



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: September 13, 2016

Approved

D. D. S. Y. L.

Date

9/16/16

SUBJECT: AMENDMENT TO EXTEND THE INTERIM APARTMENT RENT ORDINANCE AND AMENDMENTS TO THE REGULATIONS IMPLEMENTING THE INTERIM APARTMENT RENT ORDINANCE

RECOMMENDATION

1. Approve an ordinance amending Part 8 of Chapter 17.23 of Title 17 of the San José Municipal Code (Interim Ordinance) extending the termination date of that Part until the earlier of June 30, 2017 or sixty days after the effective date of an ordinance amending Chapter 17.23 consistent with Council direction (Modified Apartment Rent Ordinance).
2. Adopt a resolution amending and restating Chapter 9 of the regulations for the operation and administration of the San José Rental Dispute Mediation and Arbitration Ordinance, Chapter 17.23 of Title 17 of the San José Municipal Code (Apartment Rent Ordinance) and superseding Resolution No.77922.

OUTCOME

Adoption of the proposed amendments to the recently approved regulations will provide enhanced procedural guidance for the implementation of the fair return hearing process established in the Interim Ordinance. Extending the termination date of the Interim Ordinance will allow for additional outreach and public comment to be conducted for the Modified Apartment Rent Ordinance.

BACKGROUND

On April 19, 2016, the City Council considered changes to the City's Apartment Rent Ordinance (ARO). City Council directed staff to return with amendments making several permanent modifications to the ARO, including lowering the 8% allowable annual rent increase to 5%,

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eliminating the debt-service pass-through provision, and implementing a rent registry. City Council also directed staff to develop and bring back an Anti-Retaliation & Protection Ordinance for approval in fall 2016. The City Council also directed staff to return on May 10, 2016 with an urgency ordinance that provides a temporary pause in rent increases to apartments subject to the ARO.

On May 10, 2016, the City Council adopted the Interim Apartment Rent Ordinance (Interim Ordinance) to transition to the new ARO provisions and to reduce uncertainty for both tenants and landlords. The Interim Ordinance reduced the annual allowable rent increase on tenants from 8% to 5%, eliminated rent increases available through the pass-through provisions (including debt-service, capital improvement, rehabilitation, and operations & maintenance) after September 1, 2016, and implemented a fair return petition process. The Interim Ordinance became effective on June 17, 2016, and will be in effect until January 1, 2017 or 60 days after the permanent ordinance is in place, whichever is earlier.

On August 30, 2016, the City Council approved Resolution No. 72922 adding Chapter 9 to the existing regulations for the Apartment Rent Ordinance (Interim Regulations) providing procedures for the fair return petition process. The approved Interim Regulations included changes that were recommended by the Housing & Community Development Commission (HCDC) on August 11, 2016. Comments were received from the Law Foundation of Silicon Valley (Law Foundation) and the Tri-County Division of the California Apartment Association (Apartment Association) after the final draft of the regulations were completed. In order to ensure that public input from the Apartment Association was considered, the City Council directed staff to do additional outreach and return to the City Council with additional amendments or responses to the feedback provided.

ANALYSIS

On September 2, 2016, the Housing Department sent out a notice to its list of apartment owners and tenants informing them that the Interim Regulations would be discussed at the September 8, 2016 HCDC meeting. At the meeting, the Housing Department presented the proposed amendment to the Interim Regulations based on the stakeholder comments as well as the new letters received from the Law Foundation and the Apartment Association. Additional input was received from the public and the HCDC. The specific recommendation from the HCDC is provided in the "Commission Recommendation" section of this memo. A summary of the public input and correspondence is provided as Attachment A.

After reviewing emails, the HCDC recommendation, and the additional public input received from the Apartment Association and the Law Foundation, the Housing Department has incorporated changes to the Interim Regulations where feasible in terms of the scope and appropriateness for inclusion, the practicality of implementation and to clarify the regulations.

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The proposed modifications to the adopted Interim Regulations, are shown in underline and strikeout in Attachment B to this memorandum. These modifications provide greater clarity regarding noticing, supporting documents and reasonable expenses and add an opportunity for a tenant to respond to a fair return petition. They have also been updated to include a provision regarding translation and reasonable accommodation for speaker presentations, and modify requirements regarding originals and withdrawn petitions.

Extension of the Interim Apartment Rent Ordinance

Implementing the Modified Apartment Rent Ordinance will entail a number of decisions that will potentially impact owners and residents of ARO units. When the Interim Ordinance was approved, the Housing Department informed City Council that it intended to return with the Modified Apartment Rent Ordinance by the end of the current calendar year. Based on Department's experience in implementing the Interim Regulations, there is a strong demand for additional outreach and input opportunities as the City moves forward with this process. In addition, the lead staff person managing the Modified Apartment Rent Ordinance process recently separated from the City. This has caused a delay in key tasks such as executing the agreement with the consultant assisting with the implementation. The Interim Ordinance is currently set to terminate on January 1, 2017. In order to accommodate additional public outreach, the department is recommending that the Interim Ordinance termination date be extended to the earlier of June 30, 2017 or sixty days after the effective date of Modified Apartment Rent Ordinance.

It is the Housing Department's intention to return to the City Council with the Modified Apartment Rent Ordinance prior to June 30, 2017. However, this date is recommended to ensure that approval of another extension is not required.

EVALUATION AND FOLLOW-UP

As mentioned in the City Council memo for August 30, 2016, the Housing Department will set up training sessions to provide owners with technical assistance on the fair return petition process as needed. Staff will also provide an information memo on the Modified Apartment Rent Ordinance development progress, proposed program development, public outreach, and implementation timeline, prior to the end of the calendar year.

PUBLIC OUTREACH

This item will be posted on the City's Council Agenda website for the September 27, 2016 Council Meeting. The Housing Department will send notices regarding this meeting to ARO apartment owners and residents via its email interest lists.

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COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

The Interim Regulations were reviewed at the September 8, 2016 HCDC meeting. The Commission voted (7-0) to recommend that the City Council approve the revised amendment to the regulations implementing the Interim Apartment Rent Ordinance with the recommendation to outreach to apartment owners and edit the language of Section 9.04.04, Speakers' Presentations, to remove "concise and to the point" because it does not ensure the ability of the apartment residents to present a case in which they are not experienced or have a language or disability barrier.

CEQA

Exempt, Section 15061(b)(3) No potential for causing a significant effect on the environment, File No. PP16-051.

/s/

JACKY MORALES-FERRAND
Director, Department of Housing

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

Attachments:

A: Correspondence and Public Input from September 8, 2016 HCDC meeting

B: Amended Interim Regulations

Attachment A

Public Input and Correspondence Interim Apartment Rent Ordinance Regulations

HCDC Commissioner Comments – September 8, 2016

1. Landlords need education on the Regulations. Supports the staff plan to provide outreach and workshops to assist landlords with the process.
2. A concern was raised regarding setting time limitations on speaker presentations and the need to be “concise”. This could be challenging for people who need translation, have a disability or who are not experienced in presenting their information in a hearing. People should be allowed to speak and be given full opportunity to present their material. Commissioner O’Connell suggested that wording similar to what is used in the Mobile Home Rent Ordinance be used. “The parties will be given full opportunity to present relevant evidence and testimony. When one party has made its presentation, the remaining party will be given an opportunity to make its presentation”.

HCDC Commissioner Questions and Staff Response

1. What does deferred maintenance mean?
Deferred maintenance means maintenance that has been delayed or postponed on the building past the items useful life. The failure to perform needed repairs may result in additional repairs to the building.
2. How will landlords be able to provide evidence if they do not have 2014 base year data?
Landlords will need to reconstruct the information to the best of their ability or alternatively be able to explain to the Hearing Officer why they were not able to reconstruct the information.

