

CHAPTER 17

REGULATIONS FOR INCENTIVE HOUSING PROGRAM

17000. Introduction

This chapter establishes a program to secure the affordability of rental units for very low-income persons through regulatory agreements with participating landlords. Under the regulatory agreements landlords will be permitted to raise rents of "incentive" units in return for contractual agreements that establish rent ceilings on "dedicated" units.

[17000 Amended 3/25/93; Effective 4/2/93]

17001. Program Goals

The Incentive Housing Program has the following goals:

- (a) Occupancy of low rent, rent-controlled units by households with the greatest need for them;
- (b) Reductions in rents on some units to a level affordable to the City's neediest senior citizens, disabled and very low income families;
- (c) The maintenance of buildings participating in the program;
- (d) Creation of affordable units which will remain affordable regardless of the continuance of rent control laws for periods of at least five years;

[17001(d) Amended 3/25/93; Effective 4/2/93]

- (e) Economic feasibility for participating landlords; and
- (f) Protection of existing tenants from harassment and illegal attempts at eviction by participating landlords.

17002. Definitions

- (a) Dedicated Unit. A rental unit designated for occupancy by a very low income household under a Regulatory Agreement pursuant to the conditions set forth in this Chapter.

[17002(a) Amended 3/25/93; Effective 4/2/93]

- (b) Incentive Unit. A rental unit permitted designated increases in Maximum Allowable Rents under a regulatory agreement pursuant to the conditions set forth in this Chapter.
- (c) Voluntary Vacancy. A voluntary vacancy shall be a vacancy created when:
 - (i) The vacating tenant gives the landlord written notice of the termination of tenancy; or
 - (ii) The vacating tenant is evicted after a trial on the merits of an unlawful detainer action, based on one of the tenant fault grounds of Section 1806 of the Rent Control Law, resulting in a final judgment granting possession to the landlord; or
 - (iii) The vacating tenant abandons the premises and the landlord terminates the tenancy pursuant to Civil Code §1951.3, and the Board staff's review of the pertinent facts show the abandonment was not due to any misconduct of the landlord; or

- (iv) The vacating tenant vacates the premises pursuant to a settlement agreement after the landlord has terminated the tenancy for one of the tenant fault grounds for eviction in Section 1806 of the Rent Control Law, and the Board staff determines that there was a genuine issue of fact or law compromised by the agreement; or
 - (v) Vacancies created prior to January 1, 1989 may be considered voluntary vacancies without satisfying the above conditions where, in the discretion of the Administrator, the purposes of this program are not impaired by doing so.
- (d) Very Low Income Household. A tenant household whose adjusted household income does not exceed 60% of the median income, adjusted for household size, for the Los Angeles area. Each year these amounts will be adjusted by Board staff when the new official area median income information is released by the federal government. The formula for determining the eligible income level for a dedicated unit tenant household is: median income for the relevant year x 60% income category x household adjustment factor. Household Adjustment Factors are as follows:

	<u>60%</u>
1 person	0.7000
2 persons	0.8000
3 persons	0.9000
4 persons	1.0000
5 persons	1.0700
6 persons	1.1400

For 1992-1993, these maximum income levels are:

Very Low Income Households - Maximum Income Levels
(1992-1993)

<u>Household Size</u>	<u>Maximum Income</u>
1	\$17,766
2	\$20,304
3	\$22,842
4	\$25,380
5	\$27,157
6	\$28,933

These maximum income figures shall be adjusted effective September 1 of each year in accordance with the most recent median income figures for Los Angeles-Long Beach (Los Angeles County).

- (e) Three Bedroom Unit. A unit with three bedrooms in addition to a living room and kitchen.
- (f) Two Bedroom Unit. A unit with two bedrooms in addition to a living room and kitchen.
- (g) One Bedroom Unit. A unit with one bedroom in addition to a living room and kitchen.
- (h) Single Unit. A unit with no bedrooms in addition to a living room and kitchen facilities.
- (i) Kitchen Facilities. A kitchen sink with hot and cold running water, and adequate space for the storage and preparation of food, for a cooking stove or range, and for a refrigerator of appropriate size for the unit.

- (j) Regulatory Agreement. The agreement between the owners of the property and the Santa Monica Rent Control Board governing the rights and obligations of the respective parties under this program. The Regulatory Agreement must be approved by a majority vote of the Board. The Regulatory Agreement will be recorded and the agreement will bind successors in interest of the parties. The term of the regulatory agreement shall be five years.

[17002(d) - (j) Amended 3/25/93; Effective 4/2/93]

- (k) Senior Citizen. A person 62 years of age or older.
- (l) Child. A person under eighteen years of age.
- (m) Bedroom. A room other than kitchen, living room, dining room, or bathroom used for sleeping purposes that meets minimum habitability standards. In the case of dispute, the board staff will determine the number of bedrooms in a unit.

