administration Code must apply for a certification hearing with the Rent Board.

Section 8.11 Time of Filing Application

After receipt of a final notice of completion from the Department of Public Works, the landlord seeking exemption must file an application for certification.

Section 8.12 Application for Certification
(Corrected August 20, 1996)

Application for certification shall be filed on a form provided by the Rent Board. The application shall include:

(1) A tenant history, including the names of all tenants in possession at the time substantial rehabilitation was noticed, their last known address, their rent at the time they left voluntarily or were evicted, which tenants were evicted, the names and unit number of any current tenants and their current rents;

(2) A detailed description of the substantial rehabilitation work itemizing all costs, including but not limited to site improvements, paving and surfacing, concrete, masonry, metals, wood and plastic, thermal and moisture protection, doors and windows, finishes, specialties, equipment, furnishings, conveying systems, mechanical and electrical work;

(3) Evidence that the building is over 50 years old;

(4) A determination of condemnation, and/or

(5) A determination by the Department of Building Inspection that the premises were ineligible for a permit of occupancy;

(6) A current abstract of title;

(7) A complete inspection report issued by the Department of Building Inspection made prior to the commencement of rehabilitation work;

(8) Proof of purchase price;

(9) Final notice of completion from the Department of Building Inspection;

(10) Copies of eviction notices to prior tenants;

(11) Copies of invoices, bids and cancelled checks substantiating the costs for which the landlord has not been compensated by insurance proceeds;

(12) Sufficient copies of the petition for distribution to each tenant;

(13) Copy of the current assessment;

(14) If claim is made for uncompensated labor, the application shall include a log of dates on which the work was performed, number of hours of work and description of the work performed, and, if claim is made for electrical or plumbing work, a copy of the worker's contractors license.

Section 8.13 Fees
(Corrected/Amended August 27, 1991)

See Sections 3.10 and 3.12 above.

Section 8.14 Notification of Tenants

Upon receipt of a completed application, the Rent Board shall notify the tenant or tenants of the subject unit or units by mail, of the receipt of such application. The notice shall also state that the tenant has a right to attend a hearing regarding the application. The Board shall calendar the petition for hearing before a designated Administrative Law Judge and shall give written notice of the date to the parties at least ten (10) days prior to the hearing.

Section 8.15 Valuation of Uncompensated Labor

See Section 7.13 above.

Section 8.16 Inspection of Building

See Section 7.11 above.

Section 8.17 Tenant Objections

Tenant objections may be on the basis that the work claimed to be performed was not performed, that the work performed was necessitated by the current landlord's deferred

maintenance resulting in a code violation, that the costs claimed are not true or reasonable costs, or that the work done was not principally directed to code compliance. The tenant shall include as much documentation to support the objection as the tenant has reasonably available.

PART IX TENANT SUMMARY PETITIONS

Section 9.10 Grounds for Summary Petitions

(a) A tenant may file a summary petition if the landlord gives a rent increase which fails to comply with the provisions set forth in Section 37.3 of the Ordinance.

(b) Summary petitions shall be filed on a form to be supplied by the Board. The petitions shall be accompanied by:

(1) A copy of the landlord's notice of rent increase;

(2) a copy of any notification from the Department of Real Estate or the Rent Board which certified a rent increase based on capital improvements, rehabilitation, and/or energy conservation work; and

(3) a statement as to why the tenant believes the rent increase should not be allowed, together with any supporting documentation.

(c) Any rent increase which does not conform with the provisions of Section 37.3 of the Rent Ordinance shall be null and void.

PART X TENANT PETITION FOR ARBITRATION

Section 10.10 Decrease in Services

(Amended March 7, 1989; Subsection (e) adopted February 7, 1995; amended April 25, 1995; effective February 1, 1995; amended August 20, 1996)

(a) A tenant may petition for a reduction of base rent where a landlord, without a corresponding reduction in rent, has (1) substantially decreased housing services, including any service added after commencement of the tenancy and for which additional consideration was paid when it was provided, or (2) failed to provide housing services reasonably expected under the circumstances, or (3) failed to provide a housing service verifiably promised by the landlord prior to commencement of the tenancy.

(b) A petition for arbitration based on decreased services shall be filed on a form supplied by the Board. The petition shall be accompanied by a statement setting forth the nature and value of the service for which the decrease is being sought, and the date the decrease began and ended, if applicable.

(c) No rent decrease as requested in the tenant's petition will be allowed prior to one year preceding the filing of the petition except where one or more of the following is found:

(1) extraordinary circumstances;

(2) where the tenant establishes by a preponderance of the evidence that there has been long term notice, oral or written, from the tenant or other reliable source, regarding such decrease occurring in the interior of the tenant's unit, or where such condition existed in the interior of the unit at the commencement of the tenancy and the landlord had constructive notice of same; or

(3) where the tenant establishes by a preponderance of the evidence that there has been actual long term notice, oral or written, from the tenant or other reliable source, and/or constructive notice regarding such decrease occurring in any common area.

