



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

**SUBJECT: ACTIONS RELATED TO THE
APARTMENT RENT ORDINANCE
AND REGULATIONS**

DATE: November 3, 2017

Approved

Date

11/3/17

RECOMMENDATION

- (a) Approve an ordinance amending Parts 1 through 9 of Chapter 17.23 of Title 17 of the San José Municipal Code to make changes including revising the petition and hearing process, providing for the registration of rent stabilized units, exempting units with affordable housing vouchers from annual rent increase limitations, authorizing tenant buyout agreements, and including one of the following options:
- (1) Retain the limit on annual rent increases as 5% with no banking, and implement a capital improvement pass through petition process for specified improvements including sustainability, safety and seismic upgrades and major system upgrades that improve housing services.

Or

 - (2) Modify the annual increase to 100% of the San Francisco-Oakland-San José Consumer Price Index for All Urban Consumers (CPI-U), with a 2% floor and an 8% ceiling for annual increases, allow maximum allowable rate form of banking with a limit of 5% in any one year implement a capital improvement pass through petition process for specified improvements including sustainability, safety and seismic upgrades, major system upgrades that improve housing services and major maintenance replacements for a five-year period, and allow the pass through of 50% of program administrative fees.
- (b) Adopt a resolution approving the Regulations implementing Parts 1 through 9 of Chapter 17.23 of the San José Municipal Code.
- (c) Accept the staff report and its recommendation not to include a one-year lease requirement or duplexes in this amendment to Chapter 17.23 of Title 17 of the San José Municipal Code.

OUTCOME

If Council approves one of the two recommended options, San José’s rent-stabilization program will be modified and the Apartment Rent Ordinance (ARO) will be amended. These modifications include: limits on rent increases, a process to obtain certain capital improvement pass throughs, and a rent registry requirement. Additionally, if the CPI option is selected, “banking” of unused allowable rent increases will be allowed.

EXECUTIVE SUMMARY

Staff has developed two options for consideration by the City Council:

- The 5% Option limits rent increases to a flat rate of 5% per year. Landlords are not allowed to carryover (or “bank”) allowed rent increases to future years.
- The CPI-U Option ties the annual general rent increase to 100% of the Consumer Price Index for All Urban Areas, San José (CPI-U)¹. Landlords are allowed to bank rent increases.

When considering the two options for the annual general increase, staff developed two “packages” that include different incentives and other expenses that landlords are allowed to pass through to their tenants (“pass throughs”). For example, the CPI-U option includes an opportunity to petition to pass through certain maintenance costs to provide landlords with an added incentive to invest in maintenance. Both options in the draft Apartment Rent Ordinance and Regulations provide an opportunity for a landlord to file a fair return petition at any time, if the annual general increase is not sufficiently providing for increased costs experienced by the landlord.

Table 1 (below) summarizes the major provisions of the draft Ordinance and the two packages of policy options:

¹ The Consumer Price Index, All Items for All Urban Consumers for the San Francisco-Oakland-San José area will be used for this purpose

Table 1: Summary of Major Draft Provisions of the ARO

	5% OPTION	CPI-U OPTION
Annual General Increase	✓ 5% fixed general rent increase every 12 months with no banking	✓ 100% Consumer Price Index (CPI-U) = 3.8% (April 2017) <i>(floor 2% - ceiling 8%)</i>
Banking	☒ No Banking	✓ Maximum Allowable Rent (MAR) or Standard Banking
Capital Improvement Pass Through	✓ Sustainability, safety, & seismic upgrades <i>(100% for amortization period)</i>	✓ Sustainability, safety, & seismic upgrades <i>(100% for amortization period)</i>
	✓ Major System Upgrades that improve Housing Services <i>(100% for amortization period)</i>	✓ Major System Upgrades that improve Housing Services <i>(100% for amortization period)</i>
	☒ No Major Maintenance Replacements	✓ Major Maintenance Replacements <i>(50% for amortization period)</i> <i>Sunsets after 5 years</i>
Program Fees	☒ No shared program fees	✓ 50% of shared program fees

BOTH OPTIONS INCLUDE

Limits on Pass Through Charges	✓ Limited pass throughs allowed, no Ratio Utility Billing
Petition Process	✓ Revised petition process
Joint Petition	✓ 5% Rent Increase <i>For occupants other than a tenant's spouse, dependent/foster child or parent</i>
Tenant Buyout	✓ Allowed
Rent Registry	✓ Required
Voucher Holders	✓ Included while allowing rent increases consistent with program

BACKGROUND

In July 1979, the San José City Council enacted a rent stabilization ordinance to alleviate some of the more immediate needs created by San José's housing market. The Apartment Rent Ordinance (ARO) created rights and obligations for landlords and tenants including: limits on annual rent increases; noticing requirements; and restrictions on how much and what types of costs may be passed through to tenants. It also established an administrative review process for housing-related disputes. The ARO recognized the value of residential rental apartments as a critical housing resource.

Summary of City Council Direction

In 2015, the City Council directed the Housing Department to initiate a workplan exploring changes to the ARO. Over the past two years, staff held extensive public outreach discussing the policy issues contained in the ARO. The City Council has taken several actions pertaining to this issue. A summary of direction from the City Council is provided as **Attachment A**. Key decisions include the following:

- Reduced the annual general increase from 8% to 5%.
- Approved the Interim Ordinance which eliminated pass through provisions for debt service and capital improvements and established a fair return petition.
- Considered the City Auditor’s report and voted to implement a rent registry, rather than a unit registry and eliminate the banking provision, which allowed owners to bank unutilized rent increases, from the 5% flat rate annual general increase.
- Directed staff to consider a policy option to set the annual general increase to 100% of the Consumer Price Index, develop a workplan to include duplexes in the ARO, include a requirement for a one-year written lease, and allow tenants with rental subsidy vouchers to be covered by the ARO.
- Approved the Tenant Protection Ordinance with just cause eviction protections providing protections to all tenants.
- Approved the Ellis Act Ordinance to provide procedures for an owner to withdraw rent stabilized apartments from the rental market.

Apartment Rent Ordinance (ARO) Profile in San José

The Apartment Rent Ordinance applies to 44,359 apartments built and occupied prior to September 7, 1979. This is a significant portion of the rental housing stock in San José. ARO apartments make up 49% of all market rate rental housing in San José.

Covered by the Apartment Rent Ordinance	Number
Apartments	44,359
Properties	5,396
Owners	2,980

Source: City of San José Multiple Housing Roster, July 1, 2017

Additional information on San José’s rental housing inventory is summarized below.

Attachment B provides additional statistical information related to the apartments covered by the ARO.

Housing Inventory and Characteristics

- The City’s Multiple Housing Roster includes all properties with three units or more within San José. The total number of apartments in buildings with three units or more is 99,190.

- In 2017, the majority (83%) of ARO apartment buildings were designated as Tier II and III properties in the Multiple Housing Roster tier system. Tier I buildings are in the best condition. Tier II and III properties indicate a greater amount of deferred maintenance and/or code enforcement violations.

Ownership Characteristics

- The majority (66%) of ARO apartment owners owned three- or four-unit rent stabilized buildings. The statistic only reflects owners' ARO buildings located in San José that are subject to the ARO. For example, an owner may own rental properties outside of the city or apartments in San José that were built after 1979 and are not subject to the ARO.
- Half of ARO property owners (1,501) lived outside of San José. Half of ARO property owners (1,479) lived in San José.

Tenant Demographics

- There are approximately 140,000 people living in ARO units in San José, making up nearly half of the tenants in market-rate rental housing. This calculation is based on an average size of 3.1 persons per household.
- In 2016, ARO Tenants by ethnicity include 49% Hispanic or Latino, 34% Asian American, 20% White, and 5% African American.
- ARO Tenants by education attainment include 9% graduate degree, 16% Bachelor's Degree, 26% Associate Degree and some college, and 49% High School Diploma or less than High School Diploma.

ANALYSIS

In developing the draft recommendations for the ARO, staff considered the following sources of information: stakeholder input from tenants and landlords of varying size properties, public input, studies, research from other California cities with local rent stabilization ordinances, and City Council direction. This memorandum provides a discussion of each major provision in the ARO including City Council direction, research, public comments and recommendation as related to each provision.

I. Public Input

Staff conducted outreach over the past five months and found that apartment owners and tenants have different concerns about the policies presented in the draft ARO and Regulations. The Housing Department received 443 written comments, held seven public meetings and 15 stakeholder meetings regarding the draft ARO and Regulations. The draft ARO and Regulations were posted for public review from August 14, 2017 to September 22, 2017. A red-line version showing material changes to the public review draft of the ARO is included as **Attachment C**. A summary of the meetings held to discuss the draft ARO and Regulations is included as **Attachment D**. All written comments and a summary of the comments made during the public meetings can be viewed on the Housing Department website at the following link:

<http://www.sanjoseca.gov/index.aspx?NID=4744>

In reviewing the comments from owners and tenants, it is evident that there continues to be a lack of consensus regarding the principal goals of the ARO. However, one common theme expressed by both groups is to keep the Ordinance as simple and easy to understand as possible. The other common theme was the need for fairness. However, the concept of fairness has different outcomes for both groups. For this reason, the Housing Department has attempted to adhere to the original purpose of the ARO which is to promote stability and fairness within the residential rental market in the City. The ARO was enacted to alleviate some of the more immediate needs created by San José's tight housing market: including but not limited to the prevention of excessive and unreasonable rent increases, the alleviation of undue hardship upon individual tenants, and the opportunity for landlords to earn a fair return.

II. Summary of Major Provisions

After consideration of the comments gathered through the public comment process, staff prepared a summary of material changes that will be included in the draft ARO and Regulations. The following policy topics are included in this section:

- Annual General Increase (Section 17.23.310)
- Banking (Regulations Chapter 13)
- Capital Improvement Pass Through (Section 17.23.330)
- Limits on Pass Through Charges (Section 17.23.315)
- Petition Process (Section 17.23.350)
- Joint Petition (Section 17.23.350.c)
- Tenant Buyout (Section 17.23.300)
- Rent Registry (Section 17.23.900)
- Program Fees (Section 17.23.320.D)
- Voucher Holders (Section 17.23.169 and Section 17.23.310.D)

Annual General Increase (Section 17.23.310)

A. Council Direction & Options - Annual General Increase

On April 19, 2016, the City Council took action to direct staff to return with an ordinance to set general rent increase to 5%, including a banking provision. On January 31, 2017, the City Council amended the direction to set the annual general increase to 5% removing the banking provision, consistent with the City Auditor's report. Subsequently, on April 18, 2017, the Housing Department received direction to prepare a policy option for City Council consideration to set the annual general rent increase for rent stabilized units to the Consumer Price Index and allowing banking consistent with the staff recommendation made on April 19, 2016.

Based on this prior City Council Direction, staff has developed two options for Council consideration. Both options are included in the draft ARO and regulations. The 5% Option limits rent increases to a flat rate of 5% per year, with no banking. The CPI-U Option ties the annual

general rent increase to 100% of the Consumer Price Index for All Urban Areas, San José². Each option includes a package of incentives and other allowable pass throughs. The Annual General Increase is proposed to be limited to one of the following two options:

5% OPTION	CPI-U OPTION
✓ 5% fixed general rent increase every 12 months with no banking	✓ 100% Consumer Price Index (CPI-U) = 3.8% (April 2017) (<i>floor 2% - ceiling 8%</i>)
	✓ Every 12 months with banking
<ul style="list-style-type: none">• The 5% option will allow the Annual General Increase to continue to be set at a flat rate of 5% increase per year. The current ordinance includes the flat 5% rate and allows landlords to increase the rent no more than 5% in any 12-month period.• CPI-U will allow the Annual General Increase to be multiplied by 100% of the increase in the Consumer Price Index. The CPI-U is a well-established method to increase rents, providing landlords the ability to run their business and preventing excessive rent increases for tenants. The CPI-U for the current year will be calculated based on the annual average of the current year reported by the Bureau of Labor Statistics for the CPI-U. The CPI-U rate will be measured from the April of the calendar year preceding the year in which the increase is effective and must be within the range of 2% and 8%. Either standard banking or banking via maximum general rent is included.	

B. Research - Annual General Increase

In the case of both options, the allowed increases would be in addition to the uncontrolled rent increases that are permitted under state law when an apartment is voluntarily vacated, or a landlord evicts the tenant for cause. In considering the options for the annual general increase, the Economic Roundtable Study, City Auditor’s Report and a San Francisco Bay Area Planning and Urban Research Association (SPUR) report were reviewed. A summary of these reports can be found in **Attachment E**. Additionally, a chart showing the current (3.8%) and historic rates for the San Francisco-Oakland-San José Consumer Price Index for all Urban Consumers can be found in **Attachment F**.

Staff also reviewed a summary of rent increase limits in other California cities (**Attachment G**). Survey results found that there were 11 cities with annual increases tied to Consumer Price Index and three cities with annual increases tied to a fixed percentage. San José and Hayward have the highest annual general increase the State. On January 24, 2017, the City of Beverly Hills amended their annual general rent increase of 10% to a flat rate of 3%. In the cases of Berkeley and Santa Monica, these two cities utilized a comprehensive, annual operating cost study model that analyzed actual changes in yearly operating costs, including changes in utility costs, fees, and other standard cost items. Berkeley and Santa Monica found that, over a period of more than 25 years using the operating cost study model, the rate of inflation mirrors the rate of change

² The Consumer Price Index, All Items for All Urban Consumers for the San Francisco-Oakland-San José area will be used for this purpose

found in the operating cost model. As a result, these cities replaced the more complex operating cost model with an annual general increase linked to less than 100% of CPI-U.

The majority of rent-stabilization cities tie general annual rent increases to a percentage of the CPI-U. Most cities using an inflation standard set rent increases to a percentage that is significantly less than 100% of CPI-U. If landlords in these communities are not receiving a fair return under CPI-U, they may file a fair return petition to increase rents.

Table 3 shows the annual general rate and number of fair return petitions filed. It indicates that property owners are not petitioning for increases beyond the normal maximum in significant numbers in those or any of the other cities with long-term rent stabilization programs. The use of CPI-U does not appear to impose financial hardship on owners that would compel them to file petitions under the “fair return” provision of the local ordinances, even where a fraction of CPI-U is used as the basis of the general increase formulas.

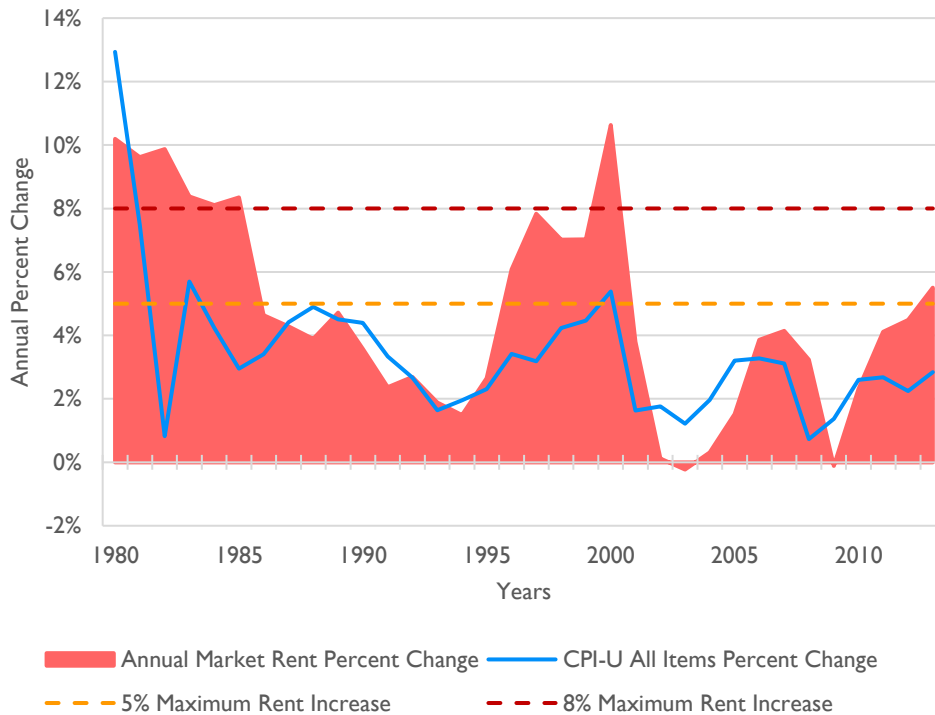
Table 3: Fair Return Petitions Filed

City	Yearly Increase	Fair Return Petitions Filed
Berkeley	65% of CPI-U	None in 13 years
Santa Monica	75% of CPI-U	None in 2 years
East Palo Alto	80% of CPI-U	One filed in the history of the program but was found to be in error. Rejected initially and not resubmitted
Los Angeles	100% of CPI-U, 3% min, 8% max	A total of 15 filed last year for 600,000 units under rent stabilization
West Hollywood	75% of CPI-U	None in last 2 years
San Francisco	60% of CPI-U, 7% max	A total of 73 petitions filed last year on 175,000 units under rent stabilization

Source: Management Partners survey August 2017

After consideration of the research on this issue, staff has come to the following conclusions. The CPI-U tends to increase and decrease along with fluctuations in the rental housing market. Implementing the 5% option would only provide a stabilizing effect to renters in strong rental markets. Conversely, the CPI-U Option would provide stabilization during periods of rapidly increasing rents and during periods when rents are increasing at a lower level. Given that tenant incomes are not increasing at the same rate of market rents, this provides additional protection and stability. Table 2 provides a visual demonstration of the stabilizing effects of a flat annual general increase versus CPI-U.

Table 2: Graph of CPI-U All-Items for San José and Maximum Rent Increases of 5% and 8% Versus Annual Rental Market Percent Change (Based on CPI Rental Index)



C. Summary of Landlord and Tenant’s Position – Annual General Increase

Staff prepared a brief summary of feedback public comments from landlords and tenants.

Landlord’s Position	Tenant’s Position
✓ 5% option	✓ CPI-U Option
<ul style="list-style-type: none"> • The range on the CPI-U model must reflect the original City Council direction. • The CPI-U model is more complex. The 5% flat rate is easier to understand and implement. • It is too early to make any changes. Implement the 5% and give it time to better understand the impact before it is changed again. • CPI-U does not represent the increase of housing expenses. Increased maintenance costs include: water bill, garage bill, business tax, repair and material and 	<ul style="list-style-type: none"> • No annual rent increases higher than the cost of living increase. Most cities have a percentage of CPI-U. • Incomes are not increasing at the 5% rate so the flat rate of 5% is destabilizing. • A flat increase would be easier to budget for than banking. • Rent spikes should be minimized by eliminating banking and capital improvement pass throughs. • Rents may be increased by 5% without any investment into the rental property • CPI-U annual general increases faced by tenants are reasonable, thus creating

- labor costs. The increases in these costs over time are increasing at a higher rate than the CPI-U annual increase. CPI-U will result in a drop in property values and a loss of tax revenues.
- Owners will withdraw from the market, resulting in: higher rent to make new tenants subsidize old tenants; more overcrowding; more crime; and a loss of investment in rental properties.
 - The Ordinance places the burden of addressing the affordable housing shortage on a small group of landlords.
- stabilization for tenants living in ARO apartments.
- CPI-U is a familiar, reliable and accessible source of data.
 - The combination of CPI-U increases and vacancy decontrol result in a fair return for landlords.

D. Recommendations – Annual General Increase

Per City Council direction, staff is providing two annual general increase options. These include a flat 5% annual increase or an increase based on 100% of CPI-U. When considering the two options for the annual general increase, staff developed two “packages” that include different incentives and other allowable pass throughs. The basis for how these items are packaged is supported by the Housing Department’s assessment that a CPI-U option is sufficient to allow landlords to attain a fair return on their property and the 5% option is in excess of what is needed for a fair return.

Staff also included an alternative policy option to set the annual general increase to a flat rate of 4%. This alternative provides additional stabilization to tenants not only in rapidly increasing rental markets but also in moderate markets. A rate of 4% would be predictable for tenants and allow them to plan on a steady rise in rents. Additionally, a flat rate is simple for tenants and landlords to understand.

Banking (Regulations Chapter 13)

A. Council Direction & Options – Banking

The original ARO allowed property owners to “bank” annual rent increases and carry them forward to a future year. At its April 18, 2017 meeting, Council directed staff to prepare policy for Council consideration that would allow standard banking with the annual allowed rent increase tied to the CPI-U.

5% OPTION	CPI-U OPTION
✓ No Banking	✓ Maximum Allowable Rent (MAR) or Standard Banking

In terms of the banking provision, there are two means by which it could be applied under the CPI-U option: 1) Standard Banking or 2) Maximum Allowable Rent (MAR). Staff is recommending using the Maximum Allowable Rent in combination with CPI-U due to the reduced costs in implementing the banking provision. Both of these options are shown as Chapter 13 of the Regulations.

B. Research – Banking

- Standard Banking** – Under the standard banking option, the general annual percentage rent increase that is not passed on to the tenant accumulates and is “banked” for future years. A landlord would be allowed to accumulate up to 10% in the “bank.” In any one given year, the maximum combined rent and pass through increase allowed (including any banked rent increases and any pass through charge increase related to Specified Capital Improvements or fair return petitions), cumulatively may not exceed 8% of the rent charged for the previous 12 months (Regulations, Option B 13.04, 13.05). For example, in the scenario in Table 4, the original lease is \$1,500 per month. The chart shows what would happen if the landlord banks allowed rent increases in Years 1 and 2, then uses them in Years 4 and 5.

Table 4: Calculation of Banking (with CPI-U) under Standard Banking

Year	CPI-U	% Used	Bank Balance	Additional Increase	Rent Charged
1	2 %	0 %	2 %	\$ 0	\$ 1,500
2	3 %	0 %	5 %	\$ 0	\$ 1,500
3	2 %	2 %	5 %	\$ 30	\$ 1,530
4	3.5 %	8 %	0.5 %	\$ 122	\$ 1,652
			*Ceiling is 8%		
5	1 %	2.5 %	0 %	\$ 41	\$ 1,693
		*Floor is 2%			

- Maximum Allowable Rent** – The “Maximum Allowable Rent” (MAR) option sets a limit on how much a landlord may charge for each apartment based on the original rental agreement plus the allowed general annual rent increase each year. In any single year, the maximum combined rent and pass through increase (including any pass through charge increase related to Specified Capital Improvements or fair return petitions), cumulatively may not exceed 8% of the rent charged for the previous 12 months (Regulations, Option A 13.01.). Additionally, if a landlord is in a position to “catch up” to the maximum allowable rate, the increase may not exceed 5% in any one year. For example, in Table 5, if the original lease amount is \$1,500, the MAR for an apartment

would be calculated as shown using the proposed CPI-U calculation of a 2% floor and 5% ceiling.

Table 5: Calculation of Banking (with CPI-U) under the Maximum Allowable Rent (\$1,500 initial monthly rent)

Year	CPI-U Annual General Rate	Annual Increase (CPI-U * MAR)	Maximum Allowable Rent (MAR)	5% Cap Only Applicable in Catch-up	Actual Rent Charged
1	2 %	\$ 30	\$ 1,530	None	\$ 1,530
2	8 %	\$ 122	\$ 1,652	None	\$ 1,652
3	6%	\$ 99	\$ 1,751	None	\$ 1,685*
4	3%	\$ 53	\$ 1,804	\$84	\$ 1,769
5	1 %	\$ 17**	\$ 1,840	\$71	\$ 1,840

* Landlord chooses to raise the rent to an amount lower than the maximum allowable in Year 3

** Floor is 2% = \$ 36

C. Summary of Landlord and Tenant’s Position – Banking

Staff prepared a brief summary of feedback public comments from landlords and tenants.

Landlord’s Position	Tenant’s Position
<input checked="" type="checkbox"/> Banking (MAR) <ul style="list-style-type: none"> The availability of a banking provision allows landlords to “catch up” their rents when there are declines in down markets. In years where landlords give little or no rent increases, tenants will experience the benefit of minimal increases. If no banking is allowed, landlords will more likely raise rent every year. 	<input checked="" type="checkbox"/> No Banking <ul style="list-style-type: none"> Tenants face the potential for larger increases in the future if landlords exercise the banking provision. No banking requires less administrative cost. No banking makes it more predictable for both landlords and tenants. The Maximum Allowable Rent banking calculation allows landlords to increase rents to unaffordable levels and will force tenants out.

D. Recommendations – Banking

- Maximum of 5% in any given year** – The draft ARO and Regulations describe two forms of banking with the CPI-U option: 1) Maximum Allowable Rent (MAR) which is automatic banking and; 2) Standard Banking which contains limits on the banking amount and its application. In general, landlords indicated that the MAR approach to banking is easier to understand, less expensive to implement, and allows for catch-up following down markets.

