

## Maintenance of Net Operating Income (MNOI) Reasonable Return Standard

### A. Reasonable Return Standard

- (1) Presumption of Fair Base Year Net Operating Income. It shall be presumed that the net operating income received by the **Landlord in the Base Year provided a reasonable return**.
- (2) Reasonable Return. A Landlord has the right to obtain a net operating income equal to the Base Year net operating income adjusted by **100% of the percentage increase in the Consumer Price Index (CPI), since the Base Year**. It shall be presumed this standard provides a reasonable return.
- (3) Base Year.
  - a. For the purposes of making reasonable return determinations pursuant to this section, the calendar year 2019 is the Base Year. The Base Year CPI shall be 2019, unless subsection (b) is applicable.
  - b. In the event that a determination of the allowable Rent is made pursuant to this section, if a subsequent petition is filed, the Base Year shall be the year that was considered as the "current year" in the prior petition.
- (4) Adjustment of Base Year Net Operating

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Landlords or Tenants may present evidence to rebut the presumption that the Base Year net operating income provided a Reasonable return. Grounds for rebuttal of the presumption shall be based on at least one of the following findings:

- a. Exceptional Expenses in the Base Year. The Landlord's operating expenses in the Base Year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating operating expenses in order that the Base Year operating expenses reflect average expenses for the property over a reasonable period of time. The following factors shall be considered in making such a finding:
  - i. Extraordinary amounts were expended for necessary maintenance and repairs.

**Commented [CB1]:** This MNOI copies the most stringent rent control program in the United States with minor changes which further choke owners who invest in St. Paul. At this time owners are not offered any exemptions from Minnesota.

However, California State Law provides some properties owners exemptions from the rent cap limitation **which St. Paul real estate investors are not afforded:**

- Units constructed in the last 15 years are exempt (on a rolling basis, i.e., a unit constructed on January 1, 2008 is not covered as of January 1, 2023, but is covered on and after January 1, 2023).
- Units are exempt if they are restricted to be affordable for low- or moderate-income residents.
- A single family home is exempt unless it's owned by a real estate investment trust (REIT), a corporation, or an LLC where one of the members is a corporation. The owner must inform the renter in writing that the tenancy is not subject to the rent cap and just cause limitations.
- Duplexes and other two-unit properties are exempt, unless one unit is occupied by the owner. Some dormitories are exempt.

**Commented [CB2]:** The CPI is not a good barometer because this statistical estimate keeps a pulse on the prices of consumer goods and does not adequately reflect the rising cost of operating a rental business. Nor does it adequately display the ratio of the percentage actual expenses as they relate to the total expense or income. This document "MNOI" is a virtual identical copy Richmond California's rent control policy. St. Paul is not Richmond CA. In November of 2018 it was reported in the Richmond Confidential by Meiyong Wu that rents in Richmond had risen by more than **30 percent in the past five years** according to the **Haas Institute**. This was not the case in St. Paul. Historically rental rates in St. Paul have always been lower than other metropolitan areas including Minneapolis.

ii. Maintenance and repair expenditures were exceptionally low so as to cause inadequate maintenance or significant deterioration in the quality of services provided.

iii. Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.

b. Exceptional Circumstances in the Base Year. The gross income during the Base Year was disproportionately low due to exceptional circumstances. In such instances, adjustments may be made in calculating Base Year gross rental income consistent with the purposes of this chapter. The following factors shall be considered in making such a finding:

i. The gross income during the Base Year was lower than it might have been because some residents were charged reduced rent

ii. The gross income during the Base Year was significantly lower than normal because of the destruction of the premises and/or temporary eviction for construction or repairs.

iii. The pattern of rent increases in the years prior to the Base Year and whether those increases reflected increases in the CPI.

iv. Other exceptional circumstances.

(5) Calculation of Net Operating Income. Net operating income shall be calculated by subtracting operating expenses from gross rental income.

a. Gross Rental Income.