(d) For the purposes of this section, notice is defined as follows:

(1) Actual Notice: Actual notice occurs when the tenant or any reliable person or entity informs the landlord, or the landlord's agents, orally or in writing, of a decrease in housing services as defined in the Rent Ordinance at Section 37.2(g).

(2) Constructive Notice: Constructive notice occurs when a decrease in housing services exists and the landlord should have known about the condition. (For example, constructive notice may be found when a reasonable inspection would have revealed the condition in the common area at any time or in the unit prior to the commencement of the tenancy.)

(e) With respect to Newly Covered Units, the earliest permissible effective date for any rent decrease allowed under this Section 10.10 shall be December 22, 1994; provided, however, that the initial base rent, as defined by Section 37.12(a) of the Rent Ordinance shall include all housing services provided or reasonably expected on May 1, 1994, or as of the commencement of the tenancy, whichever is later.

(f) Except where a failure to repair and maintain results in a substantial decrease in housing services, any relief granted by the Board under this section shall preclude relief under Section 10.11 below. This provision shall not limit any civil remedies that would otherwise be available to a tenant or landlord.

Section 10.11 <u>Failure to Perform Ordinary Repair and Maintenance</u>
(Amended March 7, 1989)

(a) Up to 60 days following receipt by the tenant of a notice of rent increase, a tenant may petition for a denial of any increase (except certified capital improvements, rehabilitation, and/or energy conservation work) if the landlord has failed to perform requested repair, replacement or maintenance, as required by state and local law.

(b) Petitions based on the above grounds must be accompanied by a copy of the notice of rent increase, a statement of the nature, and extent of the necessary repairs and/or maintenance together with supporting documentation.

Section 10.12 <u>Documentation of Gas and Electrical Increases</u>
(Amended August 24, 2004)

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served prior to or on November 1, 2004:

(a) A tenant may petition for an arbitration hearing if the landlord has failed to provide

the tenant with a clear explanation of the charges for gas and electricity on which an increase is being based.

(b) The landlord shall have the burden of proving the calculations upon which this increase is based.

(c) A petition based on this section shall be accompanied by the notice of increase.

Section 10.13 <u>Improper Utility Passthrough</u>
(Added August 24, 2004; Amended December 16, 2008, effective January 1, 2009)

(a) The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after November 1, 2004 where a Petition For Approval Of The Utility Passthrough was required to be filed under Section 6.16 of these Rules:

(i) A tenant may petition for an arbitration hearing if the landlord has increased the tenant's rent based on an increase in utility costs, but (1) has failed to file a petition for approval of the utility passthrough pursuant to Section 6.16 of these Rules, or (2) has failed to discontinue the utility passthrough after twelve months.

(ii) The landlord shall have the burden of proving that the utility passthrough has been approved and/or imposed in accordance with Section 6.16 of these Rules.

(iii) A petition based on this section shall be accompanied by the notice of increase.

(b) The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after January 1, 2009 where a Petition For Approval Of The Utility Passthrough was not required to be filed under Section 6.16:

(i) A tenant may petition for an arbitration hearing if the landlord has increased the tenant's rent based on an increase in utility costs, but (1) did not file a Utility Passthrough Calculation Worksheet with the Rent Board pursuant to Section 6.16 of these Rules; or (2) did not serve the tenant with a copy of the Utility Passthrough Calculation Worksheet, date-stamped by the Rent Board, with the notice of increase for the utility passthrough; or (3) did not properly calculate the utility passthrough or used an incorrect room count; or (4) did not discontinue the utility passthrough after twelve months.

(ii) The landlord shall have the burden of proving that the utility passthrough has been approved and/or imposed in accordance with Section 6.16 of these Rules.

(iii) A petition based on this section shall be accompanied by the notice of increase.

Section 10.14 <u>Improper Water Revenue Bond Passthrough</u>
(Effective July 20, 2005)

(a) Within one year of the effective date of a water revenue bond passthrough, a tenant may petition for an arbitration hearing on the following grounds;

(1) The landlord has not properly calculated the passthrough;

(2) The passthrough is calculated using an incorrect unit count;

(3) The landlord failed to provide a clear written explanation of the charges and the calculation of the passthrough;

(4) The unit is not in compliance with applicable laws requiring water conservation devices;

(5) The tenant requested a copy of the applicable water bill(s) and the landlord has not provided them;

(6) The tenancy began during or after the billing period(s) included in the passthrough calculation;

(7) The landlord failed to discontinue the passthrough after it was fully paid.

(b) The landlord shall have the burden of proving the accuracy of the calculation that is the basis of the water revenue bond passthrough, and that the unit is in compliance with applicable laws requiring water conservation devices.

(c) A petition based on this section shall be accompanied by the notice of the water revenue bond passthrough.

PART XI HEARINGS

Section 11.10 Time of Hearing; Consolidation

(Amended September 19, 1989; and October 20, 1998)

Within a reasonable time following the filing of a petition and payment of the estimator fee, if required, the petition shall be referred to a Administrative Law Judge. If the petition is for a determination of disability pursuant to Ordinance Sections 37.9(i)(1)(B)(i) and (ii), such hearing may be conducted by a Administrative Law Judge or other designee of the Rent Board. That Administrative Law Judge shall hold the hearing within forty-five (45) days of the date of the filing of the petition. Where petitions are filed by or for tenants of a single housing complex, and there are common material issues of law or fact, those petitions shall be consolidated for hearing, unless to do so would be unfair to either party. Written notice of the hearing, by mail, shall be given at least ten (10) days prior to the date of the hearing. A declaration under penalty of perjury stating the date and place of the mailing of such notice and stating to whom and at what addresses the notice was sent shall be retained in the file of each case.