[17002(m) Amended 3/25/93; Effective 4/2/93]

- (n) Disabled. A disabled person or a handicapped person as defined by 24 Code of Federal Regulations, Part 812.2.
- (o) Harassment. A knowing and willful act or course of conduct directed at a specific tenant or tenants which would cause a reasonable person to fear the loss of the use and occupancy of a residential rental unit or part thereof, or of any service, privilege or facility connected with such use and occupancy, including any housing service within the meaning of Rent Control Law §1801(d), without legitimate reason or legal justification, or which materially interferes with a tenant's peaceful enjoyment of the use and occupancy of a residential rental unit. A single act may constitute harassment for purposes of the Incentive Housing Program. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Acts constituting harassment include, but are not limited to the following:
- (i) Eviction on grounds of owner or relative occupancy pursuant to Rent Control Law §1806(a)(8), which is not in good faith within the meaning of subsection (4) thereof, and as provided by Board Regulation 9002(d);
 - (ii) The threat or repeated threat to evict a tenant in bad faith, under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;
 - (iii) Reduction in housing services under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;
 - (iv) Reduction in maintenance or failure to perform necessary repairs or maintenance under circumstances evidencing the landlord's purpose to cause the tenant to vacate a controlled rental unit;
 - (v) Abuse of the landlord's right of access into a residential rental unit within the meaning of California Civil Code §1954;
 - (vi) Verbal or physical abuse or intimidation.
- (p) Maximum Allowable Rent. The maximum non-Incentive Housing Program rent level authorized for a unit.
- (q) Maximum Dedicated Rent. The maximum rent which may be charged a dedicated unit participating in the Incentive Housing Program.

- (r) Maximum Incentive Rent. The maximum rent which may be charged an incentive unit participating in the Incentive Housing Program.

[17002(p) - (r) Adopted 3/25/93; Effective 4/2/93]

[17002(o)(i) Amended 05/6/04; Effective 06/03/04]

17100. Conditions for Participating in the Incentive Program

In order to participate in the Incentive Housing Program, a property owner shall be required to enter into a Regulatory Agreement with the Rent Board. No Incentive Housing Regulatory Agreement will be approved by the Board if all units on the property and the common areas of the property do not meet the habitability standards set forth in the Civil Code section 1941.1, if the landlord is not in compliance with the Rent Control Law, if the Board determines that the landlord is not likely to fully cooperate in the implementation of the Incentive Housing Program, or if the landlord has a history of substantial violations of the Rent Control Law.

[17100 Amended 3/25/93; Effective 4/2/93]

17101. Minimum and Maximum Number of Dedicated Units

- (a) As a condition of participating in this program, the landlord must agree that no less than 15% of the units on the property will become dedicated units.

For purposes of determining minimum participation, fractions shall be rounded up to the next whole number.

The minimum number of dedicated units under the Regulatory Agreement in buildings with 33 or fewer units will be determined from the following table:

Minimum Number of Dedicated Units

<u>Number of Units On Property</u>	<u>Minimum Number of Dedicated Units</u>
3 - 6	1
7 - 13	2
14 - 20	3
21 - 26	4
27 - 33	5

[17101(a) Amended 3/25/93; Effective 4/2/93]

- (b) The maximum numbers of units that can be designated as dedicated units in buildings with 31 or fewer units are shown in the following table:

Maximum Number of Dedicated Units

<u>Number of Units On Property</u>	<u>Maximum Number of Dedicated Units</u>
2 - 3	1
4 - 5	2
6 - 7	3
8 - 9	4
10 - 11	5
12 - 14	6
15 - 18	7
19 - 23	8
24 - 28	9
29 - 31	10

The maximum number of dedicated units in buildings with more than 31 units shall be 33% of the total number of units with fractions of .50 or more rounded up to the next whole number.

- (c) The specific number of units that must be dedicated units will be set forth in the regulatory agreement.

17102. Sequence of Dedicated and Incentive Unit Designation Within a Building

- (a) The first unit in a property to enter the Incentive Housing Program shall be a dedicated unit.
- (b) The second unit to enter the program shall be the next unit that has been voluntarily vacated. The unit shall become an incentive unit.
- (c) The third unit to enter the program shall be the next successive unit that has been voluntarily vacated. The unit shall become a dedicated unit. The unit must be rented to a household not living on the participating property or at any other property owned by the landlord(s) of the participating property.

[17102(c) Amended 3/25/93; Effective 4/2/93]

- (d) The fourth unit to enter the program shall be an incentive unit.
- (e) Subsequently participating units shall alternate between dedicated and incentive units. Every other dedicated unit must be rented to a new tenant until at least 15% of the units on the property are dedicated units.

[17102(e) Amended 3/25/93; Effective 4/2/93]

Order of Participation

<u>Round 1</u>	<u>Round 2</u>	<u>Round 3</u>	<u>Round 4</u>
Dedicated (E or N)	Dedicated (N)	Dedicated(E or N)	Dedicated (N)
Incentive	Incentive	Incentive	Incentive

(E) = Existing tenant.
(N) = New tenant.

- (f) Notwithstanding the sequence of dedicated and incentive unit designation set forth above, as soon as two dedicated units are rented to eligible families with children, the next vacant unit may be the bonus incentive unit provided in Regulation 17205.

[17102(f) Adopted 3/25/93; Effective 4/2/93]

- (g) Units which become vacant subsequent to an agreement to enter a building into the program shall be required to become dedicated or incentive units until the 15% participating requirement set forth in Section 17101 is met.

