INTERIM RENT CONTROL MEASURES
GUIDELINE/RULE NO. 2019-02
(Landlord Petition Hearing Process)


Authority: Section 11 of the Ordinance provides:

The Director is authorized to administer and enforce this Interim Ordinance, which may include promulgating guidelines and rules consistent with the provisions of this Interim Ordinance. Guidelines and rules promulgated by the Director pursuant to the authority provided under this Interim Ordinance shall have the force and effect of law and may be relied upon by parties to determine their rights and responsibilities under this Interim Ordinance.

Background and Summary: Section 8.A of the Ordinance, allows a Landlord to petition the City for an exemption to the limitations on rent increases set forth in Section 4 of the Ordinance, if he or she believes that the limitations prevent him or her from receiving a fair and reasonable return with respect to the operation of the property containing the Covered Rental Unit.

A Landlord may not, on the basis of a petition for fair and reasonable return, collect any increase in Rent from Tenants of Covered Rental Units until the Landlord has received the written approval of the Hearing Officer. The Landlord must comply with statutory notice requirements before any approved increase in Rents may go into effect.

A Landlord’s petition will be heard by a Hearing Officer appointed by the Director (Ordinance Section 8.A). The Hearing Officer will set a hearing date no earlier than 15 calendar days and no later than 60 calendar days after receiving proof of Landlord’s service of the petition on the Tenants of the Covered Rental Units (Ordinance Section 8.C.1) but may set a later date upon written request and a showing of good cause (Ordinance Section 8.D). The Hearing Officer will conduct the hearing in accordance with the procedures described in Ordinance Section 8.C and this Guideline/Rule. The Hearing Officer may choose to continue the hearing and request additional information (Ordinance Section 8.C.5). The Hearing Officer will evaluate the petition and consider all relevant factors (Ordinance, Section 8.E) and will decide whether the Landlord requires an increase in Rent in order to obtain a fair and reasonable return. Finally, the Hearing Officer will make written findings, affirm, deny, or modify the amount of Rent
increase requested in the petition and send a written decision to the Landlord, who must post the decision at the property containing the Covered Rental Unit(s) and deliver a copy to each Tenant of a Covered Rental Unit (Section 8.F).

**Guideline/Rule:** Section 8.A, 8.C, 8.D, 8.E, and 8.F will be administered by the City as follows:

**Landlord Petition and Hearing Officer Evaluation (Ordinance, Section 8.A and Section 8.E)**

1. If a Landlord desires to increase the rent for any Covered Rental Unit in an amount greater than allowed in Section 4 of the Ordinance, and the Landlord contends that the limitation on Rent increases in Section 4 will prevent the Landlord from receiving a fair and reasonable return with respect to the operation of the property containing the Covered Rental Unit, the Landlord may file the City of Culver City’s *Petition for Rent Increase* form (“Petition”) with the Culver City Housing Division requesting a hearing. The Petition will be considered by a Hearing Officer appointed by the Director, only after the Petition has been deemed complete.

2. A Petition will not be deemed complete until the Housing Division determines that it contains all of the required information, including the completed *Petition for Rent Increase form*, completed Tables A-J, completed Tables K-M (if applicable), and clearly legible photocopies of the required documentation, and the Landlord has demonstrated compliance with the Rent Registration requirements of Section 7 of the Ordinance. Upon the Housing Division’s request, a Landlord must produce for inspection the originals of the documentation submitted in support of the Petition.

3. Within five (5) calendar days after the date Landlord receives written notice that the Petition is deemed complete by the Housing Division, the Landlord shall mail a copy of the Petition by first class mail; postage prepaid, to all Tenants whose rents are the subject of the Petition. The Landlord need only mail the Petition and the Tables to the affected Tenants, not the attached documentation. Any personal financial information may be redacted.

4. Within ten (10) calendar days after the date the Landlord receives written notice that the Petition is deemed complete by the Housing Division, the Landlord shall file with the Housing Division a proof of service signed under penalty of perjury stating that a copy of the Petition was mailed to all affected Tenants.

5. Within ten (10) calendar days after the affected Tenant has been mailed a copy of the Petition, an affected Tenant may submit to the Housing Division a response to Landlord’s Petition. Within this same time frame, the affected Tenant must also provide a copy of Tenant’s response to the Landlord by first
class mail, postage prepaid, and file with the Housing Division a proof of service signed under penalty of perjury stating that a copy of Tenant's response was mailed to the Landlord.