Section 11.11 Notice of Hearing; Response

Written notice of the hearing shall be given by mailing a notice stating the date, time, and place of the hearing and generally describing what will take place, who has the burden of proof and the types of evidence likely to be useful at the hearing to the responding party. The responding party may file at the Board office a written response to the petition at any time before the hearing. Any response so filed may not be considered as evidence and is not a substitute for appearance at the hearing. If a response has been filed, the Administrative Law Judge shall give the petitioner a reasonable opportunity to review it and to respond to it as argument by the respondent.

Section 11.12 Notice to Attorney

Whenever any document other than evidence containing the attorney's name, address, and telephone number is filed by an attorney on behalf of a party, or whenever any party so requests in a notice signed and dated by the party and giving the name, address, and telephone number of the party's attorney, all notices sent by the Board thereafter shall be sent to the party's

attorney instead of the party. Notices will not be sent both to the party and to the attorney. A request to send notices to a party's attorney may be withdrawn at any time by a written notice to that effect signed and dated by the party and filed with the Board.

Section 11.13 Postponements
(Amended June 18, 1991)

(a) The Administrative Law Judge or Commissioners or designated staff member may grant a postponement of a hearing only for good cause and in the interest of justice.

(b) "Good cause" shall include, but is not limited, to the following:

(1) the illness of a party, an attorney or other authorized representative of a party, or a material witness of a party;

(2) verified travel outside of San Francisco scheduled before the receipt of notice of the hearing; or,

(3) any other reason which makes it impractical to appear on the scheduled date due to unforeseen circumstances or verified pre-arranged plans which cannot be changed. Mere inconvenience or difficulty in appearing shall not constitute "good cause."

(c) Parties may agree to a postponement at any time. Where the parties have agreed to a postponement, the Board shall be notified in writing at the earliest date possible.

(d) Requests for postponement of a hearing must be made in writing at the earliest date possible, with supporting documentation attached. The person requesting a postponement should notify the other parties of the request and provide them with any supporting documentation.

Section 11.14 Absence of Parties
(Amended March 11, 1986)

(a) If a party fails to appear at a properly noticed hearing or fails to file a written excuse for non-appearance prior to a properly noticed hearing, the Administrative Law Judge may, as appropriate: continue the case; decide the case on the record in accordance with these rules; dismiss the case with prejudice; or proceed to a hearing on the merits.

(b) If the party who does not appear bases an appeal substantially on the fact that

notice of the hearing was not received, the appellant must attach a declaration under penalty of perjury on a form provided by the Rent Board. The declaration must include facts to support the contention that the notice was not received.

Section 11.15 Mediation
(Amended March 7, 1989; November 19, 1996)

In any case that the Board may deem appropriate, the Administrative Law Judge may make an earnest effort to settle the controversy by mediation. The parties shall be given written notice of the mediation session in accordance with Sections 11.10 (Time of Hearing; Consolidation) and 11.11 (Notice of Hearing; Response). Section 11.13 governing postponement of hearings shall apply to mediation sessions. Written notice of the mediation session shall explain the following: that participation in a mediation session is voluntary; that a request by any party for an arbitration hearing instead of a mediation session received prior to the scheduled mediation shall be granted and held at the date and time of the scheduled mediation session; that any request by any party for an arbitration hearing instead of a mediation session received after the commencement of the mediation session but before the Administrative Law Judge has communicated privately with either party in a caucus shall be granted and held at the date and time of the scheduled mediation session; that an arbitration hearing will be conducted instead of a mediation session if the responding party fails to appear; and that the petition will be dismissed with prejudice if the petitioning party fails to appear. Sections 11.14(b) (Absence of Parties), 11.22 (Personal Appearances and Representation by Agent) and 11.23 (Legal Representation or Assistance of an Interpreter in Certain Cases) shall apply to mediations. If the parties fail to settle their differences through the mediation process, an arbitration hearing on the merits will be scheduled in approximately thirty to forty-five days with a different Administrative Law Judge. The Administrative Law Judge must fully inform the parties of their rights under the Ordinance before any mediation agreement becomes binding. To the extent possible, mediation agreements shall be self-enforcing. The Administrative Law Judge shall not allow any tenant to waive her/his rights to the lawful base rent.

Section 11.16 Refusal of Hearing in Certain Instances

(a) The Administrative Law Judge may dismiss any petition, complaint or request without a hearing if the Administrative Law Judge concludes that it is frivolous. The Administrative Law Judge shall file a written statement with the Board setting forth the basis upon which the decision rests.

(b) The Administrative Law Judge may decide any matter without a hearing if it appears from the record prior to a hearing that there is no genuine issue as to any material fact.