[17102(g) Amended 3/25/93; Effective 4/2/93]

17103. Selection of Dedicated Units

- (a) In buildings with more than one unit which is already occupied by an eligible tenant household, conversion of units to dedicated units with existing tenant households, where allowed, shall be made in the following order of priority:
- (1) Two or more bedroom units occupied by families with children;
 - (2) Any other units occupied by families with children;
 - (3) Units occupied by persons 62 years of age or older and/or disabled persons;
 - (4) Units occupied by any other eligible tenant household.
- (b) Landlords must rent vacant dedicated units of two or more bedrooms to households with at least as many members as there are bedrooms in the unit.

[17103 Amended 3/25/93; Effective 4/2/93]

17104. Rerental of Dedicated Units that Become Vacant

When a dedicated unit is vacated, the landlord shall re-rent that unit within sixty days to a very low income household.

[17104 Amended 3/25/93; Effective 4/2/93]

17200. Adjustments in Maximum Allowable Rent Dedicated Units

- (a) The Maximum Dedicated Rent for a dedicated unit as of the effective date of these amendments will be as follows:

<u>Unit Size</u>	<u>MAR</u>
Single	\$386
One bedroom unit	\$439
Two bedroom unit	\$518
Three or more bedroom unit	\$591

- (b) If the Maximum Allowable Rent for a dedicated unit is lower than the amount set forth above, the unit's rent will remain at its Maximum Allowable Rent and will not be increased to the above level.
- (c) Where a dedicated unit is also participating in the Section 8 Existing Housing Program or the Section 8 Voucher Program, its rent shall be the rent specified in Regulation 3001 (the Section 8 contract).

[17200(a)-(c) Amended 3/25/93; Effective 4/2/93]

[17200(a) Amended 9/1/93; Effective 9/1/93]

- (d) The Maximum Dedicated Rents for dedicated units shall automatically be adjusted to include the annual general adjustment, provided the landlord is in compliance with the Rent Control Law.

[17200(d) Adopted 3/25/93; Effective 4/2/93]

17201. Security Deposits - Dedicated Units

Security deposits for dedicated units rented to new tenants, except for tenants participating in the Section 8 program, shall be limited to one month's rent.

For the purposes of this section "Security Deposits" shall be as defined in Section 1950.5 of the California Civil Code. Under said definition, advance rent payments are considered as a form of security deposits.

17202. Registration Fees - Dedicated Units and Incentive Units

- (a) The registration fee for dedicated units shall be paid by the landlord, but may not be passed through to the tenant, regardless of whether the tenant may be entitled to a fee waiver. If the dedicated unit tenant had a fee waiver, the fees shall be pro-rated if they cover less than a full year.
- (b) The registration fee plus a surcharge equal to the registration fee shall be charged for each incentive unit. The surcharge may not be passed through to the tenant. Surcharges shall be pro-rated if they cover less than a full year.

17203. Adjustments in Maximum Allowable Rents - Incentive Units

- (a) Each time a unit becomes a dedicated unit pursuant to the terms of this Chapter, the Maximum Allowable Rent for an incentive unit may be increased in accordance with the following schedule to determine the unit's Maximum Incentive Rent.

INCREASES IN MAXIMUM ALLOWABLE RENTS FOR INCENTIVE UNITS

<u>No. of Bedrooms In Incentive Unit</u>	<u>For Each Very Low Income Unit Dedicated</u>
0	660
1	770
2	880
3	990

- (b) The foregoing rent increases shall be granted only once for each incentive unit.
- (c) Starting in January 1994, the foregoing amounts shall be increased by \$20, \$25, \$30, and \$35, respectively, each January.
- (d) No rents may be increased until the Rent Control Board provides a written authorization increasing the Maximum Allowable Rent of the unit to its Maximum Incentive Rent level.

[17203(a) - (d) Amended 3/25/93; Effective 4/2/93]

- (e) During the pendency of an application for participation in the Incentive Housing Program, the landlord may rent the proposed incentive unit(s) to a new tenant or tenants, providing the following occurs:
 - (i) The landlord must file the Application for Participation in the Incentive Housing Program prior to entering into the rental agreement with the prospective incentive tenant(s).
 - (ii) Prior to entering into the rental agreement, the landlord shall notify the prospective tenant(s), in writing, that there is a pending Application for Participation in the Incentive Housing Program, and the potential Maximum Incentive Rent under the program.
 - (iii) Until the Incentive Housing Program application is approved, the landlord shall charge no more than the proposed incentive unit's Maximum Allowable Rent.
 - (iv) The rental agreement must cover a minimum one-year period. It must be reviewed by the Board's legal staff and approved as conforming to this regulation prior to its execution by the proposed incentive tenant(s).
 - (v) If the landlord's Application for Participation in the Incentive Housing Program is approved by the Board, the landlord must give notice as required by California Civil Code section 827.

[17203(e) Adopted 3/25/93; Effective 4/2/93]

17204. Verification of Voluntary Vacancy as a Precondition to Rent Increases for Incentive Units

No adjustment in the maximum allowable rent for an incentive unit will be made until the Administrator verifies that the vacancy for any participating unit was a voluntary vacancy as defined in this Chapter.

