



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: August 29, 2016

Approved

D. D. SyL

Date

8/29/16

SUPPLEMENTAL

SUBJECT: APPROVAL OF THE REGULATIONS IMPLEMENTING THE INTERIM ORDINANCE AMENDING THE APARTMENT RENT ORDINANCE

REASON FOR SUPPLEMENTAL

This purpose of this memorandum is to provide a summary of public comment on the draft regulations implementing the Interim Ordinance from the Housing and Community Development Commission (HCDC), Hearing Officers, and the general public. Subsequent changes to the draft regulations are also included.

BACKGROUND

Per Section 2.08.2840.B.1 of the San José Municipal Code, it is a function of the HCDC to make recommendations to the City Council regarding regulations pertaining to the Apartment Rent Ordinance (Chapter 17.23 of the Municipal Code.) On Thursday, August 11, 2016, the HCDC reviewed and provided input on the draft regulations implementing Interim Apartment Rent Ordinance hearing process. The Housing Department requested a deferral of this item from the August 23, 2016 City Council meeting to the August 30, 2016 meeting to allow for additional public comment.

COMMISSION RECOMMENDATION/INPUT

The Commission provided feedback and questions to staff on how the interim regulations will be implemented. The Commission voted unanimously (7-0) to recommend that the City Council approve the amendment adding Chapter 9, Fair Return Petition Procedures, to the regulations implementing the Apartment Rent Ordinance. As part of the action, the Commission recommended that staff incorporate feedback made by the Commission, which included: (1)

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providing training to apartment owners on the Interim Apartment Rent Ordinance Fair Return Petition Process and the MNOI calculation, (2) notifying tenants in their primary language that a petition has been filed, (3) confirming how a rent increase is applied to leases that do not end at the time of the hearing officers decision, (4) confirming whether the rent increase becomes part of the base year rent or if it is a separate item that is dropped off after the amortization period ends, (5) including the audio tape as part of the "official hearing record", (6) confirming that there is an appeals process in the interim ordinance, and (7) determining whether a 70 day timeline to complete the petition review process can be shortened. Additionally, the Commission requested that staff inform the Commission of any changes made from the feedback given.

HCDC Input

The Commission provided input and asked questions on the draft regulations. The Commission's questions and staff responses are provided as an Attachment to this memorandum. Items that have been added to the Interim Regulations and/or incorporated into the Department's implementation workplan, per the Commission input, are discussed below.

Staff requested feedback from the Commission on whether it would be helpful to provide technical assistance to apartment owners to explain the fair return petition and the Interim Ordinance. The Commission agreed that training would be a necessary and valuable resource. Staff intends to schedule public workshops in early fall.

The Commission discussed language access practices, specifically considering the language access needs of tenants. The Commission asked if petition notices would be provided to tenants in their native language. In response to the Commission's request, the Fair Return Petition form, which will be created to implement the Interim Ordinance, will include multi-lingual information on the availability of oral translation. Staff will develop tenant notice forms for use by owners consistent with the City's Language Access Plan, in conjunction with the roll-out of the fully-modified ARO program.

The Commission requested that audio recordings of the administrative hearing be included as part of the official hearing record. Section 9.04.06 of the regulations has been amended to include audio tapes as part of the official hearing record.

The Commission also asked whether the 70-day hearing timeframe was prudent, and if there were efficiencies that could be found to reduce the time required to come to a final decision by the Hearing Officer. Staff responded that the timeframe sets a target by which most all decisions should be final. In doing so, it helps manage expectations for all parties. The timeframe recognizes the difficulties in scheduling hearings between multiple parties, and the potential for these evidence-based fair return hearings to take more time than the current pass-through hearings. In many instances, the timeframe will be shorter. As the fair return petition are processed, staff will analyze processing time data to identify areas where the process can be shortened.

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Hearing Officer Input

It should also be noted that the Program's experienced contract Hearing Officers also provided feedback on the draft regulations and integration of the draft regulations with the standards that were previously in effect. Since the release of the initial draft regulations, additional clarifying language was added to Regulations Section 9.05.02 (B) to reflect further Hearing Officer input.

Public Input

On August 25, 2016, the Housing Department held a public meeting to receive feedback on the draft regulations. No one from the public requested any modifications. The public comment focused on the clarification of operational details of the draft regulations, which staff addressed.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

/s/

JACKY MORALES-FERRAND
Director, Department of Housing

For questions, please contact Jacky Morales-Ferrand, Housing Director at (408) 535-3855.

Attachment

Attachment

HCDC Questions with Staff Responses on the Interim Apartment Rent Ordinance Regulations

1. Training should be provided to owners on the Interim Apartment Rent Ordinance (IARO) fair return petition process and the MNOI calculation.

Response: *The Department will offer training on the MNOI and IARO process. An announcement with training dates and locations will be distributed within the next two weeks.*

2. Notices that a petition has been filed should be provided in the primary language of the residents.

Response: *The Fair Return Petition form will include multi-lingual information on the availability of oral translation. The Department will develop tenant notice forms for use by owners in multiple languages consistent with the City's Language Access Plan for the fully-modified ARO Program.*

3. How are rent increases approved by a hearing officer applied to leases that do not end at the time of the hearing officer's decision? When is the rent increase applied?

Response: *Rent increases can only be applied once in a 12-month period. A rent increase that originated through a successful Fair Return Petition would not be applied until at least 12 months have passed from the prior increase.*

4. Does a rent increase become part of the base year rent or, is it a separate item that is dropped off after the amortization period ends?

Response: *If the petition is based on the claim that the NOI has not increased at the rate of inflation, the base year rent would not be adjusted. If the petitioner has petitioned on the basis that he or she was not receiving a fair return in the base year, the hearing officer may adjust the base year rent (if the burden of proof is met and the findings are made).*

5. Section 9.04.06 lists the items that are part of the official hearing record. The audio tape should be included as part of the official record.

Response: *The draft interim regulations have been amended to include audio tapes as part of the official hearing record.*

6. Section 9.0.5 mentions the potential for "appeals". However, the Interim Ordinance does not include an appeals process.

Response: *This section refers to an appeal from a Mediation Hearing Officer determination regarding a tenant petition. Per the existing Ordinance, tenant petitions will still go to mediation and have the ability to go to arbitration. Owner Fair Return petitions will have a single "arbitration" petition.*

7. The 70-day timeline completing the completing the petition review seems a bit excessive.

Response: The Housing Department will work to minimize the amount of time it takes to complete the process by analyzing data in terms of where in the petition process can potentially be streamlined.

8. The interim ordinance mentions keeping three years of data back to 2014. What happens if an owner does not have three years of data? Is there an alternative process?

Response: The Interim Ordinance requires landlords to keep their base year (2014) records so that the base year net operating income can be determined. The Ordinance does not require them to keep three years of records. If a landlord does not have the 2014 records, they can submit other evidence regarding their base year net operating income, however, they will still need to meet the burden of proof regarding that income.