Section 11.17 Conduct of Hearing
(Amended March 7, 1989; Subsection (c) amended January 18, 1994)

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. For petitions filed on or after January 19, 1994, in the absence of a timely and proper objection, relevant hearsay evidence is admissible for all purposes. Proffered hearsay evidence to which timely and proper objection is made is admissible for all purposes, including as the sole support for a finding, if (a) it would otherwise be admissible under the rules of evidence applicable in a civil action or (b) the Administrative Law Judge determines, in his or her discretion, that, based on all the circumstances, it is sufficiently reliable and trustworthy. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing,

and irrelevant and unduly repetitious evidence shall be excluded.

Section 11.18 Burden of Proof
(Amended March 11, 1986)

In any proceeding before the Board or any Administrative Law Judge thereof, the landlord shall have the burden of proving that an increase in rent in excess of the allowable annual rent increase is justified. The tenant shall have the burden of proving that there has been (1) an increase in the dollar amount of the rent in excess of the limitations, (2) a rent increase due to reduction in housing services without a corresponding reduction in rent, and/or (3) a failure to perform ordinary maintenance and repair as required under state and local law.

Section 11.19 Stipulations

The parties, by stipulation in writing filed with the Administrative Law Judge, may agree upon the facts or any portion thereof involved in the hearing. The parties may also stipulate as to the testimony that would be given by a witness if the witness were present. The Administrative Law Judge may require additional evidence on any matter covered by stipulation.

Section 11.20 Record of Proceedings
(Amended September 19, 1989; November 19, 1996)

All proceedings before the Administrative Law Judge or the Board, except investigatory review of Reports of Alleged Wrongful Eviction and mediation sessions, shall be recorded by tape or other mechanical means. A mediation agreement itself may be recorded by tape. The Board may order a transcript of a recorded proceeding or mediation agreement, provided the Board makes a copy available to the parties at the parties' expense. A party may order a transcript, provided that such party makes a copy for the Board and offers a copy to the adverse party without charge.

Section 11.21 Party Use of Reporter
(Amended November 19, 1996)

A party desiring to preserve a record of a proceeding, except a mediation session, may employ a reporter, provided that copies of any transcript are supplied to the Board and offered to the adverse party or parties without charge.

Section 11.22 Personal Appearances and Representation by Agent

In any proceeding before the Administrative Law Judge or Board, each party may appear personally or by an attorney, or by a representative designated in writing by the party, other than an attorney. Each party, attorney, other representative of a party, and witness appearing at the hearing shall file a written notice of appearance and oath with the Administrative Law Judge, which notice and oath shall become part of the record. No exception to the rule (11.17) against basing any Finding of Fact solely on hearsay evidence inadmissible under the California Evidence Code will be made on account of the absence of a party.

Section 11.23 Legal Representation or Assistance of an Interpreter in Certain Cases
(Amended July 20, 2004)

Both parties are entitled to legal representation at any stage of the proceeding. If it shall appear to the Administrative Law Judge that the issue or facts in a matter before him or her are so involved or intricate that in the interests of justice, of conserving time or of facilitating the preparation of an adequate record, a party ought to be represented by an attorney or an interpreter, the Administrative Law Judge may urge such party to procure such services. If the party agrees to procure an attorney or an interpreter, the Administrative Law Judge shall allow a party a reasonable period of time to do so. When this occurs, the opposing party shall be advised, and the matter may be continued for this purpose. If the Administrative Law Judge determines that a party cannot afford the services of an interpreter, the Board shall assist in obtaining an interpreter at no cost to the party. The term "interpreter" shall include persons trained in the international language for the deaf.

Section 11.24 Decisions of the Administrative Law Judge

(a) The Administrative Law Judge shall make written findings of fact and a written decision as to whether the noticed or proposed rent increase exceeding the limitations of Section 37.3 is justified. The decision of the Administrative Law Judge shall contain the date upon which a rent increase or decrease shall become effective.

(b) If a decrease in rent is granted, the Administrative Law Judge shall state when the decrease commenced, the value of the decrease and the nature of the service. The decision

shall also state to what amount the rent can be increased when, and if, the service is restored.

(c) If an increase is denied for failure to perform ordinary maintenance and repair, the Administrative Law Judge shall specifically enumerate the repairs necessary, and the amount to which the rent can be increased when those repairs are completed.

Section 11.25 Expedited Hearings
(Added by Ordinance No. 133-92, effective June 20, 1992)

(a) Applicability. In the following cases, a tenant or landlord may obtain an expedited hearing and order:

(1) Any landlord capital improvement petition where the proposed increase for certified capital improvement costs does not exceed the greater of 10% or $30.00 of a tenant's base rent and the parties file a signed stipulation setting forth the cost of the capital improvements on a form provided by the Rent Board;

(2) Any tenant petition alleging decreased housing services with a past value not exceeding $1,000.00 as of the date the petition is filed;

(3) Any tenant petition alleging the landlord's failure to repair and maintain the premises as required by state and local law, provided that the tenant attaches to the petition documentary evidence showing that the unrepaired/unmaintained conditions constitute violations of applicable health or safety codes;

(4) Any tenant petition alleging unlawful rent increases where the parties file a signed stipulation setting forth the tenant's rent history on a form provided by the Rent Board and the rent overpayments do not exceed a total of $1,000.00 as of the date the petition is filed;

(5) Any tenant or landlord petition concerning only jurisdictional questions where the parties file a signed stipulation setting forth the relevant facts.