However, when tenants were asked to consider which approach to banking they preferred, they shared a concern regarding the price shock that could be experienced if the deferred rent increases that are allowable under the MAR, were introduced all at one time. Sharp rises in rent can lead to displacement. Many tenants indicated they would prefer to experience a gradual rent increase each year, rather than being exposed to a sharp rent increase all in one year. Similarly, when discussing the “catch up” provisions with landlords, some indicated a rent increase above 5% may not be feasible for tenants to pay. A limit of 5% rent increases annually may allow for the retention of current tenants through a catch up period.

If Council selects the CPI-U Option, the Housing Department recommends the MAR method of banking because it is simpler and less expensive to administer than standard banking. However, staff is concerned about rent spikes. In order to prevent against sharp rises in annual rent increases, the Department is recommending an 5% cap in combination with the MAR. This would require that when raising rent that is currently below the MAR, the Landlord would be prohibited from imposing an increase of more than 5% in one year.

Capital Improvement Pass Through (Section 17.23.330)

A. Council Direction & Options – Capital Improvement Pass through

At the April 19, 2016 Council meeting, staff received direction to establish an expedited capital improvement pass through petition process to allow landlords to recover costs associated with major improvements to ARO properties. Staff has worked with stakeholders to develop a comprehensive list of improvements that landlords would be allowed to petition for a limited pass through of costs under the Specified Capital Improvement Pass Through Program listed in Appendix B of the Regulations.

5% OPTION	CPI-U OPTION
<ul style="list-style-type: none"> ✓ Sustainability, safety, & seismic upgrades <i>(100% for amortization period)</i> ✓ Major System Upgrades that improve Housing Services <i>(100% for amortization period)</i> <input checked="" type="checkbox"/> No Major Maintenance Replacements 	<ul style="list-style-type: none"> ✓ Sustainability, safety, & seismic upgrades <i>(100% for amortization period)</i> ✓ Major System Upgrades that improve Housing Services <i>(100% for amortization period)</i> ✓ Major Maintenance Replacements* <i>(50% for amortization period)</i> <i>*Sunsets after 5 years</i>

The draft ARO and Regulations includes a capital improvement pass through petition process for specified improvements. This process is intended to be an additional incentive for landlords to invest in their properties, by providing them an opportunity to obtain more than the annual increase when they make specified capital improvements. The incentive pass through petition process is entirely separate from the fair return petition process.

The Housing Department has included all three categories of pass throughs under the proposed ordinance in the CPI-U option. However, the 5% option does not include the “major maintenance replacements” category of pass throughs. Research has shown that the 5% flat rent increase is in excess of what is needed for a fair return, and there is no need to provide an extra incentive to encourage maintenance under this option.

It should be noted that for the CPI-U option, the major maintenance category sunsets on January 1, 2023. The five-year period provides an incentive to landlords to act quickly and make necessary repairs while the program is still in place.

B. Research – Capital Improvement Pass Through

- **Capital Improvement Petition Process Summary** – A summary of the capital improvement processes of other cities is included in **Attachment H**. In Los Angeles and San Francisco, a landlord files a petition, and a determination is made by staff and administrative law judge. In Berkley and West Hollywood, a hearing officer holds a hearing and makes a determination regarding the petition.
- **Capital Improvement Estimated Costs for Specific Projects** – Staff provided estimated amortization costs for capital improvement projects, specifically for re-piping, replacing a water main meter, replacing roof replacement, installing a solar PV system, and seismic upgrades. Using estimated costs, staff provided a summary of capital improvement projects by apartment size and amortization costs in **Attachment I**.
- **Capital Improvement Example** – In Table 6, if the landlord decides to do a major system upgrade such as installing air conditioning (HVAC) in an apartment complex that has no air conditioning, up to 100% of the costs, including the cost of the building permit and plan check, would be allowed to pass through to beneficiary tenant households over an amortization period of 10 years (Regulations 9.03.2.b). The maximum cost allowed to be passed through to tenants would be 3%.

Table 6: Capital Improvement Pass Through Calculation

# Apts	Total Cost	Amortization Period	Cost / Month	Cost / Apt / Month	3% Cap for \$1,500 Rent
4	\$ 20,000	10 years	\$ 166	\$ 42	\$ 45
20	\$ 30,000	10 years	\$ 250	\$ 13	\$ 45
100	\$ 135,000	10 years	\$ 1,125	\$ 11	\$ 45

In order to utilize the capital pass through provisions, the landlord must petition for and receive an administrative decision authorizing a pass through for any costs to be charged to tenants.

C. Summary of Landlord and Tenant’s Position – Capital Improvement Pass Through

Staff prepared a brief summary of feedback public comments from landlords and tenants. This summary is provided in the following table.

Landlord’s Position	Tenant’s Position
<ul style="list-style-type: none"> ✓ Sustainability, safety, & seismic upgrades ✓ Major System Upgrades that improve Housing Services ✓ Major Maintenance Replacements 	<ul style="list-style-type: none"> ✓ Sustainability, safety, & seismic upgrades ✓ Major System Upgrades that improve Housing Services ☒ No Major Maintenance Replacements
<ul style="list-style-type: none"> • Without the Major Maintenance Replacements, landlords would not be able to recover large expenses for replacing or maintaining existing housing services. • Landlords would be able to provide maintenance and upkeep at aging apartments; tenants would receive improvements to their apartment building. 	<ul style="list-style-type: none"> • “Major maintenance replacements” should not be used as an alternative to routine maintenance and replacements. • More simple record keeping for without the calculations of a 50% pass through limitation. • Tenants are concerned that landlords would be able to increase rents up to 5% annually without making any investment in the apartment building. • Tenants should not have to pay for additional pass throughs for minor repairs, routine maintenance, or bringing buildings up to code. It is the landlord’s responsibility to maintain the building, and this provision provides a windfall for landlords who have deferred maintenance. • The 10-year amortization schedule used for the pass throughs is arbitrary and does not accurately reflect the useful life of the items.

D. Recommendations – Capital Improvement Pass Through

Draft Release	Amendments from Public Comments Received
Quality construction not specified	→ Include in allowed costs 100% pass through for building permit and plan check costs; a building permit is required
Amortization periods not specified	→ Clarification on amortization

Timeline for pass throughs not specified	→ Construction must be completed in the prior 12 months prior to submitting a petition for a capital improvement pass through
--	---

- **Clarification and Quality of Capital Improvements** – Concerns were also raised regarding the quality of the improvements the landlord could make, the need for clarity regarding the amortization periods, and the need to further define the allowed improvements. Staff made changes to the draft ARO and Regulations to address these issues. These include:
 - Updating the amortization periods for the improvements;
 - Adding the pass through of 100% of City building permit and plan check costs for improvements; and,
 - Requiring that a licensed contractor completes the improvements.

Staff is recommending to allow the pass through of 100% of the cost of review of plans and building permits. The intent of these changes is to ensure quality construction when costs are passed through to tenants. The proposed changes to the list of capital improvements and amortization periods were developed after reviewing *Study of Life Expectancy of Home Components* (National Association of Home Builders/Bank of America Home Equity), which was submitted through the public comment process, as well as a review of other cities' capital improvement program guidelines.

- **3% Capital Improvement Cap is Adjusted when CPI-U Exceeds 5%** The proposed ARO and Regulations provide an expedited petition process for the pass through of specified capital improvements. The pass through would be limited to an amount not to exceed 3% of current rent at the time of the petition. When considering the proposed change in the CPI-U option with a 2% floor and 8% ceiling, the intent of the original proposal was not to layer a capital improvement pass through equal to 3% of rent on top of an annual rent increase of 8%, resulting in an 11% increase. Staff is recommending the 3% cap be adjusted to 8% minus the CPI-U amount when CPI-U exceeds 5%. The result being that in no situation would an annual increase (rent plus pass through) exceed 8%.

Limits on Pass Through Charges (Section 17.23.315)

A. Background Information – Limits on Pass Through Charges

- **Pass Through of Fees** – The draft ARO released for public comment included language related to limits on certain fees that may be passed through to tenants. These pass throughs include excess replacement fees, bounced check fees, and late payment fees. The ARO allows these fees to be passed through to tenants, but limits the amounts.

- **Ratio Utility Billing Utility Pass Throughs** - The draft ARO released for public comment indicated in the Limits on all Fees and Pass Through Charges section that “No charges may be passed through that are assigned to tenants by virtue of a ratio utility billing or similar unmetered allocation arrangement.” Ratio Utility Billing System (RUBS) is a utility billing system used by property owners to pass through sewer, water and trash utility costs to tenants. Many older multi-family apartments were not built with sub-meters for water and sewer, instead the property owner is charged for the utilities of an entire building from utility providers. Generally, owners of such buildings use a third-party billing company to calculate utility bills for tenants based on the number of occupants and/or square footage of the apartment compared to the total occupants/square footage of the building.

When any of the utility bills increase in a building with RUBS billing, the landlord or third party contractor bills the increase to the tenant. The tenant then is responsible for both the rent and the additional utility cost. This type of pass through is inconsistent with City Council direction limiting the total annual increase (which includes all utility costs) to 5% once a year.

When a landlord and tenant enter an agreement to rent an apartment, the landlord and tenant agree upon the amount of rent to be paid. Rent, as defined by both the existing rent ordinance and the revised ARO, is the consideration demanded or received by a landlord for the use or occupancy of a rental unit, and includes Housing Services. Under both the existing rent ordinance and the revised ARO, Housing Services include water, sewer and garbage removal. In other words, the cost of utilities is included in the tenant’s initial agreed upon rent. So, when there is an increase in utility cost, and that cost is passed onto the tenant, it is a rent increase under the ARO. The measure and frequency of the rent increase may be inconsistent with the City Council’s direction of an annual rent increase amount of 5%. In order to be consistent with City Council direction, the incorporation of RUBS would need to be considered with an associated decrease in the annual general rent increase (i.e. – 75% of CPI or a 3% annual increase).

Since the release of the draft ARO, the public has made several comments regarding the proposed language not allowing the pass through of utility costs using a RUBS allocation. Staff has included additional information on this issue for the City Council’s consideration.

B. Research – Limits on Pass Through Charges

- **RUBS Petitions filed with Rental Rights and Referrals Program** – From 2012 to 2017, 44 petitions were filed with the Rental Rights and Referrals Program regarding illegal rent increases from RUBS pass throughs (summary in **Attachment J**). Hearing officers and Rental Rights and Referrals Program staff addressed these issues on a case-by-case basis due to the inconsistent application of RUBS throughout ARO apartments.

Staff sampled the utility charges passed through using petitions filed with the Housing Department. It is clear that there is inconsistency in the amounts landlords passed through to tenants. Additionally, applying RUBS to an existing tenant results in a rent increase beyond the allowable rate.

Address	Monthly RUBS Charge	Monthly Rent	% Rent Increase
550 Kiely #23	\$64.47	\$1,250	5%
4311 Norwalk #210	\$103.15	\$2,881	4%
1544 Maurice Ln #29	\$109.18	\$2,191	5%
877 S. Winchester Blvd #50	\$152.95	\$2,572	6%

- The “San José ARO Study” by Economic Roundtable Report includes a summary of rates for water, trash, sanitary sewer, and other operating costs is in **Attachment K**. The analysis summarizes the operating costs and utility rates. The example indicates water makes up 2.6% of a landlord’s expenses. If the annual general rate was set at 2% (or any higher amount such as 5% or 3.8% current CPI-U rate), a 32% increase in water costs may be absorbed. Generally, increased utility costs have a limited impact on the overall expense versus income ratio for the property.

C. Summary of Landlord and Tenant’s Position – Limits on Pass Through Charges

Staff prepared a brief summary of feedback public comments from landlords and tenants.

Landlord’s Position	Tenant’s Position
<input checked="" type="checkbox"/> Allow RUBS <ul style="list-style-type: none"> • The limit on replacement card fees does not consider the labor necessary to replace the card. • The bounced check fee is unclear and may be inconsistent. • Ratio Utility Billing (RUBS) should be allowed, encouraging conservation and off-setting unpredictable increases in utility costs. It promotes conservation because tenants are more aware of their costs and will be incentivized to monitor their usage. • Tenants will be motivated to quickly report leaks such as a leaky toilet or a broken sprinkler. • It is part of the current business model. 	<input checked="" type="checkbox"/> Do not allow RUBS <ul style="list-style-type: none"> • The RUBS does not provide an incentive to tenants to conserve utilities because they cannot control the usage of other tenants, or the landlord, or the condition of the delivery system. • The RUBS process is not transparent and is susceptible to abuse. • RUBS removes the incentive to landlords to fix leaks in the system and conserve utilities in common areas. • RUBS does not reflect actual usage of utilities, is not a transparent process for tenants, and

- Shifts the increased costs to the tenants and, therefore, decreases the financial risk when costs are increasing. passes more costs to tenants to increase owner returns.
- Removing utilities from total rents also increases the value of the building because commercial values are based on net income.
- ARO buildings are all old buildings; most have shared meters, and owners have no control of utility rate and usage. Without RUBS, owners will have a huge burden for the utility bills.

D. Recommendations - Limits on Pass Through Charges

Revisions were made to the ARO based on public comments received in this section. These changes include an allowance for an additional rate to be charged to the tenant in excess of the cost of a security card – consistent with fee limitations specified in State law.

Draft Release	Amendments from Public Comments Received
Fee section does not contemplate the labor required to replace a key or security card	→ Add \$10 to actual replacement cost of the key or security card
Bounced check fee is unclear	→ Bounced check service fee was made consistent with State law provisions

Staff is not recommending RUBS be allowed as a pass through cost under the Apartment Rent Ordinance. If the inclusion of RUBS was recommended by the City Council, the annual general increase should be decreased accordingly. Alternatives exploring the option of including RUBS combined with a decrease to a flat rate of 3% or 75% of CPI-U are included in the Policy Alternatives section.

Petition Process (Section 17.23.350)

A. Council Direction & Options – Petition Process

A key component to implementing provisions of the proposed ordinance is the petition process. This section defines the grounds by which tenants and landlords can submit a Petition.

A tenant can submit a petition on the following grounds:

1. Improper rent increase, improper pass through, and other violations of the ARO
2. Housing service reductions or housing code violations.

A landlord can submit a petition on the following grounds:

1. Rent increase more than the Annual General Increase to obtain a fair return
2. Pass through charge for Specified Capital Improvements.

Under the Joint (Unopposed) Petitions, tenants may file petitions if approved by their landlord on the following grounds:

1. An additional housing services occupant (other than the tenant’s spouse, dependent/foster child, or parent) for a one-time payment or Security Deposit Increase in the maximum rent allowable of 5% if additional occupants are prohibited in the rental agreement
2. Additional housing services (parking space) for an increase in the maximum rent allowable of up to \$50 if only one parking space is reserved for the tenant in a written rental agreement.
3. One-time payment (under 17.23.320) for pets and other additional housing services.

Table 7 provides a summary of the Petition and Hearing Processes. Additional detail regarding the process can be found in the regulations.

Table 7: Summary of the process described in Chapters 6-10 of the Regulations

Issue	Filing		Decision		Appeal
Tenant Petition (Chapter 6, 7)					
Ch. 6 • Improper Rent, • Improper Pass through • Violation of ARO	Petition & Response	→	Petition Examiner Provides Administrative Decision (or refer to hearing)	→	Appeal Administrative Decision to Director
Ch. 7 • Housing Service Reductions • Housing Code Violations	Petition & Response Voluntary Mediation (Optional)	→	Hearing: Hearing Officer provides Hearing Decision	→	Appeal Hearing Decision to Director
Landlord Petitions (Chapter 8, 9)					
Ch. 8: Fair Return	Petition & Response	→	Hearing: Hearing Officer Provides Hearing Decision	→	Appeal Hearing Decision to Director
Ch. 9: Specified Capital Improvements	Petition	→	Petition Examiner Provides Administrative Decision	→	Appeal Administrative Decision in Hearing Hearing Officer Provides Final Decision

Joint Petitions (Chapter 10)

Ch. 10: Requests for Additional Housing Services	Petition & Response	→	Form Review and Approval/Denial
---	---------------------	---	---------------------------------

B. Research – Petition Process

- **Other Cities** – Housing Department staff reached out to other cities to learn how petition processes work in other programs. In Los Angeles, a tenant files a petition and the case is assigned to an investigator who makes a determination of facts. The landlord’s failure to comply with the staff determination may be grounds for a referral to the City Attorney for consideration of a criminal filing. Santa Monica offers a voluntary mediation program to tenants and landlords for petitions filed with service reduction claims. If the mediation does not resolve all issues the parties hold an administrative hearing and decisions are appealed to the Rent Board. San Francisco holds administrative hearings with Administrative Law Judges, decisions are appealed to the Rent Board.

C. Summary of Landlord and Tenant Feedback – Petition Process

Staff prepared a brief summary of feedback public comments from landlords and tenants.

Landlord Feedback	Tenant Feedback
<ul style="list-style-type: none"> • Process is cumbersome and difficult to understand. • Voluntary Mediation should be truly voluntary. • Allow the appeal to be to a hearing officer, not director in Chapter 6. • Cost of paperwork for owners is not worth the benefits of the fair return process. • The fair return allowed in the Ordinance even with vacancy decontrol is below expected return on investment and will reduce profits. Tenants will now have a financial incentive to stay. 	<ul style="list-style-type: none"> • Allows an avenue for communication and resolution of issues with landlord. • Supports the separation of the mediation and arbitration portions of the hearing process.

D. Recommendations – Petition Process

The ARO and Regulations include changes to the current landlord and tenant petition processes. Public comments indicated general support for the changes to the petition process. Tenants indicated some cases brought under Chapter 6, such as an illegal rent increase, may be more complex than others. For example, a rent increase petition may be complex if documentation for the amount of rent is not readily available and only a verbal rental agreement is in place. In this situation, the tenant and landlord may benefit from a hearing where testimony may also be

considered as evidence. Under the proposed provisions, the Hearing Examiner may refer a case to an administrative hearing if additional clarification of facts may be beneficial to the case.

Additionally, the hearing officers indicated the voluntary mediation would be difficult to enforce under the ordinance. This concern was also considered, and the formal mediation hearing process conducted by a hearing officer will be reinstated under the proposed ordinance. Formal mediation will require that the non-private portion of the hearing be recorded and if no voluntary agreement is reached, will require the mediator to file a decision. Additionally, if the voluntary agreement provides, it will allow either party to file a breach of agreement petition with the Rental Rights and Referrals Program if terms of a voluntary agreement reached in mediation are not upheld. However, both parties still have the option to participate on a voluntary basis, or choose to proceed directly to the administrative hearing.

Draft Release	Amendments from Public Comments Received
Appeals of tenant petitions made under Chapter 6 of the regulations may be heard by the Director of Housing	→ Petition Examiner may refer petitions requiring testimony to a hearing under Part 7
Voluntary mediation will not be enforceable under the ARO	→ Formal mediation conducted by a hearing officer will be reinstated, however the parties may choose to proceed directly to the administrative hearing

Joint Petition (Section 17.23.350.C)

A. Council Direction & Options – Joint Petition

The proposed ordinance features recommendations to allow landlords and tenants to file a joint (Unopposed) Petition for an increase in the maximum rent allowable of up to 5% for an additional occupant (other than the Tenant’s spouse, domestic partner, dependent/foster child, or parent) if additional occupants are prohibited in the written rental agreement. The rent will revert back to the original rate if the tenant moves out.

The high costs of rents often lead to an overcrowded living environment. According to the 2016 Economic Roundtable Study, 15% of San José’s rental households experience overcrowding. There are situations in which a family may desire to add an additional member to its household. This could be for economic reasons as well as for family considerations, such as marriage, the birth of a child, or the need to have a parent move into the apartment. Additionally, as residents age, they may need to move in with a child, or have a child move in to provide care. San José has adopted goals to be an age-friendly city, and addressing housing needs of an aging population is a critical component. The ARO has not, in the past, taken such issues into account.

Under the Tenant Protection Ordinance, the landlord’s ability to restrict additional occupants is limited. The proposed joint petition for additional occupants -responds to the concern from the landlord community that an increase in the number of occupants results in an increase in the cost of managing the apartment. Table 8 calculates the additional increase for additional occupants based on a base rent of \$1,500 per month. Under the proposed ordinance, when the additional occupants leave, the new rent would return to the prior rent.

Table 8: Additional Occupants Calculation

Additional Occupant(s)	Current Rent	Additional % Increase	Additional \$ Increase	New Rent*
1	\$ 1,500	5 %	\$ 75	\$ 1,575
2	\$ 1,500	10 %	\$ 150	\$ 1,650

B. Research – Joint Petition

- **5% Rent Increase for Additional Occupants** – Members of the public wanted to understand why 5% was selected for the rent increase associated with an additional occupant. Two factors were considered when contemplating the 5% increase: 1) Utility costs; and 2) Increases allowed by other cities. According to input from landlords, the average utility cost per occupant is approximately \$45 monthly. Assuming a \$1,500 rent amount, a 5% rent increase equates to a \$75 rent increase. The monthly utility cost, plus additional wear and tear on the apartment should be covered by the \$75 rent increase.

Staff studied the general rent increases allowed in other California rent-controlled jurisdictions. Los Angeles and Berkeley allow a 10% rent increase, while San Francisco prohibits a rent increase for additional occupants. Additionally, Richmond allows a tenant or landlord to petition for a rent increase for additional occupants, and a hearing officer makes a determination if a rent increase is allowed. A summary of research can be found in **Attachment L**.

C. Summary of Landlord and Tenant Feedback – Joint Petition

Staff prepared a brief summary of feedback public comments from landlords and tenants.

Landlord Feedback	Tenant Feedback
<ul style="list-style-type: none"> • 5% increase for additional tenants is too low. • Allowing additional occupants increased the cost of managing the apartment without providing a way to increase rents. 	<ul style="list-style-type: none"> • 5% per added tenant is too high and should not be allowed. • Concerned about abuse of the joint petition process. • Concern that current families living together may now be facing rent increases suggested by their landlords.

D. Recommendation – Joint Petition

Draft Release	Amendments from Public Comments Received
Joint petition included in only CPI-U option (as described in the memorandum to HCDC on September 14, 2017))	→ Include the joint petition in both the 5% and CPI-U options

- **Joint Petition for additional Occupants for CPI-U/5% Annual Increase Options –** The joint petition was originally presented as an option only for the CPI-U option in the draft ARO. Landlords indicated the Joint Petition should be included for both options, since the joint petition addresses concerns with the Tenant Protection Ordinance. Tenants indicated that they were concerned about abuse of the joint petition process, so the ordinance now reserves the right to file this petition to a Tenant, although a landlord must consent to a joint petition. Staff considered this request and is recommending that the Joint Petition be included in the draft ARO for both the 5% and CPI-U option.

Tenant Buyout (Section 17.23.300)

A. Council Direction & Options – Tenant Buyout

The City Council has not provided specific direction regarding tenant buyout provisions in the ARO. A tenant buyout is a situation where a landlord offers a tenant compensation to move out of their apartment on a voluntary basis. When the draft ARO was released for review, the public raised concerns about the prohibition of tenant buyouts. Landlords indicated concern regarding the inability to reset rents to market rates following a tenant buyout. The Housing Department is now recommending including requirements for tenant buyouts as a part of the ARO and regulations.

B. Research – Tenant Buyout

Staff reviewed provisions of other cities (**Attachment M**) and identified key items that should be included in the proposed buyout provisions. For example, in 2015, Santa Monica added buyout provisions to their Municipal Code. The provisions require a landlord to inform a tenants of certain rights before offering any form of compensation in exchange for a tenant’s agreement to voluntarily vacate a controlled rental unit. The information must be given in writing to each tenant on a form provided by the administration and submit a copy to program staff.

C. Summary of Landlord and Tenant’s Position – Tenant Buyout

Staff prepared a brief summary of feedback public comments from landlords and tenants.

Landlord's Position	Tenant's Position
<ul style="list-style-type: none"> ✓ Tenant Buyout • Tenant buyout should be considered as vacancy decontrol. • A tenant buyout provision that allows rents to be increased provides owners flexibility. 	<ul style="list-style-type: none"> ✓ Tenant Buyout with additional protections • Allow tenant buyout may be considered decontrol but ensure provisions that require landlord to inform tenant of their rights.

D. Recommendation – Tenant Buyout

Draft Release	Amendments from Public Comments Received
<p>Tenant buyout is not considered as vacancy decontrol</p>	<p>→ Tenant buyout provisions are specified in the ARO and Regulations include buyout provisions</p>

The draft ARO contained a provision that vacancy decontrol did not apply when a landlord terminated a tenancy with a tenant buyout. Landlords raised concern with this provision indicating other cities allow vacancy decontrol after tenant buyout when certain provisions are met.