17205. Additional Incentive Unit for Renting Dedicated Units to Families with Children

When two dedicated units at a participating property are rented to eligible households with children, the participating property will be eligible for an additional incentive unit. If and when the landlord subsequently re-rents one or both of the dedicated units with children to a household without children, the additional incentive unit's rent shall immediately be reduced to the unit's Maximum Allowable Rent.

[17205 Amended 3/25/93; Effective 4/2/93]

17206. Annual General Adjustments of Participating Units

Annual general adjustments in Maximum Dedicated Rents and Maximum Incentive Rents shall be determined in the same way as those for other rent controlled units.

[17206 Amended 3/25/93; Effective 4/2/93]

17207. Increase Petitions - Dedicated and Incentive Units

Increase petitions for a property that is participating in the program may be filed while the property is involved in the program. Current year income shall be calculated based on the Maximum Allowable Rents that would be in effect if units were not involved in the program. Increases resulting from increase petitions will not affect the Maximum Dedicated Rents or Maximum Incentive Rents of dedicated or incentive units. Such increases will affect only the Maximum Allowable Rent of the units.

When a dedicated unit's rent is its Maximum Allowable Rent pursuant to Regulation 17200(b), the individual adjustment may be added to the unit's Maximum Allowable Rent and be passed through to the dedicated tenant up to the level of the Maximum Dedicated Rent of the unit. In the event the dedicated unit's Maximum Allowable Rent plus the individual adjustment equals or exceeds the Maximum Dedicated Rent for the unit, the unit's rent under the Incentive Housing Program shall become the unit's Maximum Dedicated Rent.

For non-participating units on the property, rent increases resulting from increase petitions shall be no higher or lower than if the property were not participating in the program.

[17207 Amended 3/25/93; Effective 4/2/93]

17208. Decrease Petitions - Dedicated and Incentive Units

Decrease petitions shall be permitted on incentive or dedicated units. However, a reduction of housing services may constitute a violation of the Regulatory Agreement and remedies for violation of the Regulatory Agreement may be pursued by the Administrator in addition to a decrease petition.

17209. Base Rent Petitions or Objection Petitions Dedicated and Incentive Units

Base rent petitions or objection petitions may be filed on the property while the property is involved in the program, if the regulations in Chapter 13 permit such petitions. If a base rent or objection decision increases the Maximum Allowable Rent of a dedicated unit, whose rent under the Incentive Housing Program is its Maximum Allowable Rent pursuant to Regulation 17200(b), to a higher level than the unit's Maximum Dedicated Rent, that unit's rent under the Program shall become the unit's Maximum Dedicated Rent.

[17209 Amended 3/25/93; Effective 4/2/93]

17210. Maximum Allowable Rents After Expiration of Regulatory Agreement

- (a) Rental agreements for dedicated units must provide that if rent controls are not in effect in Santa Monica, rents may not increase by more than 66% of the annual percentage increase in the Consumer Price Index for All Urban Consumers for the Los Angeles-Anaheim-Riverside area.
- (b) After the Regulatory Agreement terminates, the rents for dedicated units shall increase to the units' Maximum Allowable Rents only after the Board staff has certified that the tenant of the dedicated unit has voluntarily vacated the unit.
- (c) When the Regulatory Agreement terminates, the Maximum Allowable Rents on incentive units shall be adjusted to the rental amount for the incentive unit collected by the landlord ninety days prior to the expiration of the Regulatory Agreement.

[17210(b) and (c) Amended 3/25/93; Effective 4/2/93]

[17210(c) Amended 11/12/98; Effective 11/27/98]

17211. Threshold Rent Program

If a prospective dedicated or incentive unit meets the requirements of the Threshold Rent Program set forth in Board Regulation 3300, the landlord may file a petition to increase the unit's Maximum Allowable Rent to the threshold level at the same time as the landlord applies for the unit's participation in the Incentive Housing Program.

[17211 Adopted 3/25/93; Effective 4/2/93]

17300. Applications to Participate

A landlord who wishes to participate in the Incentive Housing Program must complete an application form for each participating property on a form approved by the Board. All owners of the property must sign the application or an authorization to appoint an agent for purposes of participating in this program. The property must be properly registered, with no registration fees or penalties owing.

17301. Temporary Suspension of Application Processing

If the Board determines at any point that it is not possible to process applications in a timely manner due to insufficient staff or unanticipated difficulties in program operation, the Board may temporarily suspend acceptance of applications.

17302. Discretion to Deny Participation

If facts indicate that the administrator has good reason to believe that the landlord applying to participate in the program is not likely to fully cooperate in the implementation of the Incentive Housing Program, or if the landlord has a history of substantial violations of the Rent Control Law, the Administrator may exercise her discretion to deny participation to such a landlord. Said decision may be appealed to Rent Control Board.

17303. Units Ineligible as Dedicated Units

No mobilehome spaces, trailer spaces, or recreational or vehicle spaces shall be designated as dedicated units. A unit may not be designated as a dedicated or incentive unit if a tenancy has been terminated from that unit for owner occupancy after July 1, 1989.