(b) Application for Expedited Hearing and Order. In order to obtain an expedited hearing and order, the petitioner must file an application for an expedited hearing and order, including the written consent of all parties, on a form provided by the Rent Board. The application, and the applicable stipulations and documentary evidence required in subsection (a) above, must be filed at the time of filing the petition in order to obtain an expedited hearing date

within twenty-one (21) calendar days of the filing of the application. Within seven (7) calendar days of the simultaneous filing of the application, stipulations and petition, a staff member shall determine whether an expedited hearing is appropriate under subsection (a) above.

(1) If an expedited hearing is found to be appropriate, an expedited hearing shall be scheduled within twenty-one (21) calendar days of the filing of the application for an expedited hearing and order. Written notice of the expedited hearing date shall be mailed to all parties at least ten (10) calendar days prior to the date of the expedited hearing. A declaration under penalty of perjury stating the date and place of the mailing of such notice and stating to whom and at what addresses the notice was sent shall be retained in the file of each case. The notice shall state the date, time and place of the hearing and generally describe what will take place, who has the burden of proof and the types of evidence likely to be useful at the hearing.

(A) Postponement of Expedited Hearing. Requests for postponement of an expedited hearing date shall be governed by Section 11.13 (Postponements) above. If an expedited hearing is postponed, it will be rescheduled at the earliest available date which may not be within twenty-one (21) calendar days of the filing of the application.

(2) If an expedited hearing is not appropriate under subsection (a) above, written notice of rejection of the application shall be mailed to the parties within a reasonable time following the filing of the application and a hearing on the petition shall be scheduled within forty-five (45) calendar days of the filing of the petition. Written notice of the hearing shall be mailed to the parties in accordance with Sections 11.10 (Time of Hearing; Consolidation) and 11.11 (Notice of Hearing; Response) above. The hearing shall be conducted in accordance with Ordinance Sections 37.7(g) (Certification Hearings) or 37.8(e) (Hearings).

(c) Late Application for Expedited Hearing and Order. If any portion of the application, written consent of all parties, required stipulations or documentary evidence necessary for obtaining an expedited hearing and order are filed at any time after the petition is filed, a hearing on the petition shall be scheduled within forty-five (45) calendar days of the filing of the petition. Prior to commencement of the hearing, the Administrative Law Judge shall determine if an expedited hearing and order are appropriate under subsection (a) above. Where

an expedited hearing and order are appropriate, the Administrative Law Judge shall conduct the hearing in accordance with the expedited hearing procedures set forth in subsections (e) and (f) below, provided that all parties sign a written waiver of the right to receive an expedited hearing date within twenty-one (21) calendar days of the filing of the application.

(d) Application for Expedited Hearing and Order at the Hearing. Even if no application for an expedited hearing and order is filed prior to commencement of the hearing, the Administrative Law Judge may determine that an expedited hearing and order are appropriate under subsection (a) above and offer the parties an opportunity to file an application at the hearing and as long as the record in the case remains open. The Administrative Law Judge must fully inform the parties of their rights under the Ordinance before accepting the application.

(e) Conduct of Expedited Hearing. Expedited hearings shall be conducted in accordance with Sections 11.17 (Conduct of Hearing) and 11.22 (Personal Appearances and Representation by Agent) above. Burden of proof requirements set forth in Section 11.18 (Burden of Proof) above are applicable. All parties are entitled to legal representation or the assistance of an interpreter at any stage of the proceeding. No record of the hearing shall be maintained for any purpose.

(f) Order of the Administrative Law Judge. The Administrative Law Judge shall issue a written order deciding the petition no later than ten (10) calendar days after the hearing. The Administrative Law Judge shall make no written findings of fact. The Administrative Law Judge shall order payment or refund of amounts owing to a party or parties, if amounts are owed, within a period of time not to exceed forty-five (45) calendar days of the mailing of the order. If amounts owed are not paid or refunded within forty-five (45) calendar days, the Administrative Law Judge may order the amount(s) added to or offset against future rents.

(1) For expedited hearings conducted pursuant to subsection (a)(1) above in which the petitioner prevails, the Administrative Law Judge's written order shall contain the date upon which a capital improvement passthrough shall become effective, the monthly passthrough amount per unit and the applicable amortization period(s).

(2) For expedited hearings conducted pursuant to subsection (a)(2) above in

which the petitioner prevails, the Administrative Law Judge's written order shall contain the nature of each substantially decreased housing service, the value of the decrease and the total amount of the past rent reduction corresponding with the decreased housing service(s). The order will also include the amount of any prospective rent reduction for a continuing decreased housing service. The order shall state under what conditions the landlord may be able to restore the rent reductions.