Staff is recommending including buyout provisions in the ARO and Regulations to ensure tenants are aware of their rights if offered a buyout. The proposed provisions state all Buyout Offers and Buyout Agreements must include the following content:

- Tenant has the right to refuse the buyout offer, seek counsel, or speak to the City’s program staff prior to signing the Buyout Agreement.
- The Tenant has the right to cancel any Buyout Agreement within 45 days of acceptance of said Buyout agreement.
- Signature by both the landlord and tenant.
- A copy of the signed Buyout Agreement, as well as a copy of the signed Disclosure of Rights form, must be filed with staff within 30 days from the date that the Tenant and Landlord signed the Buyout Agreement. The Buyout Agreement section does not apply to Offers and Agreements made to settle pending unlawful detainer actions.

Rent Registry (Section 17.23.900)

A. Council Direction & Option – Rent Registry

Staff was directed by the City Council to implement a Rent Registry to facilitate enforcement of the Ordinance. At the April 19, 2016, and January 31, 2017 Council meetings, staff received

direction to implement a rent registry. The registry will require a landlord to submit registration for each rent stabilized apartment. The rent information provided by the landlord would go into a registry accessible to the public. A user could go online, type in the address, and see what the rent is and how much it can go up each year.

B. Research – Rent Registry

The Housing Department is currently working to develop an on-line rent registry system. The City was recently awarded an IBM’s Smarter Cities Challenge Grant. IBM consultants will be working with the Housing Department to optimize the effectiveness and utilization of the City’s system.

Tenant name was not included in the draft ARO and Regulations released for public review. However, after further research and communication with other cities, it was made clear tracking turnover of tenants without tenant name is challenging. In order to increase the effectiveness of compliance efforts, the Housing Department is recommending that the owner be required to provide tenant name as part of the rent registry requirements.

C. Summary of Landlord and Tenant’s Position – Rent Registry

Staff prepared a brief summary of feedback public comments from landlords and tenants.

Landlord’s Position	Tenant’s Position
<ul style="list-style-type: none"> • Rent registry is burdensome and adds additional workload for landlords. • Rent registry is expensive and over-regulation. • Owner and tenant information needs to be confidential. 	<ul style="list-style-type: none"> • Rent registry is needed to ensure rent and Ordinance compliance.

D. Recommendation – Rent Registry

Draft Release	Amendments from Public Comments Received
Did not include security deposit or submetered utilities	→ Include security deposit amount and indicate if the apartment building is sub-metered in the rent registry
Did not include tenant name	→ Include tenant name to track turn over more effectively. Owner or tenant name and personal information will not be displayed or provided to the public.

Staff is recommending the items to be provided by landlords will include information related to the apartment including address, number of bedrooms, and whether the unit is sub-metered, master-metered, or unmetered. Information related to the tenancy include tenant name, date of new tenancy, rent, housing services included in rent, amount of security deposit paid, and reason for turnover. Personal information regarding owner name, tenant name, personal address, or contact information will not be provided to the public. The details of what is required for the Rent Registry will be specified in the Regulations.

A compliance mechanism is needed to ensure owners comply with the Ordinance. If landlords do not register their apartments, they will not be allowed to increase rents based on the annual general increase.

Program Fees (Section 17.23.320.D)

A. Council Direction & Option – Program Fees

The staff recommendation made in April 2016 included the approval of a pass through of 50% of the program fees to tenants in combination with the general annual rate based on 100% of CPI. The pass through was not considered after the City Council direction was to allow 5% rent increases annually. Consideration of allowing 50% of the fee as a pass through is being reconsidered in combination with the CPI-U Option.

B. Research – Program Fees

Generally, rent stabilized programs in California are fully cost recovery and are funded by program fees assessed to landlords of regulated apartments. Typically, a portion of these fees may be passed through to tenants in cities with a CPI-U annual general increase. San José’s current ARO does not provide for such a pass through. An example of the pass through calculation is provided below in Table 9.

Table 9: Annual Program Fees Pass Through Calculation

Fees	Landlord’s Share	Tenant’s Share
\$ 100	\$ 50	\$ 50

C. Summary of Landlord and Tenant’s Position – Program Fees

Staff prepared a brief summary of feedback public comments from landlords and tenants.

Landlord’s Position	Tenant’s Position
<p><input checked="" type="checkbox"/> Allow program fees pass through</p> <ul style="list-style-type: none"> If tenants will also benefit from the services of the program, tenants should also share the costs with landlords. 	<p><input checked="" type="checkbox"/> Do not allow program fees pass through</p> <ul style="list-style-type: none"> Tenants are already contributing to the rent and should not share the burden of operating costs.

D. Recommendation – Program Fees

Staff recommends allowing a 50% pass through of program fees if Council approves the CPI-U Option for the annual rent increase. If Council chooses the 5% Option, the pass through is not recommended.

Voucher Holders (Section 17.23.169 and Section 17.23.310.D)

A. Council Direction & Option – Program Fees

On April 18, 2017, the City Council approved the Housing Department’s recommendation to return with an ordinance eliminating the exemption for tenants receiving a subsidy. On May 9, 2017, the City Council approved an extension of the Interim Ordinance including the removal of this exemption. Upon approval, apartments with tenants that have Housing Choice Vouchers, Veterans Affairs Supportive Housing (VASH) vouchers, or any other government subsidy that is paid on behalf of a tenant are covered by the ARO.

B. Research – Program Fees

Housing Department staff met with the Housing Authority to discuss the implications of these changes. Since the passage of the Tenant Protection Ordinance providing protections to all tenants from no-cause notices, the Housing Authority recommended allowing rent increases for voucher holders to exceed the annual general rate while continuing to allow tenants to file petitions for service reductions. The City will continue to work collaboratively with the Housing Authority as this new provision is implemented.

C. Summary of Landlord and Tenant’s Position – Voucher Holders

Staff prepared a brief summary of public comments from landlords and tenants about including these voucher units.

Landlord’s Position	Tenant’s Position
<ul style="list-style-type: none">• Landlords will no longer be incentivized to accept vouchers if voucher units are subject to the ARO.	<ul style="list-style-type: none">• Voucher holders may benefit from mediation and arbitration services.

D. Recommendation

The Housing Department recommends that the ARO include voucher units, and that the requirements for initial rental apply, while also allowing the rent for the voucher unit to be increased beyond the City’s annual general rate in accordance with the voucher program guidelines. This will continue to incentivize landlords to rent to voucher holders. Voucher

holders will be able to file petitions under the ARO for service reductions, benefiting from the mediation/administrative hearing process.

IV. Other Changes

There were other comments submitted by the public that were material in nature. The chart below indicates changes made in response to that input. The ARO and Regulations to be considered by City Council include these changes.

Draft Release		Amendments from Public Comments Received
Reasonable accommodations not specified	→	A general section was added indicating that the ARO does not intend to authorize denial of a reasonable accommodation request under State and federal law
Rent stated on rental agreement must be actual rent charged	→	New definition of Initial Rent clarify initial rent actually paid is the amount actually paid by the tenant and that this amount, shall be provided during registry.

Staff is also recommending that the City Manager have the authority to adopt or amend the Regulations for the administration and implementation of the Apartment Rent Ordinance (Section 17.23.040). Allowing the City Manager to amend to the Regulations will facilitate the minor adjustments that may be needed as these new Regulations are put into practice. Additionally, this section authorizes the Director, with the approval of the City Attorney, to adopt forms and notices to facilitate the administration and implementation of the ARO.

V. Additional City Council Direction

The proposed ordinance addresses the vast majority of the direction provided by City Council over the past two years. However, there are several areas which require additional work by the Administration prior to consideration by City Council. These include the direction to consider including duplexes in the ARO, the creation of a voluntary mediation program, and requiring one-year leases for ARO apartments.

Exploration of Inclusion of Duplexes

The City Council's direction to staff on September 1, 2015 included developing a work plan to explore the inclusion of duplexes under the ARO. The State's Costa-Hawkins Rental Housing Act (passed in 1995) exempts certain units from rent-stabilization programs: units constructed after February 1, 1995; units that were already exempt from local rent-stabilization program; and single-family homes and condominiums. Given these State exemptions, duplexes may be included under the City's ARO up to 1995.

Using 2015 County Assessor data, staff's preliminary estimate of the number of duplexes is 6,393 duplex buildings comprising 12,786 units. The City exempts ARO units that are landlord-occupied. The County Assessor data indicates that San José has 1,394 duplex units with a homeowner's exemption, leaving a net number of potential rental units in duplexes at 11,392 units.

While there is the potential to add more than 11,000 rent-stabilized units to the City's ARO program, landlords of duplexes have not operated under a rent-regulated environment and are unfamiliar with the ARO. Additionally, increasing the ARO housing supply by 25% would require a significant amount of additional time and staffing to transition a new group of landlords into the program.

After the passage of the Tenant Protection Ordinance, members of the community also raised the question on if duplexes could be included under the Tenant Protection Ordinance. In response to this question, staff would need to complete a policy review of the implications of adding duplexes to the ARO as well as the Tenant Protection Ordinance. A work plan for action items necessary to include duplexes in the ARO is included as **Attachment N**.

Considering current demands and priorities on the Housing Department, it would be difficult for staff to move forward with the duplex work plan at this time. Staff recommends reconsidering the addition of duplexes after the Department has fully implemented the revised Apartment Rent Ordinance and all staff have been hired and onboarded. This would ensure that the Department has sufficient capacity to consider and plan for the impacts of adding additional apartments to the Ordinance.

Staff prepared a brief summary of feedback public comments from landlords and tenants.

Landlord's Position	Tenant's Position
<ul style="list-style-type: none">Do not include duplexes. Duplexes are an owner's entry to property management.	<ul style="list-style-type: none">Duplexes should be included under the ARO. Renters should be protected regardless of type of property renting from.

Mediation Program

At the April 19, 2016 Council meeting, staff was directed to develop a voluntary mediation program to address landlord and tenant disputes, and disputes between different tenants. A voluntary mediation program would provide a resource to enhance relations between landlords and tenants, as well as tenants and tenants. The program may include staff or volunteers who are trained and experienced with apartment, landlord, and tenant issues; who have knowledge of the City's ARO program; and who can provide education, guidance, and technical assistance to resolve potential issues in a lower-conflict environment. Providing this resource to help resolve issues in a potentially lower conflict environment may enhance the stability of tenant living situations, the ability for landlords to manage their apartments, and the overall environment of

the community. A voluntary mediation program is intended to reach beyond the scope of the ARO.

The Housing Department will consider the scope, size, cost and source of funding for a mediation program as part of the 2018-2019 budget process. A work plan for implementation must be completed prior to initiating a new mediation program.

Renewable One-year Written Lease

Prior to the adoption of the Tenant Protection Ordinance, staff proposed a new provision requiring a renewable one-year lease as a part of the updated ARO. At the April 18, 2017 meeting, the City Council directed staff to incorporate the one-year lease into the ARO.

Staff is recommending dropping the one-year written lease requirement. It was intended to provide tenant stability in the absence of just cause protection. With the passage of the Tenant Protection Ordinance, this provision is no longer needed.

PUBLIC OUTREACH

Staff met with a wide range of stakeholders while developing the Apartment Rent Ordinance and Regulations. With the assistance of the California Apartment Association, Bay Area Homeowners Network, and the Renters Coalition, the Housing Department met with property landlords and managers of small properties, large properties, and a variety of tenants and tenant advocates on multiple occasions. Any request made from an individual or group to meet with the Housing Department was held during the public comment period. The Department also hosted 24 public meetings on the proposed Ordinance listed in **Attachment D**. The public comment files can be found on the website.

The most recent comment files are posted on the website:

- **Comments received July 11, 2017 to July 31, 2017:**
<http://www.sanjoseca.gov/DocumentCenter/View/70783>
- **Comments received August 15, 2017 to September 25, 2017:**
<http://www.sanjoseca.gov/DocumentCenter/View/71919>
- **Comments received September 26, 2017 to October 28, 2017:**
<http://www.sanjoseca.gov/DocumentCenter/View/73083>

EVALUATION AND FOLLOW-UP

The ARO will have a second reading by the City Council two weeks following the first reading of the ordinance. The updated ordinance will be effective 30 days following the second reading of the City Council. Additionally, the Housing Department is issuing a Request for Proposals in the Winter 2017 to identify service provider(s) for legal services support within our community.

Funding for these services has been approved from federal Community Development Block Grant (CDBG) funds.

POLICY ALTERNATIVES

The most significant policy decision included in the ARO is the annual rent increase. As demonstrated in this memorandum, there are a variety of approaches utilized by different jurisdictions to set the annual general increase. One theme that arose throughout the public process was the importance of simplicity. The following alternative would provide the simplicity of the flat fee option with limited pass throughs but would provide greater rent stability by reducing the annual general increase.

Alternative #1: Set the Annual General Increase at a flat rate of 4%.

Pros: A flat rate is simple and easy for both tenants and landlords to understand. The rate of 4% provides additional stability to tenants in strong rental markets.

Cons: The reduction in the flat rate could reduce the amount of income that owners would have available to reinvest in the maintenance and improvement of their properties.

Reason for not recommending: City Council provided direction for staff to return with a flat rate of 5%.

The other significant issue raised during the ARO outreach process is the issue of RUBS. Therefore, staff has provided Alternative #2 and #3 pertaining to this issue. It should be noted, that if the City Council wanted to direct staff to add a provision to authorize the pass through costs allocated by RUBS to tenants, the following actions should be pursued in advance of such implementation:

- Further discussions with stakeholders would take place to review the parameters required for RUBS pass through;
- The annual general increase included for all apartments covered by the ARO would be decreased to reflect the additional pass through amount as described in Alternative #2 and #3; and
- Staff and the Attorney's office would restructure technical components of the ARO to maintain consistency with the annual general rent increase.

The following alternatives outline two options for the City Council to consider if the inclusion of RUBS was recommended:

Alternative #2: Annual General Increase at 75% of the CPI-U with Ratio Utility Billing System (RUBS)

Pros: Adjusting the Annual General Increase to of 75% of CPI-U and RUBS will more closely match the annual increase amount of the current proposal to set the annual rate to 100% of CPI-U and no RUBS. Landlords would also shift the risk of rising water and trash costs to tenants, providing more predictable expenditures in the future.

Cons: A 75% of the CPI-U may not fully capture the fluctuation of the market as the 100% of the Consumer Price Index would.

Reason for not recommending: A 75% of the CPI-U would only be recommended with the pass through of RUBS to minimize the financial effects of RUBS in addition to rent.

Alternative #3: Annual General Increase at 3% with Ratio Utility Billing System (RUBS)

Pros: Adjusting the annual general increase to 3% and allowing RUBS will more closely align with the current annual rate of 5%. Additionally, a flat increase is simpler and easier to implement.

Cons: A flat 3% may not fully capture the fluctuation of the market as the Consumer Price Index would.

Reason for not recommending: A 3% annual general increase would only be recommended with the pass through of RUBS to minimize the financial effects of RUBS in addition to rent.

COST IMPLICATIONS

Approval of these actions will enable the Housing Department to implement changes to the ARO including implementation of a rent registry, new capital improvement program, expanded public outreach, education, and compliance efforts. The Rental Rights and Referrals Program has been designated as a cost recovery fee program by City Council. The recommendations in this memorandum, if approved, will result in increased fees to be charged to the owners of apartments subject to the ARO. The fee increases, associated with providing additional services, are detailed in an accompanying memorandum on the November 14, 2017 City Council agenda entitled “*Expanded Apartment Rent Ordinance Staffing and Fee Implementation.*”

BUDGET REFERENCE

A proposed staffing plan for the Rental Rights and Referrals Programs and the accompanying 2017-2018 Appropriation Ordinance and Funding Source Resolution Amendments and adjustments to the 2017-2018 Schedule of Fees and Charges necessary to implement ARO program changes are detailed in a separate memorandum on the November 14, 2017 for City Council agenda for approval.

COORDINATION

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

COMMISSION RECOMMENDATION

Pursuant to Section 7.01 of the existing regulations, the ARO and Regulations were presented to the Housing and Community Development Commission (HCDC) at their regularly scheduled meeting on September 14, 2017 and a special meeting on October 5, 2017. Table 10 and Table 11 reflect the summary of HCDC recommendations for the respective HCDC meetings. These reports and attachments is available at the following link:

<http://www.sanjoseca.gov/index.aspx?NID=4744>

Table # 10: Summary of HCDC Recommendations from September 14, 2017 Meeting

Issue	HCDC Motions that Passed
Apartment Rent Ordinance	
CPI	CPI with 2% floor and 6% ceiling
Banking	No banking
Capital Improvement	Capital improvement pass through with maintenance replacement
Shared Fees	Shared fee for pass through at 50%
Occupancy	Joint petition for an increase. Directed staff to return with options for percentage increases from other jurisdiction and for joint petitions, include caregiver and parent to exceptions of spouse and children.
Ration Utility Billing System (RUBS)	No RUBS
Petition Process	Petition process as proposed
Duplexes	No duplexes

Table # 11: Summary of HCDC Recommendations from October 5, 2017 Special Meeting

Issue	Motion Passed
Apartment Rent Ordinance	
Annual General Increase	5% annual increase with limited pass through (Change from motion passed at the September 14, 2017 meeting)
Specified Capital Improvements	Specified Capital Improvements: Allow 100% pass through for building permit and require a licensed contractor; provide modified amortization periods; construction must be completed within 12 months prior to submitting petition and limit 3% cap on pass through when CPI-U exceeds 5%.
RUBS	Do not allow RUBS
Joint Petition	Allow joint petition for additional occupants for both the 5% and CPI-U options

Petition Process - Appeals	Appeals under Chapter 6 (violations of the ARO) will be heard by a Hearing Officer; Under Chapter 7 (Service Reductions) reinstate formal mediation with a hearing officer, but retain voluntary participation.
Buyout	Addition of a section allowing and regulating Tenant Buyouts, striking the language “if requested” (regarding offering in tenant’s language)
One-Year Lease	Drop one-year written lease requirement
Duplexes	Bring back duplexes for November 9 th HCDC meeting
Joint Petitions	Add parent to relationships exempt from joint petitions

CEQA

Statutorily Exempt, File No. PP17-075, CEQA Guidelines Section 15061(b)(3), No potential for causing a significant effect on the environment.

/s/

JACKY MORALES-FERRAND
Director, Department of Housing

For questions, please contact Rachel VanderVeen, Program Administrator, at (408) 535-8231.

ATTACHMENTS:

- **Attachment A** – Summary of City Council Direction
- **Attachment B** – Apartment Rent Ordinance (ARO) Apartment Owner & Tenant Profile
- **Attachment C** – Red-Line Version Showing Material Changes to the Public Review Draft of the ARO and Regulations
- **Attachment D** – Summary of Public Meetings for the Apartment Rent Ordinance
- **Attachment E** – Annual General Increase Research
- **Attachment F** – Historic CPI-U Chart
- **Attachment G** – Summary of Rent Increase Limits in Other Cities
- **Attachment H** – Capital Improvement Petition Process Summary
- **Attachment I** – Capital Improvement Estimated Costs for Specific Projects
- **Attachment J** – Summary of Utility Billing Petitions
- **Attachment K** – Utility Costs Over Time
- **Attachment L** – Jurisdictions with Joint Petition Process for Additional Occupants
- **Attachment M** – Jurisdictions with Tenant Buy Out Provisions
- **Attachment N** – Exploration of Duplex Inclusion in the ARO Work Plan

Summary of City Council Direction

Council Meeting	Council Direction and Action
September 1, 2015	<p>Direction:</p> <ul style="list-style-type: none"> • City Council accepted the staff report and proposed work plan, including recommendations to include: Financial Outcomes and Fair Returns; Debt-Service Pass-Through, research ARO housing inventory and data by building and comparison of rents between ARO v. market rate rentals; demographic characteristics of renters; and to defer the work on the source of income discrimination ordinance and return to the full Council once a settlement or update on the City of Santa Monica lawsuit becomes available. • City Council also directed staff to convene an <i>advisory committee</i> made up of renters, property owners, landlords, and advocates to review the final suggestions of staff before the item is brought to Council for a final vote; and to include in the Workplan an exploration of income eligibility criteria for rent-controlled units, including consideration of duplexes. http://www.sanjoseca.gov/DocumentCenter/View/46397 (Item 4.3)
April 19, 2016	<p>Direction:</p> <ul style="list-style-type: none"> • 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% with banking capped at 10%, an annual maximum of 8% rent increase cap (including any banking and allowed capital improvement pass through), provide tenant notification of banking; eliminating the debt-service pass-through provision, establishing a new simple and predictable Capital Improvement Program, adding a limited capital improvement incentive program, developing a unique amortization process, implementing a fair return process, implementing a rent registry, and developing a voluntary mediation program. • City Council directed staff to return with an Anti-Retaliation and Protection Ordinance. • City Council directed staff to return on May 10, 2016 with an urgency ordinance that provided a temporary pause in rent increases to apartments subject to the ARO. http://www.sanjoseca.gov/DocumentCenter/View/55891 (Item 4.1)
May 10, 2016	<p>Direction:</p> <ul style="list-style-type: none"> • Staff to return with an ordinance addressing Ellis Act evictions from ARO apartments, demolition of ARO units, and conversion of ARO apartments to condominiums. • Staff to return with a plan to increase staffing to sufficiently administer, monitor and reinforce requirements of ARO. <p>Action:</p> <ul style="list-style-type: none"> • City Council adopted the Interim Ordinance effective through January 1, 2017. 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) and implemented a fair return petition process. http://www.sanjoseca.gov/DocumentCenter/View/56624 (Item 4.4)

August 30, 2016

Action:

- City Council approved amendments to the existing regulations for the Interim Ordinance providing procedures for the fair return petition process.
<http://www.sanjoseca.gov/DocumentCenter/View/60440> (Item 4.3)

October 18, 2016

Action:

- City Council adopted an Ordinance extending the termination date for the Interim Ordinance to June 30, 2017.
<http://www.sanjoseca.gov/DocumentCenter/View/61854> (Item 2.2)

January 31, 2017

Direction:

- City Council directed the Administration to maintain a rent registry, rather than a unit registry and the remainder of the audit of the ARO as recommended by staff, was approved, including elimination of the banking provision.
<http://www.sanjoseca.gov/DocumentCenter/View/65862> (Item 4.2)

April 18, 2017

Action:

- Approved the Ellis Act Ordinance to provide procedures for an owner's withdrawal of rent stabilized apartments from the rental market including requirements for noticing, relocation benefits, the tenant rights to return, and control of rents for apartments constructed or returned to the rental market within five years of withdrawal.

Direction:

- Staff to research the impact of subjecting all replacement units under the Ellis Act Ordinance to re-control by the Ellis Act and provide additional research regarding existing Ellis Act Ordinances throughout California.
- Staff to incorporate into the ARO a requirement that a property owner offer a renewable one-year written lease to tenants.
- Staff to return with an Ordinance to remove the ARO exemption for apartments with tenants whose rent is subsidized by any government agency.
- Staff to prepare a policy for Council consideration to tie the annual allowed rent increase for rent controlled units to the Consumer Price Index and allowing banking, consistent with the staff recommendation at the April 19, 2016 meeting.
- Staff to return with a work plan to evaluate whether duplexes should be added to the ARO.

<http://www.sanjoseca.gov/DocumentCenter/View/68081> (Item 4.3)

May 9, 2017

Action:

- City Council approved the Tenant Protection Ordinance restricting no- cause evictions and establishing requirements for landlords to state a just cause for eviction.
- City Council approved an ordinance amending the Interim Ordinance to extend the termination date of the Interim Ordinance until December 31, 2017 and to add a provision amending the definition of Rental Unit to eliminate the exemption for rental apartments with tenants whose rent is subsidized by a government agency.

Direction:

- Return to the City Council with a strategy for educating tenants and landlords on the Tenant Protection Ordinance.
- Identify a means for funding legal services for low income tenants needing assistance in effectuating their “just cause” rights.
- Return to the City Council with an amendment to the Tenant Protection Ordinance to address criminal activity be addressed a just cause and prohibit landlords from threatening notification of immigration authorities of their tenants’ immigration status.

<http://www.sanjoseca.gov/DocumentCenter/View/68838> (Item 4.4)

October 24, 2017

Action:

- City Council approved an Ordinance amending the Interim Ordinance to extend the termination date until after the effective date of a revised Apartment Rent Ordinance.