Public Testimony from September 8, 2016 HCDC meeting

1. A Landlord was concerned about the capital improvement credit and stated the annual cap of 5% is inadequate especially if a large emergency repair is needed.
2. A tenant expressed concern that the Rental Rights and Referral Program was biased towards landlords.
3. The Law Foundation of Silicon Valley submitted the following email and recommended changes included in the email.

From: Melissa Morris <MelissaM@lawfoundation.org>
Sent: Thursday, September 8, 2016 4:50:06 PM
To: Lopez, Robert (HSG); Morales-Ferrand, Jacky
Subject: HCDC Item (f)--Interim Apartment Rent Ordinance Regulations

Dear Ms. Morales-Ferrand and Mr. Lopez,

After reviewing the proposed revisions to the interim Apartment Rent Ordinance regulations, the Law Foundation of Silicon Valley offers the following comments and recommendations:

9.02.03—any notices provided or prepared by the City should be translated into Spanish and Vietnamese.

9.02.04—10 days will not, in most cases, be sufficient for tenants to submit all supporting documentation. Tenants have to obtain copies of the petition, analyze the petition, and collect relevant evidence, which may include requesting public records or other information from credible third parties. Additionally, 10 days is a very short period for a tenant to retain an attorney, and for the attorney to submit responsive documents to the petition. Tenants should have additional time to submit to the hearing officer (and to the landlord) supporting documents after they have filed their Opposition statements.

9.02.06(E)—if the petition is withdrawn or deemed withdrawn under this section, the City should send a notice to the tenants informing them of the withdrawal.

9.02.06(F)—we support the requirement for a city staff report. We believe the information in this report will help simplify the process for both landlords and tenants, and will help the city collect useful data regarding fair return petitions. We note that, under the regulation, it does not appear to authorize staff to make recommendations about whether to grant or deny a petition.

9.02.06(G) has a typographical error that makes the language confusing. The first sentence should be: “In the event that the petition is complete except for missing Base Year NOI evidence, the landlord. . . .”

9.03.01 and 9.03.02—the regulation should either give more time between the mailing of the hearing notice and the hearing and require less advance notice for postponing the hearing. Under existing regulations, if the hearing notice is mailed only two weeks prior to the hearing, and if the tenant only has 7 days to request a postponement, then the tenant has at most 4 or 5 business days to request a postponement. This timeline makes it incredibly difficult for tenants to retain attorneys, who will need time to review the case and collect evidence in order to represent their clients competently. Additionally, since the regulation does not require the landlord to send a copy of the petition to each tenant, tenants have to go to the City during business hours to review the petition—no small feat for tenants who work full time. This process is extremely prejudicial to tenants, especially in light of the fact that landlords have what is, in essence, unlimited time to prepare their petitions before submitting them.

The regulation should make clear that every tenant has the right to receive a copy of the full petition. The regulations should either require the landlord to furnish every tenant with a copy of the petition or require the City to provide a copy immediately upon the tenant’s filing of an Opposition Statement. Ensuring that tenants have access to petitions is an essential due process protection.

Please share these comments with the members of the HCDC. Diana Castillo will be attending this evening’s meeting as well.

Many thanks,

Melissa A. Morris | Senior Attorney
Fair Housing Law Project | Public Interest Law Firm
melissam@lawfoundation.org | p 408.280.2429 | f 408.293.0106

Law Foundation  OF SILICON VALLEY

Advancing Justice in Silicon Valley
152 North Third Street, 3rd Floor
San Jose, California 95112
www.lawfoundation.org

John L Worthing

Worthing Capital

845 Oak Grove Ave. Suite 105—Menlo Park, CA 94025—(650) 327-6677

September 10, 2016

Jacky Morales-Ferrand, Director
Housing Department
200 East Santa Clara Street, 12th floor
San Jose, CA 95113-1905

Dear Ms. Morales-Ferrand:

Attached please find the memo to follow up on my comments on Thursday night at the Housing and Development Committee meeting.

I'd like you to know that I have been in apartment ownership and operations business since 1978. I have followed the rules of rent control and have never had a rent control arbitration until this year, once the interim ordinance took effect.

I'd like you to know that I have done several major rehabilitations of property in San Jose. Here are five examples.

1. **2020 Southwest Expressway:** I was the General Partner on this property which we purchased in 1994. Over \$2,000,000 was invested in capital improvements to transform "**Casa del Rey**" into **Cherry Creek Apartments**. At the time of purchase, there was a drive-in window for drug deals, leaky roofs, as well as a swimming pool that looked like a swamp. We installed new roofs, new front doors, new patio surrounds, all new double pane windows, new low flush toilets, all new landscaping, new pool and pavement. Today this is a beautiful property.
2. **480 South Fourth Street:** 16 of the units in this property were closed by the city due to rot in the main beams. This building was literally falling apart. We spent \$800,000 rehabbing this property creating a valuable asset near SJSU.
3. **4860 Northlawn:** We spent \$200,000 on this 12 unit property fixing the drainage, replacing 90% of the hardscape eliminating trip hazards that existed. New double pane windows, paint, all new lighting, landscaping including artificial turf have made this a beautiful property. The comparison to the sister property across is startling.
4. **1895 The Alameda:** Just completed rehab includes all new hardscape that eliminated deficient front stoops and provided sidewalk to the street. Two new staircases were installed to replace stairs that were completely rotten. New turf, new windows, all new walkways and new paint have made this landmark location on Alameda look beautiful. We spent \$180,000 in improvements on this 15 unit building.
5. **2091-3001 Magliocco Drive:** We have installed all new double pane windows, but have terminated a \$200,000 rehab due to the interim rent control ordinance. Those potential jobs for many locals are now lost.

I believe the city of San Jose is being very reactionary and unreasonable in its pursuit of protecting a handful of tenants that received large increases. By addressing pass through of debt service loopholes and limiting rent increases to a maximum, the council has insured that massive increases are a thing of the past.

One factor that must always be remembered is interest rates. We have been in a low interest rate market cycle for over a decade. Interest rate increases will put great pressure on landlords and with only 5% increases allowed, the city will see again what happened in the early 90s, namely deterioration of the housing stock.

Casa del Rey which I referred to above was a perfect example of the damage interest rate increases can be on the operations of a building. The former owner was squeezed by interest rate increases and was forced to cut services and compromise on the quality of management practices, thus leading to a quick deterioration. It is an ugly cycle. Owners get massive debt service increases and can't pass them on to tenants. What does one do? You cut capital spending in a hope to hold on. 5% will compound the problem.

In conclusion, I fear the limit of 5%. That 5% limit will certainly curtail capital spending and in the event of increased interest rates endanger capital improvements for a long time. A cutback in capital spending will put the quality of the housing stock at risk while cutting back on hundreds of local small businesses that earn a living working on apartment capital improvements.

The "Fair return" concept is capricious and arbitrary and lends itself to "Me against them" negotiations. It is a confusing smoke screen that looks fair on the surface, sort of a feel good bureaucratic olive branch that in reality is bureaucratic nightmare designed to prevent rent arbitration. Owners are just going to say "Forget it, I won't do any improvements."

I strongly encourage the City to review the importance of Capital improvements and make sure you don't endanger capital improvements in the rent control discussion. Keep the maximum increase at 8% and shelve the complicated formulas.

