

NOTE: Unchanged text is in plain Arial font.

7/5/18 Additions to Regulations are in single-underline plain Arial font.

7/5/18 Deletions to Regulations are in ~~single-strikethrough Arial font~~.

7/15/18 Board amendment additions are in double-underlined Arial font.

**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and (b) amended and Subsection (h) added May 24, 1994; Subsection (i) added January 31, 1995; amended March 14, 1995; repealed and adopted April 25, 1995, effective February 1, 1995; entire Section renumbered and/or amended in its entirety effective June 6, 1995; Section 6.10(b)(5)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; entire Section renumbered and/or amended in its entirety effective [date])

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

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~~  
28 ~~from a selling price which exceeds the seller's purchase price by more than the percentage~~

1 increase in the CPI between the date of previous purchase and the date of current sale plus the  
2 cost of capital improvements, rehabilitation and/or energy conservation work made or performed  
3 by the seller.

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

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

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

23 (1) **Debt Service.**

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

26 (i) If a building is refinanced or there is a change in ownership  
27 resulting in increased debt service, only the landlord who incurred such expenses may file a  
28 petition under this Section, and only one rent increase per unit based upon increased debt

1 service shall be allowed for each such refinance or transfer, except in extraordinary  
2 circumstances or in the interest of justice. In no event shall the petition be denied solely due to  
3 the subsequent transfer of the property, unless the successor in interest declines to substitute in  
4 as the petitioner.

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

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

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

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

24 **(2) Property Taxes.**

25 (A) For petitions filed before December 11, 2017, the Rent Board may  
26 consider increased property taxes. Property taxes based upon supplemental tax bills not yet  
27 received and/or due and payable by the landlord shall be taken into account. If there is a change  
28 in ownership resulting in increased property taxes, only the landlord who incurred such

1 expenses may file a petition under this Section, and only one rent increase per unit based upon  
2 increases in property taxes shall be allowed for each such transfer, except in extraordinary  
3 circumstances or in the interest of justice. In no event shall the petition be denied solely due to  
4 the subsequent transfer of the property, unless the successor in interest declines to substitute in  
5 as the petitioner.

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

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

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

- 23 (A) the need to provide day-to-day management of the building;  
24 (B) the level of management services previously required for the building;  
25 (C) the reasonable cost of the services in an arms-length transaction;  
26 (D) whether any tenants have objected that the cost and quality of the  
27 services are not in keeping with the socioeconomic status of the building's existing tenants;  
28 (E) and, other extraordinary circumstances.