<http://www.sanjoseca.gov/DocumentCenter/View/72956> (Item 4.3)

Apartment Rent Ordinance (ARO) Apartment Owner & Tenant Profile

Owner Summary

Table 1: ARO Buildings by Tiers

Tier 1		Tier II		Tier III		Total Buildings	Total # of ARO Units	ARO Unit Exemptions
879	16%	2,289	43%	2,228	41%	5,396	44,359	5,869

Source: City of San José Housing Department, Multiple Housing Roster (MHR) database

Table 2: Number of Owners by ARO Building Size

3 or 4 Unit Bldgs.		5 to 9 Unit Bldgs.		10 to 19 Unit Bldgs.		20 to 49 Unit Bldgs.		50+ Unit Bldgs.		Total Owners
1,459	49%	664	22%	426	14%	254	9%	177	6%	2,980

Source: City of San José Housing Department, Multiple Housing Roster (MHR) database

Table 3: Number of ARO Property Owners by Residency Location

Location of Residency	ARO Property Owners	
San José	1,479	49%
California	2,927	98%
Out of State	53	2%

Source: City of San José Housing Department, Multiple Housing Roster (MHR) database

Tenant Summary

Table 1: Total Number of ARO Tenants

Total People in ARO Units	San Jose Population Estimate	% of San Jose Population that are ARO Renters
137,513	1,025,350	13%

Table 2: Percentage of ARO Apartments vs. Market Rate Housing

	Number of Apartments	Percent
Total Apartments with three units or more (Multiple Housing Roster)	99,190	
Affordable Housing Apartments	19,934	
Duplex	11,392	
Market Rate Apartments	= 99,190 - 19,934 + 11,392 = 90,648	
Apartment Rent Ordinance Apartments	44,359	49% of Market Rate Apartments are ARO

Table 3: ARO Tenants by Ethnicity

African American	Asian American or Pacific Islander	Hispanic or Latino	White/Non-Hispanic	Other
5%	24%	49%	20%	2%

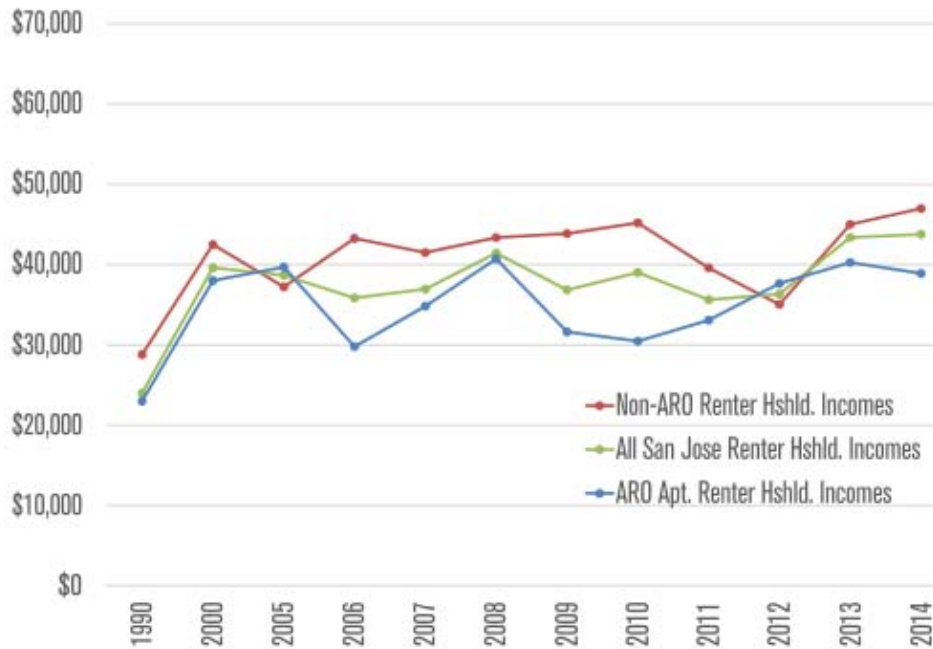
Source: Economic Roundtable - San José ARO Study 2016

Table 4: ARO Tenants by Education Attainment

Graduate Degree	Bachelor's Degree	Associate Degree	Some College, No Degree	HS Diploma or GED	Less than HS Diploma
9%	16%	6%	20%	23%	26%

Source: Economic Roundtable - San José ARO Study 2016

Table 5: Median Household Income by ARO Status, Unadjusted



Source: Economic Roundtable - San José ARO Study 2016

Chapter 17.23 APARTMENT RENT ORDINANCE

PART 1	GENERAL
PART 2	DEFINITIONS
PART 3	INITIAL RENT AND RENT INCREASES; PETITIONS AND HEARINGS PROCESS
PART 4	FEES
PART 5	ENFORCEMENT
PART 6	EVICCTIONS – RENT STABILIZED UNITS
PART 7	RESERVED <u>TENANT BUYOUT AGREEMENTS</u>
PART 8	FAIR RETURN STANDARD
PART 9	RENT REGISTRY

PART 1. GENERAL

17.23.010 Title.

Parts 1 through 9 of this Chapter 17.23 shall be known as the "Apartment Rent Ordinance."

17.23.020 Policy and purposes declaration.

The purposes of the Apartment Rent Ordinance are to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. The Apartment Rent Ordinance recognizes the value of residential rental units as a critical resource amid the continuing shortage of and persistent demand for housing in the City of San José. In July 1979, the City enacted a rent control ordinance to alleviate some of the more immediate needs created by San José's housing situation: including but not limited to the prevention of excessive and unreasonable rent increases, the alleviation of undue hardship upon individual tenants, and the opportunity for landlords to earn a fair return. To further protect tenants from excessive and unreasonable rent increases, the Apartment Rent Ordinance generally limits annual rent increases, requires notices be provided to the City, regulates how much and what types of costs may be passed through to tenants, provides for monitoring of rents, and provides for an administrative review process for housing-related disputes. The rights and obligations created by the Apartment Rent Ordinance for landlords and tenants are created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and are in addition to any rights and obligations under state and federal law.

17.23.030 Scope and application.

A. Parts 1 through 9 of the Apartment Rent Ordinance apply to each Rent Stabilized Unit, as defined in Section 17.23.167 and, as applicable, to each Covered Property as defined in Section 17.23.123.

17.23.040 Regulations; Forms authorized.

The City Manager may adopt or amend regulations for the administration and implementation of the Apartment Rent Ordinance. The Director, with the approval of the City Attorney, may adopt forms and notices to facilitate the administration and implementation of the Apartment Rent Ordinance. All forms and notices called for in this Chapter and the Regulations shall be adopted by the Director unless otherwise indicated.

17.23.050 Notice of Apartment Rent Ordinance to Tenant Households.

A. Each Landlord shall post a written notice and maintain such posting, on a form approved by the Director, of the applicability of the Apartment Rent Ordinance in a conspicuous location within each building containing one or more Rent Stabilized Units. The Landlord shall have complied with this requirement by posting a Notice of the Apartment Rent Ordinance in the same location as ~~with~~ a notice to tenants posted in accordance with subsections (1) or (2) of Civil Code Section 1962.5(a) or ~~if posted~~ immediately adjacent to the posting of the Residential Occupancy Permit in compliance with Section 17.20.6~~2~~30.

B. Each Landlord shall notify the Tenant Household of the applicability of the Apartment Rent Ordinance prior to entering an oral or written rental agreement for a Rent Stabilized Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this Section ~~17.23.340(B)~~ by providing ~~one copy of~~ (1) written notice that the Rent Stabilized Unit is subject to this Chapter and, (2) a copy of the current City informational notice or handbook for Tenants of Rent Stabilized Units (“Informational Notice”), if such notice is available from the City of San ~~the Notice of Apartment Rent Ordinance to~~ José, to the Tenant upon entering an oral or written rental agreement for the Rent Stabilized Unit.

17.23.060 Limit on Electronic Payment.

It shall be unlawful for any Landlord to demand or require either cash or an electronic funds transfer or online internet payment as the exclusive method of payment of Rent or Security Deposits, except that cash may be required for a limited period of time under the conditions allowed by California Civil Code Section 1947.3(a)(2), as amended.

17.23.070 Reasonable Accommodation; Fair Housing

A. Nothing in this Chapter is intended to authorize a Landlord to deny a request for reasonable accommodation required under state or federal law, or to impose a charge for that accommodation where no charge is allowed by law.

B. Nothing in this Chapter is intended to authorize a Landlord to avoid obligations imposed by federal, state or local fair housing law.

PART 2. DEFINITIONS

17.23.100 General.

Unless the context otherwise requires, the definitions set forth in this Part govern the construction of the Apartment Rent Ordinance.

17.23.105 Administrative Decision.

"Administrative Decision" means a Petition Examiner's final written determination on a Landlord or Tenant Petition.

17.23.110 Affordable Rental Unit.

"Affordable Rental Unit" means each Rental Unit that is owned or operated by any government agency, or any individual Rental Unit for which the Rent is limited to no more than affordable rent, as such term is defined in California Health & Safety Code Section 50053, for lower income households pursuant to legally binding restrictions recorded for the benefit of a government agency. However, if the ownership or operation, or the Rent limitation ceases, then the Rental Unit will no longer be considered an Affordable Rental Unit. The presence of one or more Affordable Rental Units in a Multiple Dwelling shall not exempt any other Rental Unit in the same building that does not also meet the definition of Affordable Rental Unit.

17.23.112 Annual General Increase.

"Annual General Increase" shall have the meaning provided in Section 17.23.310 ~~A~~.

17.23.115 Base Year.

"Base Year" shall have the meaning provided in Section 17.23.810.B.

17.23.116 Buyout Agreement

"Buyout Agreement" shall have the meaning provided in Section ~~2.01.3~~ of the Regulations.

17.23.117 Buyout Offer

"Buyout Offer" shall have the meaning provided in Section 2.01.4 of the Regulations.

17.23.120 Capital Improvements.

"Capital Improvements" means building, unit or property additions or modifications that replace or enhance an existing physical feature of a Rent Stabilized Unit or of a building containing a

Rent Stabilized Unit or that provides new Housing Services to the Tenants as compared to the level of services as previously provided.

17.23.121 Commission.

"Commission" means the Housing and Community Development Committee or successor.

17.23.122 Consumer Price Index ~~For All Urban Consumers.~~

"Consumer Price Index ~~For All Urban Consumers~~" means the Consumer Price Index ~~F~~for ~~A~~all ~~U~~urban ~~e~~Consumers in the San Francisco-Oakland-San Jose all items index (1982-84 equals 100), as reported by the Bureau of Labor Statistics of the United States Department of Labor. In the event a successor index to the Consumer Price Index for all urban consumers for all items for the San Francisco-Oakland-San Jose area or comparable area is established by the Bureau of Labor Statistics, this definition may be updated accordingly in the Regulations.

17.23.123 Covered Property.

"Covered Property" means an individual building or complex of buildings containing one or more Rent Stabilized Units, together with any common areas.

17.23.124 Current Year.

"Current Year" shall have the meaning provided in Section 17.23.810.C.

17.23.125 Director.

"Director" means the City's Director of the Department of Housing or the Director's designee.

17.23.126 Ellis Act Ordinance.

"Ellis Act Ordinance" means the ordinance codified in Part 11 of Chapter 17.23.

17.23.127 For-Cause Termination.

"For-Cause Termination" is the termination of a tenancy based on a reason for eviction that would legally entitle a Landlord to evict a Tenant Household on three (3) days' notice under California Code of Civil Procedure Sections 1161(2) (for Tenant's nonpayment of Rent), 1161(3) (for Tenant's failure to perform a material term of rental agreement), or 1161(4) (for Tenant allowing a nuisance or other unlawful activity).

17.23.130 Gross Income.

"Gross Income" shall have the meaning provided in Section 17.23.820.A.

17.23.131 Guest Room.

"Guest Room" shall have the meaning provided in Section 20.200.460.

17.23.132 Guesthouse.

"Guesthouse" shall have the meaning provided in Sections 20.200.470 and 20.200.480.

17.23.135 Hearing Officer.

"Hearing Officer" shall have the meaning provided in Section ~~6.06.2.01.1101~~ of the Regulations.

17.23.136 Housing Services.

"Housing Services" means those services provided and associated with the use or occupancy of a Rental Unit, including but not limited to repairs, replacement, maintenance, painting, light, heat, water, elevator service, pest control, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, utilities, parking, storage, and any other benefits, privileges, or facilities.

17.23.137 Initial Rental Rate.

"Initial Rental Rate" means the actual amount paid by the Tenant for the use and occupancy of the Rent Stabilized Unit at the commencement of the tenancy, or in the case of a Rental Voucher Unit, the sum of the rent paid by the Tenant and government agency.

17.23.140 Landlord.

"Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive Rent for the use and occupancy of any Rental Unit or portion thereof, and the agent, representative, or successor of any of the foregoing. For purposes of this Chapter, Landlord does not include an individual who is a member of the Tenant Household whose primary residence is the same Rental Unit as the Tenant.

17.23.145 Multiple Dwelling.

"Multiple Dwelling" means a multiple dwelling as that term is defined and used in Title 20 of this Code and includes all units subject to Part 8 of Chapter 17.20.

17.23.146 Municipal Code.

"Municipal Code" means the San José Municipal Code.

17.23.150 Net Operating Income.

"Net Operating Income" shall have the meaning provided in Section 17.23.810.A.

17.23.151 Notices.

The following notices are defined terms for purposes of this Chapter with the following meanings.

A. "Informational Notice" shall have the meaning provided in Section 17.23.050.B.

B. "Notice of the Apartment Rent Ordinance" shall have the meaning provided in Section 17.23.050A.

~~A.~~

~~B. "Notice of Rent Increase" means the notice informing a Tenant Household of a proposed increase in Rent charged for the use and occupancy of a Rent Stabilized Unit in accordance with Part 4 of the Apartment Rent Ordinance.~~

C. "Notice of Re-Rental" shall have the meaning provided in Section 17.23.600.

D. "Notice of Termination" means the notice informing a Tenant ~~Household~~ of the termination of its tenancy including but not limited to a notice to quit or vacate, provided in Section 17.23.600 and a notice in accordance with Civil Code section 1946.1 ~~and or~~ Code of Civil Procedure section 1162, as amended.

17.23.155 Operating Expenses.

"Operating Expenses" shall have the meaning provided in Section 17.23.820.C.

17.23.160 Petition.

"Petition" shall have the meaning provided in Section 2.01.14 of the Regulations.

17.23.161 Petition Examiner.

"Petition Examiner" shall have the meaning provided in Section 6.06.05 of the Regulations.

17.23.165 Regulations.

"Regulations" means the regulations adopted by the City Council or pursuant to Section 17.23.040.

17.23.166 Rent.

"Rent" means the consideration, including any funds, labor, bonus, benefit, or gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit, including Housing Services, or for the assignment of a lease or rental agreement for a Rental Unit, including subletting.

17.23.167 Rent Stabilized Unit.

A. "Rent Stabilized Unit" means a Rental Unit in any Guesthouse or in any Multiple Dwelling building for which a certificate of occupancy was issued on or prior to September 7, 1979 or that was offered or available for rent on or before this date.

A. The following shall not be considered Rent Stabilized Units:

1. Rooms or accommodations in hotels, motels, or guesthouses which are legally rented to transient guests for a period of less than thirty days consistent with the Municipal Code, except those rooms or accommodations subject to Part 2.5 of Chapter 20.80;

2. Housing accommodations in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended), fraternity house or sorority house, or in dormitories owned and operated by an institution of higher education, a high school or elementary school;

3. Affordable Rental Units; and

4. Rental Units in a building containing only one or two dwelling units.

17.23.168 Rental Unit.

"Rental Unit" means a structure or part of a structure (including but not limited to a Guest Room in a Guesthouse) offered or available for rent as a home, residence, or sleeping place, whether or not the residential use is a conforming use permitted under the San José Municipal Code, together with the land and appurtenant buildings thereto, and all housing services, privileges, and facilities supplied in connection with the use or occupancy thereof. A Rental Unit shall not include a Mobilehome or Mobilehome Lot as defined in Section 17.22.160 and 17.22.170.

17.23.169 Rental Voucher Unit

"Rental Voucher Unit" means a Rental Unit that is restricted to occupancy by lower income households by a contract where the Tenant pays no more than 35% of their income towards the Rent, the remainder being paid with a government agency or a nonprofit administering government agency's funds, and where the rent is not increased on an annual basis, but only where allowed under the rules of the government agency.

17.23.170 Section.

"Section" means a numbered section in Municipal Code Chapter 17.23 unless otherwise indicated.

17.23.171 Security Deposit

"Security Deposit" shall have the meaning provided in California Civil Code Section 1950.5, as amended.

17.23.172 Specified Capital Improvements.

"Specified Capital Improvements" shall have the meaning provided in Section 17.23.330.

17.23.175 Tenant.

"Tenant" means a person or persons entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Rental Unit.

17.23.176 Tenant Household.

"Tenant Household" means all Tenant(s) who occupy any individual Rental Unit, ~~including and~~ each minor ~~dependent~~ child of any Tenant whose primary residence is the Rental Unit.

17.23.177 Tenant Protection Ordinance.

"Tenant Protection Ordinance" means the ordinance codified in Part 12 of Chapter 17.23.

PART 3. INITIAL RENT AND RENT INCREASES; PETITION AND HEARING PROCESS

17.23.300 Initial Rent and Vacancy Decontrol.

A. Valid Decontrol. The Initial Rental Rate for a new tenancy in a Rent Stabilized Unit may be set by the Landlord ~~only~~ if the Rent Stabilized Unit was vacant due to one of the following two circumstances.

1. Voluntary Vacancy. The prior Tenant Household voluntarily terminated the tenancy.
2. For Cause Termination. A Landlord legally terminated the prior tenancy as a For-Cause Termination.

B. Exceptions to Decontrol. Only the Rent charged consistent with this Chapter to the former Tenant, plus any annual adjustment authorized by this Chapter, may be charged for a Rent Stabilized Unit in the following circumstances.

1. No Cause Termination. A Landlord terminated a tenancy without cause in accordance with Section 1946.1 of the California Civil Code or Section 827 of the California Civil Code.
2. Continuing Tenancy. An existing Tenant or existing member of the Tenant Household, (including individuals who are not listed on an existing rental agreement), has entered into a new oral or written rental agreement for the same Rent Stabilized Unit.

~~3. Tenant Buyout by Landlord. A Landlord effectively terminated a tenancy without cause by paying a Tenant listed on the rental agreement, or the Tenant Household generally, with a primary purpose of encouraging the Tenant and Tenant Household to vacate the Rent Stabilized Unit.~~

4.3. Unlawful Landlord Activity. A Landlord effectively terminated a tenancy without cause by encouraging the Tenant to terminate the tenancy through unlawful activities prohibited under the Tenant Protection Ordinance, the Apartment Rent Ordinance, or State law.

5.4. Any Other Illegal Evasion. A Tenant terminated a tenancy because of illegal conduct by the Landlord or any other means by which a Landlord fraudulently seeks to set a new initial rental rate.

17.23.310 Limits on Rent Increases.

A. Annual Rent Increase Limit. The Rent of any Rent Stabilized Unit may not be increased by more than the Annual General Increase unless otherwise authorized by Petition. If the Landlord has not substantially complied with the City's request to register or re-register a Rent Stabilized Unit pursuant to the procedures in the Regulations, the Landlord may not increase the Rent for the Rent Stabilized Unit.

B. The "Annual General Increase" is limited to:

5% ~~OPTION B:~~ The monthly Rent charged for the previous twelve (12) months for the Rent Stabilized Unit multiplied by five percent (5%).

~~CPI-U OPTION A:~~ The monthly Rent charged for the previous twelve (12) months for the Rent Stabilized Unit multiplied by a percentage determined and posted by the Director on or prior to June 1, being equal to one hundred percent of the increase in the Consumer Price Index measured from the April of the preceding calendar year preceding the year in which the increase is effective to the April of the ~~calendar current year~~ calendar year, ~~in which the increase is effective,~~ but in no event greater than ~~five~~ eight percent (85%) nor less than two percent (2%). Notice of such increase may not be served on a Tenant prior posting of the percentage.

~~OPTION B:~~ The monthly Rent charged for the previous twelve (12) months for the Rent Stabilized Unit multiplied by five percent (5%).

C. Rent Increase Frequency Limit. Not more than one Rent increase, including the Annual General Increase, any increase allowed under Chapter 13 of the Regulations, and any increase authorized by a final ~~Administrative Decision or Hearing Officer~~ Decision after a Petition, may Petition may be imposed in any twelve-month period. An increase in Rent authorized by a decision on a Petition filed pursuant to Section 17.23.350.C or a Part 8 of this Chapter may be imposed after notice has been provided pursuant to Civil Code Section 827, if the decision states that the initial increase is exempt from the 12 month interval requirement under this Section.

~~C.~~ D. Rental Voucher Unit - Rent Increases. During the time a Rental Unit serves as a Rental Voucher Unit, the Initial Rent shall be subject to this Chapter, but its Rent may be

adjusted annually consistent with the published rules of the applicable government agency in lieu of the Rent adjustments allowed under this Chapter.

17.23.315 Limits on All Fees and Pass Through Charges

A. Limitation on Pass Through Charges. No pass through of charges to Tenants is authorized except as expressly authorized in this Chapter. Without altering the generality of the foregoing sentence, no charges for utility services (such as electricity, natural gas, telephone, water, waste water, and refuse or waste management services) may be passed through to Tenants by Landlord. No charges may be passed through that are assigned to Tenants by virtue of ratio utility billing or similar unmetered allocation arrangements.

B. Limitation on Fees. The following fees may not be charged to Tenants except as provided:

1. Excess Replacement Fees. No Landlord shall charge a Tenant a replacement fee for a key or security card that exceeds the actual replacement cost plus ten dollars unless approved by Petition or the Regulations.

2. Excess Bounced Check Service Fees. ~~No~~ No Landlord shall charge a Tenant a ~~fee~~ service charge for a dishonored ("bounced") check that exceeds the amount allowed under California Civil Code Section 1719 (a)(1), as amended. Landlord ~~need not provide Tenant with a third party invoice for this service charge~~ the fee charged by the bank for the return of the check.

3. Late Payment Fees. No Landlord shall charge a Tenant a fee for late payment of Rent exceeding a total of five percent (5%) of the monthly Rent for each payment of Rent that is three (3) or more days late.

~~3.4.~~ Application Screening Fees. No Landlord shall charge a Tenant an application screening fee in excess of the amount allowed under California Civil Code Section ~~Civil Code Section~~ 1950.6 (b), as amended.

C. Separate Line-Item Required. No Landlord may pass through any charge to any Tenant allowed under this ~~Section-Part~~ unless the charge is clearly listed on the rental agreement and the Rent invoice (if any) and is accompanied by a true and correct copy of the invoice or bill paid by the Landlord for such charge.

D. Tenant Petitions Authorized. In the event a Tenant disputes the pass through of a charge or the calculation of the Tenant's share of the charge, the Tenant may file a Petition for a determination as to whether such charge may be passed through pursuant to this Section and whether the calculation of the Tenant's share comports with this Section and any Regulations governing such pass through. Any of the following reasons provide grounds for such a Petition:

1. There exists a dispute as to the genuineness of the bill or the amount of the charge.
2. The pass through of the charge is not authorized under this Chapter.

3. There exists a dispute as to whether the Tenant had the right to use and occupy the Rental Unit during the billing period or any portion of the billing period.

4. Mathematical errors in the relevant calculations

4.5. Copies of the Landlord's invoice or bill were not provided as required.

E. Security Deposit

Except as provided in Section 17.320.C, a Security Deposit, once established, cannot be raised for the duration of the tenancy. For purposes of this section only, where several Tenants occupy one Rental Unit, the Tenancy shall be deemed to continue so long as any one of the Tenants who occupied the Rental Unit when the deposit was set continues to occupy the Rental Unit.

17.23.320 Exceptions to Limits on Rent Increases and Other Charges.

A. Rent Increase Awards for Landlord Fair Return Petitions. A Landlord may increase rents in excess of the Annual General Increase to the extent a higher rent is authorized in a final Hearing Officer's ~~d~~Decision on a Landlord Petition for fair return filed in accordance with Part 8 of this Chapter.

