

1 **Section 6.16 Utility Passthrough**

2 (Added August 24, 2004; Subsection (i) amended September 21, 2004; Amended  
3 December 16, 2008, effective January 1, 2009)

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

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

11 (b) Determination of Initial “Base Year”

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

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

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

23 (ii) For all new tenancies commencing after December 31, 2003, the initial  
24 “base year” shall be the calendar year immediately preceding the year of the inception of the  
25 tenancy.

26 (iii) A landlord may petition the Board for approval of an alternate “base year”  
27 if the landlord became an owner of record after December 31, 2002 and demonstrates a good  
28 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

1 (b)(i) or (b)(ii). The Board will not approve an alternate “base year” that creates exaggerated  
2 results unless the proposed alternate “base year” coincides with the landlord’s first full calendar  
3 year of ownership.

4 (c) Subsequent Adjustments to Initial “Base Year”

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

10 A new “base year” is established at the end of every fifth calendar year after the initial  
11 “base year”. For example, where the initial “base year” is 2002, the new “base year” shall be  
12 2007 for petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2009  
13 and December 31, 2013. If the tenancy continues for an additional five years, the “base year” will  
14 become 2012 for petitions and Utility Passthrough Calculation Worksheets filed between  
15 January 1, 2014 and December 31, 2018, and so on. For another example, where the initial  
16 “base year” is 2003, including those tenancies that had an earlier “base year” prior to January 1,  
17 2009, the new “base year” shall be 2008 for petitions and Utility Passthrough Calculation  
18 Worksheets filed between January 1, 2010 and December 31, 2010. If the tenancy continues for  
19 an additional five years, the “base year” will become 2013 for petitions and Utility Passthrough  
20 Calculation Worksheets filed between January 1, 2015 and December 31, 2019, and so on. For  
21 another example, where the initial “base year” is 2004, the new “base year” shall be 2009 for  
22 petitions and Utility Passthrough Calculation Worksheets filed between January 1, 2011 and  
23 December 31, 2015. If the tenancy continues for an additional five years, the “base year” will  
24 become 2014 for petitions and Utility Passthrough Calculation Worksheets filed between  
25 January 1, 2016 and December 31, 2020.

26 (d) Determination of “Comparison Year”

27 For purposes of this section, the “comparison year” in all cases shall be the calendar year  
28 immediately preceding the filing of the landlord’s Utility Passthrough Calculation Worksheet or

1 Petition for Approval of Utility Passthrough.

2 (e) Petition Required for Certain Utility Passthroughs

3 Effective January 1, 2009, the landlord is required to file a Petition for Approval of Utility  
4 Passthrough when using a comparison of utility costs for the prior two calendar years (e.g.  
5 2007/2008 in 2009, 2008/2009 in 2010, 2009/2010 in 2011, etc.). The petition shall be on a form  
6 prescribed by the Board. The petition shall specify the units on the property that are subject to  
7 the petition. The petition will be decided without a hearing unless the Administrative Law Judge  
8 determines that a hearing is required.

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

21 (g) Petition Not Required for Certain Utility Passthroughs

22 Effective January 1, 2009, the landlord is not required to file a Petition for Approval of  
23 Utility Passthrough using a comparison of costs for years other than the prior two calendar  
24 years. For example, in 2009, pursuant to subsection (e) above, the landlord must file a petition  
25 for “base year” 2007 and “comparison year” 2008 in order to impose a utility passthrough, but  
26 need not file a petition for “base years” 2003, 2004, 2005 or 2006 and “comparison year” 2008.  
27 However, in order to impose a utility passthrough where a petition is not required under  
28 subsection (e), the landlord must comply with the following requirements:

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

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

20 (iii) A tenant who receives a utility passthrough under this subsection (g) may  
21 file a hardship application with the Board within one year of the effective date of the passthrough,  
22 and may be granted relief from all or part of such passthrough based on hardship.

23 (h) Laundry Facilities

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

28 (i) where the laundry facilities are separately metered in both the “base year”

1 and “comparison year”, the landlord shall not include the utility costs for the laundry facilities in  
2 the utility passthrough calculation; or

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

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

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

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

18 (j) Calculation of the Utility Passthrough

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

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

24 (ii) Calculate the total utility cost for the “base year” and the total utility cost  
25 for the “comparison year”.

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

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

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

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

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

19 (vi) Divide the resulting figure, if greater than zero, by twelve (12) to determine  
20 the average monthly utility increase for the entire property.

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

1 space, shall be included in the room count in a manner that most reasonably takes into account  
2 the size of the space and its utility usage.

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

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

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

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

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

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

19 (p) The provisions of this Section shall be deemed a part of every rental agreement  
20 or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the  
21 landlord and the tenant agree that the landlord will not pass through any utility increases, in  
22 which case such agreement will be binding on the landlord and on any successor owner of the  
23 property.

24 (q) Where a utility increase has been lawfully passed through to the tenant, a change  
25 in the ownership of the property in which the tenant's unit is located will not affect the tenant's  
26 liability to pay the amount passed through.  
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1 **Section 10.13 Improper Utility Passthrough**

2 (Added August 24, 2004; Amended December 16, 2008, effective January 1,  
3 2009)

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

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

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

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

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

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

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

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