Commented [CB3]: Reduced Rent need to be defined. Does it include rents that were below market for the discounts provided long term tenants?

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i. Gross rental income shall

include:

Gross rents calculated as gross scheduled rental income at one hundred percent occupancy and all other income or consideration received or receivable in connection

with the use or occupancy of the Rental Unit, except as provided in Subparagraph (B) of this section.

If there is a difference in the number of rental units between the Base Year and the current year, in making calculations of net operating income in the Base Year and the current year, the rental income and expenses for the same number of units shall be used in calculating the net operating income for both periods.

The purpose of this provision is to ensure that a petitioner is not requesting that the current fair net operating income reach a level which was provided in the Base Year by a larger number of units or is limited to a net operating income which was formerly provided by a smaller number of units.

If there are units that are vacant or owner-occupied at the time a petition is filed which were rented in the Base Year, for the purposes of the MNOI analysis a rental income for the unit shall be calculated on the basis of average rents for comparable units in the building . If there are no comparable units in the property rental income for the vacant or owneroccupied units, the rent shall be calculated on the basis of recently established initial rents for comparable units in the City. If there are units that were rented in the current year, which were vacant or owner-occupied in the Base Year, for the purposes of the MNOI analysis a rental income for the unit for the Base Year shall be calculated on the basis of average rents for comparable units in the building in the Base Year. If there are no comparable units in the property, rental income for the vacant or owner-occupied units in the Base Year shall be calculated on the basis of Base Year rents for comparable units in the City. If a staff determination is appealed to the City Council, a **Legislative, Hearing Officer may use another reasonable methodology to ensure compliance with the purposes of this** subsection

Commented [CB4]: Define other reasonable methodology.

ii. Gross rental income shall not include:

Utility Charges for sub-metered gas, electricity or water which are paid directly by the tenant; or

Charges for refuse disposal, sewer service, and, or other services which are either provided solely on a cost pass-through basis and/or are regulated by state or local law.;

b. Operating Expenses. Operating expenses include the following:

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- i. Reasonable costs of operation and maintenance of

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the Rental Unit

- ii. Management expenses. It must be presumed that management expenses have increased between the Base Year and the current year by the percentage increase in rents or CPI, whichever is greater, unless the level of management services has either increased or decreased significantly between the Base Year and the current year. This presumption must also be applied in the event that management expenses changed from owner managed to managed by a third party or vice versa.

- iii. Utility costs except a utility where the consideration of the income associated with the provision of the utility service is regulated by state law and consideration of the costs associated with the provision of the utility service is preempted by state law or the income associated with the provision of the utility is not considered because it is recouped from the Tenants on a cost pass-through basis.

- iv. Real property taxes and insurance, subject to the limitation that property taxes attributable to an assessment in a year other than the Base Year or current year may not be considered in calculating Base Year and/or current year operating expenses.

- v. Property taxes assessed and paid.

- vi. License, registration and other public fees required by law to the extent these expenses are not otherwise paid or reimbursed by Tenants.

**Commented [CB5]:** Neither a cap of 3% rent increase or CPI accurately or reasonably reflects the cost associated with rental property management. Management fees vary in % of gross and what services are provided. Maintenance is not calculated on a % of income. It is an actual cost when reporting or a known area per unit cost.

**Commented [CB6]:**

Richmond CA's cost per unit is \$218 per year. That does not include other "fees" associate with this policy. For an apartment renting at \$900 per month 67% of the allowed rent increase would go to cover the program fee. Interestingly in Richmond's original draft estimated the fee at \$47 per unit.