6. The Ordinance requires the Petition to include a statement indicating the basis on which a Landlord contends the limitations of the Ordinance on Rent increases will prevent the Landlord from receiving a fair and reasonable return with respect to the operation of the property containing the Covered Rental Unit(s). The statement must be in sufficient detail to (a) provide notice to the affected Tenants of the basis for Landlord's request, which must be supported by the Tables attached to the Petition and by the documentation produced by Landlord; and (b) provide the Hearing Officer with sufficient information upon which to render a decision. The Tables attached to the Petition and the documentation requested allow the Landlord to provide evidence the Landlord wants the Hearing Officer to consider. The Housing Division ("Staff") may, in its discretion, elect to prepare or have prepared an analysis of the Petition ("Staff Analysis") for the Hearing Officer, summarizing the information provided, noting where additional information may be needed, and identifying areas of potential conflict with the Ordinance, as described in Sections 17 – 36 of this Guideline/Rule. The Staff Analysis will not be binding on the Hearing Officer and copies will be provided to Landlord and the affected Tenants at least three days prior to the hearing.

7. The Landlord shall bear the burden of proving by a preponderance of the evidence at the hearing that because of the implementation of the Ordinance, the landlord is unable to obtain a fair and reasonable return with respect to the operation of the property containing the Covered Rental Units.

8. Evidence pertinent to whether a Landlord is deprived of a fair and reasonable return with respect to the operation of the property containing the Covered Rental Units includes the Landlord's net operating income (NOI), which is defined as gross income (including rents from all units in the rental property containing the Covered Rental Units and income from ancillary services offered by the Landlord on the property (e.g., laundry, vending machines, etc.) minus expenses for maintaining and operating the rental property. Evidence provided by the Landlord could include, but is not limited to, rent receipts, lease agreements, utility bills, receipts for other expenses, and verbal testimony. Upon a request by the Housing Division or the Hearing Officer, Landlord must produce originals of such documentation for inspection.

9. If the Hearing Officer concludes the application of the Ordinance to the Covered Rental Unit deprives the landlord of a fair and reasonable return with respect to the operation of the property containing the Covered Rental Unit, the Hearing Officer may approve a rent increase in excess of the cap set forth in Section 4 of the Ordinance. The base NOI during the 12 months before rent stabilization
(deemed to be the period of June 1, 2018 – May 31, 2019 and referred to hereinafter as “Base Year”), shall be presumed to be fair and reasonable.

10. A fair and reasonable return is defined as a Landlord’s ability to maintain the value of the NOI earned from the property during the Base Year (“Base Year NOI”), adjusted for inflation, during the pendency of the Ordinance. Maintenance of the value of the NOI adjusted for inflation is achieved when the percent increase to the Base Year NOI is equal to or greater than the percent increase in the consumer price index (CPI) for the Los Angeles area, as reported monthly by the U.S. Department of Labor, Bureau of Labor Statistics (BLS) (Consumer Price Index for All Urban Consumers (CPI-U), All Items in Los Angeles-Long Beach-Anaheim, CA, not seasonally adjusted, 1982-84=100) during the same period. Where referenced in this Guideline/Rule, CPI refers to this statistic. A Landlord has not established that he/she is deprived of a fair and reasonable return if the Hearing Officer determines that the Landlord has maintained the value of the Base Year NOI adjusted for inflation. See Section 17-25 and 27-35, below, for additional details.

11. In evaluating a Petition, the Hearing Officer shall consider all relevant factors that may potentially impact a Landlord’s ability to obtain a fair and reasonable return and shall consider the basis for the calculation of any increase in rent. Relevant factors may include, but are not limited to, changes in costs to the Landlord attributable to increased utility rates, property taxes, insurance, advertising, variable mortgage interest rates, governmental assessments and fees, incidental services, employee costs, normal repair and maintenance, upgrading and addition of amenities or services, rent rolls, financial statements, expert analysis, and relevant studies.

12. The Hearing Officer is authorized to adjust gross income for the Base Year if the Landlord demonstrates that the Base Year rents were unreasonably low due to a peculiar circumstance (e.g. where base year rent for one or more units was not the result of an arms-length transaction), thereby artificially depressing the Base Year income, and, by extension, the Base Year NOI. The Landlord has the burden of demonstrating by a preponderance of the evidence that actual rents received in the Base Year were unreasonably low compared to similarly situated units with respect to condition, quality, size, amenity, and location. There shall be a rebuttable presumption that an adjustment to Base Year gross income is warranted if the actual Base Year gross income for a particular property was less than the assumed Base Year gross income would have been had the applicable U.S. Department of Housing and Urban Development (HUD) Fair Market Rent been charged for each unit in the affected property.