B. Pass Through Awards for Landlord Specified Capital Improvements Petitions. A Landlord may impose a pass through charge in addition to Rent to the extent authorized in a final Administrative Decision or Hearing Officer's ~~D~~decision on a Landlord Specified Capital Improvements Petition filed in accordance with Section 17.23.330. Provided however, in no event may the total monthly amount imposed for Specified Capital Improvements, including any amount awarded under a prior decision, exceed three percent (3%) of the monthly Rent validly charged for the Rent Stabilized Unit on the date of the filing of the Petition. Charges for Specified Capital Improvements shall not be considered Rent for purposes of this Chapter and shall not increase when Rent increases, nor shall they be considered part of Rent for the purpose of calculation of the Annual General Increase. Following a valid vacancy decontrol of Rent for a Rent Stabilized Unit in accordance with Section 17.23.300, any awarded charges for Specified Capital Improvements for that unit shall expire. [CPI OPTION –add “Notwithstanding the above the amount to be passed through under this Section may not exceed 8% minus one hundred percent of the Consumer Price Index.”]

C. One-Time Payments for New Additional Housing Services. A Tenant Household may file a joint petition to allow the Tenant to make a payment of a one-time fee or increase the Tenant's Security Deposit in order to receive or be entitled to certain new or additional Housing Services that are expressly excluded in the written rental agreement, to the extent that these Housing Services that are identified in the Regulations. The one-time payment for a new or additional Housing Services may not exceed five percent (5%) of the monthly Rent validly charged at the time of the Tenant request. The one-time payment or additional Security Deposit, that payment shall not be considered Rent for purposes of this Chapter and shall not be included when calculating a Rent increase or subject to the one increase in any twelve-month period limitations in Section 17.23.310.

17.23.325 Council Initiated Exceptions to Limits on Rent Increases and Other Charges

~~D.~~ A. Other Fees, Charges, and Costs that May Be Passed Through to Tenants. The following charges may be passed through to Tenants, separate from Rent only in compliance with the requirements below. These charges shall not be considered Rent for purposes of this Chapter and shall not increase when Rent increases, nor shall they be considered part of Rent for the purpose of calculation of the Annual General Increase.

~~Pass Through of Annual Fees imposed under Chapter 17.23.~~

[CPI- U OPTION.A.1 to be added if Rent Increase is based on the CPI-U OPTION.]

1. Rent Stabilized Unit Charges. A Landlord may pass through to a Tenant a share of annual charges imposed on the Landlord by City under Section 17.23.400 for the Tenant's Rental Unit subject to the following conditions:

- a. The total charge by the Landlord may not exceed fifty percent (50%) of the total amount paid by the Landlord; and
- b. No Landlord may require a Tenant to pay any amount of any charge that is attributable to any period of time that the Tenant was not entitled to use and occupy the Rental Unit

~~1. [OPTIONAL.To be added if Rent Increase is based on CPI-U.]~~

~~2.~~ 2. Other New Charges That May Be Passed Through to Tenant Households. A Landlord may pass through to a Tenant a share of charges imposed on the Landlord by governmental agencies or by public utilities subject to regulation by the California Public Utilities Commission, subject to the limitations in subsection 3 below where all of the following conditions are met:

- a. The charge is a new charge, as opposed to an increase in an existing charge, which the governmental agency or the public utility requires the Landlord to pay; and
- b. Such pass through has been authorized by resolution of the City Council in which the charge in question was expressly identified; and
- c. The Landlord passes through the charge in accordance with the rules specified in such a resolution adopted by the City Council and the Regulations.
- d. The Landlord passes through the charge in accordance with the rules specified in such a resolution adopted by the City Council and the Regulations.

~~3.~~ 3. Conditions to Pass Through Charges to Tenants. No charge described in subsection ~~-2;~~ ~~of Section 17.23.330.D~~ may be passed through to any Tenant pursuant to this Section unless all of the following conditions are satisfied:

- ~~a.~~ a. The total charge by the Landlord may not exceed fifty percent (50%) of the total amount paid by the Landlord; and
- b. No Landlord may require a Tenant to pay any amount of any charge that is attributable to any period of time that the Tenant was not entitled to use and occupy the Rental Unit; and
- c. No Landlord may require a Tenant to pay any amount of any charge that is attributable to common areas or Rental Units other than the Tenant Household's Rental Unit; and
- d. No Landlord may require a Tenant to pay more than its share of the charge attributable to that Tenant's Rental Unit that is permitted to be passed through to Tenant.

17.23.330 Petitions for Pass Through for Specified Capital Improvements.

A. Purpose. The purpose of this Section is to provide an incentive for certain improvements by allowing Landlords to petition for a limited pass through to the Tenant of the amortized costs of the improvements listed in Appendix B to the Regulations (“Specified Capital Improvements”) subject to the following conditions:

1. The charge must comply with the limitations in Section 17.23.320.B.
2. The Specified Capital Improvement must do one of the following: provide new Housing Services or enhanced Housing Service functionality to the Tenants; increase the safety (including ADA accessibility), sustainability (water or energy conservation) or seismic readiness of the Rent Stabilized Units-Unit (or of a building containing a Rent Stabilized Unit); or, for petitions filed before January 1, 2023, replace or maintain existing Housing Services.

~~B.~~ 3. The Specified Capital Improvement must have been completed within 12 months prior to the filing of the petition and must meet the criteria in the Regulations.

~~C.B.~~ Petition Required. A Landlord must petition for and receive an Administrative Decision authorizing a pass through for any costs to be charged to Tenants pursuant to this Section prior to passing through any charges.

~~D.C.~~ No Pass Through for Improvements to Maintain Existing Housing Services. The following may not be passed through to the Tenant unless explicitly authorized by the Regulations: (1) the costs of a Specified Capital Improvement that replaces an existing physical

feature of a Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit) with a physical feature of similar kind and quality; or (2) the costs of a Specified Capital Improvement that maintains a similar level of functionality as a prior physical feature of a Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit).

17.23.350 Petition Process.

A. Tenant Petitions. There is hereby established a Tenant Petition process, which process and procedures shall be set forth in the Regulations. A member of a Tenant Household may submit a Petition to the Director on any one or more of the following grounds: to allege a Rent increase in violation of the Ordinance; to request a reduction in Rent based on decreased Housing Services; to contest a fee or charge ~~pursuant to Section 17.23.315.D~~ as an unauthorized or excessive pass through; to allege other violations of the Ordinance or Regulations; or other specific grounds that may be provided by the Regulations.

B. Landlord Petitions. There is hereby established a Landlord Petition process, which process and procedures shall be set forth in the Regulations. A Landlord may submit a Petition to the Director on any one or more of the following grounds: to request a Rent increase in excess of the Annual General Increase in order to obtain a fair return as described in Part 8; to request the ability to pass through a charge for Specified Capital Improvements; or other specific grounds that may be provided by the Regulations.

C. Joint (Unopposed) Petitions. There is hereby established a Joint Petition process, which process and procedures shall be set forth in the Regulations. A ~~Landlord and~~ Tenant may file a petition to request approval of a one-time payment or Security Deposit increase pursuant to Section 17.23.320.C, if the Landlord has signed the petition. Subject to the conditions in the Regulations, a ~~Landlord and~~ Tenant may file a petition for an increase in the ~~maximum~~ Rent allowable of up to 5% for an additional ~~occupant~~ Tenant ~~(other than the Tenant's spouse or child)~~ if additional occupants are prohibited in the written rental agreement, or an increase in the ~~maximum~~ Rent allowable of up to \$50 for a second parking space if only one parking space is reserved for the Tenant in a written rental agreement. Provided that no increase in the Rent is allowed for a Tenant's dependent child, foster child, spouse, or domestic partner, or parent which terms may be further defined in the Regulations.

D. Petitions Affecting Rental Voucher Units.

A Tenant or Landlord filing a petition that applies to a Rental Voucher Unit must indicate that on the petition and provide a copy of the petition to the government agency or nonprofit administering government agency's funds within the time period specified in the Regulations for notice to the other party. The government agency or nonprofit administering government agency's funds shall be entitled to participate in the petition process, and to file a petition or response within the time period specified in the Regulations.

PART 4. FEES**17.23.400 Fee - Rental unit.**

The costs of providing services and administering ~~the Apartment Rent Ordinance~~ this Chapter shall be reimbursed to the general fund by imposition of a fee chargeable against each Rental Unit in the City of San José subject to the provisions of ~~the Apartment Rent Ordinance~~ this Chapter. This is the fee previously codified in Section 17.23.480 and 17.23.490 pursuant to Ordinance No. 19696.

17.23.410 Fee — Timing, Method and Exemptions ~~Penalty for late Payment.~~

~~A.~~ A. Timing and Method. ~~Apartment Rent Ordinance Fee.~~

~~1.~~ ~~There is hereby imposed on each Rent Stabilized Unit an Apartment Rent Ordinance fee. This is the fee previously codified in Section 17.23.490.A pursuant to Ordinance No. 19696.~~

1. ~~Said fee~~ The fee imposed pursuant to Section 17.23.400 shall be paid ~~once annually~~ at the time at which the residential occupancy permit fee, if applicable, is due and paid under Title 17 of this Code, provided that the fee may also be collected by a supplemental billing, or collected in an alternative manner if so provided in the Regulations. Said fee may be included as an Operating Expense under the definition contained in Section 17.23.820. The City Manager shall report to the City Council no less than once each year regarding the City Manager's recommendation and the recommendation of the Commission as to the amount of such fee necessary to recover the costs of administering this Chapter. The amount of the fee shall be determined by Resolution of the City Council adopted from time to time. The fee shall not exceed the amount found by the City Council to be necessary to administer this Chapter, and the Council's finding in this regard shall be final. Payment by the Landlord of the fee shall be made at the same time and in conjunction with the residential occupancy permit fee, or in an alternative manner if so provided in the Regulations and the Director of Finance is hereby authorized to collect said fees in this manner.

~~A.~~ B. Late Payment ~~Penalty.~~ Whoever fails, for more than thirty days after date of notice, to pay the ~~Apartment Rent Ordinance~~ fee required hereunder shall, in addition to said fee, pay an additional ~~penalty~~ late charge assessment as determined by resolution of the City Council. No portion of ~~the fee or any penalty charge~~ or fee for late payment or submissions authorized by this Section, or any portion thereof, may be passed-through to the Tenant ~~Household.~~

~~B.~~ C. Fee Credit Upon Transfer. In the event the residential occupancy permit is transferred to a subsequent owner of the Rental ~~Stabilized~~ Unit for which the fee has been paid, the subsequent owner shall be deemed to have paid said fee for the Rental ~~Stabilized~~ Unit.

~~C.~~ D. Fee Exemptions. The Regulations shall provide procedures and standards for a Landlord to prove eligibility for fee exemptions for Rent Stabilized Units based on claims of owner occupied units or units exempt pursuant to the definition provided in Section 17.23.167.B, Rent Stabilized Unit.

PART 5. ENFORCEMENT

17.23.500 Penalties.

~~A.~~ A. Penalty for Violations of this Chapter. In addition to all other remedies provided by law, including those set forth in Chapter 1.08 of Title 1 of the San José Municipal Code, and as part of any civil action brought by the City, a court may assess a civil penalty in an amount up to the greater of two thousand five hundred dollars (\$2,500) per violation per day, or ten thousand dollars (\$10,000) per violation, payable to the City, against any person who commits, continues, operates, allows, suffers, or maintains any violation of a provision of this Chapter 17.23, subject to California Civil Code Section 1947.7, as amended.

~~B.~~ B. Attorney Fees. The prevailing party in any civil action brought pursuant to this Chapter 17.23 shall be entitled to the reasonable costs of bringing such civil action, including court costs and attorney fees.

17.23.510 Retaliatory Eviction.

Possession of a Rental Unit shall not be recovered by a Landlord from a Tenant, and the Tenant Household, who is not otherwise in violation of the terms of occupancy of the Rental Unit, if either:

A. The Landlord's dominant motive in seeking to recover possession of the Rental Unit is retaliation against the Tenant for exercising any rights under this Chapter 17.23; or

B. The Landlord's dominant motive in seeking to recover possession of the Rental Unit is to evade the purposes of this Chapter 17.23.

~~B.~~

17.23.520 Waivers.

A. Nonwaiver. Any waiver or purported waiver by a Tenant of rights granted under this Chapter 17.23 prior to the time when such rights may be exercised shall be void as contrary to public policy.

B. Waiver of Rights. It shall be unlawful for a Landlord to attempt or seek to waive, or to waive, in a written or oral rental agreement, the rights granted a Tenant under this Chapter prior to the execution of, or as a condition of entering into or extending, a written or oral rental agreement.

17.23.530 Excessive Rents Demanded or Received; Civil and Criminal Liability.

A. Misdemeanor. Any Landlord found to have ~~demanded, accepted, received, or retained~~ imposed, ~~received~~, or demanded prohibited pass through charges, other fees or charges or any Rent in excess of the ~~maximum~~-Rent allowed under this Chapter 17.23 and its implementing

Regulations shall be guilty of a misdemeanor, subject to the provisions of California Civil Code Section 1947.7, as amended.

B. Civil Penalties. Any person found to have ~~imposed, received, or demanded prohibited pass through charges, other fees or charges or~~ demanded, accepted, received or retained any payment of Rent in excess of the ~~maximum~~ Rent allowed under this Chapter 17.23 and its implementing regulations or ~~pass through charges, other fees or charges that are not allowed by the decision of a Hearing Officer~~ under this Chapter 17.23, shall be liable to the Tenant from whom such payment was demanded, accepted, or received ~~or retained,~~ for the amount that was impermissibly charged, plus damages as determined and not to exceed five hundred dollars (\$500) or three (3) times the amount by which such payment exceeded the ~~maximum~~ Rent allowed, whichever is greater. Remedies provided in this paragraph are in addition to any other legal remedies and are not intended to be exclusive.

17.23.540 Affirmative Defense Against Unlawful Detainer Actions.

Rent Stabilized Units. A Landlord seeking to terminate a tenancy of a Tenant or Tenant Household for a Rent Stabilized Unit must comply with Section 17.23.600(A) ~~Part 6~~ of the Apartment Rent Ordinance and the Tenant Protection Ordinance. Non-compliance shall constitute an affirmative defense for a Tenant of a Rent Stabilized Unit against any unlawful detainer action under Code of Civil Procedure section 1161.

17.23.550 Civil Action for Wrongful Eviction.

In addition to any other remedies provided by law, any Landlord found to have evicted a Tenant from a Rental Stabilized Unit in violation of the Apartment Rent Ordinance is liable to that Tenant for a fine of up to ten thousand dollars (\$10,000), and the reasonable costs incurred by the Tenant as a result of the eviction, including the costs of moving the Tenant Household and the reasonable costs of bringing such suit, including court costs and attorney fees.

17.23.560 Disclosure to Purchasers of Real Property.

A. Any Owner, as that term is defined in Part ~~110~~ of this Chapter 17.23, of a Rent Stabilized Unit shall disclose to a potential buyer in writing, prior to the close of escrow that the Rent Stabilized Unit is subject to this Chapter 17.23 and implementing regulations. Upon request by the City, such Owner or former Owner shall provide the City with a copy of such written disclosure.

B. Failure of an Owner to make the disclosure set forth in Section 17.23. ~~850-560~~ shall in no way excuse a purchaser of a Rent Stabilized Unit from any right, responsibility, or obligation under this Chapter 17.23.

17.23.570 Administrative Citations; Injunctive Relief.

- A. The Director may enforce the rights and responsibilities created by this Chapter 17.23 and the Regulations, including issuance of an administrative citation in accordance with Chapter 1.15 of the San José Municipal Code.
- B. The City Attorney may seek injunctive relief to restrain or enjoin any violation of this Chapter or the Regulations.

17.23.580 Rights and Obligations Cumulative.

- ~~1.~~ A. Rental in Violation of City Ordinance. If a Landlord rents a Rent Stabilized Unit; ~~(ia)~~ in violation of the City's Short Term Rental Ordinance, Part 2.5 of Chapter 20.80 or for an unpermitted non-residential use; ~~(bii)~~ in material violation of the City's Housing, Fire or Building Codes, Chapter 17.20, or Title 24; ~~(iii)~~ or ~~(e)~~ in violation of the implied warranty of habitability, such rental shall also be considered a violation of this Chapter and may give rise to any of the remedies or penalties identified in this Part 5.
- ~~2.~~ B. Tenant Protections. Tenants shall have the right to seek the protections set forth in the Tenant Protection Ordinance in addition to any remedies available under Parts 1 through 9 of this Chapter.
- ~~3.~~ C. Failure to Provide a Notice of Termination; Evasion. If a Landlord fails to comply with Section 17.23.600, requires a Tenant to enter into a new lease under another name, or otherwise seeks to evade the restrictions on Rent in this Chapter such actions shall also be considered a violation of this Chapter and may give rise to any of the remedies or penalties identified in this Part 5.
- ~~4.~~ D. Additional Rights and Obligations. The rights and obligations set forth in Parts 1 through 9 of this Chapter are in addition to those set forth in any other Part or Chapter of the Municipal Code.

PART 6. EVICTIONS – RENT STABILIZED UNITS**17.23.600 Notices of termination of tenancy - Mandatory notice to city.**

- A. Copy of Notice of Termination to City. A copy of each and every Notice of Termination ~~and Unlawful Detainer~~ issued to a Tenant ~~Household~~ of a Rent Stabilized Unit shall be filed with the Director within ~~five~~ ~~three~~ ~~(35)~~ days after the service thereof on the Tenant ~~Household~~.
- B. Supplement to Notice of Termination of Tenancy Filing. ~~Until the Rent ~~st~~Stabilized Unit is first registered pursuant to the Regulations,~~ ~~the~~ copy of the Notice of Termination provided to the Director, excluding copies of the Notice of Termination based on a three-day notices to pay or quit, shall be accompanied by a "filing statement" from the Landlord or property manager, made under penalty of perjury, setting forth all of the following information in a form approved by the Director:

1. The amount of Rent that the Tenant Household being evicted is currently paying each month;
2. The date of the most recent Rent increase to the Tenant who has received the Notice of Termination;
3. The physical address of the Rent Stabilized Unit being vacated;
4. The names, ~~mailing address, email address, and current phone number~~ of the ~~adult members of the~~ Tenants Household being evicted, ~~if available to the Landlord~~; and
5. Such other information as may be reasonably requested by the City.

~~C. — Notice of Intent. Additionally, the filing statement provided to the Director pursuant to subsection C. above shall provide a statement from the Landlord or property manager, made under penalty of perjury, that the Landlord is not evicting the Tenant Household in order to evade the purposes of this chapter or any other applicable ordinance, law, or regulation.~~

D.C. Notice of Re-Rental to the City. ~~Unless the Landlord is already obligated to re-register the Rent Stabilized Unit on vacancy or re-rental pursuant to the~~ ~~Where~~ Regulations, once a Tenant Household has vacated a Rent Stabilized Unit ~~after receipt of such Notice of Termination~~, such Landlord shall be required to provide the Director with the following information in a form approved by the Director, subject to Civil Code 1947.7, as amended:

1. The amount of Rent that the subsequent Tenant Household is actually ~~currently~~ paying each month; and
2. The physical address of the Rent Stabilized Unit; and
3. The name, ~~mailing address, email address, and phone number~~ of each ~~adult member of the~~ subsequent Tenant Household ~~if available to the Landlord~~; and
4. ~~Copies~~ A copy of the written rental agreement (if any) between the Landlord and Tenant; and

~~— Copies of all Rent receipts held by the Landlord for the subsequent Tenant Household and that Tenant Household's predecessor(s); and~~

5. The reason ~~behind~~ the prior Tenant vacatiedng the Rent ~~Stablized~~ Stabilized Unit, if known; and

~~5. —~~

6. Such other information as may be reasonably requested by the City.

E.D. Use of Personal Information. Personally-identifying information about Tenants and Tenant Households received by the City pursuant to this Section shall be ~~confidential and~~ used for investigation and prosecution of violations of the Municipal Code or other applicable laws.

Unless the City receives permission from such individuals, City staff shall not otherwise provide such information to third parties unless required to do so by law or court order. For so long as the City requires registry of rents and requires the Landlord to provide the name of present or former tenant, the following information, when required to be provided by and received from the Landlord is confidential and shall be treated as confidential information within the meaning of the Information Practices Act of 1977: the name of a present or former Tenant and any additional information provided concerning the Tenant.

~~F~~.E. Each Violation a Separate Violation. For purposes of assessing civil and criminal penalties, violations of the requirements set forth in this Section shall be considered separate violations of this Chapter.

~~17.23.605 — Cumulative rights and obligations.~~

~~The rights and obligations set forth in this Part 6 are cumulative and in addition to those set forth in any other Part or Chapter of the Municipal Code, including but not limited to the rights and obligations set forth in the Tenant Protection Ordinance and the Ellis Act Ordinance. Nothing in this Part expands or restricts such other rights and obligations.~~

PART 7. ~~RESERVED~~ TENANT BUYOUT AGREEMENTS

17.23.700 Purpose.

The purpose of this ~~section 17.23.700 et. seq and its related Regulations~~ Part 7, is to increase the fairness of Buyout Offers and Agreements by requiring Landlords provide Tenants with a City ~~generated~~ Disclosure ~~of Rights~~ form, and permitting Tenants to rescind Buyout Agreements, provided certain conditions are met, within 45 days of executing the Buyout Agreement. An additional goal is for the City to obtain data relating to the prevalence of Buyout Agreements, so as to monitor the level of tenant displacement, and regulate compliance with the purposes of this Chapter.

17.23.705 Tenant Buyout

~~**PART 7.**—Subject to the requirements of Chapter 14 of the Regulations, a Landlord may negotiate with a Tenant to obtain a voluntary vacancy by agreement The procedures of a Tenant Buyout shall be conducted in a manner consistent with Chapter 14 of the Regulations.~~

PART 8. FAIR RETURN STANDARD

17.23.800 Purpose.

A Landlord may Petition for a Rent adjustment in order to obtain a fair return in the event that the other increases allowed pursuant to the Apartment Rent Ordinance do not provide a fair return. This Part sets forth the standards for determining whether or not a Landlord is obtaining a fair return and what Rent increase would be required to provide a fair return if a Landlord is obtaining less than a fair return.

17.23.810 Fair Return Standard

A. Fair Return Standard. A fair return is the Base Year Net Operating Income adjusted by the percentage increase in the Consumer Price Index since the Base Year. "Net Operating Income" is the Gross Income from a Covered Property net of Operating Expenses, as such amounts are calculated and adjusted pursuant to this Part. Debt service costs are not included in calculating Net Operating Income.

B. Base Year. The "Base Year" is the 2014 calendar year, provided that where the Rent for Rent Stabilized Units has been set in a prior fair return decision regarding a Petition pursuant to this Part, in which case the calendar year that was the Current Year in the prior determination may be used as the Base Year for the purposes of reviewing a subsequent fair return petition.

~~B.C.~~ Current Year. The Current Year is the most recent calendar year preceding the submission of a Petition pursuant to this Part.

~~C.D.~~ Calculation of ~~CPI-U~~ Consumer Price Index. The Consumer Price Index ("CPI-U") for the Base Year shall be 251.985, which equals the annual average for 2014 reported by the Bureau of Labor Statistics for the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San Jose area. The CPI-U for the Current Year shall be the annual average for the Current Year reported by the Bureau of Labor Statistics for the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San Jose area. In the event a successor index to the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San Jose area is established by the Bureau of Labor Statistics, this calculation method may be updated accordingly in the Regulations.

17.23.820 Calculations of Gross Income and Operating Expenses

A. Calculation of Gross Income. For the purposes of determining the Net Operating Income, Gross Income shall be the sum of the following:

1. Rent, calculated on the basis of one hundred percent rental occupancy at the Rents in effect at the end of the Base Year or Current Year, as applicable; and
2. Income from coin operated laundry facilities, vending machines and similar income; and
3. Interest from security and cleaning deposits (except to the extent paid to Tenants); and
4. All other income or consideration received or receivable in connection with the use or occupancy of the Rent Stabilized Units and the Covered Property.

B. Adjustments of Gross Income.

1. Vacancy and Unpaid Rent. Rents shall be adjusted for uncollected rents due to vacancy and unpaid Rent to the extent such are reasonable and beyond the control of the Landlord. Adjustments pursuant to this section are subject to the limitation that the ratio of

uncollected Rents due to vacancies and unpaid Rent in the Current Year shall not exceed the ratio in the Base Year, unless the Landlord can demonstrate that the higher ratio is reasonable, is not the outcome of asking Rents exceeding market rents, and will likely be reoccurring.

2. Separately Charged Fees. Gross Income shall be adjusted to include other fees and charges not included in Rent that are paid to the Landlord or Landlord's designee by Tenants. If the Landlord collects any fees or charges that are not allowed under the Apartment Rent Ordinance, this fact may be considered in the determination on the Petition. In no event shall the collection of unauthorized fees or charges in the Base Year or Current Year be applied so as to result in a Rent increase to the Tenant.