**Commented [CB7]:** Seems reasonable.

**Commented [CB8]:**

vii. Landlord-performed labor compensated at reasonable hourly rates. However, no landlord-performed labor shall be included as an operating expense unless the landlord submits documentation showing the date, time, and nature of the work performed. There shall be a maximum allowed under this provision of five percent (5%) of gross income unless the Landlord shows greater services were performed for the benefit of the residents.

viii. Legal expenses. Reasonable attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, legal expenses necessarily incurred in dealings with respect to the normal operation of the Property, and reasonable costs incurred in obtaining a rent increase pursuant to SPLC 193A. To the extent allowable legal expenses are not annually reoccurring and are substantial they shall be amortized over a five-year period, unless the City concludes that a different period is more reasonable. At the end of the amortization period, the allowable monthly rent shall be decreased by any

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Adjustments to Operating Expenses. Base Year and/or current year amount it was increased because of the application of this provision.

operating expenses may be averaged with other expense levels for other years or amortized or adjusted by the CPI or to reflect levels that are normal for residential Rental Units or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of Base Year and current year expenses and providing a reasonable return. If the claimed operating expense levels are exceptionally high compared to prior expense levels and/or industry standards the Landlord shall have the burden of proof of demonstrating that they are reasonable and/or reflect recurring expense levels. Expenses which are exceptional and reasonable must be amortized in order to achieve the objectives of this section.

c. Projections of Base Year Operating Expenses in the Absence of Actual Data

If the Landlord does not have Base Year operating expense data, it shall be presumed that operating expenses increased by the percentage increase in the CPI between the Base Year and the current year. This presumption is subject to the exception that specific operating

**Commented [CB9]:** This suggests capping owner-performed maintenance at 5% of gross. St. Paul's housing is more expensive to manage than Richmond CA. You can't own a grade A property in St. Paul, perform 95% of the maintenance, and have the value of your labor capped at 5% of gross revenue. This clause clearly demonstrates the disdain the drafters hold for owners of rental property and their lack of understanding for all goes into owning a well maintained property. St. Paul's housing stock is substantially older than Richmond or Berkeley CA and required additional maintenance due to age and climate. Let's do some math: A 10 unit building with rents averaging \$900 per month the maximum amount an owner could use as a deduction per month is \$450. Have any of you ever called a plumber to unclog a drain, had your driveway plowed, had the torsion spring fixed on your garage door or an ice dam on your roof thawed, had blinds hung or door replaced? We have industry standard for maintenance labor and it's not based on income. Maintenance isn't a luxury expense.

**Commented [CB10]:** Appears reasonable.

expenses must be adjusted by other amounts when alternate percentage adjustments are supported by a preponderance of evidence (such as data on changes in the rates of particular utilities or limitations on increases in property taxes.)

(6) Allocation of Rent Increases

Rent increases authorized pursuant to this section must be allocated as follows:

- a. Rent increases for unit-specific capital improvements must be allocated to that unit;
- b. Rent increases for building-wide or common area capital improvements must be allocated equally among all units;
- c. Rent increases resulting from the Net Operating Income analysis must be allocated equally among all units;
- d. Notwithstanding the subsections above, the City, in the interests of justice, shall have the discretion to apportion the rent increases in a manner and to the degree necessary to ensure fairness. Such circumstances include, but are not limited to, units that are vacant or owner occupied.

(7) Relationship of Individual Rent Adjustment to Annual General Adjustment

Any Individual Increase Adjustment established pursuant to this Section must take into regarding the petitioning year, and the Individual Adjustment may be limited or conditioned

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account the extent of any

Annual General Adjustments the Landlord may be implementing, or otherwise be entitled to, at and during the time for which the Individual Adjustment is sought accordingly.

If it is determined that the Landlord is not entitled to an Individual Adjustment, the Landlord may implement the full upcoming General Adjustment.

(8) Limits to Annual Rent Adjustments Based on Maintenance of Net Operating Income Standard

- a. Purpose. The purpose of this subsection (a) is to protect Tenants from substantial rent increases which are not affordable, and which may force such Tenants to vacate their homes and result in consequences contrary to the stated purposes of the Ordinance, namely, to maintain the diversity of the Saint Paul community, to preserve the public peace, health and safety, and advance the housing policies of the City.

b. Rent Increase Limit

Notwithstanding any other provision of this regulation, the implementation of a Maximum Allowable Rent increase must be limited each year to fifteen percent (15%) of the Maximum Allowable Rent on the date the petition is filed.