Sincerely,

John L. Worthing

From: Melissa Morris [REDACTED] >

Sent: Monday, August 29, 2016 12:23 PM

To: The Office of Mayor Sam Liccardo; District1; District2; District3; District4; District5; Oliverio, Pierluigi; District7; Herrera, Rose; District9; District 10; City Clerk; Grabowski, Ann; Morales-Ferrand, Jacky; Greene, Shasta; Lujano, Jose; Parra-Garcia, Sabrina; Castro, Huascar; Shih, Stacie

Cc: Diana Castillo; Kyra Kazantzis

Subject: Item 4.3—Approval of the Regulations Implementing the Interim Amendment to the Apartment Rent Ordinance (August 30, 2016, City Council Meeting)

Dear Mayor and City Councilmembers,

I am writing on behalf of the Law Foundation of Silicon Valley to urge you to approve the regulations implementing the interim amendment to the Apartment Rent Ordinance. Although we would have preferred more time to review and comment on these regulations, we acknowledge the necessity of adopting regulations before September 1. The interim ordinance, which Council approved in May, requires the City to transition from the ARO's previous system of pass-throughs to the interim ARO's fair return process beginning September 1, 2016; as such, the City should approve these regulations in order to effectuate the interim ordinance.

These interim regulations will provide an opportunity for both the City and stakeholders to evaluate the fair return methodology and process; our experience during this interim period can inform the long-term changes to the ARO and its regulations that will be adopted later this year.

As the City implements the regulation, the City notice described in section 9.02.04(A)(4) should, in addition to the requirements of section 17.23.270, include an explicit statement of the tenant's right to oppose the petition, the process for opposing the petition, all relevant timelines for opposing the petition, and the process for obtaining copies of the petition and all related documents from the Rental Rights and Referrals Program.

We also support the recommendation of the HCDC that notices be provided to tenants in their preferred language. Whether through the regulation, through its implementation, or both, the City must make this process accessible to both tenants and landlords who have limited English proficiency. We look forward to working with the City to ensure that both the interim program and the long-term changes to the ARO are implemented in such a way that the ARO's protections are accessible to tenants in our diverse community.

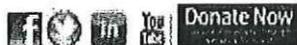
Sincerely,

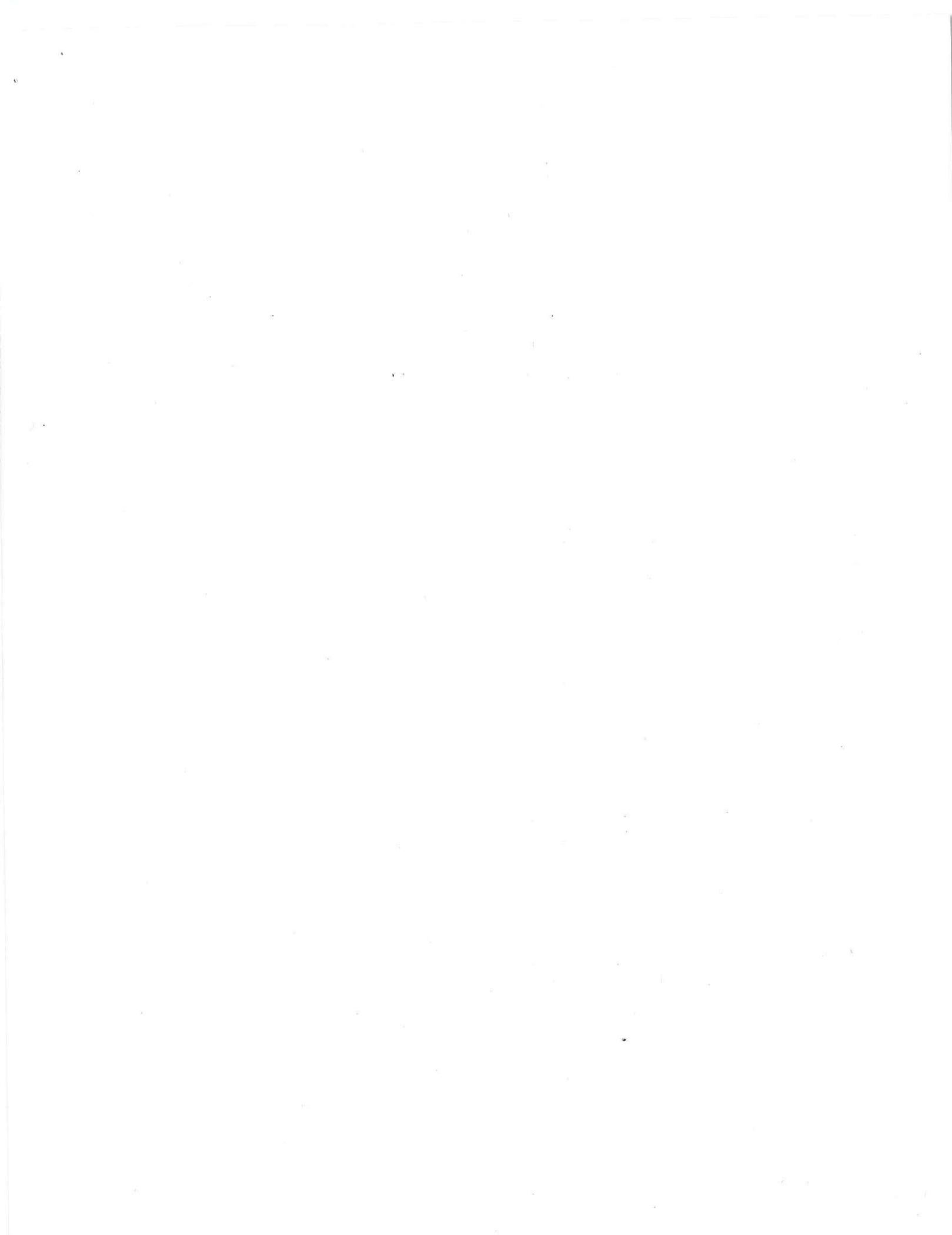
Melissa A. Morris | Senior Attorney
Fair Housing Law Project | Public Interest Law Firm


Law Foundation OF SILICON VALLEY

Advancing Justice in Silicon Valley

[REDACTED]
San Jose, California 95112
www.lawfoundation.org







California Apartment Association

[REDACTED]
Sacramento, CA 95814

[REDACTED] • caanet.org

August 30th, 2016

Via Electronic Mail Only

Mayor Sam Liccardo and Council
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Dear Mayor Liccardo:

The California Apartment Association (CAA) is requesting that Council delay the implementation of the proposed guidelines for the Fair Rate of Return petition process. We are concerned about the hurried nature in which the proposed guidelines have been introduced, the lack of outreach conducted by the Housing Department to property owners and the failure to reach out to industry partners for feedback on the guidelines.

Recognizing the complexity of this issue, we enlisted the assistance of our attorneys to conduct a legal review of the guidelines. In that review, which is attached to this letter, you will find a number of concerns that would merit further study. The attached legal memo explains why there is time for further study in the section titled 'No Urgency to Pass Proposed Regulations.'

In the effort to achieve the shared goal of developing a petition process that is unambiguous and straightforward, we are requesting the Council to grant the additional time for the Housing Department to review and address our concerns.

Sincerely,

[REDACTED]

Anil Babbar
Vice President
California Apartment Association, Tri-County Division

cc: Jacky Morales Ferrand
Shasta Greene



Stephen D. Pahl
Karen K. McCay
Fenn C. Horton
Catherine S. Robertson
Servando R. Sandoval
Ginger L. Sotelo

Sonia S. Shah
Helene A. Simvoulakis-Panos
John A. List
Julie E. Bonnel-Rogers
Matthew J. Wendt
Eric J. Stephenson
Lerna Kazazic

Sarahann Shapiro
Theresa C. Lopez
Special Counsel

225 West Santa Clara St., Suite 1500, San José, California 95113-1752 • Tel: 408-286-5100 • Fax: 408-286-5722

11620 Wilshire Blvd., Suite 900, Los Angeles, California 90025-1706 • Tel: 424-217-1830 • Fax: 424-217-1854

MEMORANDUM

TO: Interested Parties

FROM: Pahl & McCay

DATE: August 29, 2016

RE: Legal Concerns Regarding Proposed Amendment to San José Rent Control Regulations to add Chapter 9 Fair Return Petition Provisions

At the request of the California Apartment Association (“CAA”),¹ below please find a summary of legal, procedural and practical concerns relating to the proposed amendment to the Rental Dispute Mediation and Arbitration Program Apartment Regulations of the City of San José to add “Chapter 9 Fair Return Petition Procedures.”² According to the Memorandum of August 8, 2016, from Jacky Morales-Ferrand to the Honorable Mayor and City Council, the purpose of the proposed amendment is to provide “the procedural direction needed for the interim fair return hearing process implemented by the Interim Ordinance amending Chapter 17.23 of Title 17 of the San José Municipal Code (Apartment Rent Ordinance)” (hereinafter referred to as the “Interim Ordinance”).