13. Qualified operating expenses include property taxes, utility charges, professional fees and costs, reasonable repairs, and reasonable health and safety related amortized capital improvements, described below. Evidence may include, but is
not limited to, rent receipts, lease agreements, utility bills, receipts for other expenses in conjunction with providing services, and verbal testimony.

14. The Hearing Officer has discretion not to include any expense deemed unreasonable in this calculation. Any expense determined to be unusually high for a certain limited duration may be reasonably amortized by the Hearing Officer for the purpose of this calculation.

15. In an effort to treat tenants fairly irrespective of a landlord’s credit worthiness, mortgage costs are not considered to be an eligible expense for the purpose of determining fair and reasonable return in the implementation of the Ordinance.

16. Should a capital improvement to increase Tenant health and safety be completed during the duration of the Ordinance, the Hearing Officer may review the capital improvement and consider the cost of the capital improvement to determine whether and to what extent the expense was reasonable. To determine the monthly cost of this expense, the total cost should be amortized over the reasonable life of the improvement, which in most cases should not be less than five (5) years, as determined by the Hearing Officer. The amortized annual or monthly cost should be added to maintenance and operational expenses, and analyzed along with all other revenues and expenses through the NOI analysis described below. Capital improvements that are not related to health and safety are not considered eligible maintenance or operating expenses for the purposes of analyzing NOI, since it is assumed that these regular capital improvement costs are paid for out of capital reserves and are not part of NOI.

For petitions submitted before June 1, 2020:

17. If the petitioner submits a Petition before June 1, 2020, and therefore does not have a full year of income and expenses to include with his or her Petition, the Petition will be evaluated on an average monthly basis. The procedures set forth in Sections 17 through 26 of this Guideline/Rule are for the evaluation of Landlord’s Petition on an average monthly basis, as well as the preparation of a Staff Analysis related thereto.

18. The Landlord must submit evidence of his or her income and expenses for the property on which the Covered Rental Units are located that are the subject of the Petition. The Landlord must submit evidence of all income and expenses for the Base Year, and for each full month between June 2019 and the last full month before the month in which the Petition is filed ("Current Year"). For example, if the Petition is filed on December 12, 2019, the Landlord must submit Base Year income and expenses and Current Year income and expenses for June 2019 through November 2019.
19. Staff will calculate the Base Year NOI by reviewing the evidence provided by the Landlord and including only substantiated income and expenses. Only income and expenses for which there is documented evidence will be considered substantiated. The Base Year NOI will be divided by 12 to yield a Base Year Monthly NOI.

20. Staff will calculate the Monthly CPI Adjustment Multiplier. The Monthly CPI Adjustment Multiplier is the CPI, as reported by the BLS, for the last full month before the month in which the Petition is filed, divided by the CPI for the last month of the Base Year (May 2019), which is 274.479.

21. Staff will calculate the Adjusted Monthly NOI by multiplying Base Year Monthly NOI by the Monthly CPI Adjustment Multiplier. Adjusted Monthly NOI is the NOI representing the fair and reasonable return to which the Landlord is currently entitled (as defined in Section 10 of this Guideline/Rule), since it maintains the Base Year Monthly NOI, adjusted for inflation.

22. Staff will calculate the Current Year NOI by reviewing the evidence provided by the Landlord and including only substantiated income and expenses (i.e. those that have occurred and where documentation has been provided). Future income or expenses or income and expenses that have not yet been incurred (e.g. planned capital improvement projects) are not considered substantiated. The Current Year NOI is divided by the number of months between June 2019 and the last full month before the month in which the Petition is filed, which yields the Current Year Monthly NOI.

23. Staff will subtract the Current Year Monthly NOI from the Adjusted Monthly NOI to determine the funds necessary to maintain a fair and reasonable NOI (the “Necessary Funds”).

24. If the Necessary Funds are zero or a negative number, then the Landlord is presumed to have a Current Year Monthly NOI that is already equal to or greater than the amount necessary for a fair and reasonable return. In this case, Staff will recommend the Hearing Officer deny the petition.

25. If the Necessary Funds are a positive number, then the Landlord has demonstrated that he or she may not be receiving a fair and reasonable return with current rent levels. In this instance, Staff will divide the Necessary Funds by the number of units at the property, to determine the monthly rent increase per unit that would allow the Landlord to receive a fair and reasonable return (the “Justified Unit Monthly Rent Increase”). Staff will then compare for each unit the Justified Unit Monthly Rent Increase versus the current monthly rent. If the Justified Unit Monthly Rent Increase is less than or equal to 3% of the unit’s current rent, then the 3% rent increase allowed under the Ordinance is sufficient in order to ensure the landlord will receive a fair and reasonable return. If this is
true for all units, staff will recommend the Hearing Officer deny the petition, since the landlord already has the ability to raise rents sufficiently in order to ensure a fair and reasonable return. If the Justified Unit Rent Increase is more than 3% of the unit’s current rent for one or more units, then staff will recommend the Hearing Officer approve a rent increase beyond the 3% cap solely for those specific units, and Staff will recommend that the rent be increased only sufficiently beyond the 3% cap in order to allow the Landlord to collect the Justified Unit Rent Increase for that unit(s).