17304. Eligible Tenants for Dedicated Units

(a) A tenant household seeking occupancy of a dedicated unit must be approved by Board staff. The tenant household members must complete an application form approved by the Board together with verifications of all sources of income on the forms approved by the Board. No application will be considered until it is complete. A complete application includes completion of the Board approved form by the applicant and verification by all income sources of the amount of income for all members of the tenant household. A tenant household establishes eligibility by meeting all of the qualifications and showing that none of the disqualifications apply. The Administrator or her designee shall determine whether the tenant household is eligible for the program and notify the tenant household within ten days of the filing of the tenant household's complete application.

(b) Qualifications include eligibility by income, assets, and household composition.

[17304(b) Amended 3/25/93; Effective 4/2/93]

(c) Income standards shall be identical to those used by the Section 8 Existing Housing Certificate Program. The federal regulations at 24 Code of Federal Regulations, Part 813 are incorporated into these regulations for purposes of determining income eligibility for the program.

(d) The income of prospective dedicated tenants who are self-employed or who are engaged in occupations which provide irregular work and income shall be measured by averaging three years' income.

(e) Assets of households seeking the occupancy of a dedicated unit, excluding necessary items of personal property, such as furniture and automobiles, shall be treated as follows:

(1) 10% of the value of the household's total assets valued under \$100,000 shall be imputed as income in addition to the actual income earned by the asset, if any;

(2) 15% of the total cash value of assets valued between \$100,000 and \$200,000 will be imputed as income in addition to actual income earned, if any.

[17304(d) and (e) Adopted 3/25/93; Effective 4/2/93]

(f) Households eligible for the proposed dedicated unit shall be limited to very low income households with either:

(1) One or more children; or

(2) A person over 62 years of age or over; or

(3) A disabled person or a handicapped person as defined by 24 Code of Federal Regulations, Part 812.2.

(g) Disqualifications. The following persons are not eligible to be tenants of dedicated units.

(1) Heads of households who are full time students, except for persons participating in the AFDC or SSI job training program;

- (2) The participating landlord, his or her spouse, domestic partner, children, parents, grandparents, brother, sister, sister-in-law, brother-in-law, mother-in-law, father-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, and cousin;
- (3) Employees of the participating landlord and employees of the Santa Monica Rent Control Board;
- (4) Households with a member or members who own residential real property;
- (5) Households owning assets with a cash value totalling more than \$200,000.

[17304(f) and (g) Amended 3/25/93; Effective 4/2/93]

17305. Subsequent Ineligibility of Tenant

- (a) By May 1 of each year, every tenant occupying a dedicated unit under this program must report annually to the Rent Control Board all income for the preceding calendar year for all members of the tenant household.
- (b) When a dedicated tenant household's income increases to more than 100% of median income, adjusted for household size, for one calendar year, the Rent Control Board may increase the unit's rent to its Maximum Allowable Rent.
- (c) If the Board adjusts the dedicated unit's rent under this regulation, Board staff will mail notice to the landlord and the tenant thirty days in advance of the effective date of the increase to the Maximum Allowable Rent. When an adjustment is made under this regulation, the participating landlord must designate a new dedicated unit from occupied units or designate the next voluntarily vacated unit as the replacement dedicated unit. The participating landlord may designate an occupied unit as a dedicated unit if the tenant occupying that unit is eligible for the program and agrees to participate in the program.
- (d) The tenant's failure to report income for any two consecutive calendar years may, after notice to the tenant by the Board, be treated as an admission that income has exceeded 100% of median income for one consecutive calendar year, unless the tenant shows good cause for such failure to report income.

[17305(b) - (d) Amended 3/25/93; Effective 4/2/93]

17306. Property Quality Standards

The landlord must certify that all units on the property and common areas meet the habitability standards set forth in the Civil Code section 1941.1.

Said certification shall be on a form provided by the Board. It must be based on an inspection of all units by the landlord with the exception of units in which inspections are waived by the tenant. The Board shall conduct an inspection of the proposed dedicated units and common areas. No regulatory agreement shall be executed unless the property meets the habitability standards.

17307. Rental Agreements

As a condition of participating in the program, Board staff must approve any rental agreement used for a dedicated unit to ensure compliance with the Regulatory Agreement and the Rent Control Law. Board staff may develop a model lease for use by participating landlords.

17308. Required Covenants of Regulatory Agreement on Rental Use

As a condition of participating in this program, the landlord shall agree to waive during the term of the agreement his or her rights to:

- (a) apply for a removal permit under Section 1803(t) of the Rent Control Law,
- (b) apply for any applicable exemption, for any unit on the property.
- (c) convert dedicated units in the building to condominiums under the Tenant Ownership Rights Charter Amendment, and
- (d) withdraw units under Government Code §7060 and Chapter 16 of Board Regulations.

17309. Reporting of Vacancies and Changes in Household Composition

- (a) Participating landlords must report to the Board any vacancy or anticipated vacancy and whether that vacancy is a voluntary vacancy, as defined in this Chapter. If the vacancy is claimed as a voluntary vacancy, the landlord must furnish all appropriate documentation requested by Board staff to establish that fact. Such a report must occur within thirty days of the vacancy. The non-reporting of vacancies may be grounds for termination of participation in the Incentive Housing Program.
- (b) By May 1st of each year, the landlord must report to the Board the actual rent charged on all incentive units and dedicated units and the name and unit designation of all tenants at the property, on a form supplied by the Board. Failure to return this completed form may be grounds for termination of participation in the Incentive Housing Program.