While the rental housing industry strongly agrees that such direction is needed given the ambiguities of the Interim Ordinance (which were previously raised with City staff), CAA urges the City Council not to rush to pass regulations which, as set forth below, do not provide the needed guidance. Instead, CAA asks that the City provide the impacted individuals and businesses and their advocates the time necessary to review and address their concerns with City staff about the proposed regulations so that informed decisions can be made and all those impacted by the proposed regulations will be able to know and understand their rights and responsibilities under the Interim Ordinance, which should be the goal of all concerned.

¹ This Memorandum has been prepared with the understanding that it is intended to be communicated to interested parties by CAA. By sharing this analysis with such interested parties, neither CAA nor its counsel intend to waive the attorney-work product privilege or the attorney-client communication privilege with respect to any other analyses or communications exchanged between CAA and Pahl & McCay, a Professional Law Corporation.

² This Memorandum relates only to the proposed regulations. There remain several legal and practical concerns with the Interim Ordinance which became effective on June 17, 2016, which are not addressed herein.

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No Urgency to Pass Proposed Regulations

The Housing Department has indicated that it is “critical” for the proposed regulations to be passed at the August 30, 2016, Council Meeting so that they are in place on September 1, 2016; however, such is not the case. As the Council is aware, the Interim Ordinance provides, in pertinent part, that “[a]fter September 1, 2016, a landlord may petition for a rent increase in excess of the 5% increase allowed pursuant to Section 17.23.800 *by invoking the hearing process referred to in Section 17.23.230* in order to seek a fair return as described in this section.” [Interim Ordinance § 17.23.820(a) (emphasis added)]. As such, in the unlikely event any landlord files a fair return petition prior to the implementation of any new regulations, the landlord may proceed under the petition process already set forth in the Interim Ordinance.

In addition, it is our understanding that the Housing Department has not even finalized the Fair Return Petition (“FRP”) form mandated by the proposed regulations. No such form has been posted on the City’s website and staff at the Housing Department indicated on Monday, August 29, 2016, over the telephone that the FRP form is not available because “they are still working on it,” and the “ordinance has not been drawn up yet.”

The proposed regulations state that a FRP must be presented on a City Petition Form. [Proposed Reg. § 9.02.01]. In fact, it states that a petition “will not be accepted for filing . . . where the petition is not made on the City petition form . . .” [Proposed Reg. § 9.02.04(A)(1)]. If the form is not ready by September 1, 2016, there is no need for the implementing regulations to be in place by that date, since there would be no possible way for a landlord to submit a FRP until the form is completed.

CAA recognizes that implementation of the Interim Ordinance is a daunting task and there is still much to do, but implementation of regulations which contain legal, procedural and practical deficiencies will not assist hearing officers, landlords or tenants in navigating this new process. The following is a summary of the major concerns identified so far by the rental housing industry with the proposed regulations, which should be addressed by City staff before implementing regulations are adopted by the City Council. CAA desires to work with City staff with respect to these concerns in order to ensure an understandable and fair process for the implementation of the City Council’s policy decisions contained within the Interim Ordinance.

Regulations Change the Evidentiary Standard for Landlord FRPs Only

Section 17.23.320 of the existing Ordinance provides that “any party or their counsel may appear and offer such documents, testimony, written declaration or other evidence as may be pertinent to the proceeding.” The existing regulations state that “conformity to judicial rules of evidence is not necessary.” [Existing Reg. § 3.04.05(a)]. Contrary to these existing provisions, the new proposed regulations determine, in advance, what may and may not be considered by the

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hearing officer and impose evidentiary hearsay rules, apparently only on landlords, in what has heretofore been a relatively informal process.³

For example, Proposed Regulation 9.02.03 provides that contemporaneously prepared ledgers are not accepted as sufficient evidence for the Current Year regardless of who prepared the statements, how they were prepared or whether there is any doubt whatsoever as to their contents. Instead, the City staff apparently wants every landlord in every case to present individualized receipts, cancelled checks and detailed invoices of every expense for a property, no matter the size of the property or the number of expenses incurred, mandating the hearing officer to sift through each of them one by one to determine whether the expense was “reasonable.” If such a protracted process is required by regulations, each FRP could take weeks if not months to complete. While there may be circumstances where a hearing officer doubts the veracity of a general ledger or other financial statement, and thus requires additional documentation, to hold at the outset that all such statements may not be used is, to excuse the expression, unreasonable.

Similarly, the Proposed Regulations state that “[e]xpenses should be documented by contemporaneous and complete invoices from licenses business and provided along with cancelled checks as proof of payment thereof.” [Proposed Reg. 9.06.03(F)]. Not all work done on a property requires licensed contractors. In addition, the Proposed Regulations do not take into consideration non-vendor work such as increases in the number on-site staff or increases in on-site staff compensation, neither of which will be supported by invoices from licensed contractors. Are those, too, now being excluded from operating expenses? The Proposed Regulations seem to be designed to address only a limited subset of the expenses of the typical rental property in an effort to prevent owners from ever succeeding on a FRP.

In addition, the Proposed Regulations appear to prevent the parties from being given full opportunity to present relevant evidence and testimony. Proposed Regulation 9.04.04 provides, in pertinent part, that “[n]otwithstanding Regulation section 3.04.02, the hearing Officer shall establish equitable time limits for presentations at a hearing.” Regulation 3.04.02 provides, in pertinent part, that “[t]he parties will be given full opportunity to present relevant evidence and testimony.” The Proposed Regulations appear to require individual invoices, receipts, and cancelled checks for each and every expense and then modify a party’s right to be given a full opportunity to present relevant evidence and testimony. One can only wonder why such a limitation is being imposed when the evidentiary burden is being increased.

³ Proposed Reg. § 9.04.07(D) states no rent adjustment shall be supported solely by hearsay evidence, significantly increasing the burden of proof for landlords, while allowing tenants to present entire claims solely on hearsay testimony.

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Regulations Impose Evidentiary Burdens that May Be Insurmountable for Most Landlords

The Proposed Regulations state that “evidence of rents collected in comparable buildings located in the same neighborhood” may tend to show that “rents were unusually low for the quality, location, age, amenities and condition of the housing.” [Proposed Reg. § 9.02.03(C)]. The Proposed Regulations also indicate that the “Hearing Officer may also evaluate reasonableness by considering whether such expenses are in keeping with expenses for buildings of similar configuration and age.” [Proposed Reg. § 9.06.02]. What the Proposed Regulations do not address, however, is how any landlord is to gather and present such evidence.

There is no subpoena power within the Ordinance and there is no mechanism for compelling competing landlords to provide their financial data. Even if a neighboring landlord were willing to voluntarily provide its financial information, the burden would be significant since contemporaneous ledgers apparently cannot be considered. Further, owners of other buildings are generally prohibited from attending hearings. [Existing Reg. § 2.01.01(b)].