26. Staff, in evaluating proposed rent increases for any Covered Rental Units, should not recommend that the rent increase for any Covered Rental Unit exceed 10% of the base rent charged on June 11, 2019 or the date tenancy began. The Hearing Officer retains discretion to adjust rent as provided in the Ordinance and based on the evidence provided.

For Petitions submitted on or after June 1, 2020.

27. If the Landlord submits a Petition on or after June 1, 2020, he or she will have a full year of income and expenses to include with his or her Petition, so the Petition will be evaluated on an annual basis. The procedures set forth in Sections 27 through 36 of this Guidelines/Rule are for evaluation of a Landlord’s Petition on an annual basis, as well as the preparation of a Staff Analysis related thereto.

28. The Landlord must submit evidence of his or her income and expenses for the property on which the Covered Rental Units are located that are the subject of the Petition. The Landlord must submit evidence of all income and expenses for the full Base Year (June 2018 – May 2019), and for each of the last 12 full months before the month in which the petition is filed (“Current Year”). For example, if the Petition is filed on July 15, 2020, the Landlord must submit Base Year income and expenses for June 2018 – May 2019 and Current Year income and expenses for July 2019 – June 2020.

29. Staff will calculate the property’s Base Year NOI by reviewing the evidence provided by the Landlord and including only substantiated income and expenses. Only income and expenses for which there is documented evidence will be considered substantiated.

30. Staff will calculate the Annual CPI Adjustment Multiplier, which is the average of the 12 monthly CPI numbers for the 12 full months immediately preceding the month in which the Petition is filed, divided by the average monthly CPI during the Base Year (June 2018 – May 2019), which is 269.226.

31. Staff will calculate the Adjusted NOI by multiplying the Base Year NOI by the Annual CPI Adjustment Multiplier. Adjusted NOI is the NOI which represents the
fair and reasonable return to which the landlord is currently entitled (as defined in Section 10 of this Guideline/Rule), since it maintains the Base Year NOI, adjusted for inflation.

32. Staff will calculate the Current Year NOI by reviewing the evidence provided by the Landlord and including only substantiated income and expenses (i.e. those that have occurred and where documentation has been provided). Future income or expenses or income and expenses that have not yet been incurred (e.g. planned capital improvement projects) are not considered substantiated.

33. Staff will subtract the Current Year NOI from the Adjusted NOI to determine the funds necessary to maintain NOI (the “Necessary Funds”).

34. If the Necessary Funds are zero or a negative number, then the Landlord is presumed to have a Current Year NOI that is already equal to or greater than the amount necessary for a fair and reasonable return. In this case, staff will recommend the Hearing Officer deny the petition.

35. If the Necessary Funds are a positive number, then the Landlord has demonstrated he or she is not receiving a fair return with current rents. In this instance, staff will divide the Necessary Funds by the number of units at the property, and then divide by 12 to yield a monthly Necessary Funds amount, to determine the monthly rent increase per unit that would allow the Landlord to receive a fair and reasonable return (the “Justified Unit Rent Increase”). Staff will then compare for each unit the Justified Unit Rent Increase versus the current rent. If the Justified Unit Rent Increase is less than or equal to 3% of the unit’s current rent, then the 3% rent increase allowed under the Ordinance is sufficient in order to ensure the Landlord will receive a fair and reasonable return. If this is true for all units, Staff will recommend the Hearing Officer deny the Petition, since the Landlord already has the ability to raise rents sufficiently in order to ensure a fair and reasonable return. If the Justified Unit Rent Increase is more than 3% of the unit’s current rent for one or more units, then staff will recommend the Hearing Officer approve a rent increase beyond the 3% cap solely for those specific units, and Staff will recommend that the rent be increased only sufficiently beyond the 3% cap in order to allow the landlord to collect the Justified Unit Rent Increase for that unit(s).

36. Staff, in evaluating proposed rent increases for any Covered Rental Units, should not recommend that the rent increase for any Covered Rental Unit exceed 10% of the base rent charged on June 11, 2019 or the date tenancy began. The Hearing Officer retains discretion to adjust rent as provided in the Ordinance and based on the evidence provided.
Hearing Procedures (Ordinance, Section 8.C and Section 8.D)

37. A hearing before the Hearing Officer on a Petition complying with the requirements of the Ordinance, Section 8 and this Guideline/Rule, which has been deemed complete by the Housing Division, shall be set for a date no sooner than fifteen (15) calendar days and no later than sixty (60) calendar days after the City's receipt of proof of Landlord's service of the filed Petition on Tenants of the Covered Rental Units.

