

**PROPOSED AMENDMENTS TO SECTIONS 6.10 AND 12.17 OF THE RENT BOARD'S
RULES AND REGULATIONS – PUBLIC HEARING ON SEPTEMBER 11, 2018**

1 NOTE: Unchanged text is in plain Arial font.

2 Additions to Regulations are in single-underline plain Arial font.

3 Deletions to Regulations are in ~~single-strikethrough plain Arial font~~.

4 **Section 6.10 Operating and Maintenance Expenses**

5 (Subsection (a) amended effective February 28, 1989; Subsections (b), (c) and
6 (d) amended February 21, 1989; Subsections (e) and (g) amended February 28,
7 1989; Subsection (f) renumbered February 28, 1989; Subsections (a) and (b)
8 amended and Subsection (h) added May 24, 1994; Subsection (i) added January
9 31, 1995; amended March 14, 1995; repealed and adopted April 25, 1995,
10 effective February 1, 1995; entire Section renumbered and/or amended in its
11 entirety effective June 6, 1995; Section 6.10(b)(5) amended effective
12 June 20, 1995; entire Section renumbered and/or amended in its entirety effective
13 June 18, 1996; Subsection (e) amended effective March 19, 2002; entire Section
14 renumbered and/or amended in its entirety effective [date]

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

17 (a) A rent increase may be considered justified if it is found that the aggregate cost of
18 Operating and Maintenance Expenses (~~including but not limited to real estate taxes, business
19 registration and license fees, insurance, routine maintenance and repairs, water, sewer service
20 charge, janitorial service, refuse removal, elevator service, security system and debt service~~)
21 has increased over a 12-month period preceding the date of filing the petition ("Year 2"),
22 compared to the Operating and Maintenance Expenses incurred in the 12 months prior to Year 2
23 ("Year 1"), in a percentage amount of the tenant's rent above the percentage amount equal to
24 the allowable annual rent increase. Alternatively, the immediately preceding two calendar years
25 may be used. Use of a particular calculation period in order to create exaggerated results is
26 disfavored. To determine the per unit rent increase, this cost increase is divided by 12 months,
27 then divided by the number of units in the building. Only those tenants in residence during Year
28 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

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1 cost of refuse removal shall be allocated to the time periods when refuse removal occurred, the
2 cost of insurance premiums shall be allocated to the period of coverage, and the cost of repair
3 work shall be allocated to the time when the work was performed, ~~and the cost of property~~
4 ~~taxes, including supplemental taxes, shall be allocated to the applicable tax year (regardless of~~
5 ~~when the tax bill was received or paid). Proof of payment shall be required, and prospective~~
6 ~~increases shall not be considered, except that property taxes based upon supplemental tax bills~~
7 ~~not yet received and/or due and payable by the landlord shall be taken into account.~~

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

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

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

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

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

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

19 (e) Operating and maintenance expenses include, but are not limited to: water and
20 sewer service charges; janitorial service; refuse removal; elevator service; security system;
21 insurance for the property; routine repairs and maintenance; business registration fees; pest
22 control; debt service only as set forth in subsection (1); property taxes only as set forth in
23 subsection (2); and, management expenses only as set forth in subsection (3).

24 **(1) Debt Service.**

25 (A) For petitions filed before December 11, 2017, the Rent Board may
26 consider increased debt service; provided, however, the following rules shall apply:

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

7 (ii) When the property was purchased within two years of the date
8 of the previous purchase, consideration shall not be given to that portion of increased debt
9 service which has resulted from a selling price which exceeds the seller's purchase price by
10 more than the percentage increase in the CPI between the date of previous purchase and the
11 date of the current sale plus the cost of capital improvements, rehabilitation and/or energy
12 conservation work made or performed by the seller.

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

18 (B) For petitions filed on or after December 11, 2017, where the landlord
19 purchased the property on or before April 3, 2018, the Rent Board shall only consider increased
20 debt service if the landlord demonstrates that it had reasonably relied on its ability to pass
21 through those costs to the tenants at the time of the purchase, and if demonstrated,
22 consideration of debt service shall be subject to the rules in subsections (e)(1)(A)(i)-(iii).

23 (C) For petitions filed on or after December 11, 2017, where the landlord
24 purchased the property after April 3, 2018, the Rent Board shall not consider any portion of
25 increased debt service.

26 **(2) Property Taxes.**

27 (A) For petitions filed before December 11, 2017, the Rent Board may
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1 consider increased property taxes. Property taxes based upon supplemental tax bills not yet
2 received and/or due and payable by the landlord shall be taken into account. If there is a change
3 in ownership resulting in increased property taxes, only the landlord who incurred such
4 expenses may file a petition under this Section, and only one rent increase per unit based upon
5 increases in property taxes shall be allowed for each such transfer, except in extraordinary
6 circumstances or in the interest of justice. In no event shall the petition be denied solely due to
7 the subsequent transfer of the property, unless the successor in interest declines to substitute in
8 as the petitioner.

9 (B) For petitions filed on or after December 11, 2017, where the landlord
10 purchased the property on or before April 3, 2018, the Rent Board may consider that portion of
11 increased property taxes that has resulted from an increased assessment due to the completion
12 of needed repairs or capital improvements, as well as an increase in the annual tax rate, but
13 shall only consider that portion of increased property taxes resulting from an increased
14 assessment due to a change in ownership if the landlord demonstrates that it had reasonably
15 relied on its ability to pass through those costs to the tenants at the time of the purchase.

16 (C) For petitions filed on or after December 11, 2017, where the landlord
17 purchased the property after April 3, 2018, the Rent Board may consider that portion of
18 increased property taxes that has resulted from an increased assessment due to the completion
19 of needed repairs or capital improvements, as well as an increase in the annual tax rate, but
20 shall not consider that portion of increased property taxes resulting from an increased
21 assessment due to a change in ownership.

22 (3) **Management Expenses.** The Rent Board may consider increased
23 management expenses. However, for petitions filed on or after July 15, 2018, the Rent Board
24 may consider management expenses only to the extent those expenses are reasonable and
25 necessary, based on certain factors, including but not limited to:

26 (A) the need to provide day-to-day management of the building;

27 (B) the level of management services previously required for the building;

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- (C) the reasonable cost of the services in an arms-length transaction;
- (D) whether any tenants have objected that the cost and quality of the services are not in keeping with the socioeconomic status of the building's existing tenants;
- (E) and, other extraordinary circumstances.

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1 **Section 12.17 Notices to Vacate Filed with the Board**

2 (Added February 10, 1987, effective February 14, 1987; amended November 21,
3 2017, effective January 1, 2018; amended [insert date])

4 At the time of filing, the Board shall make no determination as to the legal sufficiency of
5 notices to vacate filed pursuant to Ordinance Section 37.9(c) or of procedures followed by the
6 parties; provided, however, that for notices to vacate under 37.9(a)(8), 37.9(a)(9), 37.9(a)(10),
7 37.9(a)(11) and 37.9(a)(14), served on or after January 1, 2018, the Board may request that the
8 notice state the tenant's rent and for notices to vacate under 37.9(a)(8) only, the Board may
9 request that the notice include a blank change of address form for the tenant, as required by
10 Ordinance Section 37.9(a)(8)(v).