If the amount of any rent increase granted under these regulations exceeds this limit, any portion in excess of the annual must be deferred.

In subsequent years deferred amounts of the allowable rent increase may be implemented.

At the end of each year the deferred amount of the increase must be calculated and an interest allowance shall be calculated based on the standard set forth in this regulation. One twelfth (1/12) of the interest allowance must be added on to full monthly increase authorized under the MNO standard.

(9) Constitutional Right to a Reasonable Return.

No provision of this regulation shall be applied so as to prohibit the Rent Administrator or Hearing Officer from granting an individual rent adjustment that is demonstrated by the Landlord to be necessary to meet the requirements of this ordinance and/or constitutional reasonable return requirements.

**Planned or Completed Capital Improvements**

B. Capital Improvement Standard to cover the amortization of those costs. For purposes of this section a capital

improvement shall be

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(1) The Amortized Costs of Capital Improvements.

Operating expenses include the amortized costs of capital improvements plus an interest allowance

any improvement to a unit or property which materially adds to the value of the property, appreciably prolongs its useful life or adapts it to new use and has a useful life of more than one year and a direct cost of \$250.00 or more per unit affected.

Allowances for capital improvements shall be subject to the following conditions:

The costs are amortized over the period set forth in this regulation and in no event over a period of less than thirty-six (36) months.

**Commented [CB11]:** 15% should be the base cap not 3% and CPI dropped. However due to low voter turn out in an "off" year election an annual cap of 3% was approved by the voters. The approved 3% plus CPI+7 % should be the rule. This would significantly lower the administrative cost of "overseeing this program". Richmond CA has less than half the rental units than St. Paul and an annual program operating costs are over 2.8 million.

The costs do not include costs incurred to bring the Rental Unit into compliance with a provision of the Saint Paul Legislative Code or state law where the original installation of the improvement was not in compliance with code or state law.

At the end of the amortization period, the allowable monthly rent shall be decreased by any amount it has increased due to the application of this provision.

The improvement is not an ordinary repair, replacement, and/or maintenance, and is necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety in accordance with Saint Paul Legislative Code Chapter 34.

The amortization period shall be in conformance with the following schedule adopted by the City unless it is determined that an alternate period is justified based on the evidence presented in appeal hearing.



Amortization of Capital Improvements and Expenses	
In amortizing capital improvements, and/or expenses, the following schedule shall be used to determine the amortization period of the capital improvements and/or expenses	Years
<i>Appliances</i>	
Air Conditioners	10
Refrigerator	5
Stove	5
Garbage Disposal	5
Water Heater	5
Dishwasher	5
Microwave Oven	5
Washer/Dryer	5
Fans	5

Cabinets	10
Carpentry	10
Counters	10
Doors	10
Knobs	5
Screen Doors	5
Fencing and Security	5
Management	5
Tenant Assistance	5
<i>Structural Repair and Retrofitting</i>	
Foundation Repair	10
Foundation Replacement	20
Foundation Bolting	20
Iron or Steel Work	20
Masonry-Chimney Repair	20
Shear Wall Installation	10
Electrical Wiring	10
Elevator	20

**Commented [CB12]:** This does not line up with IRS guidelines. It is excessive and burdensome to require owners of rental properties to maintain two sets of books. Section 179 of the IRS tax code allows landlords to immediately expense new or used appliances.