[17309 Amended 3/25/93; Effective 4/2/93]

17310. Successors in Interest

In the event the Santa Monica Rent Control Board ceases to exist for any reason, the Santa Monica Rent Control Board's rights and obligations under the Regulatory Agreement are assigned to the City of Santa Monica.

The terms of the Regulatory Agreement shall apply to any successor in interest of the landlord.

17400. Withdrawal by Landlords

Within two years of signing the Regulatory Agreement, any landlord who has entered into a Regulatory Agreement under this Chapter may terminate the Regulatory Agreement upon payment of a cancellation fee to the Board. The cancellation fee will be based on the actual cost to the Board of processing the termination and adjusting the maximum rents under Regulation 17210, but in no event more than \$500.

17401. Sanctions for Harassment and Unlawful Evictions

Tenants in properties participating in the program may report to the Board instances of unlawful eviction attempts or harassment of tenants by the landlord for the purpose of forcing that tenant to vacate. Where, after investigation, the Administrator or her designee concludes that the landlord did, in bad faith, attempt to force a tenant to vacate, increases on incentive units may be withheld or reduced. In extreme cases, the Board may terminate the Regulatory Agreement.

Remedies

(a) Termination. The participation of any landlord in the Incentive Housing Program may be terminated prior to the date of expiration contained in the Regulatory Agreement for reasons stated in sections (e) and (f) of this Regulation. Termination can occur only by means of Termination Proceedings, the procedure of which is specified in this Regulation.

(b) Effect of Termination; Tenant or Administrator Complaint.

Upon termination of a landlord's participation in the Program, due to grounds stated in section (e) of this Regulation, resulting from a complaint filed by a tenant or the Board's administrator, the rents of the landlord's participating units shall be adjusted as follows:

(i) Incentive Units. Rents for incentive units will be reduced as of the next rental payment following termination to the units' Maximum Allowable Rent. Upon the rendering of a decision terminating a landlord's participation in the Program, staff will send a certification of the correct Maximum Allowable Rent to the landlord and affected tenants.

(ii) Dedicated Units. Upon a landlord's termination from the Incentive Housing Program, rents of the landlord's dedicated units will remain at such levels and be adjusted in such manner as is prescribed under the terms of the Program until the dedicated units have been voluntarily vacated within the meaning of Regulation 17002(c) by the tenants occupying them at the time of the termination. Upon such voluntary vacation, rents of the dedicated units may be restored to their Maximum Allowable Rents. The landlord may increase the rents in that circumstance only through notifying the Board and obtaining a certification of the correct rent level.

(c) Effect of Termination; Landlord Complaint. Upon termination of a landlord's participation in the Program, due to grounds stated in section (f) of this Regulation, resulting from a complaint filed by a landlord, the rents of the landlord's participating units shall be adjusted in the same manner as would occur upon the expiration of the Regulatory Agreement, as provided in Board Regulation 17210.

[17401(b) and (c) Amended 3/25/93; Effective 4/2/93]

(d) Effect of Termination Due to False Qualification for Incentive Rent Levels. Upon a determination in proceedings conducted under terms of this Regulation that the landlord obtained permission to enroll an incentive unit in the Program through actual or constructive fraud or through undue influence, as defined in section (e)(iii) of this Regulation, it shall be concluded that the owner was at no time lawfully entitled to collect incentive rent levels for the unit.

(e) Grounds for Termination. A landlord's participation in the Incentive Housing Program may be terminated due to an act or acts of the landlord or any person acting on behalf of or in concert with the landlord, including, but not limited to the following:

(i) Harassment, as provided in Board Regulation 17002(o);

(ii) Unlawful eviction of a tenant from the property participating in the Program;

(iii) False qualification for enrollment of an incentive unit in the Program by means of actual or constructive fraud as defined in California Civil Code §§1572-1573, or undue influence as defined in California Civil Code §1575;

(iv) Collection of rent in excess of the Maximum Allowable Rent for use and occupancy of any controlled rental unit not participating in the Incentive Housing Program or in excess of the Maximum Dedicated Rent or Maximum Incentive Rent for any unit participating in the Incentive Housing Program, provided that the landlord has acted willfully or with oppression, fraud or malice, and has refused to make prompt restitution. This ground is valid only upon a court's filing of a judgment establishing

the unlawful collection or the issuance of a final Board decision so establishing, followed by the expiration of the time limit for the filing of a petition for administrative mandate;

[17401(e)(iv) Amended 3/25/93; Effective 4/2/93]

- (v) Persistent violations of the Rent Control Law Board Regulations or a Regulatory Agreement;
- (vi) Persistent failure to provide adequate maintenance and repair of a participating property, or to provide adequate housing services, or failure to comply substantially with applicable state or local housing, health or safety laws;
- (vii) Material violation of this Chapter or a material breach of the Regulatory Agreement, including non-reporting of vacancies at the participating property as required by Regulation 17309(a) and failure to return the completed report of actual rent charged and name and unit designation of tenants by May 1 of each year, as required by Regulation 17309(b).

