

4. Pursuant to 17.22.910, make recommendations to the city council regarding the amount of the fee necessary to recover the costs of administering Chapter 17.22.
5. Make recommendations to staff regarding updates of the forms used in implementing Chapter 17.22 or Chapter 17.23.
6. Conduct such studies and submit to the city council and the city manager such reports or recommendations respecting mobilehome parks and mobilehome living in the City of San José as the council or the city manager may from time to time request.
7. Make recommendations to the city council regarding changes in provisions of Title 20 of this Code relating to mobilehomes and mobilehome parks.

Under Part 28 of Chapter 2.08 of the Municipal Code, the Commission is a thirteen (13) member body with seven (7) representative members with special eligibility requirements: (a) one member must be recommended by an organization of owners of San José mobilehome parks; (b) one member must be recommended by an organization of residents of San José mobilehome parks; and (c) at least five members must represent low income households. The mobilehome park owner and resident “designated representative” provisions were originally part of the MAC commission structure in Chapter 2.08. There were similar designated representative provisions and findings in the ACR commission structure in Chapter 2.08 but these were not carried over to the HCDC ordinance after the merger.

The purpose of this ordinance is to allow “designated representatives” on the Commission to represent owners and tenants of buildings subject to the Apartment Rent Ordinance (“residential rent stabilized buildings”) for the reasons discussed below.

ANALYSIS

The proposed modifications to the ordinance establishing the Housing and Community Development Commission allow the Council to designate members of the Commission to represent: 1) tenants of residential rent stabilized units; and 2) owners of residential rent stabilized buildings. By doing this, the designated representatives will be allowed to participate in decisions that they may otherwise be disqualified from under the Political Reform Act and the Fair Political Practices Commission’s (FPPC) regulations interpreting the Act.

Government Code Section 87103 is the provision of the Political Reform Act that specifies that a public official has a prohibited financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, **distinguishable from its effect on the public generally**, on certain specified financial interests of the official.

FPPC regulation 18703 (e) specifies certain circumstances when a financial effect is deemed indistinguishable from that of the public generally, including:

“(5) Required Representative Interest. The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified represented and there is no unique effect on the official’s interest.”

As such, it is recommended that San José Municipal Code Section 2.08.2820 be amended to require that one member of the Housing and Community Development Commission be an owner or manager of a residential rent stabilized rental building; and one member be a tenant of a residential rent stabilized unit.

Additionally, it is recommended that Section 2.08.2850 be amended to include findings and declarations which provide that: (a) for the purposes of the owner or manager of a rent stabilized residential building who serves on the Commission, the San José rent stabilized apartment owner community is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103; and (b) for purposes of the tenant who serves on the Commission, the San José residential rent stabilized tenant community is tantamount to and constitutes the public generally within the meaning of California Government Code Section 87103. Together, these provisions allow the persons appointed to these representative positions to take action on issues related to the Apartment Rent Ordinance without violation of the general conflict of interest provisions of state and local law. It should be noted however, that even with these modifications, the “public generally” exception only applies if the effect is on the identified interest represented and there is no unique effect on the official’s interest. For example, if the Commission were to take a position on a particular project in which a Commissioner resides as a tenant, that decision may have a unique effect on that Commissioner’s financial interest requiring disqualification from participation on the part of the Commissioner.

There is currently one landlord of buildings subject to the Apartment Rent Ordinance on HCDC. Commissioner Michael Fitzgerald is the owner of residential rent stabilized residential buildings. He previously served as a designated owner representative on the former ACR. There are major policy decisions coming before HCDC regarding possible changes to the Apartment Rent Ordinance. Without this amendment, and the designation as owner representative, Commissioner Fitzgerald likely would be disqualified from participating in the discussion and recommendations made by HCDC on this issue.

There is currently no tenant of residential rent stabilized residential buildings on the Commission. In order to implement the provisions of this proposed amendment, the

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Council will need to appoint a tenant in a residential rent stabilized building to the Commission as the designated representative.

CEQA

Not a project, File No. PP10-068(c), Code or Policy change that involves no changes in the physical environment.

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