3. Owner Occupied Rental Units or Rental Units Otherwise Not Rented at Market Levels. If a Rent Stabilized Unit is not rented in an arm's length transaction during the Base Year or Current Year or a portion thereof, the potential market rental income for such Rent Stabilized Units shall be included in calculating adjustments to Gross Income, which income shall be estimated based on the Rents of comparable Rental Units on the Covered Property, or if there are no comparable Rental Units on the Covered Property, the current market rents of comparable Rental Units in the immediate area.

4. Increases in Rent Based on Vacancy Decontrol. The Rent of Rent Stabilized Units that received a Rent increase following a valid vacancy decontrol pursuant to Civil Code section 1954.53 at any time from the first date of the Petition's Current Year through the date of the last hearing on the Petition, shall be computed at the Rent Stabilized Unit's new Rent after vacancy, for all twelve months of the Petition's Current Year. In addition, if the Rent Stabilized Unit is eligible for an Annual General Increase during any month of the Current Year, the general adjustment shall be included for such months.

5. Illegal or Uninhabitable Rentals during the Base Year. If a Rent Stabilized Unit was rented in violation of the Municipal Code during the Base Year, the Base Year rent for that unit shall be established pursuant to Section 17.23.820.B.3, unless the Rent Stabilized Unit was uninhabitable in the Base Year. If a Rent Stabilized Unit is uninhabitable in the Base Year, any adjustment to income shall be made in consideration of the duties of the Landlord under law and the purpose of this Chapter.

6. Other Income in Violation of Municipal or State Law. If not already accounted for as Rent, Gross Income shall be adjusted to include other income to a Landlord from renting a Rent Stabilized Unit in violation of the City's Short Term Rental Ordinance, Part 2.5 of Chapter 20.80, in violation of any other local or state law or regulation. If the Landlord earns income in violation of the law, this fact may be considered in the determination on the Petition. In no event shall the collection of unpermitted or illegal Rent or Gross Income in the Base Year or Current Year be applied so as to result in a Rent increase to a Tenant Household.

C. Calculation of Operating Expenses. For the purposes of determining Net Operating Income, Operating Expenses shall include the following expenses to the extent they are incurred in connection with the operation of the Covered Property:

1. Annual fees assessed under Chapter 17.23 to the extent that they are not passed through to Tenants;
2. Business license fees;
3. Real property taxes;
4. Utility costs paid by the Landlord to the extent that they are not passed through to Tenants;
5. Insurance;
6. Normal and reasonable repair and maintenance expenses for one or more Rental Units and the Covered Property. Repair and maintenance expenses shall include, but not be limited to, building maintenance including carpentry, painting, plumbing and electrical work, supplies, equipment, refuse removal, and security services or systems, cleaning, fumigation, landscaping, and repair or replacement of furnished appliances, drapes, and carpets;
7. Reasonable management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting, other managerial expense. Management expenses are presumed to be six percent (6%) of Gross Income, unless established otherwise. Management expenses in excess of eight percent (8%) of Gross Income are presumed to be unreasonable and shall not be allowed unless it is established that such expenses do not exceed those ordinarily charged by commercial management firms for similar residential properties;
8. Attorneys' fees and costs that are:
 - a. Incurred in connection with successful good faith attempts to recover Rents owed or with successful ~~good faith~~ unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from Tenants;
 - b. Legal expenses that are necessarily incurred in dealings with respect to the normal operation of the Rent Stabilized Units or Covered Property, to the extent such expenses are not recovered from adverse or other parties;
 - c. Reasonable and necessary costs incurred in obtaining a Rent increase pursuant to this Chapter, including administrative or judicial proceedings in connection with this Chapter, except where the pass-through of such expenses would constitute a violation of public policy or would contravene the exclusion in Section 17.23.820.D.5.

Any attorneys' fees and costs included in Operating Expenses pursuant to this Section shall be amortized over a period of five (5) years, unless it is demonstrated that an alternate amortization period would be more reasonable and more consistent with the purposes of this Chapter.

9. Replacement of facilities, materials or equipment not included in Section 17.23.820.C.6 necessary to maintain the same level of services as previously provided, to the extent that they are not passed through to Tenants and subject to the condition that said expenses

shall be amortized in accordance with the standards for Operating Expense amortization in the Regulations.

D. Exclusions from Operating Expenses. For the purposes of determining Net Operating Income, Operating Expenses shall not include:

1. Avoidable and unnecessary expenses incurred during or since the Base Year including expenses for additional maintenance and repair work which would not have been necessary if the maintenance had not been unreasonably deferred by the Owner or a prior Owner;
2. Debt service, including mortgage interest and principal payments and other expenses associated with obtaining debt services, including but not limited to appraisal and title insurance costs;
3. Fees, other than fees expressly authorized by Section 17.23.820.C;
4. Penalties, fees or interest imposed for violation of this Chapter or any other law;
5. Legal expenses excluded as set forth in this Chapter or the Regulations;
6. Contributions to lobbying efforts or organizations which lobby on behalf of apartment owners on local, state or federal legislative issues;
7. Depreciation;
8. Any expenses for which the Landlord has been or was eligible for reimbursement by any rebate or discount, security deposit, insurance, judgment for damages, settlement or any other method or device;
9. Any expense incurred in conjunction with the purchase, sale, lease (but not including individual rental agreements with Tenants) financing or re-financing of the building that contains the Rent Stabilized Units, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.; and
10. Any other expense that does not benefit the Covered Property, including, but not limited to, the cost of or forming a corporation, partnership or other entity or buying out a stockholder or partner of the Landlord.

E. Adjustments to Operating Expenses.

1. Interest Allowance for Amortized Expenses. Allowances for amortized Operating Expenses shall include an interest allowance as provided in the Regulations.
2. Adjustment of Unusually Low or High Expenses. A claimed expense(s) for a particular type of Operating Expense shall be adjusted if the claimed expense(s) is:
 - a. Not representative of the annual recurring level of the expense; or

b. In the case of Base Year expenses, not a reasonable representation of average expenditures for that item in the years preceding and following the Base Year; or

c. In the case of Current Year expenses, is not a reasonable estimate of future recurring annual expenditures for that item,

Unusually high or low expenses in a particular year shall be adjusted to allow for a reasonable comparison between the annual recurring level of the expense(s) in the Base Year and the Current Year. This adjustment may be made by using an average of the particular expense over a number of years or amortizing an amount that is above the average, or using an industry average or adjusting expense levels from other years by the CPI-U or by some other reasonable methodology. In making such adjustments for specific items, the goal shall be to establish an amount for that particular Operating Expense that most reasonably serves the objectives of obtaining a reasonable comparison between the recurring level of expense(s) in the Base Year and the Current Year.

3. Amortization of Non-recurring expenses. Non-recurring expenses which are "substantial" shall be amortized over a reasonable period. For purposes of this paragraph, non-recurring expenses are substantial if they exceed one (1%) of the annual Rent (as determined pursuant to Section 17.23.820.A.1).

4. Calculation of Management Expenses. It shall be presumed that management expenses increased by the percentage increase in the CPI-U between the Base Year and the Current Year, unless the Landlord can demonstrate that the level of management services that are beneficial to the Tenants has increased. A change from owner management in the Base Year to third party management in the Current Year, in itself, shall not be considered an increase in management services beneficial to the Tenants.

5. Mixed Use Properties; Segregation of Expenses and Income. If a portion of the Covered Property is not used as residential rental property with Rent Stabilized Units or includes units which are not rent stabilized, this must be declared in the Petition, and any Income and Operating Expenses must be fairly allocated, consistent with the purposes of this Chapter, between the other uses and the rent stabilized portion of the property covered by the Petition.

6. Apportionment of Operating Expenses. In the event that a particular Operating Expense covers several years of costs, the costs shall be fairly allocated to the year that they are attributable to, even if they were paid for in a different year.

17.23.830 Adjustment of Base Year Net Operating Income

A. Presumption of Fair Return. The Apartment Rent Ordinance presumes that the Landlord received a fair return in the Base Year.

B. Rebutting the Presumption. The presumption that the Landlord received a fair return in the Base Year based on reasonable expenses may be overcome by sufficient evidence showing that income was unusually low or expenses were unusually high for a particular Covered Property in the Base Year as described in this Part.

C. Authority to Adjust Net Operating Income. The Hearing Officer may adjust the Base Year Net Operating Income if the Hearing Officer finds:

1. The Landlord's Operating Expenses in the Base Year were unusually high or low in comparison to other years due to unusual circumstances. In such instances, adjustments may be made in calculating Operating Expenses so the Base Year Operating Expenses reflect average expenses for the Covered Property over a reasonable period of time. The Hearing Officer shall consider the following factors in making this finding:

a. The Landlord made substantial Capital Improvements during the Base Year, which were not reflected in the Base Year rents;

b. Substantial repairs exceeding one (1%) of the annual Rent (as determined pursuant to Section 17.23.820.A.1) were made due to damage caused by uninsured disaster or vandalism, provided that the property was not uninsured or unreasonably underinsured as determined by the Hearing Officer, which were not reflected in the Base Year rents;

c. Maintenance and repair were below accepted standards or resulted from the unreasonable deferral of other repairs or work;

d. Other expenses were unreasonably high or low, notwithstanding prudent business practice.

2. The Landlord's Gross Income during the Base Year was unusually high or low. In such instances, adjustments may be made in calculating Gross Income consistent with the purposes of this Chapter. The Hearing Officer shall consider the following factors in making this finding:

a. The Gross Income during the Base Year was unusually low because some Tenants had unusually low Rents for the quality, location, age, amenities and condition of the housing as compared to the Rent for comparable units without housing violations in the immediate area in which the Rent Stabilized Unit is located. In the event that a claim is made pursuant to this section, the Landlord shall pay for an appraisal of Base Year rents for comparable buildings made by an appraiser selected by the City. The appraisal, which shall be presented as evidence, shall be conducted in a manner consistent with the standards in the Regulations.

b. The Gross Income during the Base Year was significantly lower than normal because of destruction of all or part of the premises and/or temporary eviction for construction or repairs;

c. There was a special relationship between the Landlord and Tenant (such as a family relationship) resulting in abnormally low rent charges;

d. The Rents had not been increased for five years preceding the Base Year;

e. The Tenant lawfully assumed maintenance responsibilities in exchange for low Rent increases or no Rent increases; or

f. Other special circumstances which establish that the Rent was not set as the result of an arms-length transaction.

Section 17.23.840 Establishment of Base Year Operating Expenses in the Absence of Expense Records

If Base Year Operating Expense information is unavailable, the Landlord shall submit a request to the City to accept the Petition without complete Base Year Operating Expense information in a manner consistent with the standards in the Regulations. In the absence of Base Year Operating Expense information, it shall be presumed that Operating Expenses have increased by the same percentage as the CPI-U since the Base Year, except that data or rate information or other sources of cost information may be considered in estimating the level of particular Operating Expenses in the Base Year. Information on increases or decreases in costs between the Base Year and the Current Year may be introduced by the Landlord, Tenant or members of the Tenant Household, City staff, and/or the Hearing Officer.

Section 17.23.845 Purchasers of Rent Stabilized Properties after the Base Year

If the Landlord can show that the Landlord purchased the Covered Property between January 2015 and May 2016 in an arm's length transaction, and that reasonable attempts were made to obtain the records regarding gross income from the prior owner, and no information on the Base Year gross income is available from Tenants or City Staff, the Landlord may request to the City to accept a Petition for an adjustment under Section 17.23.820 using the year of purchase as an Alternative Base Year, in which case, the provisions of Section 17.23.810 shall be adjusted accordingly.

Section 17.23.850 Allocation of Rent Increases

Rent increases resulting from a Landlord Petition for fair return shall be allocated equally among all Rent Stabilized Units in the Covered Property; subject to the condition that the Hearing Officer, in the interests of justice, shall have the discretion to apportion the Rent increases in another manner necessary to ensure fairness.

Section 17.23.860 Authority to Insure a Fair Return

If a court finds that a Landlord has been denied a fair return, notwithstanding any other provision in this section, the Hearing Officer may provide for a Rent adjustment that is adequate to provide a fair return.

17.23.870 Landlords to Retain 2014 Records.

Landlords are required to keep all financial records for 2014 which may be necessary for making a Net Operating Income determination. Failure to retain such records of Base Year Operating

Expenses may result in the loss of the ability to demonstrate the need for a fair return Rent increase after September 1, 2016.

PART 9. RENT REGISTRY

17.23.900 Rent Registry.

A. Rent Registration. The procedures for registration shall be established in this Part and the Regulations. All registration requirements are subject to Civil Code Section 1947.7, as may be amended. The Landlord shall complete and submit to the Director a registration for each Rent Stabilized Unit on a City approved form, annually unless some other interval is specified by the City in the Regulations.

B. Copy of Registration to Tenant. If requested by the City, each Landlord shall provide to an adult member of the Tenant Household of a Rent Stabilized Unit a true and correct copy of the completed registration form that pertains to their Rent Stabilized Unit within ten (10) days of submission to the Director. The Landlord may redact any information that does not pertain to that Rent Stabilized Unit except the name and address of the Landlord.

C. Regulations. The Regulations adopted by the City Manager for the implementation and administration of this Chapter 17.23 may address the contents and submission of registrations, including deadline for submissions by Landlords.

D. Implementation of an Alternate Registry Procedure. Notwithstanding Section 17.23.900.(A), the City Council by resolution may at any time after the second annual registration cycle is complete change to another interval for, or vacancy-based, registration.

E. Landlord Tenant Collusion. It shall be a violation of this Chapter to report an amount of Rent for a Rent Stabilized Unit to the Director other than the actual amount paid by the Tenant Household for the use and occupancy of the Rent Stabilized Unit, or in the case of a Rental Voucher Unit, the sum of the rent paid by the Tenant and government agency.

~~E.F. Upon failure to submit the registration or re-registration for a Rent Stabilized Unit required pursuant to the Regulations within thirty (30) days of the date the registration or re-registration is due, the Landlord shall pay a late registration fee as set forth in the schedule of fees adopted by resolution of the City Council.~~

~~17.23.910 — Registration Processing Fee and Procedures~~

~~A. Costs Reimbursed for Registration. The costs of obtaining and processing the registration required this Part may be reimbursed to the general fund by imposition of a separate fee chargeable against each Rent Stabilized Unit in the City of San José.~~

~~B. The procedures for Registration shall be established in the Regulations and the City Council shall set any registration fee by resolution.~~

~~C. The City Manager shall adopt a schedule of fees to recover the costs incurred by the City for late submissions of either the registration submission required under this Part or a registration~~

~~fee imposed by this Part, or both. The late fees authorized by this Section 17.23.910 are non-exclusive remedies and in no way limit or otherwise prohibit from other actions to ensure compliance with this Chapter 17.23, including but not limited to those actions authorized in Part 5 of Chapter 17.23~~

DRAFT

CITY OF SAN JOSÉ, CALIFORNIA

REGULATIONS FOR
CHAPTER 17.23 INCLUDING APARTMENT RENT ORDINANCE

Revised 9/15/2017 Revised

DRAFT

TABLE OF CONTENTS

	<u>Page</u>
Chapter 1 TITLE, REPLACEMENT OF PRIOR REGULATIONS.....	1
Chapter 2 DEFINITIONS	1
Chapter 3 ELIGIBILITY	<u>Error!</u>
<u>Bookmark not defined.</u> ²	
3.01. <u>Covered Units.</u>	<u>32</u>
Chapter 4 REGISTRATION AND FEE	<u>43</u>
4.01. <u>Purpose.</u>	<u>43</u>
4.02. <u>Annual Registration and Fee.</u>	<u>43</u>
4.03. <u>Registration Fee Exemption.</u>	<u>43</u>
4.04. <u>Processing Exemption Requests.</u>	<u>54</u>
Chapter 5 GENERALLY APPLICABLE PETITION AND RESPONSE PROCEDURE; HEARING OFFICER AND PETITION EXAMINER REQUIREMENTS	<u>64</u>
5.01. <u>Petition Procedures.</u>	<u>64</u>
5.02. <u>Petitions Authorized.</u>	<u>64</u>
5.03. <u>Petition Process; All Petitions.</u>	<u>75</u>
5.04. <u>Burden of Proof.</u>	<u>97</u>
5.01. <u>Hearing Officers.</u>	<u>97</u>
Chapter 6 TENANT PETITIONS FOR IMPROPER RENT, IMPROPER PASS THROUGH OF CHARGES AND VIOLATIONS OF THE APARTMENT RENT ORDINANCE; ADMINISTRATIVE DECISIONS AUTHORIZED.....	<u>98</u>
6.01. <u>Applicability.</u>	<u>99</u>
6.02. <u>Issuance of Administrative Decision.</u>	<u>99</u>
6.03. <u>Revisions to Administrative Decision.</u>	<u>99</u>
6.04. <u>Appealing Administrative Decision to the Director.</u>	<u>109</u>
Chapter 7 TENANT PETITIONS FOR REDUCED HOUSING SERVICES AND CODE VIOLATIONS; VOLUNTARY MEDIATION; HEARINGS AUTHORIZED.....	<u>109</u>
7.01. <u>Applicability.</u>	<u>109</u>
7.02. <u>Housing Service Reductions and Code Violations.</u>	<u>1010</u>
7.03. <u>Basic Service Level.</u>	<u>1010</u>
7.04. <u>Voluntary Mediation Process.</u>	<u>1211</u>
7.05. <u>Hearing Authorized.</u>	<u>1311</u>
7.06. <u>Proof of Service Reductions.</u>	<u>1311</u>
7.07. <u>Determining Value of Unreasonable Service Reductions.</u>	<u>1412</u>

TABLE OF CONTENTS

	<u>Page</u>
7.08. <u>Consequences of a Service Reduction Unreasonable Under the Circumstances.</u>	<u>1413</u>
7.09. <u>Housing Code Violations.</u>	<u>1413</u>
7.10. <u>Findings.</u>	<u>1413</u>
7.11. <u>Hearing Procedures.</u>	<u>1513</u>
7.12. <u>Conduct of Hearing.</u>	<u>1514</u>
7.13. <u>Decision.</u>	<u>1716</u>
7.14. <u>Appealing Hearing Decision to the Director.</u>	<u>1816</u>
Chapter 8 LANDLORD FAIR RETURN PETITIONS; HEARINGS AUTHORIZED	<u>1817</u>
8.01. <u>Applicability.</u>	<u>1817</u>
8.02. <u>Petitions and Notice.</u>	<u>1817</u>
8.03. <u>Pre-submittal Meeting.</u>	<u>2018</u>
8.04. <u>Fair Return Hearings.</u>	<u>2018</u>
8.05. <u>Staff Report Regarding Fair Return.</u>	<u>2019</u>
8.06. <u>Conduct of Hearing.</u>	<u>2119</u>
8.07. <u>Guidance for Substantive Determinations on Fair Return Petitions.</u>	<u>2321</u>
8.08. <u>Decision.</u>	<u>2423</u>
8.09. <u>Appealing Hearing Decision to the Director.</u>	<u>2523</u>
Chapter 9 LANDLORD PETITIONS FOR PASS THROUGH OF CHARGES FOR SPECIFIED CAPITAL IMPROVEMENTS; ADMINISTRATIVE DECISIONS AUTHORIZED	<u>2524</u>
9.01. <u>Applicability.</u>	<u>2524</u>
9.02. <u>Petitions and Notice.</u>	<u>2624</u>
9.03. <u>Standards for Specified Capital Improvements Costs Pass Through.</u>	<u>2725</u>
9.04. <u>Value of Specified Capital Improvements that May Be Passed Through to Beneficiary Tenant Household.</u>	<u>Error!</u>
	<u>Bookmark not defined.</u> 26
9.05. <u>Banking of Annual General Adjustment.</u>	<u>2826</u>
9.06. <u>Guidance for Substantive Determinations.</u>	<u>2826</u>
9.07. <u>Use of Petition Examiner Administrative Decision.</u>	<u>2926</u>
9.08. <u>Appeals.</u>	<u>2927</u>
Chapter 10 JOINT REQUESTS FOR ADDITIONAL HOUSING SERVICES	<u>3327</u>
Chapter 11 ENFORCEMENT AND IMPLEMENTATION	<u>3527</u>
11.01. <u>Prevention.</u>	<u>3527</u>

TABLE OF CONTENTS

	<u>Page</u>
11.02. <u>Implementation</u>	<u>3527</u>
11.03. <u>Appeal</u>	<u>3628</u>
Chapter 12 (OPTION A) MAXIMUM ALLOWABLE RENT.....	<u>3628</u>
12.01. <u>Maximum Allowable Rent, Defined</u>	<u>3628</u>
12.02. <u>Annual Rent Increases to Receive Maximum Allowable Rent</u>	<u>3628</u>
12.03. <u>Maximum Allowable Rent, Database</u>	<u>3628</u>
Chapter 12 (OPTION B) BANKING OF AUTHORIZED ANNUAL GENERAL INCREASE	<u>3628</u>
12.01. <u>Purpose</u>	<u>3628</u>
12.02. <u>Banking Defined; Notice to Tenant Required</u>	<u>3628</u>
12.03. <u>Accounting of Banked Rent Increases per Rent Stabilized Unit</u>	<u>3729</u>
12.04. <u>Maximum Carryover Limit for Banked Increases</u>	<u>3729</u>
12.05. <u>Maximum Rent Increase and Specified Capital Improvement Pass Through Allowed</u> . <u>3729</u>	
Chapter 13 TENANT PROTECTION.....	<u>Error!</u>
<u>Bookmark not defined.</u> ¹	
13.01. <u>Purpose and Authority</u>	<u>Error!</u>
<u>Bookmark not defined.</u> ¹	
13.02. <u>Definitions</u>	<u>Error!</u>
<u>Bookmark not defined.</u> ¹	
13.03. <u>[Reserved / Exemptions.]</u>	<u>Error!</u>
<u>Bookmark not defined.</u> ¹	
13.04. <u>Methods of Informing the Director of a Necessary Repair or Replacement</u>	<u>Error!</u>
<u>Bookmark not defined.</u> ¹	
13.05. <u>Landlord Petition to Contest Enrollment Status</u>	<u>Error!</u>
<u>Bookmark not defined.</u> ²	
13.06. <u>Tenant Petition to Contest Necessary Repair or Replacement Completion</u>	<u>Error!</u>
<u>Bookmark not defined.</u> ³	
Chapter 14 TENANT BUYOUT OFFERS AND AGREEMENTS.....	<u>37</u>
<u>14.01. City-Disclosure of Rights Form</u>	<u>37</u>
<u>14.02. Buyout Agreement</u>	<u>38</u>
<u>14.03. Rescission of Buyout Agreement</u>	<u>38</u>
<u>14.04. Filing Requirements</u>	<u>39</u>
<u>14.05. Exemptions</u>	<u>39</u>

TABLE OF CONTENTS

Page

DRAFT

Chapter 1

TITLE, REPLACEMENT OF PRIOR REGULATIONS

These Regulations are adopted pursuant to Section 17.23.040 of San José Municipal Code ("SJMC") Chapter 17.23. These Regulations wholly replace and supersede the Regulations approved by the City Council on January 17, 1989 by Resolution No. 61114, as amended.

Chapter 2

DEFINITIONS

2.01. This eChapter contains definitions of the more commonly used words and phrases found in these Regulations. Defined terms used in these Regulations that are not defined in the Regulations shall have the meaning ascribed to such terms in the Ordinance.

2.01.1 "Administrative Decision" means the initial decision on a Petition prepared by the Petition Examiner and distributed to the Parties.

2.01.2 "Base Year" shall have the meaning set forth in SJMC Section 17.23.115.

2.01.3 "Buyout Agreement" means a signed written agreement, resulting from the Buyout Offer, consistent with the requirements of Chapter 14 wherein the Landlord promises to provide consideration in exchange for the Tenant's agreement to voluntarily vacate the Rent Stabilized Unit. "

~~2.01.2~~2.01.4 "Buyout Offer" means a Landlord's offer to a Tenant to provide consideration in exchange for the Tenant's agreement to voluntarily vacate the Rent Stabilized Unit.

~~2.01.3~~2.01.5 "Business Day" means any Day that San José City Hall is open for City business.

~~2.01.4~~2.01.6 "Capital Improvements" shall have the meaning set forth in SJMC Section 17.23.120.

~~2.01.5~~2.01.7 "Current Year" shall have the meaning set forth in SJMC Section 17.23.810.C.

~~2.01.6~~2.01.8 "Day" means a calendar day.

~~2.01.7~~2.01.9 "Decision" means a written decision by a Hearing Officer.

~~2.01.8~~2.01.10 "Director" shall mean the City of San José's Director of Housing or his or her designee.