[17401(e)(vii) Amended 3/25/93; Effective 4/2/93]

- (f) Termination Due to Board's Breach of Agreement. A landlord's participation in the Incentive Housing Program may be terminated due to the Board's material breach of the Regulatory Agreement.
- (g) Complaints. Termination Proceedings may be commenced only by means of the filing of a complaint, submitted upon a Board-approved complaint form and filed at the Board's administrative offices. The only persons authorized to file such complaints are tenants residing on a property participating in the Incentive Housing Program, participating landlords and the Santa Monica Rent Control Board's administrator. A tenant or administrator complaint shall allege that grounds exist within the meaning of section (e) of this Regulation to terminate a landlord's participation in the Program. A landlord complaint shall allege that the Board has materially breached the terms of the Regulatory Agreement.
- (h) Contents of Complaints. The complaint must state the particular ground or grounds for termination, and must contain a complete statement of the alleged facts upon which the complaining party relies, and the dates or approximate dates upon which the events are alleged to have occurred. The complaint shall be subscribed by the complaining party, verifying the truth, or his or her belief in the truth of the facts alleged "under penalty of perjury." No tenant complaint will be accepted for filing by the Board unless accompanied by a proof of service, submitted on a Board-approved form, declaring under penalty of perjury that a true copy of the complaint has been delivered, either in person or by U.S. Mail, to the landlord named in the complaint.
- (i) Landlord's Response. A landlord named in a termination complaint may file a response to the complaint, submitted upon a Board-approved response form and filed at the Board's administrative offices. This response is optional and informal, and may contain any information, contentions or references that the landlord believes are relevant to the issues raised by the complaint. Any factual allegation in the complaint will be deemed to have been denied by the landlord, unless it is specifically admitted.
- (j) Time Limitations. A landlord's participation in the Program may not be terminated due to the landlord's acts or failures to act, when under a duty to act, which occurred more than three (3) years prior to the filing of the complaint.
- (k) Preliminary Investigation; Tenant or Administrator Complaint. As soon as practicable following the filing of a tenant or administrator complaint, an investigator in the Board's employ will conduct a preliminary investigation of the matter. The results of the investigation will be stated in a written report in which the probable facts will be marshalled. Copies of all pertinent documents will be attached to the report. Upon completion, the report will be forwarded to an attorney on the Board's legal staff, to whom the case will be assigned for recommendation.

- (l) Staff Attorney's Analysis; Informal Office Conference. The assigned staff attorney will analyze the complaint, the answer, if any, the preliminary investigation report and any accompanying documents. The staff attorney, at his or her discretion, may schedule an informal office conference with the landlord, the purpose of which will be to gather more information, and where necessary, to obtain the landlord's voluntary compliance. The staff attorney may exercise discretion as to whether to include both the landlord and the complaining party in the conference.
- (m) Staff Attorney's Report and Recommendation. Within ten (10) working days following the forwarding of the preliminary report to the staff attorney, or following the office conference, if any, the staff attorney will issue a report and recommendation to the Board to grant or deny the complaint for termination of participation in the Incentive Housing Program. All reports and recommendations are subject to approval by the Board's General Counsel. Copies of the report and recommendation will be sent to the parties by U.S. Mail, at least ten (10) calendar days prior to the Board's consideration of the recommendation, along with an official notice advising the parties of the time and place of such consideration by the Board.
- (n) Board Hearing. The staff attorney's report and recommendation will be placed on the Board's agenda for hearing and determination.

[17401(m) and (n) Amended 3/25/93; Effective 4/2/93]

- (o) Conduct of Hearing. The Board's hearing on a complaint for termination of participation in the Incentive Housing Program shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unnecessary delay.
- (p) Evidence Rules. The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious or irrelevant evidence shall be excluded upon order by the Chairperson.
- (q) Order of Proceedings. The Board's public hearing on a complaint for termination of participation in the Incentive Housing Program shall ordinarily proceed in the following order:
 - (i) Staff Report.
 - (ii) Presentation by or on behalf of complainant, if the complainant wishes to expand upon material contained in the complaint.
 - (iii) Other speakers for the complaint.
 - (iv) Landlord's case in response to complaint.
 - (v) Other speakers against the complaint.
 - (vi) Rebuttal by complainant.
 - (vii) Motion to close the public hearing (or to continue it to a subsequent meeting).
 - (viii) Questions by Commissioners will be in order at any time following a speaker's presentation.
- (r) Board Determination. If the Board finds that the complaint for termination is supported by a preponderance of the evidence, it shall grant the complaint and terminate the landlord's participation. Three votes are necessary to grant the complaint for termination. In the event that three affirmative votes to grant the complaint for termination are not obtained, the complaint shall be denied.

- (s) Findings. All decisions of the Board shall be supported by written findings. If the Board adopts the staff recommendation, the staff recommendation shall constitute the findings of the Board unless the Board determines otherwise. If the Board rejects the staff recommendation, the Board may adopt its findings at the next subsequent meeting of the Board.