(3) For expedited hearings conducted pursuant to subsection (a)(3) above in which the petitioner prevails, the Administrative Law Judge's written order shall contain the date and amount of the deferred rent increase, a specific enumeration of the necessary repairs and/or maintenance and the amount to which the rent can be increased when those repairs and/or maintenance are completed.

(4) For expedited hearings conducted pursuant to subsection (a)(4) above in which the petitioner prevails, the Administrative Law Judge's written order shall contain the dates of each relevant rent increase, the amount of rent actually paid by the tenant, the lawful amount of rent owed by the tenant and the amount of rent overpayments.

(5) For expedited hearings conducted pursuant to subsection (a)(5) above, the Administrative Law Judge's written order shall state whether the subject rental unit(s) is/are subject to the jurisdiction of the Rent Board.

(g) Stay of Administrative Law Judge's Order. The Administrative Law Judge's written order shall be stayed for fifteen (15) calendar days from the date of mailing the order.

(h) Objection to Administrative Law Judge's Order. Any objection to the Administrative Law Judge's order must be received by the Rent Board within fifteen (15) calendar days of the mailing of the order unless such time limit is extended for good cause by a staff member. "Good cause" shall include, but is not limited to, the following: verified illness or death of a party which prevented the filing of a timely objection; verified absence from the party's mailing address during the fifteen (15) calendar days following the mailing of the order; any other reason which made it impractical to file a timely objection. Mere inconvenience or difficulty in filing the objection shall not constitute "good cause." The objection to the Administrative Law

Judge's order shall be filed on a form provided by the Rent Board. The form shall state the basis of the objection, and shall be accompanied by sufficient copies to distribute to each party, along with one set of business-sized envelopes (with no return address) addressed to each party, with first class postage affixed to each envelope.

(1) Effect of Timely Objection. The timely filing of an objection will automatically dissolve the Administrative Law Judge's order. The petitioning party may refile the petition for hearing under any other appropriate hearing procedure set forth in the Ordinance. To the greatest extent possible, the new case will be assigned for hearing to the same Administrative Law Judge who issued the dissolved order.

(2) Finality of Administrative Law Judge's Order. If no timely objection to the Administrative Law Judge's order is made, the order becomes final. The order is not subject to appeal to the Board under Ordinance Section 37.8(f) nor is it subject to judicial review pursuant to Ordinance Section 37.8(f)(9).

(i) Consolidation. To the greatest extent possible, and only with the consent of all parties, expedited hearings with respect to a given building shall be consolidated.

PART XII LEGAL ACTIONS UNDER ORDINANCE SECTION 37.9(e)

Section 12.10 Reports of Alleged Wrongful Evictions; Notice to Parties

The Board shall adopt a form for reports of alleged wrongful evictions. Upon submission to the Board of a completed Report of Alleged Wrongful Eviction, the Board shall send a notice acknowledging receipt of the report and summarizing the rights and responsibilities of landlords and tenants regarding possession of, and eviction from, residential rental units and unlawful detainer proceedings to both landlord and tenant, without fee.

Section 12.11 Investigation of Reports of Alleged Wrongful Eviction

(a) The Executive Director shall investigate a Report of Alleged Wrongful Eviction to determine if there is evidence of any of the following:

(1) A landlord is evicting more than one tenant at approximately the same time;

(2) that an eviction may be in retaliation for a dispute arising from a tenant's exercising of his or her rights under the Ordinance;

(3) that a dispute over the proper interpretation of the Ordinance is involved in an eviction or eviction attempt;

(4) that after a tenant has been required to vacate a rental unit, it appears that the eviction was effected by fraud or in bad faith; or

(5) a policy issue of city-wide importance is raised.

(b) If the Executive Director finds that none of the above acts of unlawful eviction is met regarding a case of alleged wrongful eviction, the tenant shall be informed of such decision immediately and in writing.

Section 12.12 Hearing of Alleged Wrongful Eviction

If the Executive Director determines that there is evidence of any of the acts of unlawful eviction set forth in Section 12.11, the Executive Director shall mail a notice to the complainant and to the allegedly wrongfully evicting landlord that a hearing has been set before a Administrative Law Judge of the Board at the date no less than five (5) and no more than twenty

(20) days from the date of mailing of the notice, to consider whether or not the landlord has acted or is acting in violation of Section 37.9(a) A copy of the tenant's Report shall be sent with such notice to the landlord. Both landlord and tenant shall be notified that they or their representatives may address the Administrative Law Judge at such meeting on the question of the existence or absence of a violation of Section 37.9(a) of the Ordinance, may make sworn statements if they wish, and may invite witnesses to speak on the matter.

At the conclusion of the hearing, the Administrative Law Judge shall report to the Board a summary of the evidence produced at the hearing. The Board may elect to hold additional hearings. If the Board finds, by a vote of at least three (3) members, that it appears there has been or there exists an eviction or attempted eviction in violation of the Ordinance by the landlord, the Board's public consideration of the matter shall end. Thereafter, the matter shall be one of prospective or actual litigation and shall be discussed in Executive Session unless, and to the extent, the members unanimously approve public discussion thereof. Notice of a decision by the Board to take no action on an alleged wrongful eviction shall be sent to the parties and such decision shall not prejudice a request by the tenant for further consideration upon the discovery of new evidence.