~~2.01.9~~2.01.11 "Hearing Officer" shall mean a person, ~~under contract with the City~~ who conducts administrative hearings on Petitions submitted by Landlords or Tenants

pursuant to the provisions of SJMC Chapter 17.23. ~~Any action or determination attributed to the Hearing Officer hereunder that is taken prior to an appeal of the Administrative Decision shall mean the Petition Examiner.~~

~~2.01.10~~2.01.12 "Housing Service Reduction" shall mean a reduction in one or more Housing Services without a corresponding reduction in Rent.

~~2.01.11~~2.01.13 "Landlord" shall have the meaning set forth in SJMC Section 17.23.140.

~~2.01.12~~2.01.14 "Mail" shall mean to deposit in the U.S. Mail with first class postage prepaid, 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. If ~~the~~ a Landlord or Tenant, including pParties to a petition or a Buyout Agreement have consented to notice by email and provided email addresses, notice may be given by email with such notice deemed complete at the time of the email is sent by electronic transmission.

~~2.01.13~~2.01.15 "Ordinance" shall mean the Apartment Rent Ordinance, Parts 1 to 9, SJMC Chapter 17.23.

~~2.01.14~~2.01.16 "Party" shall mean a Landlord or a Tenant who is either the petitioner or responding party to a Petition. "Parties" shall refer to all relevant parties to a Petition, including each responding party. A responding party is a Tenant or Tenant Household who may be impacted by a Landlord Petition, and is the Landlord who may be impacted by a Tenant Petition.

~~2.01.15~~2.01.17 "Petition" shall mean a claim by a Landlord or a Tenant on a form approved by the Director that is filed pursuant to Section 5.03.1.

~~2.01.16~~2.01.18 "Petition Examiner" shall mean a person who conducts administrative reviews of Petitions and issues Administrative Decisions on Petitions submitted by Landlords or Tenants pursuant to the provisions of SJMC Chapter 17.23. A Petition Examiner may be either an employee of the City of San José or a person under contract with the City.

~~2.01.17~~2.01.19 ~~"Rental Rights and Referrals Program Staff" or "Program Staff"~~ shall mean the employees of the City of San José who implement SJMC Chapter 17.23 and its regulations.

~~2.01.18~~2.01.20 "Response" shall mean a response on a form approved by the Director filed by either a Landlord or a Tenant pursuant to Section 5.03.4.

~~2.01.19~~2.01.21 "SJMC" shall mean San José Municipal Code.

~~2.01.20~~2.01.22 "Specified Capital Improvement" shall mean those items set forth in Appendix B.

Chapter 3

GENERAL

3.01. Covered Property. Property is covered if Program Staff determines that (a) a Residential Occupancy Permit is or should be required and (b) if the property is not exempted by definition.

3.02. Amendment of Rental Agreement to Remove Housing Services. In accordance with Chapter 7, a Tenant may submit a Petition regarding Housing Service Reductions. During a Hearing on such a Petition, a Hearing Officer shall have the authority to determine whether the Housing Service Reduction impacts an essential or material term or condition of the rental agreement in a manner that constitutes a constructive eviction. *No amendment of a rental agreement to remove Housing Services shall be effective unless the Tenant has received a notice of the Tenant ~~Pre-Amendment Form~~ Notice-Rights.*

3.03. Summary of Petition Processes. The following table summarizes the Petition and Hearing Processes authorized by these Regulations.

<u>Tenant Petitions</u>		<u>Landlord Petitions</u>		<u>Joint Petitions</u>
<i>Chapter 6 Improper Rent, Improper Pass- Through; or Violation of ARO</i>	<i>Chapter 7 Housing Service Reductions or Housing Code Violations</i>	<i>Chapter 8 Fair Return</i>	<i>Chapter 9 Specified Capital Improvements</i>	<i>Chapter 10 <u>Tenant</u> Requests for Additional Housing Services</i>
Petition & Response	Petition & Response	Petition & Response	Petition	Petition & Response
	Voluntary Mediation (Optional)	Pre-Hearing Meeting (Optional)		
Petition Examiner Provides Administrative Decision	Hearing: Hearing Officer provides Hearing Decision	Hearing: Hearing Officer Provides Hearing Decision	Petition Examiner Provides Administrative Decision	Form Review and Approval/Denial
Appeal Administrative Decision to Director	Appeal Hearing Decision to Director	Appeal Hearing Decision to Director	Appeal Administrative Decision in Hearing; Hearing Officer Provides Final Decision	

Chapter 4

REGISTRATION AND FEE

4.01. Purpose. The purpose of this Chapter 4 is to enable the City to monitor and control allowable rents as mandated by the Ordinance and to collect fees for the purpose of covering the cost of administering the ~~Ordinance~~ Chapter. (SJMC Section 17.23.400)

4.02. Annual Registration and Fee.

4.02.1 Mailing of Registration Forms. The Director shall ~~m~~Mail an annual registration form and fee statement to each Landlord of a Rent Stabilized Unit in the City using the City's Code Enforcement database, currently referred to as AMANDA, or any successor database maintained by the City. The failure of a Landlord to receive the registration form shall not excuse the Landlord's late filing of the registration form. (SJMC Section 17.23.90+0)

4.02.2 Deadline for Submission of Registration Form and Fee. Landlords shall complete and submit to the Director the registration form and the annual fee payment prior to the payment deadline identified in the fee statement.

4.02.3 Alternative Registration Cycle. If the City Council authorizes a change from the annual registration cycle to an interval different from that of the fee statement, the completed registration forms shall be due to the Director on the date specified in the form, or if registration is due upon vacancy, within 30 days of vacancy.

4.03. Registration Fee Exemption. Landlords may request an annual exemption from the fee required pursuant to SJMC Section 17.23.400 by completing and submitting annually a form to be provided by the Director no later than ten (10) Business Days before the deadline for the payment of the fee as shown on the fee statement. Exemptions shall only be granted when one of the following circumstances has been adequately demonstrated:

4.03.1 Owner-occupied Units. The ~~form will require the~~ Landlord ~~to~~ provides evidence that the unit is owner occupied by the Landlord, which can include but is not limited to voter registration information, utility bills, state-issued identification, or other information showing the unit is the Landlord's place of residence. No person who claims a homeowner's property tax exemption in another location is eligible for an owner-occupied fee exemption. Only Landlords who are natural persons may receive this fee exemption.

4.03.2 Transient Occupancy Units. The rental unit is used for transient accommodations (for periods of less than 30 days) such as a hotel or guest house consistent with City ordinances. The form will require the Landlord to provide evidence of transient occupancy, including the Transient Occupancy Registration Certificate and any other required permits. This exemption does not apply to short-term vacation rentals (e.g., AirBnB) since under Part 2.5 of Chapter 20.80, the Landlord may not use a Rent Stabilized Unit as a short-term vacation rental.

4.03.3 Affordable Rental Units. The rental unit is an Affordable Rental Unit. The form will require the Landlord to provide evidence that the rental unit is an Affordable Rental

Unit by providing copies of the recorded affordability restriction or government contract that applies to the unit, and if requested, a copy of the current rent roll showing the affordable rent.

4.03.4 Government Owned Units. The rental unit is owned by a local, state or federal governmental agency. The form will require the Landlord to provide recorded documents providing current proof of government ownership.

4.03.4.03.5 Other Exemptions: The rental unit or accommodation is located within any hospital, convent, monastery, extended care facility, emergency residential shelter, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended), fraternity house, sorority house, or in dormitories owned and operated by an institution of higher education, a high school, or an elementary school. The form will require the Landlord to provide evidence establishing that the unit or accommodation is a permitted use within one of the aforementioned facilities, including but not limited to permits, licenses, and ownership documentation.

4.04. Processing Exemption Requests. Program Staff shall act on all such requests for fee exemptions within sixty (60) days of receipt of such request form and shall provide a written decision to the Landlord. The decision of the Program Staff may be appealed to the Director consistent with the procedures in Section 10.03. The Landlord shall have the burden of proof with respect to any claimed exemption. (SJMC Section 17.23.400)

4.05 Contents of Registration Form. The registration form shall include the following information as of the date specified on the form:

1. The address of the Rent Stabilized Unit; and
2. The name and address of each person or entity that is the Landlord, or if more than one, each Landlord of the Rent Stabilized Unit; and
3. The occupancy status of the Rent Stabilized Unit and, if occupied, the commencement date of the current tenancy; and
4. History of tThe Rent charged for the use and occupancy of the Rent Stabilized Unit; and
5. The amount of security deposit charged at the inception of the tenancy.
6. Whether the Rent Stabilized Unit is sub-metered, master-metered, or unmetered.
7. The number of Tenants occupying the unit, and the Tenants' names.
8. Household Services that are being provided at the inception of the Tenancy.
59. The signature of the Landlord of the Rent Stabilized Unit affirming under penalty of perjury that the information provided in the annual registration is true and correct; and
610. Such other information reasonably requested by the City.

Chapter 5

GENERALLY APPLICABLE PETITION AND RESPONSE PROCEDURE; HEARING OFFICER AND PETITION EXAMINER REQUIREMENTS

5.01. Petition Procedures. The procedures set forth in this Chapter 5 shall apply to all Petitions. The subsequent Chapters of these Regulations address individualized requirements and procedures defined for each Petition type. Specifically, Chapter 6 addresses improper Rent or improper pass-through of charges and violations of the Apartment Rent Ordinance; Chapter 7 addresses Housing Service Reductions and violations of the City's Housing Code; Chapter 8 addresses fair return claims; Chapter 9 addresses the pass-through of Specified Capital Improvements; and Chapter 10 address requests for additional Housing Services.

5.02. Petitions Authorized. Only the Petitions based on the grounds described below shall be accepted.

5.02.1 Tenant Petitions. A member of a Tenant Household may submit a Petition to the Director on any one or more of the following grounds:

- a. Improper Rent Increase or Pass-Through of a Charge. To allege excess Rent was charged or a pass-through of a charge that does not comply with the Apartment Rent Ordinance. (SJMC Section 17.23.350.A)
- b. Violation of Apartment Rent Ordinance. To allege any violation of the Apartment Rent Ordinance. (SJMC Section 17.23.350.A)
- c. Housing Services Reductions or Housing Code Violations. To allege a reduction of Housing Services or a violation of the City's Housing Code. (SJMC Section 17.23.350.A)

5.02.2 Landlord Petitions. Any Landlord whose Rent Stabilized Units are subject to the provisions of the Apartment Rent Ordinance and who seeks to increase the Rent of any Rent Stabilized Unit or Units by an amount above the Annual General Increase may submit a Petition to the Program Staff on any one or more of the following grounds:

- a. Fair Return. To allege that the Rent increase otherwise permitted by Apartment Rent Ordinance would not permit the Landlord a Fair Return. (SJMC Section 17.23.350.B)
- b. Specified Capital Improvements. To seek expedited approval to pass through all or a portion of the cost of a Specified Capital Improvement that is listed in Appendix B. (SJMC Section 17.23.320.B)

5.02.3 Joint Petition: the following petitions filed by the Tenant ~~and landlord~~ for increases may be filed with Landlord agreement.

- a. Requesting Additional Housing Services. A Tenant Household that desires additional Housing Services and Landlord that desires additional funds to provide

additional Housing Services may submit a joint ~~Landlord-Tenant~~ Petition. A Tenant Household, with Landlord's consent, may submit a Petition to make a payment of a one-time fee or increased security deposit ~~in order to~~ receive or be entitled to new or additional Housing Services. (SJMC Section 17.23.320.C).

b. A Landlord and Tenant may file a petition for an increase in the ~~maximum-Rent allowable~~ of up to 5% for an additional Tenant occupant (other than the Tenant's spouse, domestic partner, parent, or ~~minor~~ dependent or foster child). Such increases in the maximum allowable Rent, as adjusted, will terminate if the additional occupant leaves. (SJMC Section 17.23.350.C).

c. A Landlord and Tenant may file a petition for an increase in the ~~maximum-Rent allowable~~ of up to or an increase in the ~~maximum-Rent allowable~~ of up to \$50 for a second parking space, where only one space was provided under the original rental agreement. (SJMC Section 17.23.350.C).

5.03. Petition Process; All Petitions.

5.03.1 Initial Petition. Either a Landlord, member of a Tenant Household, or both may file a Petition with the Program Staff regarding a Rent Stabilized Unit on a form approved by the Director. Prior to filing a petition under Section 5.02.01 or 5.02.02, the petitioner shall notify the relevant parties (as described in Section 5.03.01.a) of the petitioner's intent to file. The Petition shall be accompanied by all required supporting documentation. Upon receipt of the initial Petition, the Program Staff will review the Petition for completeness.

a. Initial Notice to Parties. Upon receipt of a Petition, the Program Staff shall ~~m~~Mail notice of the receipt of the Petition to the relevant parties as described below. The notice shall be on a form approved by the Director. The notice form shall provide information on where the Petition may be reviewed and summarize each Party's right to file a Response to the Petition, a separate Petition, or both.

i. In the case of a Tenant Petition, notice shall be given to the Landlord, and the notice form shall include the requested rent decrease.

ii. In the case of a Landlord Petition, notice shall be given to all Tenants in the building covered by the Petition, and the notice form shall include the requested rent increase.

iii. In the case of a joint Petition by both a Landlord and Tenant, notice shall be given to each party affected by the joint Petition, and the notice form shall include the proposed amount of the one-time payment.

iii.iv. In addition to the requirements set forth in 5.03, in the case where a Party files a Petition that applies to a Rental Voucher Unit, the petitioner shall adhere to the requirements set forth in SJMC 17.23.350.D.

b. Incomplete Petitions. If the Petition is incomplete, the Program Staff shall provide notice to the petitioner that the Petition is incomplete and provide a list of deficiencies in the Petition, and/or the supporting documentation, and shall hold the Petition for ten (10) Business Days after ~~m~~Mailing such notice. The petitioner may add to, amend, or revise and re-submit the Petition to the Program Staff.

c. Complete Petitions. If the Petition is complete, then the Program Staff will ~~m~~Mail a notice that a complete Petition was received to the relevant parties described below. The notice that a complete Petition was received shall identify the due date for the submission of a Response to the Petition. In addition to ~~M~~mailing a copy of the receipt of a complete Petition, the Program Staff may also provide a summary of the Petition and hearing process and a petition response form to the parties receiving notice. A delay in providing a notice of whether or not the Petition is complete shall not be deemed a determination that the Petition is complete.

i. In the case of a Tenant Petition, notice shall be given to the Landlord.

ii. In the case of a Landlord Petition, notice shall be given to all Tenants in the building covered by the Petition.

iii. In the case of a joint Petition by both a Landlord and Tenant, notice shall be given to each party affected by the joint Petition.

5.03.2 Notices. The City shall Mail all notices, except as provided below. It is presumed that a Petition or a Response to a Petition filed with Program Staff contains the correct address for notice, and that ~~M~~mailed notices to such addresses are received three (3) calendar days (not including Sunday and federal holidays) after ~~m~~Mailing. In the Petition or a response, the petitioning or responding party may provide an email address. If a Party consents to receive notice via email, such notice shall be deemed received upon sending of the email to the address provided by the Party by the Program Staff.

5.03.3 Petition and Forms. Petitions and forms shall be as prescribed by the Director with the approval of the City Attorney as to form. The Petition forms may require that written statements be made under penalty of perjury. Petition forms shall include a proxy form to be completed by either a Landlord or Tenant who is designating a proxy to act on his or her behalf for purposes of the Petition and Hearing process. A proxy form may be revoked only in writing.

5.03.4 Response to Submitted Petition. The responding party (a Tenant or Tenant Household responding to a Landlord Petition ~~and or~~ the Landlord responding to a Tenant Petition) shall have thirty (30) days from the date of the ~~m~~Mailing of the notice that a complete Petition was received to submit a Response to a Petition and any supporting documents. If the responding party provides a Response to the Petition, the Program Staff shall provide notice to the petitioner that a Response was received. This Section 5.03.4 shall not apply to Specified Capital Improvement Petitions; members of one or more Tenant Households may appeal an Administrative Decision for a Specified Capital Improvement Petition as described in Chapter 9.

5.04. Burden of Proof. Although each Petition shall be addressed in accordance with the procedures defined for each Petition type, as described in following Chapters of these Regulations, all Petitions are subject to the burden of proof described in this Section. The burden of proof shall be satisfied by providing sufficient evidence to demonstrate that the fact sought to be proven is more probable than some other fact (e.g. a preponderance of the evidence standard). The burden of proof to show that the Landlord is entitled to obtain a rent increase based on a fair return or a pass through of costs for a Specified Capital Improvement is on the Landlord. Tenants have the burden of proving the existence of Housing Service Reductions, and Housing Code violations, and other claimed violations of the Ordinance.

5.05. Relief from Default. The Hearing Officer may relieve any party from the failure to adequately state the party's claim prior to or during the first meeting upon a reasonable showing of mistake, fraud, inadvertence, or excusable neglect, upon such reasonable conditions as may be determined by the Hearing Officer, including granting to the opposing party additional time to respond to any claim, addition to, or revision of, a claim filed pursuant to the relief so granted.

Chapter 6

TENANT PETITIONS FOR IMPROPER RENT, IMPROPER PASS THROUGH OF CHARGES AND VIOLATIONS OF THE APARTMENT RENT ORDINANCE; ADMINISTRATIVE DECISIONS AUTHORIZED

6.01. Applicability. The procedures set forth in this Chapter 6 apply to Tenant Petitions regarding a Rent increase or the pass through of a charge. They also apply to Tenant Petitions regarding violations of the Apartment Rent Ordinance.

6.02. Issuance of Administrative Decision. After reviewing the complete Petition and any Responses, the Petition Examiner shall either (a) provide an Administrative Decision to the Program Staff or (b) request that Program Staff schedule a hearing under Part 7 for the Petition and any Responses. The Administrative Decision shall be a tentative ruling and shall acknowledge each Petition, Response, and any relevant supporting documentation, as applicable. The Administrative Decision shall be made on a form that is approved by the Director. The Administrative Decision shall be provided by the Petition Examiner to the Program Staff within twenty (20) Business Days after the applicable deadline for submission of a Response. The Program Staff shall ~~m~~Mail the Administrative Decision on the Petition to the Parties.

6.03. Revisions to Administrative Decision. Each Party will have ten (10) days after the Administrative Decision is Mailed to comment on the Administrative Decision. The Petition Examiner may, in his or her sole discretion, revise or amend the Administrative Decision to correct non-substantive errors (such as typographical errors, mathematical errors, etc.) or to address substantive omissions (such as a failure to address a claim raised in a Petition or Response), after reviewing any comments received from the Parties on the Administrative

Decision. The Program Staff shall provide a copy of any revised Administrative Decision to all Parties no more than seven (7) days after the end of the comment period, or notify all Parties that the Administrative Decision will not be revised.

6.04. Appealing Administrative Decision to the Director. Any Party to a Petition may appeal the Administrative Decision, as it may be revised in accordance with section 6.03, to the Director on a form approved by the Director. Any Party may appeal to the Director within thirty (30) days of the ~~M~~ mailing date of the revised Administrative Decision or notice that the Administrative Decision will not be revised. If no Party appeals to the Director within thirty (30) days, the Administrative Decision will be considered a final Decision. The Director's sole authority upon appeal of an Administrative Decision is to either affirm the Administrative Decision or remand the Administrative Decision to the Petition Examiner. If the Director remands the Administrative Decision to the Petition Examiner, the Director's remand is limited to ~~may-identifying~~ specific sections of the Ordinance or Regulations, or specific issues that the Petition Examiner must address ~~or re-evaluate~~ when drafting a reconsidered Administrative Decision. A reconsidered Administrative Decision shall be a final Decision.

Chapter 7

TENANT PETITIONS FOR HOUSING SERVICES REDUCTIONS AND CODE VIOLATIONS; VOLUNTARY MEDIATION; HEARINGS AUTHORIZED

7.01. Applicability. The procedures set forth in this Chapter 7 apply to Tenant Petitions regarding Housing Service Reductions or Housing Code violations that consist of a breach of the warranty of habitability. In the event that Tenant Petitions are filed or submitted that contain claims under this Part and Part 6, they may be heard together consistent with the procedures in this Part.

7.02. Housing Service Reductions and Code Violations. A reduction in Housing Services that occurs without a corresponding decrease in Rent is equivalent to a Rent increase. Each Housing Service Reduction and Housing Code violation must be considered in any determination of what constitutes a reasonable Rent reduction, as applicable under the circumstances. A Hearing Officer shall have the authority to determine whether the Housing Service Reduction impacts an essential or material term or condition of the rental agreement in a manner that constitutes a constructive eviction.

7.03. Basic Service Level.

7.03.1 Definition. The Landlord is required to furnish to the Tenant a basic level of Housing Services, herein called the "Basic Service Level". The Basic Service Level for a particular Housing Service for a particular Rental Unit is established by:

a. Civil Code Sections 1941.1 and 1941.2 and other applicable codes and statutes;

- b. The Landlord's implied warranty of habitability;
- c. Express or implied agreement between Landlord and Tenant;
- d. The level of service consistent with subsections (a), (b), and (c) above and implied by:

- i. The nature and quality of original construction of improvements, fixtures, and equipment;
- ii. The age of the improvements, fixtures, and equipment;
- iii. The condition of the improvements, fixtures, and equipment at the beginning of the applicable term of tenancy;
- iv. The Landlord's policies of operation and maintenance, repair, and replacement communicated to the tenant at the beginning of the applicable term of tenancy.

7.03.2 Housing Service Reductions. A Housing Service Reduction occurs when the Landlord has breached the obligation to furnish to the Tenant the Basic Service Level and the Tenant's usability of the Rent Stabilized Unit is thereby measurably reduced.

7.03.3 Allegations of Housing Service Reductions. Tenants may Petition for a Rent adjustment by filing a Tenant Petition in the form provided by the City. The Tenant Petition shall include for each Housing Service Reduction alleged:

- a. The prior level of service established as part of the Housing Services to be provided by the Landlord for the rental unit; and
- b. The specific changes in the prior level of service comprising the alleged reduction in service; and
- c. The date the service reduction was first noticed by the Tenant; and
- d. The date the Tenant gave notice to the Landlord of the alleged service reduction, and whether the notice was given orally or in writing; and
- e. The date the Tenant gave notice to the Landlord that the Tenant requested the alleged service reduction to be corrected, and whether the request was oral or in writing; and
- f. When and how the Landlord responded to the Tenant's notice; and
- g. Whether the condition was improved or corrected and if so, when and how; and

h. The status of the condition as of the date the Petition is signed by the Tenant.

7.04. Voluntary Mediation ~~Hearing~~ Process.

7.04.1 Prior to ~~reviewing the claims~~ scheduling a hearing under Section 7.05, raised in a Tenant Petition for Housing Service Reductions or Housing Code violations, Program Staff shall offer a voluntary Mediation process to the parties. If agreed to by both parties, a Mediation will be scheduled prior to any hearing process.

7.04.2 For purposes of this Section, "Mediation" means a meeting in which a Landlord and Tenant have the opportunity to communicate with a Mediator or Hearing Officer and each other in a face-to-face setting at a neutral location in order to resolve a rental housing dispute voluntarily under ground rules designed to protect the confidentiality and neutrality of the communications, and in the absence of a written voluntary agreement to make a determination regarding any claims under this Part 7.

7.04.3 Following the initial presentation, the Mediator will meet privately with each side to attempt to work out a voluntary agreement. Private sessions are not recorded and confidential information provided during them shall not be accepted and shall not be used in decision making by the Mediator.

7.04.4 If the parties arrive at a voluntary agreement which resolves the dispute, the Mediator will write that agreement on a City voluntary agreement form and witness the parties' signatures. Any voluntary agreement that includes a Tenant buyout must comply with the Buyout Agreement requirements in the Ordinance and these regulations.

7.04.5 After meeting in private session, the Mediator will meet with both parties together to sign any voluntary agreement or to provide an opportunity to present any additional evidence or testimony. Any voluntary agreement reached between the Parties shall be submitted in writing to the City and shall be filed as the resolution of the petition(s).

~~7.04.3~~ 7.04.6 "Mediator" means a Hearing Officer or a person who is certified to have completed at least forty hours of basic mediation training, with subsequent advanced training, and who has also participated as a Mediator or co-Mediator in at least ten mediations conducted under the auspices of a recognized community or commercial mediation program, and is subject to Section 11.01.03 ~~who has agreed (in a form acceptable to the Director) to a statement of mediation ethics and principles, including an acknowledgment of the duty to disclose any conflicts of interest in any specific case.~~ A Mediator shall not own a real estate interest in rental property consisting of three or more units; is not a Tenant of a Rent Stabilized Unit and may not be an employee or an officer of groups or organizations which have or are viewed by significant numbers of tenants or landlords as having taken advocacy positions in landlord/tenant matters..