Regulations Do Not Adequately Address Tenant Notice Requirements

Proposed Regulation 9.02.04(A)(4) states, in pertinent part that a:

[P]etition will not be accepted for filing . . . where the petition is not accompanied by . . .

(b) [A] **copy of the City notice from the landlord consistent with Section 17.23.270 to each tenant that the landlord is filing a fair return petition . . . and**

(d) [A] declaration that he/she has served written notification on all the tenants.”

Section 17.23.20, requires landlords to provide tenants notice of their right to utilize the rental dispute mediation and arbitration hearing process; the time limits within which to file a petition and the current address and telephone number of the City’s program offices, none of which, except maybe the address and phone number, is relevant to a landlord’ FR Petition.

Further, Section 17.23.270 only applies whenever a landlord notifies a tenant or tenants of a proposed rent increase which exceeds eight percent [sic] of the then current rent of such tenant. Even reading this as exceeding five percent, the Interim Ordinance mandates that “a landlord must invoke the hearing process referred to in 17.23.230 in order to seek any increase in excess of the five percent increase allowed without review pursuant to Section 17.23.800. [Interim Ordinance § 17.23.800(C)]. Since the Interim Ordinance requires a landlord to invoke the hearing process before issuing a notice of rent increase, the provisions of 17.23.270 do not

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provide any guidance as to how or when a tenant is being notified. Any proposed regulation should clarify this issue, not create more confusion, which is the case with the currently proposed regulations.

Proposed Reg. 9.06.02: "Reasonableness" Generally

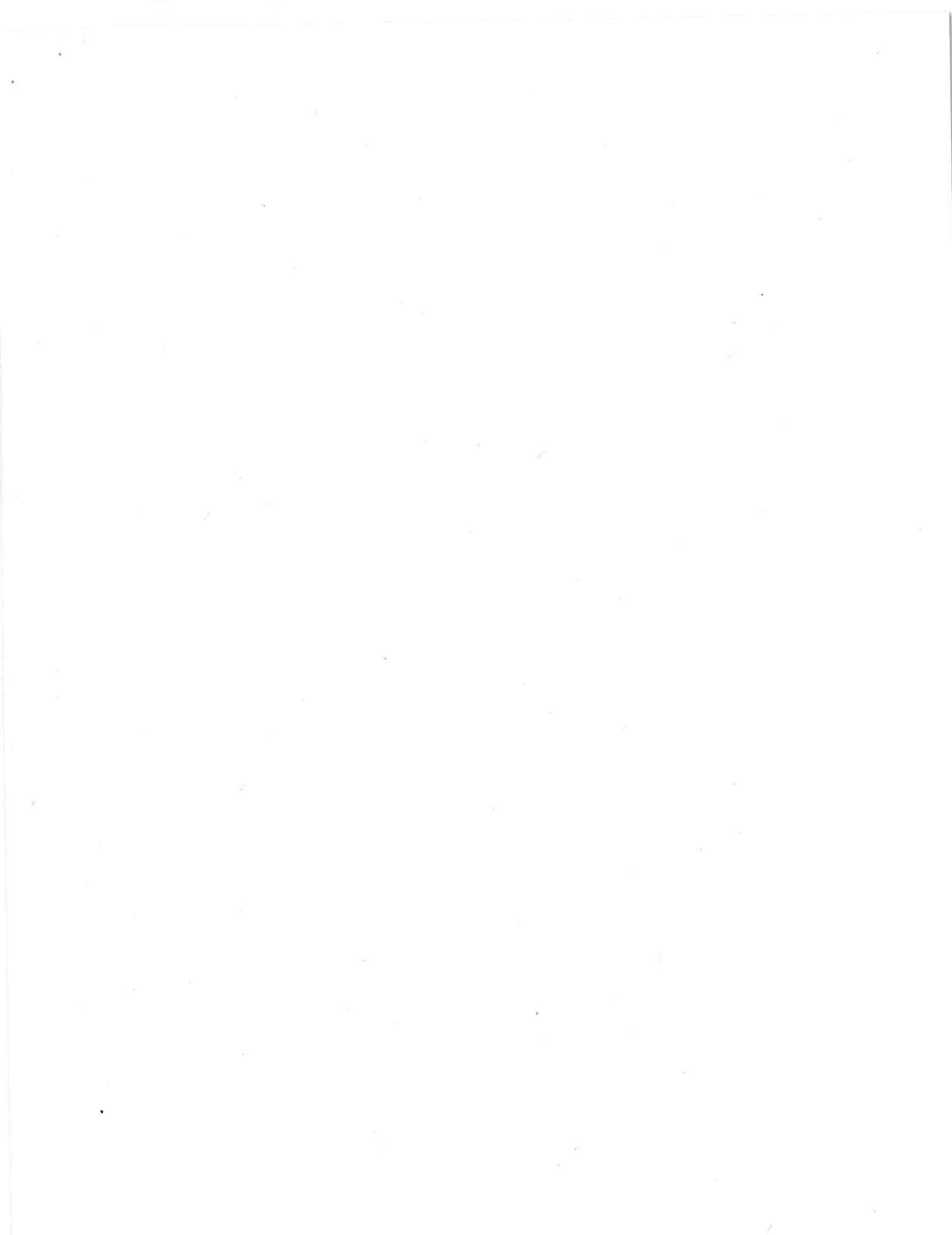
Subsection B provides that "deferred maintenance" will generally not be reasonable (Proposed Reg. 9.06.03(B)), but deferred maintenance is not defined and it is unclear how the City is distinguishing between deferred maintenance and capital improvements.

Subsection E arbitrarily determines that financing expenses of 3.5% or less may be reasonable, but any financing expenses in excess of 3.5% "must be reasonable under the circumstances and must be documented to the satisfaction of the hearing officer." [Proposed Reg. 9.06.03(F)]. There is no factual justification for the 3.5% as the amount of interest may vary depending on the size of the property, the financial wherewithal of the owner and what is being financed. In addition, the Proposed Regulation begs the question what must be documented, the circumstances or the amount of the interest rate? What are the standards of reasonableness to be applied? The regulations put forth an alleged "standard" without any clear guidance to those governed by the Ordinance except the hope that a "reasonable" hearing officer be assigned to the case.

Subsection G also arbitrarily determines that payments to affiliated entities will generally not be reasonable; however, there is no factual basis for such a regulatory determination. If the work is being done by an affiliate at competitive pricing to a third party vendor, why should such expenses not be considered? If an owner of a rental property also owns a roofing company, the expense of the roof, if competitively priced, would be a bona fide expenditure that should be considered when calculating "reasonable" expenses.

Presentation and Use of Newly Required "Staff Report" is Highly Suspect

The Housing Department has imposed an additional level of review and analysis of a landlord's FRP by mandating in the regulation that "[a] staff report shall accompany the NOI petition when it is submitted to the hearing officer and be available for the review by the parties." [Proposed Reg. 9.02.04(F)]. The regulation does not state when it will be available to the parties and whether landlords will have the opportunity to address the reports contents. Further, it appears that City staff will now be participating in the proceedings as the regulations require "a brief presentation of the results of any Program investigations or staff reports in relation to the petition, if any." [Proposed Reg. § 9.04.03(C)]. We are unclear as to what the "if any" refers since staff reports would be mandated by the Proposed Regulations, but, more importantly, presentation by City staff at the hearing is highly likely to bias the purportedly neutral hearing officer, who is selected and assigned by City staff.