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<i>Fencing</i>	
Chain	10
Block	10
Wood	10
<i>Fire Systems</i>	

Fire Alarm System	10
Fire Sprinkler System	20
Fire Escape	10
<i>Flooring/Floor Covering</i>	
Hardwood	10
Tile and Linoleum	5
Carpet	5
Carpet Pad	5
Subfloor	10
Fumigation Tenting	5
Furniture	5
Automatic Garage Door Openers	10

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<i>Gates</i>	
Chain Link	10
Wrought Iron	10
Wood	10
<i>Glass</i>	
Windows	5
Doors	5
Mirrors	5
<i>Heating</i>	
Central	10
Gas	10

Planting	10
Sprinklers	10
Tree Replacement	10
<i>Lighting</i>	
Interior	10
Exterior	5
Locks	10
Mailboxes	10
Meters	10
<i>Plumbing</i>	
Fixtures	10
Pipe Replacement	10
Re-Pipe Entire Building	20
Shower Doors	5
<i>Painting</i>	
Interior	5
Exterior	5
<i>Paving</i>	
Electric	10
Solar	10
Insulation	10
<i>Landscaping</i>	

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Asphalt	10
Cement	10
Decking	10
Plastering	10
Sump Pumps	10
Railings	10
<i>Roofing</i>	
Shingle/Asphalt	10
Built-up, Tar and Gravel	10
Tile	10
Gutters/Downspouts	10
<i>Security</i>	
Entry Telephone Intercom	10
Gates/Doors	10
Fencing	10
Alarms	10
Sidewalks/Walkways	10
Stairs	10
Stucco	10
Tilework	10
Wallpaper	5
<i>Window Coverings</i>	
Drapes	5
Shades	5
Screens	5
Awnings	5
Blinds/Miniblinds	5
Shutters	5

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(2) Interest Allowance for Expenses that Are Amortized.

An interest allowance shall be allowed on the cost of amortized expenses. The allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the Rent Administrator shall designate by regulation an index which is most comparable to the PMMS index.

**Commented [CB13]:** The local industry standard for capital improvement expenses is managed through a 5% annual reserve expense. Owners should be provided a 5% reserve expense. Again, this DRAFT unnecessarily complicates the process which results in further unnecessary expenses. Fixing problems ( rent gouging) that don't exit except for .05% of the housing stock.

a. Exclusions from Operating Expenses. Operating expenses shall not include the following:

- i. Mortgage principal or interest payments or other debt service costs and costs of obtaining financing.
- ii. Any penalties, fees or interest assessed or awarded for violation of any provision of this chapter or of any other provision of law.
- iii. Land lease expenses.
- iv. Political contributions and payments to organizations or individuals which are substantially devoted to legislative lobbying purposes.
- v. Depreciation.
- vi. Any expenses for which the Landlord has been reimbursed by any utility rebate or discount, Security Deposit, insurance settlement, judgment for damages, settlement or any other method or device.
- vii. Unreasonable increases in expenses since the Base Year.
- viii. Expenses associated with the provision of master-metered gas and electricity services.

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ix. Expenses which are attributable to unreasonable delays in performing necessary maintenance or repair work or the failure to complete necessary replacements, which are not Tenant caused. (For example if a roof replacement is unreasonably delayed, the full cost of the roof replacement would be allowed; however, if interior water damage occurred as a result of the unreasonable delay.

b. Adjustments to Operating Expenses. Base Year and/or current year operating expenses may be averaged with other expense levels for other years or amortized or adjusted by CPI or to reflect levels that are normal for residential Rental Units or may otherwise be adjusted, in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison of Base Year and current year expenses and providing a reasonable return. If the claimed operating expense levels are exceptionally high compared to prior expense levels and/or industry standards the Landlord shall have the burden of proof of demonstrating that they are reasonable and/or reflect recurring expense levels. Expenses which are exceptional and reasonable shall be amortized in order to achieve the objectives of this section.

c. Projections of Base Year Operating Expenses in the Absence of Actual Data

If the Landlord does not have Base Year operating expense data, it shall be presumed that operating expenses increased by the percentage increase of CPI between the Base Year and the current year. This presumption is subject to the exception that specific operating expenses shall be adjusted by other amounts when alternate percentage adjustments are supported by a preponderance of evidence (such as data on changes in the rates of particular utilities or limitations on increases in property taxes.)