[17401(o) - (s) Adopted 3/25/93; Effective 4/2/93]

- (t) Hearing Procedure Upon Filing of Landlord Complaint. Upon the filing of a termination complaint by a landlord, alleging the Board's material breach of the Regulatory Agreement, the procedures provided in sections (k) through (s) of this Regulation shall not be applicable. The matter will proceed as follows: Staff will prepare a report analyzing the complaint, and will place the matter on the Board's agenda for a public conference between the Board and the landlord. Notice of this conference will be given to the affected tenants at least ten working days prior to such conference. The conference will be for the purpose of openly reaching a settlement of the matter satisfactory to the Board and landlord. If no settlement is reached, the Board shall refer the matter to a hearing officer for a determination.
- (u) Hearing. If, as a result of the foregoing procedures, a termination complaint filed by a landlord is referred by the Board for hearing, the matter will be heard by a hearing officer who will be an impartial, disinterested person selected by the City of Santa Monica. In no event will a Board employee hear termination complaints filed by a landlord, and in no event will the Board designate the specific hearing officer who will hear such termination complaints. The hearing will be conducted in the manner specified in Board Regulations 4009 through 4018.
- (v) Joint Selection of Hearing Officer After Objection. If any party to a termination proceeding pursuant to a landlord complaint objects to having the matter heard by the particular hearing officer selected by the City of Santa Monica, then the parties will jointly select a hearing officer from a list of five attorneys included in the Regulatory Agreement for the participating property, chosen by the parties thereto at the time they entered the Regulatory Agreement.
- (w) Decision. Within sixty (60) days after the date on which the matter is referred for hearing, the hearing officer shall render a written decision supported by findings of fact and conclusions of law. In the decision, the hearing officer will decide either to terminate the participation of the landlord in the Program due to the Board's material breach of the Regulatory Agreement or that the landlord shall continue to participate in the Program if no such material breach by the Board is found. A decision terminating a landlord's participation shall specify that the termination is effective thirty (30) days after the decision is rendered. The decision of the hearing officer shall be subject to no further administrative appeal, and shall be considered the final administrative decision for all purposes.
- (x) Judicial Review. The provisions of Board Regulation 10000, pertaining to judicial review of Board decisions pursuant to Code of Civil Procedure §1094.5, through petitions for writ of administrative mandate, are applicable to all hearing officer's and Board decisions upon termination complaints under this Regulation. A petition for writ of mandate, challenging a decision under this Regulation must be filed in Superior Court within ninety (90) days after the hearing officer or Board renders the decision.
- (y) Termination Complaints Raising Issues Cognizable in Other Types of Proceedings. In the event that a termination complaint alleges facts raising issues within the Board's regulatory jurisdiction, which are ordinarily addressed by the Board in other types of proceedings, including rent decrease, non-registration, excess rent or base rent proceedings under Chapters 4, 8 and 13 of Board Regulations, respectively, the staff attorney assigned to the case shall include in the report and recommendation to the Board under section (m) of this Regulation, a recommendation that such issues be separately heard in the appropriate proceedings, upon the filing of the necessary petitions or complaints. The jurisdiction of the hearing officer or Board under this Regulation is limited solely to the question of whether or not there are grounds to terminate the landlord's participation in the Program. Notwithstanding the foregoing, the hearing officer or Board may take administrative notice of the contents of the files of any type of Board proceeding, and of the

findings of fact, conclusions of law and decisions of the Board and its hearing examiners in any such proceeding.

- (z) Prohibition of Increases. In the event that a landlord's participation in the Program is terminated upon any grounds constituting a violation of the Rent Control Law or Board Regulations, the Board shall, upon the recommendation of its staff, with due notice to the affected parties, and to the extent consistent with the provisions of California Civil Code §1947.7, order that the subject property be ineligible for individual or general rent adjustments until such time as the landlord has fully ceased and remedied such violation, including, where appropriate, restitution of any excess rent collections which have been retained.

[17401(t) - (z) Amended 3/25/93; Effective 4/2/93]

17402. Failure to Comply with the Regulatory Agreement

The Regulatory Agreement shall provide for sanctions for noncompliance with its terms. Such sanctions shall include withholding of incentive rent increases until compliance is obtained, termination from the program and damages for the Board's costs in enforcing the Regulatory Agreement.

17403. Option to Renew

Landlords shall have the option of renewing participation in the program for an additional five year period.

[17403 Amended 3/25/93; Effective 4/2/93]

17404. Renegotiation of Existing Contracts

Incentive Housing Program Regulatory Agreements which are in effect on the effective date of these amendments to Chapter 17 may be amended to conform to these amendments to Chapter 17 by a recorded addendum to the agreement. The landlord must request such amendment in writing within ninety (90) days of the effective date of the amendments to Chapter 17.

[17404 Adopted 3/25/93; Effective 4/2/93]

17501. Program Review

Program review may be conducted by the board at regular intervals or after the first, second and third years.

[17501 Adopted 8/27/92; Effective 9/9/92]
[17501 Amended 3/25/93; Effective 4/2/93]

[Chapter 17 Adopted 2/23/89; Effective 3/7/89]
[Chapter 17 Amended 10/26/89; Effective 11/16/89]
[Chapter 17 Amended 3/25/93; Effective 4/2/93]
[17002(o)(i) Amended 05/6/04; Effective 06/03/04]