Section 12.13 <u>Legal Action</u>

Where the Board first finds an eviction or attempted eviction to be in violation of the Ordinance, the Board shall decide whether or not to commence legal action against the landlord requiring the vote of three (3) or more members.

Section 12.14 <u>Evictions under Section 37.9(a)(8)</u>
(Amended June 18, 1991; Subsection (c) amended March 7, 1995; Subsection (d) added October 20, 1998; amended June 10, 2008)

(a) For purposes of an eviction under Section 37.9(a)(8) of the Ordinance, the term "landlord" shall mean a natural person, or group of natural persons who in good faith hold a recorded fee interest in the property and meet one of the following requirements:

(i) held a recorded fee interest of at least 10%, or a recorded equitable interest under contract of sale of at least 10%, which interest was recorded on or before

February 21, 1991, and continues to hold at least such a 10% interest on the date of service of the notice to vacated; or

(ii) holds a recorded fee interest of at least 25%, or a recorded equitable interest under contract of sale of at least 25%, on the date of service of the notice to vacate.

(b) On or before service of the notice to vacate, the tenant shall be informed in writing of (1) the identity and percentage of ownership of the owner to move in or (2) the name and relationship of the relative to move in, as well as the name and percentage of ownership of the evicting owner; and (3) the date the current percentage of ownership was recorded.

(c) For purposes of an eviction under Section 37.9(a)(8) of the Ordinance, a landlord or landlord's relative can have only ONE "principal place of residence" which is defined as the permanent or primary home of the party claiming that a unit has that status attached to it. It is a unit that the party occupies for more than temporary or transitory purposes. Evidence that a unit is or is intended to be the party's "principal place of residence" includes, but is not limited to, the following elements, a compilation of which lends greater credibility to the claim of “principal place of residence of an owner” whereas the presence of only one element may not support such claim:

(1) the subject premises are listed as the owner’s place of residence on any motor vehicle registration, driver’s license, or with any other public agency, including State and local taxing authorities;

(2) utilities are installed under the owner’s name at the subject premises;

(3) all of the owner’s personal possessions have been moved into the subject premises;

(4) a homeowner’s tax exemption;

(5) voter registration;

(6) a U.S. Postal Change of Address form;

(7) the subject premises are the place the owner normally returns to as his/her home, exclusive of military service, hospitalization, vacation, or travel necessitated by

employment;

(8) notice to move at another dwelling unit was given in order to move into the subject premises; and

(9) the owner sold or placed on the market for sale the home he/she occupied prior to the subject premises.

(d) A tenant is disabled under Ordinance Section 37.9(i)(1)(B)(i) if the tenant meets the standard for blindness or disability under the federal Supplemental Security Income/California State Supplemental Program (SSI/SSP). In determining whether a tenant is disabled, a finder of fact shall consider relevant evidence, including:

(1) findings by any government entity concerning a disability;

(2) testimony concerning the disability; and

(3) medical evidence concerning the disability.

Section 12.15 <u>Evictions Regarding Capital Improvement or Rehabilitation Work</u>
(Amended February 10, 1987, effective February 14, 1987 and applicable to notices served on or after that date; amended January 9, 2007)

(a) For purposes of an eviction under Section 37.9(a)(11) of the Ordinance, the capital improvement and/or rehabilitation work to be done must involve work that would make the unit hazardous, unhealthy, and/or uninhabitable while work is in progress. If there is a dispute between the landlord and the tenant as to whether the work that is to be performed creates a hazardous or unhealthy environment, the tenant may file a report of alleged wrongful eviction with the Board.

(b)(1) Copies of all necessary permits, a description of work to be done and a reasonable approximate date (month and year) when the tenant can reoccupy the unit shall be given to the tenant on or before the date of service of the notice to vacate. On or before the date of service of the notice to vacate, the landlord also must advise the tenant in writing that the permit application and the rehabilitation or capital improvement plans, if required by the Bureau of Building Inspection, are on file with the Central Permit Bureau of the Department of Building Inspection located at 1660 Mission and arrangements may be made to review such applications

or plans.

(2) The tenant will vacate the unit only for the minimum time required to do the work as stated in the notice, not to exceed three months, unless the time is extended by the Board upon petition by the landlord pursuant to subsection (e) below.

(c) Displaced tenants should advise the Board and the landlord of their temporary addresses during the period of displacement in order that they may be notified regarding their relocation.

(d) Moving Costs

Any landlord who seeks to recover possession of a unit pursuant to Section 37.9(a)(11) of the Ordinance shall pay relocation expenses as provided in Section 37.9C of the Ordinance.

(e) Landlord's Petition for Extension of Time

(1) Before giving the notice to vacate, if the landlord knows or should know that the work will require the removal of the tenant(s) for more than the three months authorized under Ordinance Section 37.9(a)(11), the landlord shall petition the Rent Board for approval of displacement for more than three months. The petition shall include one original and copies for each involved tenant of the following documents:

(A) A completed petition form;

(B) Copies of all necessary building permits, showing approval has been granted;

(C) A written breakdown of the work to be performed, detailing where the work will be done and the cost of the work;

(D) An estimate of the time needed to accomplish the work and approximate date (month and day) each involved tenant may reoccupy.