38. The Hearing Officer may, in his or her discretion, grant a continuance of the originally scheduled hearing date upon a request by the Landlord or Tenant and a showing of good cause. The request must be made in writing and be received by the Hearing Officer at least five (5) business days prior to the originally scheduled hearing date. In the instance of a Landlord's continuance request, the Landlord must personally deliver a copy of the request to the affected Tenant(s). In the instance of a Tenant's continuance request, the Tenant must personally deliver a copy of the request to the Landlord. In no event shall the continuance be longer than fifteen (15) calendar days from the originally scheduled hearing date.

39. Upon setting the hearing date, the Hearing Officer shall send written notice to the Landlord of the date, time and place set for the hearing. Upon receipt, the Landlord shall post such notice in a conspicuous place at the affected property including the Covered Rental Units that are the subject of the Petition. Such notice shall be placed on a written instrument that is at least 11 inches in width and 17 inches in length, and shall be placed not less than four (4) feet above ground level in the common area, at the entry or entries to the building or units, or other similar location or locations as necessary to provide Tenants a reasonable opportunity to view the notice and be advised of the hearing. Within five (5) calendar days of receipt of the notice of hearing, the Landlord shall personally deliver a copy of the notice to each Tenant in the affected Covered Rental Units.

40. At the hearing, the Landlord shall be given the opportunity to testify, call witnesses and to present evidence concerning the Petition. If a Landlord fails to appear at a scheduled hearing, the Hearing Officer will render a decision based on the Petition, any response submitted by an affected Tenant in accordance with the requirements of Section 5 of this Guideline/Rule, the Staff Analysis, the evidence contained in the administrative record, and any evidence presented at the hearing.

41. The Hearing Officer may hear testimony and receive evidence from the Tenants in the affected Covered Rental Units, including any written response from an affected Tenant submitted in accordance with the requirements of Section 5 of this Guideline/Rule.
42. The Hearing Officer may hear testimony from Staff, if needed, regarding the Petition, any response from an affected Tenant and/or the Staff Analysis.

43. The Hearing Officer may continue the hearing and request additional information or documentation from the Landlord or Tenant prior to issuing a written decision. If the requested information or documentation is not produced before the new hearing date, the Hearing Officer will render a decision based on the Petition, the Staff Analysis, the evidence contained in the administrative record, and any other evidence available at the close of the hearing.

44. The Hearing Officer shall have the power to issue orders to keep order and decorum during the hearing.

45. All testimony and evidence shall be provided under oath and all hearings conducted by the Hearing Officer shall be open to the public.

Hearing Officer Decision (Ordinance, Section 8.F)

46. After considering all of the testimony and evidence submitted at the hearing, within 20 calendar days after the conclusion of the hearing, the Hearing Officer shall issue a written decision denying, affirming or modifying the amount of Rent increase requested in the Petition and shall adopt written findings in support of that decision. Such findings shall include, but not be limited to, a determination as to whether the requested increase is necessary for the Landlord to receive a fair and reasonable return with respect to the operation of the property containing the Covered Rental Unit(s). The written decision shall be served by first-class mail, postage prepaid on the Landlord and Landlord shall post such notice in a conspicuous place at the property containing the affected Covered Rental Units. Within five (5) calendar days of receipt of the written decision, the Landlord shall personally deliver a copy of the written decision to each Tenant in the affected Covered Rental Unit(s). The Hearing Officer's decision on Landlord's Petition shall be final. However, if the Hearing Officer assesses an administrative penalty, then Landlord may contest the imposition or amount of the penalty.

47. If the Hearing Officer determines that a Landlord is in violation of the Ordinance and assesses an administrative penalty, the Landlord may file a request with the Housing Division for a separate administrative hearing before a different Hearing Officer to contest the imposition and/or the amount of the administrative penalty in accordance with the procedures identified in Culver City Municipal Code (CCMC) Section 1.02.045. Unless a Landlord requests an administrative hearing to contest the imposition of the administrative penalty, pursuant to CCMC Section 1.02.045, the assessment of the administrative penalty shall constitute the final administrative order of the City with respect to said administrative penalty, and
the penalty shall be due and payable by the Landlord to the City of Culver City within 10 calendar days following assessment of the administrative penalty.

Issued: December 19, 2019

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Community Development Director