From: Anna Salas

Sent: Tuesday, August 30, 2016 10:45AM

To: The Office of Mayor Sam Liccardo; District1; District2, District3: District4; District5; Oliverio, Pierluigi; District7; Herrera, Rose; District9; District 10; City Clerk; Grabowski, Ann; Morales-Ferrand, Jacky; Greene, Shasta; Lujano, Jose; Parra-Garcia, Sabrina; Castro, Huascar; Shih, Stacie

CC: Diana Castillo; Kyra Kazantzis

Subject: Item 4.3-Approval of the Regulations Implementing the Interim Amendment to the Apartment Rent Ordinance (August 30, 2016, City Council Meeting)

Dear Mayor and City Councilmembers,

I am writing to urge you not to approve the regulations implementing the interim amendment to the Apartment Rent Ordinance. The added proposed Regulations would incur increase time and cost to the small business owner. Undo City Regulations are burdensome and time consuming to all of us small property owners.

As for myself, I want to concentrate on finding buyers and sellers and not be over burden with more time consuming regulations. Some of my clients are already stating that they might want to concentrate their property search in other jurisdictions with less regulations were a small business owner can invest with more confidence and less hurdles. Additional regulations are costly and time consuming and drive potential clients away.

Therefore, please do not approve the Regulations Implementing the Interim Amendment to the Apartment Rent Ordinance Item 4.3 on today's agenda (August 30, 2016).

Sincerely,

Anna Salas, Realtor

John L Worthing
Worthing Capital
845 Oak Grove Ave. Suite 105—Menlo Park, CA 94025—(650) 327-6677

September 10, 2016

Jacky Morales-Ferrand, Director
Housing Department
200 East Santa Clara Street, 12th floor
San Jose, CA 95113-1905

Dear Ms. Morales-Ferrand:

Attached please find the memo to follow up on my comments on Thursday night at the Housing and Development Committee meeting.

I'd like you to know that I have been in apartment ownership and operations business since 1978. I have followed the rules of rent control and have never had a rent control arbitration until this year, once the interim ordinance took effect.

I'd like you to know that I have done several major rehabilitations of property in San Jose. Here are five examples.

1. **2020 Southwest Expressway:** I was the General Partner on this property which we purchased in 1994. Over \$2,000,000 was invested in capital improvements to transform "**Casa del Rey**" into **Cherry Creek Apartments**. At the time of purchase, there was a drive-in window for drug deals, leaky roofs, as well as a swimming pool that looked like a swamp. We installed new roofs, new front doors, new patio surrounds, all new double pane windows, new low flush toilets, all new landscaping, new pool and pavement. Today this is a beautiful property.
2. **480 South Fourth Street:** 16 of the units in this property were closed by the city due to rot in the main beams. This building was literally falling apart. We spent \$800,000 rehabbing this property creating a valuable asset near SJSU.
3. **4860 Northlawn:** We spent \$200,000 on this 12 unit property fixing the drainage, replacing 90% of the hardscape eliminating trip hazards that existed. New double pane windows, paint, all new lighting, landscaping including artificial turf have made this a beautiful property. The comparison to the sister property across is startling.
4. **1895 The Alameda:** Just completed rehab includes all new hardscape that eliminated deficient front stoops and provided sidewalk to the street. Two new staircases were installed to replace stairs that were completely rotten. New turf, new windows, all new walkways and new paint have made this landmark location on Alameda look beautiful. We spent \$180,000 in improvements on this 15 unit building.
5. **2091-3001 Magliocco Drive:** We have installed all new double pane windows, but have terminated a \$200,000 rehab due to the interim rent control ordinance. Those potential jobs for many locals are now lost.

I believe the city of San Jose is being very reactionary and unreasonable in its pursuit of protecting a handful of tenants that received large increases. By addressing pass through of debt service loopholes and limiting rent increases to a maximum, the council has insured that massive increases are a thing of the past.

One factor that must always be remembered is interest rates. We have been in a low interest rate market cycle for over a decade. Interest rate increases will put great pressure on landlords and with only 5% increases allowed, the city will see again what happened in the early 90s, namely deterioration of the housing stock.

Casa del Rey which I referred to above was a perfect example of the damage interest rate increases can be on the operations of a building. The former owner was squeezed by interest rate increases and was forced to cut services and compromise on the quality of management practices, thus leading to a quick deterioration. It is an ugly cycle. Owners get massive debt service increases and can't pass them on to tenants. What does one do? You cut capital spending in a hope to hold on. 5% will compound the problem.

In conclusion, I fear the limit of 5%. That 5% limit will certainly curtail capital spending and in the event of increased interest rates endanger capital improvements for a long time. A cutback in capital spending will put the quality of the housing stock at risk while cutting back on hundreds of local small businesses that earn a living working on apartment capital improvements.

The "Fair return" concept is capricious and arbitrary and lends itself to "Me against them" negotiations. It is a confusing smoke screen that looks fair on the surface, sort of a feel good bureaucratic olive branch that in reality is bureaucratic nightmare designed to prevent rent arbitration. Owners are just going to say "Forget it, I won't do any improvements."

I strongly encourage the City to review the importance of Capital improvements and make sure you don't endanger capital improvements in the rent control discussion. Keep the maximum increase at 8% and shelve the complicated formulas.

Sincerely,

John L. Worthing

ATTACHMENT B

AMENDMENT TO THE RENTAL DISPUTE

MEDIATION AND ARBITRATION PROGRAM REGULATIONS

Chapter 9 Fair Return Petition Procedures

9.01 General Provisions

9.01.01 Intent

This Chapter is intended to provide procedures for the fair return hearing process provided for in Section 17.23.820 of the Municipal Code of the City of San José and to supplement the provisions in the existing regulations implementing Chapter 17.23 of the Municipal Code. Where procedures differ from the provisions in the existing regulations, these procedures are intended to apply to fair return petitions. These regulations are intended to be harmonized with existing provisions for tenant petitions and service reductions when those petitions are considered in connection with a fair return petition.

9.01.02 Conflicting Provisions

Ordinance No. 29730 adopting Section 17.23.800 through Section 17.23.8520 shall control over conflicting provisions in this Chapter.

9.01.03 Notice

It is presumed that a ~~landlord~~petitioner's petition contains the correct address for notice, and that notices mailed to that address are received three (3) days after mailing.

9.02 Petitions and Notice

9.02.01 Petition Filing Requirement.

After September 1, 2016 a landlord seeking a rent adjustment must file a fair return petition with the Rental Rights and Referrals Program (Program) on a City petition form with all required supporting documentation and obtain a determination of completeness under this Chapter.

9.02.02 Petition and Forms.

Petition and forms shall be as prescribed by the Director with the approval of the City Attorney as to form. All forms shall specify, and all written statements shall be made, under penalty of perjury.

9.02.03 Notice of Petition and Proposed Increase

The landlord must serve on all tenants a City approved notice of the proposed petition filing, requested increase, proposed effective date of increase and tenant's rights to file, prior to filing the petition.

9.02.04 Opposition Statements.

A tenant may submit a statement in opposition to the claim(s) made by the petition on a City approved form ("Opposition Statement"). The Opposition Statement should be filed with the Program within 10 days of the date of the City Complete Notice. The Opposition Statement must be accompanied by a proxy form and should include any supporting documentation intended to be presented at the hearing.

9.02.0305 Supporting Evidence.

A. The ~~owner~~landlord must submit with the petition complete at least three (3) sets of copies of all evidence the ~~owner~~landlord is relying on to support his or her claim, marked accordingly. Receipts, cancelled checks, and detailed invoices are the best documentation.

B. Tax returns and ledgers may be submitted as part of the supporting evidence, however, Tax returns are not accepted as sufficient evidence for Current Year claims, or for any year less than three years prior to the Current Year. Copies of contemporaneously prepared ledgers are not accepted as sufficient evidence for the Current Year.

C. Evidence that may tend to show that rents were unusually low for the quality, location, age, amenities and condition of the housing includes evidence of rents collected in comparable buildings located in the same neighborhood.