(3) Allocation of Rent Increases

Rent increases authorized pursuant to this section shall be allocated as follows:

- a. Rent increases for unit-specific capital improvements shall be allocated to that unit;
- b. Rent increases for building-wide or common area capital improvements shall be allocated equally among all units;
- c. Rent increases resulting from the Net Operating Income analysis shall be allocated equally among all units;
- d. Notwithstanding the subsections above, the Rent Administrator or Hearing Officer, in the interests of justice, shall have the discretion to apportion the rent increases in a manner and to the degree necessary to ensure fairness. Such circumstances include, but are not limited to, units that are vacant or owner occupied.

- (4) Conditional Rent Adjustments for Proposed Capital Improvements Landlord to petition for an upward rent adjustment based upon anticipated future

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- a. In order to encourage necessary capital improvements, the Rent Administrator allows a
- expenses for capital improvements. The purpose of this procedure is to permit Landlords to seek advanced authorization for future rent adjustments based upon anticipated capital improvements. A petition under this Section should only be made for anticipated expenses that the Landlord intends to incur during the twelve-month period following the date of final Rent Administrator or Hearing Officer decision. This procedure should not be used for anticipated expenses for ordinary repairs and maintenance.
- b. If the petition is granted in whole or in part, the rent increase shall be postponed until such time as the capital improvements are made and an Addendum authorizing the increases is issued.
- c. No addendum shall be issued for such proposed capital improvements unless they are completed within twenty-four (24) months from the date of final decision granting the conditional rent adjustment, unless the Landlord obtains an additional addenda authorizing an extension of the time period to complete the capital improvement. Extensions may be granted due to reasonable delays in the completion of capital improvements as determined by the Hearing Officer.

**Commented [CB14]:** Please provide an example. If an owner of a 10 unit building needs to install a new roof at a cost of \$25,000, which by your rules would be amortized over 10 years, an owner can increase the residents rent by 3% plus \$17 per month only after written approval and completion of the work. That's backwards. Most capital improvements are planned- not a surprise. Some have nothing to do with code and are done out of pride of ownership. We did a complete tear-out and repaved our parking lot. Requiring City approval for an expense that you paid out of pocket to improve your property is ridiculous.

## Changes in the Number of Tenants

*Nothing in this section is intended to direct or alter the screening methods of landlords.*

### C. Changes in the Number of Tenants

- (1) Base Occupancy Level: The Base Occupancy Level for a Rental Unit, as used in this Chapter, shall be the number of Tenants allowed by the Rental Agreement as defined in 193A of the Ordinance for the unit effective May 1, 2022, or at the beginning of any tenancy established after May 1, 2022 (ie a new rental unit).
- (2) Increase in Tenants:
- a. If the number of Tenants allowed by the Rental Agreement actually occupying a unit as the Tenants' principal residence has increased above the Base Occupancy Level for that unit, then the Maximum Allowable Rent for the unit may be increased by up to fifteen percent (15%) for each additional tenant above the base occupancy level, in addition to any Maximum Allowable Rent adjustment to which the Landlord is otherwise entitled.
- b. Notwithstanding Regulation (2) a., no increase in the Maximum Allowable Rent for additional Tenants shall be granted for any additional Tenant who is a spouse, domestic partner, child, grandchild, parent, grandparent, legal guardian of a child, parent of any of the Tenants, or caretaker/attendant as

required for a reasonable accommodation for a person with a disability, unless the Tenants agree in writing to the specific Maximum Allowable Rent increase.

- c. If the number of Tenants actually occupying a Rental Unit as a principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (2) a., then the Maximum Allowable Rent increase for that Rental Unit shall automatically decrease by the amount of the Maximum Allowable

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Base Occupancy Level.

Rent increase that is no longer justified, as a result in the decrease in the number of Tenants, unless the Tenant and Landlord agree in writing to permanently increase the

- d. Increases in the Maximum Allowable Rent due to an increase in the Base Occupancy Level shall remain permanent. As such, if the number of Tenants actually occupying a Rental Unit as the Tenants' principal residence decreases subsequent to any Maximum Allowable Rent increase for additional Tenants granted pursuant to subsection (2) a., then the Tenants may replace the departing Tenant with another Tenant (subject to the Landlord's standard screening methods).