(2) If, after the notice to vacate has been given or after the work has commenced, it is apparent that the work will take longer than the three months authorized under Section 37.9(a)(11) or longer than the time approved by the Board, the landlord immediately shall file a petition pursuant to subsection (e)(1) above, along with a statement of why the work will require more time.

(3) A hearing on the landlord's petition shall be scheduled within 30 days of the date of filing the petition and conducted pursuant to Part 11 of these Rules and Regulations. The Administrative Law Judge shall render a written decision as to the reasonableness of the landlord's time estimate. The tenants or the landlord may appeal this determination by filing an appeal with the Commissioners pursuant to Ordinance Section 37.8(f).

(f) Nothing in this section shall preclude a tenant from filing a report of alleged wrongful eviction with the Board.

Section 12.16 <u>Reoccupancy Following Evictions Under Section 37.9(a)(11)</u>
(Formerly Section 12.15; amended February 10, 1987, effective February 14, 1987 and applicable to notices to vacate served on or after that date; Subsection (a) amended September 8, 2009, to be effective November 1, 2009)

(a) Where a tenant has vacated a unit to allow a landlord to carry out capital improvements or rehabilitation work, pursuant to Section 37.9(a)(11) of the Ordinance, the landlord shall advise the tenant, in writing, immediately on completion of the improvements, and shall allow the tenant to reoccupy the unit as soon as the improvements or rehabilitation work is completed, and shall not increase the rent for such reoccupancy by more than the limitations set forth in Section 4 above. The tenant shall have 30 days from receipt of the landlord's offer of reoccupancy to notify the landlord of acceptance or rejection of the offer and, if accepted, shall reoccupy the unit within 45 days of receipt of the landlord's offer.

(b) If the time period allowed to perform the work pursuant to Section 12.15 above has passed and the landlord has not informed the tenant that the unit is ready for reoccupancy, the tenant may file a decrease in service petition and/or a report of alleged wrongful eviction. Upon a proper showing, the tenant may be awarded a rent reduction to correspond with the decrease in services calculated by the difference between the monthly rent formerly paid for the unit from which the tenant was displaced and the monthly rent paid for the replacement unit.

Section 12.17 <u>Notices to Vacate Filed with the Board</u>
(Added February 10, 1987, effective February 14, 1987)

At the time of filing, the Board shall make no determination as to the legal sufficiency of notices to vacate filed pursuant to Ordinance Section 37.9(c) or of procedures followed by the

parties.

Section 12.18 Procedures Regarding Evictions under Section 37.9(a)(13)
(Formerly Section 12.17 adopted October 29, 1986; numerical correction to subsection (j) August 20, 1996; Entire Section deleted, effective June 29, 1999)

Section 12.19 Other Displacements
(Added March 7, 1989)

(a) If a tenant is forced to vacate her/his unit due to fire or other disaster, the landlord shall, within 30 days of completion of repairs to the unit, offer the same unit to that tenant under the same terms and conditions as existed prior to her/his displacement.

(b) The tenant shall have 30 days from receipt of the landlord's offer to notify the landlord of acceptance or rejection of the offer and, if accepted, shall reoccupy the unit within 45 days of receipt of the landlord's offer.

(c) However, the cost of capital improvements which are necessary before rerenting a unit which was damaged or destroyed as set forth in subsection (a) above, which cost was not reimbursed by insurance proceeds or by any other means (such as a satisfied judgment) may be passed through to the tenant by utilization of the capital improvement petition process as set forth in Part 7 above. Any rent increase under this section would require that a 30-day notice be served upon the tenant(s).

(d) The landlord who attempts to rerent a unit, but refuses to allow a tenant to return to her/his home under this section shall have wrongfully endeavored to recover or wrongfully recovered said tenant's rental unit in violation of Section 37.9 of the Ordinance and shall be liable to the displaced tenants for actual and punitive damages as provided by Ordinance Section 37.9(f). This remedy shall be in addition to any other remedy available to the tenant under the Rent Ordinance.

Section 12.20 Evictions under Section 37.9(a)(2)
(Adopted November 12, 1997; amended March 6, 2007; amended December 14, 2011; amended February 1, 2012)

(a) Unilaterally Imposed Obligations and Covenants

Notwithstanding any change in the terms of a tenancy pursuant to Civil Code Section

827, a tenant may not be evicted for violation of a covenant or obligation that was not included in the tenant's rental agreement at the inception of the tenancy unless: (1) the change in the terms of the tenancy is authorized by the Rent Ordinance or required by federal, state or local law; or (2) the change in the terms of the tenancy was accepted in writing by the tenant after receipt of written notice from the landlord that the tenant need not accept such new term as part of the rental agreement. The landlord's inability to evict a tenant under this Section for violation of a unilaterally imposed change in the terms of a tenancy shall not constitute a decrease in housing service under the Rent Ordinance as to any other tenant.