D. Evidence that may tend to show destruction or vandalism of the building or units includes contemporaneous insurance claims.

9.02.0406. Acceptance for Filing; Completeness.

A. A petition will not be accepted for filing for under any of the following circumstances:

1. Where the petition is not made on the City petition form or not correctly completed.
2. Where the petition is not accompanied by three copies of all required supporting documentation.

3. A petition seeking a rent increase was filed for the property within the previous twelve months, ~~including petitions that were subsequently withdrawn and the subject of a decision, voluntary agreement or withdrawal determination under Section 9.03.03.~~

4. Where the petition is not accompanied by (a) list of all tenants and their addresses, (b) ~~a copy of the City notice from the landlord consistent with Section 17.23.270 to each tenant that the landlord is filing a fair return petition~~ (c) a copy of the completed proxy form and (d) a declaration that he/she has served the written ~~notification~~ notice pursuant to Section 9.02.03 on all the tenants prior to filing.

B. Within ten (10) working days after the date of receipt of a petition, or an amended petition, Program staff shall determine whether said petition is complete or whether corrections or additional information is needed. If the petition is complete and there are no corrections or missing documents or information, Program staff shall mail a notice of determination of completeness (“City Complete Notice”) to the ~~petitioner~~ landlord with a copy to the tenants including information regarding tenant petition rights. A delay in the response by Program staff shall not be deemed a determination of completeness.

C. If the petition is determined not to be complete, the Program staff shall mail a notice to the ~~petitioner~~ landlord listing the additional information or documentation required to complete the petition. ~~Petitioner~~ Landlord may amend the petition to include the required information or documentation. With respect to 2014 Base Year information or documentation, ~~petitioner~~ landlord may amend the petition by submitting a written statement identifying the required information or documentation that is unavailable, and state how it became unavailable, under penalty of perjury. Such a submittal does not relieve the ~~petitioner~~ landlord of the burden of proof.

D. If the petition is determined not to be completed correctly, the Program staff shall notify ~~petitioner~~ landlord in writing of the corrections required to complete the petition. ~~Petitioner~~ Landlord shall amend the petition to make the corrections. If ~~Petitioner~~ landlord disagrees with the corrections, the ~~Petitioner~~ landlord may also submit a letter objecting to the corrections.

E. If the ~~Petitioner~~ landlord fails to amend or supplement the petition as required by Paragraph C or D within thirty (30) days of the date the notice sent under Paragraph C or D was mailed, the petition shall be deemed to be withdrawn.

F. A staff report shall accompany the NOI petition when it is submitted to the hearing officer, or as soon thereafter as is possible and be available for review by the parties prior to the hearing. The report shall include a list of all petitions filed in the last 12

months, the rate of inflation for the applicable petition period, a list of all unresolved City code violation complaints, and a summary of the petition and evidence submitted.

G. In the event that the petition is complete except for missing Base Year NOI evidence, ~~the~~ ~~owner~~ ~~landlord~~ may submit a City prescribed form requesting the Program to accept the petition without the complete Base Year NOI evidence. The form will require an affidavit under penalty of perjury indicating that the ~~owner~~ ~~landlord~~ does not have and cannot obtain this evidence, and a description of how this evidence and may require a filing fee to cover the cost for Program staff to investigate and prepare a report for the Hearing Officer. **A modified City Complete Notice will be sent in this event. The** scheduling of the hearing will occur after the Program staff report is complete.

H. Once the hearing is scheduled, all tenants and the landlord shall be mailed notice of the hearing date and time, and information regarding the availability of the petition, any tenant submitted opposition statements or petitions, supporting documentation, and staff report at City Hall for review.

9.03 Scheduling and Appearance: [Withdrawal](#)

9.03.01 Program staff shall assign an (Arbitration) Hearing Officer to hear the completed fair return petition and the administrative hearing on the petition shall be scheduled within thirty (30) days of the mailing of the notice of determination of completeness. In the event the Hearing Officer elects to hold a pre-hearing conference, the pre-hearing conference shall be scheduled within 30 days and the hearing thereafter. Notice of the hearing date shall be sent to the ~~Petitioner~~ ~~landlord~~ and affected tenants. The notice of the hearing date shall be deposited in the U.S. Mail at least two weeks prior to the hearing date.

9.03.02 Requests for rescheduling of the hearing will be considered if they are for reasons beyond the control of the requester and are received by program staff at least seven (7) days before the hearing date. Additionally, requests for rescheduling based on a party's medical emergency or similar significant conflicts may be allowed by Program staff if they were clearly unforeseen upon documentation of the unforeseen event and the immediate notification of Program staff.

9.03.03 Failure to appear by ~~petitioner~~ ~~landlord~~ or a proxy designated in writing to act for ~~petitioner~~ ~~landlord~~ shall result in a determination that the petition has been withdrawn.

9.03.04 If tenant petitions also have been filed for service reduction, housing code violations or other violations of the Ordinance, the hearing on NOI petition shall not occur until the mediation hearing for the tenant petitions is completed and period for

appeal has ended. If there is an appeal, the appeal shall be heard by the hearing officer assigned for the NOI hearing. The tenant petition hearing on appeal and NOI petition hearings shall be combined unless it is determined to be infeasible by Program staff.

9.03.05 Petition withdrawals must be made in writing and the reason for withdrawal provided; withdrawal of a landlord petition will not prevent the hearing of tenant petitions for the property. City staff will notify tenants of the withdrawal of a petition. A petition for a property that was the subject of a withdrawn petition shall be heard by the previously assigned hearing officer, unless Program staff determines that is not feasible.

9.04 Conduct of Hearing.

9.04.01 Hearing Officer.

The Hearing Officer shall control the conduct of the hearing and rule on procedural requests. The hearing shall be conducted in the manner deemed by the Hearing Officer to be most suitable to secure that information and documentation which is necessary to render an informed decision, and to result in a fair decision without unnecessary delay.

9.04.02 Ex Parte Communications.

There shall be no oral communication outside the hearing between the Hearing Officer and any party or witness, except at a prehearing conference, if any, to clarify and resolve issues. All discussion during the hearing shall be recorded ~~on~~ audiotape. All written communication from the Hearing Officer to a party after the hearing has commenced shall be provided to all parties.

9.04.03 Order of Proceedings.

A hearing on a fair return petition shall ordinarily proceed in the following manner, unless the Hearing Officer determines that some other order of proceedings would better facilitate the hearing:

- A. A brief presentation by or on behalf of landlord, if landlord desires to expand upon the information contained in or appended to the petition for rent adjustment, including presentations of any other affected parties and witnesses in support of the petition;
- B. A brief presentation by or on behalf of opponents to the petition, including presentations of any other affected parties and witnesses in opposition to the petition;

- C. A brief presentation of the results of any Program investigations or staff reports in relation to the petition, if ~~any~~ requested by Hearing Officer;
- D. Rebuttal by landlord.

9.04.04 Speakers' Presentations.

The presentation of each person speaking during a hearing shall be concise and to the point; visual and other presentation aids may be used as deemed appropriate by the Hearing Officer, provided that the presenter furnishes such materials in advance for inclusion in the hearing record. Notwithstanding Regulation section 3.04.02, the Hearing Officer shall establish equitable time limits for presentations at a hearing, [subject to adjustments for translation and reasonable accommodation](#).

9.04.05 Right of Assistance.

All parties to a hearing shall have the right to seek assistance in developing their positions, preparing their statements, and presenting evidence from an attorney, tenant organization representative, landlord association representative, translator, or any other person designated by said parties to a hearing.