(3) Decrease in Number of Tenants Allowed:

If any policy or policies imposed by the Landlord unreasonably prevent the Tenant from maintaining the Base Occupancy Level for that unit, then the Maximum Allowable Rent for that unit shall be decreased by an amount equal to the percentage by which the number of allowable Tenants has been reduced. As used in this regulation, "policy" or "policies" means any rule, course of conduct, act or actions by a Landlord.

- a. A policy shall be deemed unreasonable if it is different from and more restrictive than the policies originally used to screen the current Tenant(s).
- b. Refusal based on the proposed additional occupant's lack of creditworthiness shall be deemed unreasonable if that person will not be legally obligated to pay some or all of the rent to the Landlord.
- c. Refusal shall be deemed reasonable if the increase would bring the total number of occupants above the maximum allowable under SPLC Chapter 34, Chapter 60, Minnesota State Building Code or Minnesota State Fire Code.

(4) Grounds for Objections:

Tenants responding to petitions under subsection (B) (1) may file objections with the Hearing Officer on one or more of the following grounds:



- a. The base occupancy level alleged by the landlord is incorrect; however, a tenant may not contest a base occupancy level that was established in a prior decision;
- b. The number of tenants alleged by the landlord as being currently allowed by the lease and actually occupying the unit as a principal residence is incorrect;
- c. An additional tenant claimed by the landlord as justifying a rent increase is a spouse, registered domestic partner, child, grandchild, parent, grandparent, legal guardian of a child or caretaker/attendant as required for a reasonable accommodation for a person with a disability and the original tenant(s) did not agree in writing to an increase for such person(s);
- d. The unit is not eligible to receive annual general adjustments for any period since its rent was last certified or individually adjusted by the City. Any such objection shall
- e. The landlord is collecting rent in excess of the Maximum Allowable Rent.

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identify each

challenged annual general adjustment and the reason for the alleged ineligibility; or

## Changes in Space or Services

### D. Changes in Space or Services

#### (1) Increase in Space:

The Maximum Allowable Rent may be adjusted upward when, with the written agreement of the Tenant(s), there is an increase in the usable space or in the Housing Services beyond that which was provided to a unit on May 1, 2022, or when the Base Rent was first established.

- a. Additional or reconfigured space: Where a Landlord adds habitable living space to a unit or reconfigures it, the Maximum Allowable Rent for such unit must be permanently increased as provided under Capital Improvements.
- b. Additional services: Where a Landlord adds non-habitable space or increases the services provided to a unit, the Maximum Allowable Rent for such unit may be increased by an amount representing the commercially reasonable value of the additional space or increased services. If the additional or reconfigured space or the services are subsequently reduced or eliminated, the rent increase authorized herein must be reduced or terminated. Any increase for an additional bedroom may result in an increase to the Base Occupancy Level for an additional occupant.
- c. Increases may be denied if the added or reconfigured space or services do not clearly benefit a majority of the affected Tenants and a Tenant objects.

- d. If the added or reconfigured space or services clearly benefit a majority of the affected Tenants, then increases may be denied if a majority of the affected Tenants object.

(2) Decrease in Space or Services; Substantial Deterioration; Failure to Provide Adequate Services; Failure to Comply with Codes, the Warranty of Habitability or the Rental Agreement:

*It is not the Department's intent to enforce rent decreases to the provisions below. The rules below are to be considered holistically with the other factors justifying an increase in Rent.*

Decreases in Space or Services. The Maximum Allowable Rent must be adjusted downward where a Landlord is aware of and causes a Tenant to suffer a decrease in housing services or living space from the services and space that were provided on May 1, 2022, or from any services or space provided at the beginning of the tenancy. The amount of the rent decrease must be calculated by multiplying the percentage of impairment of the Tenant's use

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of and benefit from the unit (as a

result of the reduction in living space or housing services) by the Maximum Allowable Rent in effect at the time of the impairment, and for past decreases, multiplied by the period of time the impairment existed. In determining the amount of the downward rent adjustment by the percentage of impairment of use/benefit method, the City may consider the reasonable replacement cost of the space or service in question. Decreases in the Maximum Allowable Rent must not be granted due to a decrease in space or services that is a direct result of intentional actions on the part of the Tenant to purposefully cause a decrease in space or services.