9.04.06 Hearing Record.

The Hearing Officer shall maintain an official hearing record, which shall constitute the exclusive record for decision. The hearing record shall include:

- A. A copy of the petition and documents submitted to support the petition;
- B. Any written responses to the petition received from ~~one or more affected parties~~ tenants;
- C. All exhibits, papers, and documents offered either before or during the hearing;
- D. A list of participants present at the hearing;
- E. A summary of all testimony upon which the decision is based;
- F. A statement of all materials officially noticed;
- G. All findings of fact and conclusions of law;
- H. Any tentative decisions provided to the parties for comment and any comments received;
- I. All recommended or final decisions, orders, or rulings; and
- J. Hearing [audiotape\(s\)](#) recording.

9.04.07 Proof.

The landlord has the burden of proof to establish that a rent adjustment is required in order to provide the landlord with a fair return. The determinations regarding the quantum of proof required to meet the burden shall be made with respect to the following guidelines:

- A. The burden of proof shall be satisfied by persuading the Hearing Officer that the fact sought to be proven is more probable than some other fact.
- B. The burden of proof shall be met by using evidence only which has a tendency in reason to prove or disprove a disputed fact of consequence.
- C. Evidence shall be received with the petition for expenses alleged in the petition and made available for review by the parties prior to the first hearing unless the evidence is ordered to be submitted by the Hearing Officer.
- D. Moreover, no rent adjustment shall be granted unless supported by the preponderance of the relevant and credible evidence noted in the hearing record and no rent adjustment shall be supported solely by hearsay evidence.

9.04.08 Re-Opening of Hearing Record.

The Hearing Officer may re-open the hearing record when she or he believes that further evidence should be considered to resolve a material issue, where the hearing record has been closed and where a final decision has not yet been issued by the Hearing Officer. In those circumstances, the parties may waive further hearing by agreeing in writing to allow additional exhibits into evidence.

9.05 Decision.

9.05.01 Within thirty (30) days after the close of the hearing, the Hearing Officer shall issue a final decision, approving, partially approving, or disapproving the rent adjustment requested by the fair return petition. Prior to the issuance of the final decision, the Hearing Officer may, at his or her discretion, prepare a tentative decision and request the Program staff to comment regarding clerical or mathematical errors and to circulate a tentative decision to the ~~owner~~landlord and affected parties for comment regarding clerical or mathematical errors. Any such comments shall be provided to the Hearing Officer and parties in writing by the commenter.

9.05.02 The decision shall include findings of fact and conclusions of law which support the decision, and shall specify the following:

- A. The amount of the rent increase, if any, for each unit.
- B. In the case of a downward adjustment in the rent, an itemization of each reduction in service on which the reduction is based, and the amount of reduction attributable to that housing service. An itemization of housing code violation shall be listed separately and the amount of reduction attributable to that violation. This provision is not intended to prohibit service reductions allowed under the Ordinance and regulations that cannot be readily itemized in this manner.
- C. Any conditions which are placed on the award;
- D. The date on which any adjustment to the rent is effective for each unit.
- E. At the option of the Hearing Officer, any determinations for service reductions or other tenant petitions appealed to the Hearing Officer.
- F. The cover page of the decision will provide that the date the decision is issued is the date of mailing.

9.05.03 Voluntary Agreements. The Hearing Officer may recess the hearing to allow for the negotiation of a Voluntary Agreement. Voluntary Agreement negotiations are not recorded. Voluntary Agreements shall be executed on an approved City form and be consistent with Chapter 1-8 of the regulations, however, the Voluntary Agreement shall not set the base year net operating income and/or its component elements, or the fair return.

9.06 Guidance for Substantive Determinations

9.06.01 In calculating net operating income expenses for capital expenditures and replacement of facilities, materials or major equipment necessary to maintain the same level of services as previously provided may be allowed except insofar as such expenses are compensated by insurance proceeds or other sources. Such expenses shall be limited to those actually incurred in the base year or in the current year. The amount expended shall be amortized according to the schedule, below provided that the Hearing Officer may use 7 years for unlisted items, or such other period as is determined to be reasonable and consistent with the purposes of the Ordinance.

IMPROVEMENT AMORTIZATION PERIOD IN YEARS

Air Conditioner 10
Major Appliances (other than those listed) 7
Cabinets 10
Dishwasher 7
Doors 10
Dryer 7
Electric Wiring 15
Elevator 20
Fencing 10
Fire Alarm System 10
Fire Escape 10
Flooring 7
Garbage Disposal 7
Gates 10
Gutters 10
Heating 10
Insulation 10
Locks 7
Paving 10
Drywall 10
Plumbing 10
Pumps 10
Refrigerator 10
Roofing 10
Security System 10
Stove 10
Stucco 10
Washing Machine 7
Water Heater 7

9.06.02 Expenses for maintenance and repair are reasonable and normal where they are consistent within 10% from year to year. The Hearing Officer may also evaluate reasonableness by considering whether such expenses are in keeping with expenses for buildings of similar configuration and age.

9.06.03 Reasonableness Generally

A. Expenses must be reasonable.

B. Expenses arising from **intentionally** deferred maintenance **or repairs** will generally not be reasonable.

C. Expenses must be out of pocket and not reimbursed by any source in order to be reasonable.

D. ~~Expenses that vary more than 10% different from prior years must be accompanied by a written justification and other documentation acceptable to the Hearing Officer for the variation in order to be reasonable.~~ If the Hearing Officer determines that the variation **or timing of expenses is not reasonable, then such expenses is not consistent with the purposes of the Ordinance, these expenses** may be reallocated or amortized as the Hearing Officer determines to be consistent with the Ordinance.

E. Financing expenses for capital expenditures and replacement of facilities, materials or major equipment will be reasonable if they are for a period not exceeding the amortization period and the annual interest rate does not exceed 3.5%. Any financing with an interest rate in excess of 3.5% must be reasonable under the circumstances and must be documented to the satisfaction of the Hearing Officer.

F. Expenses should **be documented** by **original** contemporaneous and complete invoices **or other similar documents that identify the provider, cost, address of work, dates, and the nature of the work performed from licensed businesses** and **be provided** along with cancelled checks **or other as** proof of payment thereof. **Original documents are the best evidence.** ~~It is anticipated that such documents will identify the provider, cost, address of work, dates and the nature of the work performed.~~

G. Expense claims based on cash payments **and/or** payments to affiliated entities **must be documented to the satisfaction of the Hearing Officer.** ~~will generally not be reasonable.~~

9.07 Definitions

9.07.01 All undefined capitalized terms shall be defined as provided in the Interim Ordinance and if not defined therein, in the fair return petition form.

9.07.02 "Beyond the Control of the Owner" shall mean not precipitated by voluntary actions, such as ~~owner/landlord~~'s issuance of notices to vacate without cause, but not including voluntary vacancies or vacancies after an unlawful detainer proceeding.

9.07.03 "Capital Expenses" shall mean expenses for capital expenditures and replacement of facilities, materials or major equipment necessary to maintain the same level of services as previously provided.

9.07.04 “Capital Improvements” are building, unit or property additions or modifications that improve the housing services to tenants from the level of services as previously provided.

9.07.05 “Current Year” shall mean the 12 month period ending the month prior to the submittal of a fair return petition. Alternatively, the ~~petitioner~~landlord may request to use an alternative current year that ended no more than 3 months prior to the submittal of the petition, but in that event the CPI for the Current Year shall be adjusted backwards accordingly.

9.07.06 “Director” shall mean the City of San Jose’s Director of Housing.

9.07.07 “Mail” shall mean to deposit in the U.S. Mail, including but not limited to, deposit in a U.S. mail postal box. Program staff may also “mail” documents and notices by utilizing certified or registered mail or with commercial package or courier services, in which case an item is mailed when it is deposited with or in the drop box of the service.

9.07.08 “Rental Rights and Referrals Program staff” or “Program Staff” shall mean the employees of the City of San José who implement Municipal Code Chapter 17.23 and its regulations.