- a. Denial of Petitions for Unilateral Removal: The City will not accept petitions from Landlords who seek a Maximum Allowable Rent decrease for the unilateral removal or reduction of space or services from a Tenant's base level space or services. Landlord petitions shall be accepted only when a Tenant has expressly agreed in writing to the removal of such space or services. "Base level space or services" are the housing services or living space that was provided at the unit on May 1, 2022, or at the beginning of the tenancy.
- b. Inadequate Services & Substantial Deterioration: The Maximum Allowable Rent must be adjusted downward for any substantial deterioration in a Rental Unit and/or for any failure to provide adequate Housing Services occurring during the petitioner's tenancy. For purposes of this subsection, a substantial deterioration means a noticeable decline in the physical quality of the Rental Unit resulting from a failure to perform reasonable or timely maintenance and adequate Housing Services means all services necessary to operate and maintain a Rental Unit in compliance with all applicable state and local laws and with the terms of the Rental Housing Agreement. The amount of the rent decrease must be calculated by multiplying the percentage of impairment of the Tenant's use of and benefit from the unit (as a result of the deterioration or failure to provide

adequate service, violation, breach or failure to comply) by the Maximum Allowable Rent in effect at the time of the impairment.

c. Code Violations & Breach of the Warranty of Habitability:

- i. Where a condition at the Rental Unit threatens the health or safety of the occupants but does not actually impair the use of the unit, the Maximum Allowable Rent decrease shall be in an amount that reflects the reduction in value of the Rental Unit due to the unsafe or unhealthy condition.
- ii. The rent decrease authorized under this subsection for a violation of the warranty of habitability or for a code violation that poses a significant threat to the health or safety of Tenants (e.g., dangerous window bars, missing smoke detector) shall be automatically doubled prospectively if proof of correction of the violation is not submitted to the Rent Administrator within thirty-five (35) calendar days of mailing of the City's decision unless the Landlord establishes that the violation cannot be corrected within that time

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iii. For purposes

of this subsection, a breach of the warranty of habitability due to circumstances beyond the Landlord 's control.

occurs when the Rental Unit is not in substantial compliance with applicable building and housing code standards, which materially affect health and safety. Minor housing code violations which do not interfere with normal living requirements do not constitute a breach of the warranty of habitability.

- d. Maximum Allowable Rent reductions pursuant to this Section shall be effective from the date the Landlord first had notice of the space or service reduction, deteriorated condition, service inadequacy, or code or habitability violation in question and shall terminate on the date of the first rent payment due after adequate proof has been submitted to the Rent Administrator that the condition for which the reduction was granted no longer exists.
- e. A Tenant who files a petition pursuant to this regulation must be able to establish the basis for the reduction and when the Landlord first received notice of the decreased service, deterioration, code violation or habitability violation. Notice may be actual or constructive. A Landlord is deemed to have notice of any condition existing at the inception of a tenancy that would have been disclosed by a reasonable inspection of the Rental Unit. A copy of a housing code inspection report from the City of Saint Paul should be submitted with the petition.

**Pattern of Recent Increases or Decreases in Rent**

For the purposes of determining reasonable return on investment, the pattern of recent rent increases or decreases will be determined by the Consumer Price Index (CPI) for the twelve-month period ending as of March of the current year for All Urban Consumers for the Minneapolis-St. Paul-Bloomington area (All Items) provided by the U.S. Bureau of Labor Statistics.

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