~~7.04.4 No record shall be made of any act, statement, or occurrence during the Mediation. Notwithstanding the foregoing, any voluntary agreement reached between the Parties shall be submitted in writing to the City and shall be filed as the resolution of the Petition.~~

7.04.7 The voluntary agreement may not require or allow an increase in Rent or a pass through not authorized under the Ordinance. If the voluntary agreement contains a section making a violation of the material terms subject to review by a Petition Examiner under the Ordinance and Regulations, a written claim of violation may be filed within ninety (90) days of the date of its filing, provided that the party filing the claim has sent a written request to the violating party to perform one or more specific, material items to be performed under the voluntary agreement. The written claim must contain a copy of the request to the violating party and the party making the claim must send a copy to the violating party. If the ~~Petitioner~~ Examiner determines that a material term of the voluntary agreement has been violated and contacts with the violating party fail to resolve the issue, the Petition Examiner shall send the parties notice of breach and shall schedule a hearing under Section 7.05 on the grounds that the issues were not resolved by the voluntary Mediation.

~~7.04.5–~~ 7.04.8 If a voluntary agreement is not possible, or if one of the parties does not agree to a voluntary agreement, the Hearing Officer will make a written decision regarding Housing Service Reductions or Housing Code violations, and any claims raised under Part 6. Appeals of the Hearing Officer's decision shall be filed in writing with the Director within seven (7) days of the issuance of the decision.

7.05. Hearing Authorized. If voluntary Mediation does not result in a resolution of the issues raised in the Petition, or if the Parties opt not to participate in voluntary Mediation, then the Petition review process shall commence with a Hearing before a Hearing Officer in accordance with the procedures established below. Appeals pursuant to Section 7.04.8 shall commence with a Hearing before a Hearing Officer in accordance with the procedures established below. Additionally, if the hearing has been scheduled regarding a claim of breach of voluntary agreement, the Hearing Officer shall consider if the voluntary agreement which has been claimed to be broken, has been broken, and if so, may determine an equitable remedy which may compensate for the violation by increasing or decreasing the rent accordingly.

~~7.05.~~

7.06. Proof of Service Reductions. The burden of proof of each service reduction is on the person alleging the reduction. A service reduction for a particular service for a particular rental unit shall be proven as follows:

7.06.1 The person alleging the service reduction shall prove:

- a. The Basic Service Level for the particular Housing Service for the particular Rental Unit; and
- b. The actual service level for the particular Housing Service for the particular Rental Unit; and
- c. That the actual service level is, or was, materially lower than the Basic Service Level; and

d. That the Housing Service Reduction occurred within the twelve (12) month period immediately preceding the date of filing the petition commencing the proceeding in which the issue is being heard.

7.06.2 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 in determining the Basic Service Level, or in determining that the actual service level is materially lower than the Basic Service Level.

7.07. Determining Value of Housing Service Reductions. If the Hearing Officer finds that a Housing Service Reduction has occurred, the Hearing Officer shall determine the monetary value to be assigned to the service reduction by applying the following standards and procedures:

7.07.1 The Hearing Officer shall determine the percentage reduction in usability of the Rental Unit caused by the service reduction, commencing with the accrual date.

7.07.2 In determining the percentage reduction of usability, the Hearing Officer shall consider the following factors:

- a. The area affected;
- b. The amount of time the Tenant is exposed to the condition;
- c. The degree of discomfort the condition imposes;
- d. The extent to which such a condition causes a reasonable tenant to find the premises uninhabitable and leave; and
- e. Similar factors.

7.07.3 The Hearing Officer shall apply the percentage reduction to the monthly Rent, divide by 30, and multiply the resulting sum by the number of days commencing from the accrual date to the date of restoration of the service reduction condition to the Basic Service Level, to determine the value of the service reduction.

7.08. Consequences of a Housing Service Reduction. The value of a Housing Service Reduction, as determined in accordance with these Regulations, shall be applied as a credit against the Tenant's obligation to pay Rent.

7.09. Housing Code Violations. Violations of Title 24 of the Municipal or of California Civil Code Sections 1941.1 and 1941.2 shall be considered by the Hearing Officer who may reasonably condition, disallow, or reduce Rent based on their severity. An inspection report of a San José Code Enforcement Inspector shall be deemed presumptive, but not conclusive proof of the matters recited therein.

7.10. Findings. In making any determination that an alleged Housing Service Reduction exists, or has a particular monetary value, or that a Housing Code violation exists or

not, or has a particular monetary value, any Decision shall make and include a specific finding of the facts upon which the determination is based.

7.11. Hearing Procedures.

7.11.1 Notice and Timing of Hearing. Within thirty (30) days of a decision by one or more Parties to opt not to participate in voluntary Mediation or completion of voluntary Mediation without resolution, the Program Staff shall provide notice to all Parties of the date and time of the Hearing. The date of the Hearing shall be scheduled for twenty (20) to thirty (30) days after completion of voluntary Mediation or the decision to opt not to participate in voluntary Mediation, a referral by a Petition Examiner under Section 6.02 or an appeal pursuant to Section 7.05. Hearings shall be scheduled after 6:00 p.m. on weekdays, or at such other time as the Program Staff determines is feasible for Hearing Officers and as needed to allow Parties to participate.

7.11.2 Additional Submissions. The Program Staff shall accept additional submissions of arguments and documentation regarding the claims raised in the Petition up to ten (10) days prior to the Hearing, so long as two (2) complete copies of the submission are provided to the Program Staff and a complete copy of the submission is provided by the submitting Party to all other responding and petitioning Parties.

7.11.3 Hearing Officer Assignments. A Hearing Officer shall be assigned to preside over each Hearing. The Hearing Officer shall have access to the Petition, any Response, and all supporting documentation prior to the Hearing. The Hearing Officer shall accept argument from all Parties on the claims raised in the Petition, Response and any additional submissions, and review relevant supporting documentation.

7.11.4 Rescheduling or Alternate Scheduling of the Hearing. 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 prompt notification of Program Staff. Program Staff shall reschedule the Hearing with the originally assigned Hearing Officer unless that Hearing Officer is unavailable.

7.11.5 Effect of Failure to Appear. Failure to appear at the Hearing by the petitioner or the proxy designated in writing to act for the petitioner shall result in a determination by the Hearing Officer that the Petition has been withdrawn, and in that event notice shall be provided to the Parties of the withdrawal of the Petition.

7.12. Conduct of Hearing 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.

7.12.2 Hearing Attendance. The petitioners, any opposing parties, and each party's designated proxies, legal representatives, translators and non-party witnesses may attend the Hearing. The Hearing Officer may limit the attendance at the Hearing of persons not necessary for the proceedings. There is no child care available and minors who are not witnesses should not be brought to the Hearing.

7.12.3 Ex Parte Communications. There shall be no oral communication regarding the subject matter of the Petition outside the Hearing between the Hearing Officer and any party or witness (e.g. urgent scheduling issues or other non-substantive topics may be discussed *ex parte*). All discussion during the Hearing shall be recorded. Any written communication between or among the Hearing Officer and a Party after the Hearing has commenced shall be provided to all Parties, or if the Party has a proxy, to the proxy.

7.12.4 Records of Hearings. Audio of Hearings will be recorded. This record will be available to all Parties for review. The Hearing Officer has the discretion to allow or disallow the making of other records or transcripts.

7.12.5 Order of Proceedings. A Hearing shall ordinarily proceed in the following manner, unless the Hearing Officer determines that some other order of proceedings would better facilitate the Hearing:

a. Submissions after Time Deadlines. If a submission is proffered after the deadline in Section ~~7.11.28-06-02~~ 7.11.28, the Hearing Officer may decline to accept the submission into the record unless all parties agree that the late submission is not prejudicial.

b. Length of Hearing. A Hearing schedule shall be established by the Hearing Officer providing for not more than seven (7) hours of Hearing testimony. An extension of this time period may be granted by the Hearing Officer for just cause as determined by the Hearing Officer. In no case may the Hearing last more than ten (10) hours unless the need for translation results in the need for a longer Hearing.

7.12.6 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.

7.12.7 Participation in Hearing. Any Party, its designated proxy or its counsel may attend the hearing and offer evidence and testimony. However, the Hearing Officer may adopt rules to encourage a timely and business-like hearing, such as requiring the Parties, rather than their counsel or other advisors, to be the primary speakers at Hearings, with adequate time given to consult with their counsel or advisor, or, with a large group encouraging representatives, if any, to be the primary spokespersons.

7.12.8 Participation of the Hearing Officer. The Hearing Officer shall at all times in the conduct of the Hearing and in otherwise performing the duties of the Hearing Officer act neutrally and impartially as between the Landlord and the Tenants.

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

- a. A copy of the Petition, Response, and any other documents submitted to support the petition;
- b. Any written submissions by the parties,
- 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. The appeal(s) of the Administrative Decision.
- h. The Hearing Officer's Decision.
- i. All findings of fact and conclusions of law;
- j. Any Administrative Decision provided to the Parties;
- k. All recommended or final decisions, orders, or rulings; and
- l. A recording of the Hearing in a format determined by the Director.

7.12.10 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.

7.13. Decision.

7.13.1 Time for Issuance. The Hearing Officer shall issue a written Decision to all Parties within thirty (30) days after the Hearing based on the arguments and supporting documentation available to the Hearing Officer. 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 Parties for comment regarding clerical or mathematical errors. All such comments shall be provided to the Hearing Officer and the other Parties in writing by the commenter within ten (10) days of receipt of the tentative Decision.

7.13.2 Decision Contents. The Decision shall include findings of fact and conclusions of law which support the Decision, and shall specify the following:

- a. The amount of change to the Rent, if any, for each unit.
- b. In the case of a downward adjustment in the Rent, for each unit entitled to an adjustment; (a) an itemization of each reduction in Housing Services on which the reduction is based, the amount of reduction attributable to that Housing Service, and the duration of the adjustment; and (b) an itemization of each code violation on which the reduction is based, the amount of reduction attributable to that violation, and the duration of the adjustment.
- c. Any conditions which are placed on the award including conditions and limitations imposed for violation of SJMC Chapter 17.23;
- d. The date on which any adjustment to the rent is effective for each unit.
- e. An explanation of the basis for the Decision with citations to the Ordinance.
- f. The cover page of the decision will provide that the date the decision is issued is the date of ~~m~~Mailing.

7.13.3 Applicability of Decision. The Decision of a Hearing Officer shall not apply to a tenant who has not filed a Petition or has not been included in a Landlord's Petition.

7.14. Appealing Hearing Decision to the Director. Any Party to a Hearing may appeal the Hearing Decision to the Director on a form approved by the Director. Any Party may appeal to the Director within thirty (30) days of the ~~m~~Mailing date of the Hearing Decision. If no Party appeals to the Director within thirty (30) days, the Hearing Decision will be considered a final Decision. The Director's sole authority upon appeal of a Hearing Decision is to either affirm the Hearing Decision or remand the Hearing Decision to the Hearing Officer for reconsideration. If the Director remands the Hearing Decision to the Hearing Officer, the Director's remand is limited to ~~may identify~~ ing specific sections of the Ordinance or Regulations, or specific issues that the Hearing Officer must address ~~or re-evaluate~~ when drafting a reconsidered Hearing Decision. A reconsidered Hearing Decision shall be a final Decision.

Chapter 8

LANDLORD FAIR RETURN PETITIONS; HEARINGS AUTHORIZED

8.01. Applicability. The procedures set forth in this Chapter 8 apply to Landlord Petitions requesting a Rent increase in order to obtain a fair return ("fair return Petition"). This Chapter 8 provides procedures and standards that apply in addition to the substantive fair return analytical requirements established in SJMC Chapter 17.23.

8.02. Petitions and Notice. The following requirements and standards supplement the fair return petition process identified in SJMC Chapter 17.23.

8.02.1 Petition Filing Requirement. A Landlord seeking a rent increase in excess of the amount allowed under SJMC Section 17.23.310 on fair return grounds must file a fair

return Petition on a City petition form with all required supporting documentation. Documentation must be marked on each page with the specific petition form item it is intended to support. In the event of a petition with claims under SJMC Section 17.23.830.C, the landlord must also arrange for retaining the City selected appraiser prior to the scheduling of a hearing.

8.02.2 Supporting Evidence. A Petition for a fair return must include at least three (3) sets of copies of all evidence the Landlord is relying on to support his or her claim, marked accordingly. Receipts, cancelled checks, and detailed invoices are the best documentation.

a. Tax returns and ledgers may be submitted as part of the supporting evidence, however, tax returns alone 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 alone are not accepted as sufficient evidence for the Current Year.

b. Evidence that may tend to show that rents were unusually low for the quality, location, age, amenities and condition of the housing includes but is not limited to evidence of rents collected in comparable buildings located in the same neighborhood.

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

8.02.3 Petitions Without Complete Base Year Evidence. In the event that a Petition that is otherwise complete does not include actual evidence of Base Year net operating expenses, the Landlord may submit a Director approved form requesting the Program to accept the Petition without the complete Base Year net operating expense evidence. The request form will require an affidavit under penalty of perjury indicating that the Landlord does not have and cannot obtain this evidence, and a description of how this evidence was lost and may require a filing fee to cover the cost for Program Staff to investigate and prepare a report for the Hearing Officer. Upon receipt of a complete request form, if the Program Staff has ~~m~~Mailed a notice of incomplete petition pursuant to Section 5.03.1 and all other portions of the Petition are complete, the Program Staff shall Mmail a notice of complete Petition pursuant to Section 5.03.1.

8.02.4 Petitions Claiming that Base Year Gross Income is Unusually Low.

a. Appraisal Requirement. If the Landlord Petition claims that the Base Year Gross Income is unusually low because some Tenants had unusually low Rents for the quality, location, age, amenities and condition of the Rental Units as compared to Rents for comparable units, the Landlord shall be required to pay the costs of an appraisal determining the Base Year rents for comparable buildings at the time of, and as a condition to, filing a Petition. The City shall select the appraiser to prepare such appraisal and shall provide the appraiser with instructions on the scope of the appraisal which shall include Base Year rents for at least three comparable buildings containing Rent Stabilized Units located in the same neighborhood as the Covered Property for which the Petition has been submitted. The appraisal shall be prepared by an Appraisal Institute Certified Appraiser with experience appraising rental property in the City. The appraisal will fully explain the appraiser's determination of comparability and any

adjustments made by the appraiser between the property that is the subject of the Petition and the comparable properties. (SJMC Section 17.23.830)

b. Exclusion from Claims of Unusually Low Base Year Gross Income. A property in which every Rent Stabilized Unit has been the subject of valid decontrol after the Base Year, in accordance with SJMC Section 17.23.300, is precluded from claiming that Base Year Gross Income was unusually low.

8.03. Pre-submittal Meeting. The Director may, at his or her discretion, authorize Program Staff to hold an informational meeting with a Petitioner to ~~discuss supporting evidence~~ for a fair return Petition (as described in Section 8.02.2 of these Regulations), upon submission of a fair return Petition and after Initial Notice to the Parties is provided in accordance with Section 5.03.1.a of these Regulations. No representation by Program Staff at such a meeting shall be binding on a Hearing Officer.

8.04. Fair Return Hearings.

8.04.1 Program Staff shall assign a Hearing Officer, who shall hear the completed fair return Petition within forty (40) days of the Mailing of the notice of determination of completeness. The Hearing Officer may elect to hold a pre-hearing conference with the parties. In the event the Hearing Officer elects to hold a pre-hearing conference, the pre-hearing conference and hearing shall each be scheduled within forty (40) days of the Mailing of the notice of determination of completeness. Notice of the hearing date shall be sent to the landlord and tenants. The notice of the hearing date shall be Mailed at least two weeks prior to the Hearing date.

8.04.2 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.

8.04.3 Failure to appear by Landlord or a proxy designated in writing to act for Landlord shall result in a determination that the petition has been withdrawn.

8.04.4 Petition withdrawals must be made in writing and the reason for withdrawal provided. Program Staff will notify Tenants of the withdrawal of a Petition. A new 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.

8.05. Staff Report Regarding Fair Return. Prior to the Hearing, Program Staff shall prepare a staff report that includes the following information, as applicable:

8.05.1 a calculation of the allowable rent adjustment pursuant to the Fair Return Standard,

8.05.2 a breakdown of the Base Year and Current Year income and expense by category,

8.05.3 a computation of the percentage adjustment of the Base Year net operating income showing the steps underlying the calculation consistent with SJMC Section 17.23.830,

8.05.4 a list of all petitions filed for the property in the last 12 months and any approved Petitions for Specified Capital Improvements,

8.05.5 a list of all unresolved City code violation complaints,

8.05.6 a listing of evidence of any violations of SJMC Chapter 17.23,

8.05.7 a listing of any income that may have been received in violation of Chapter 17.23, Part 2.5 of Chapter 20.80,

8.05.8 the names of the parties or proxies designated to receive Notice,

8.05.9 the list of any missing or otherwise incomplete items that was provided to the Petitioner, and

8.05.10 a summary of the petition and evidence submitted.

8.06. Conduct of Hearing.

8.06.1 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.

8.06.2 Hearing Attendance. The petitioners, any opposing parties, and each party's designated proxies, legal representatives, translators and non-party witnesses may attend the Hearing. The Hearing Officer may limit the attendance at the Hearing of persons not necessary for the proceedings. There is no child care available and minors who are not witnesses should not be brought to the Hearing.

8.06.3 Ex Parte Communications. There shall be no oral communication regarding the subject matter of the Petition outside the Hearing between the Hearing Officer and any party or witness, except at a prehearing conference, if any, to clarify and resolve issues (e.g. urgent scheduling issues or other non-substantive topics may be discussed *ex parte*). All discussion during the Hearing shall be recorded. All written communication from the Hearing Officer to a party after the Hearing has commenced shall be provided consistent with Section 5.03.2 to all parties, or if the party has a proxy, to the proxy.

8.06.4 Records of Hearings. Audio of Hearings will be recorded. This record will be available to all parties for review. The Hearing Officer has the discretion to allow or disallow the making of other records or transcripts.

8.06.5 Order of Proceedings. A hearing on a 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. Submissions after Time Deadlines. If a submission is proffered after the later of the deadline in Section 7.11.2 or, 6-03-02 the date for submissions set in the pre-hearing conference, if any, the Hearing Officer may decline to accept the submission into the record unless all parties agree that the late submission is not prejudicial.

b. Length of Hearing. A Hearing schedule shall be established by the Hearing Officer providing for not more than ten (10) hours of Hearing testimony. An extension of this time period may be granted by the Hearing Officer for just cause as determined by the Hearing Officer. Just cause may include but is not limited to Hearing a fair return Petition where the Base Year records are unavailable.

8.06.6 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.

8.06.7 Participation in Hearing. Any Party, its designated proxy or its counsel may attend the hearing and offer evidence and testimony. However, the Hearing Officer may adopt rules to encourage a timely and business-like hearing, such as requiring the Parties, rather than their counsel or other advisors, to be the primary speakers at Hearings, with adequate time given to consult with their counsel or advisor, or, with a large group encouraging representatives, if any, to be the primary spokespersons.

8.06.8 Participation of the Hearing Officer. The Hearing Officer shall at all times in the conduct of the Hearing and in otherwise performing the duties of the Hearing Officer act neutrally and impartially as between the Landlord and the Tenants.

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

- a. A copy of the Petition and documents submitted to support the petition;
- b. Any written submissions by the parties,
- 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. The appeal(s) of the Administrative Decision.
- h. The Hearing Officer's Decision.
- i. All findings of fact and conclusions of law;
- j. Any Administrative Decision provided to the Parties;
- k. All recommended or final decisions, orders, or rulings; and
- l. A recording of the Hearing in a format determined by the Director.

8.06.10 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.

8.07. Guidance for Substantive Determinations on Fair Return Petitions. In addition to the standards identified in SJMC Chapter 17.23, the following guidance shall be incorporated by Hearing Officers when calculating gross income and operating expenses for purposes of identifying and maintaining net operating income.

8.07.1 Operating Expenses. In calculating Operating Expenses for the replacement of facilities, expenses for materials or major equipment necessary to maintain the same level of Housing Services as previously provided may be allowed, except insofar as such expenses are compensated by insurance proceeds or other sources or to the extent that such expenses have already been passed through to Tenants. 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 attached as Appendix A, provided that the Hearing Officer may use seven (7) years for unlisted items, or such other period as is determined to be reasonable and consistent with the purposes of the Ordinance.

8.07.2 Reasonable Maintenance and Repair Expenses. Expenses for maintenance and repair are reasonable and normal where they are consistent within ten percent (10%) from year to year, or otherwise shown to be consistent with the annual recurring level of expenses. The Hearing Officer may also evaluate reasonableness by considering whether such expenses are in keeping with expenses for buildings of similar configuration and age.

8.07.3 Housing Service Reductions and Housing Code Violations. If applicable, any Housing Service Reductions and Housing Code violations must be considered in any determination of what constitutes a reasonable Rent increase.

8.07.4 Reasonableness Generally. If the Petition Examiner or Hearing Officer determines that the variation or timing of expenses is not reasonable, then such expenses may be reallocated or amortized as the Hearing Officer determines to be consistent with the Ordinance.

Expenses should be documented by contemporaneous and complete invoices or other similar documents that identify the provider, cost, address of work, dates, and the nature of the work performed and be provided along with cancelled checks or other proof of payment thereof. Original documents are the best evidence, although all types of evidence may be submitted.

Expense claims based on cash payments or payments to affiliated entities must be documented to the satisfaction of the Petition Examiner or Hearing Officer.

8.07.5 Interest Allowance for Amortized Expenses. The interest allowance for Operating Expenses required to be amortized in connection with a fair return Petition shall equal the interest rate equal to the prime rate as reported by the Wall Street Journal as of the date of the initial submission of the Petition, plus an additional two percent, to be taken as simple interest. (Section 17.23.820.E)

8.07.6 Calculation of Base Year CPI-U. The Consumer Price Index For All Urban Consumers ("CPI-U") for the Base Year shall be 251.985. (Section 17.23.810.D.)

8.07.7 Calculation of Current Year CPI-U.

a. Calendar Year. To determine the CPI-U for the Current Year when petitioner uses a calendar year for the Current Year, the CPI-U for the Current Year shall be the annual average for the Current Year reported by the Bureau of Labor Statistics for the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San Jose area. For example, the annual average CPI-U in 2016 for all urban consumers for all items for the San Francisco-Oakland-San José area is 266.344, which represents an increase from the Base Year of 14.359, or approximately 5.7%.

8.08. Decision: Time for Issuance. The Hearing Officer shall issue a written Decision to all Parties within thirty (30) days after the Hearing based on the report by Program Staff and the arguments and supporting documentation available to the Hearing Officer.

8.08.2 Decision Contents. The Decision shall include findings of fact and conclusions of law which support the Decision, and shall specify the following:

a. a calculation of the allowable rent adjustment pursuant to the fair return standard,

b. a breakdown of the base year and current year income and expense by category

c. a computation of the percentage adjustment of the base year net operating income showing the steps underlying the calculation

d. The amount of change to the Rent, if any, for each unit;

e. Any conditions which are placed on the award including conditions and limitations imposed for violation of SJMC Chapter 17.23;

- f. The date on which any adjustment to the rent is effective for each unit;
- g. An explanation of the basis for the Decision with citations to the Ordinance, which must include:
 - i. A calculation of the amount of change to the Rent pursuant to the fair return standard;
 - ii. An itemization of Base Year and Current Year income and expenses by category;
 - iii. A calculation of the percentage adjustment of the Base Year net operating income (including the steps underlying the calculation); and
- h. The cover page of the decision will provide that the date the decision is issued is the date of ~~m~~Mailing.

8.08.3 Applicability of Decision. The Decision of a Hearing Officer shall not apply to a Tenant who has not filed a Petition or has not been included in a Landlord's Petition.

8.08.4 Effective Date of Rent Adjustments. Unless otherwise set by the Hearing Officer, any rent increases allowed in a Decision shall not be effective until all of the following are completed: (a) the Landlord provides notice to the Tenant of such increase pursuant to Civil Code Section 827 and (b) twelve months have passed since the last increase in the ~~T~~enant's ~~R~~ent. In the event of a rent decrease, the Decision shall specify the effective date of the rent decrease.

8.09. Appealing Hearing Decision to the Director. Any Party to a Hearing may appeal the Hearing Decision to the Director on a form approved by the Director. Any Party may appeal to the Director within thirty (30) days of the ~~m~~Mailing date of the Hearing Decision. If no Party appeals to the Director within thirty (30) days, the Hearing Decision will be considered a final Decision. The Director's sole authority upon appeal of a Hearing Decision is to either affirm the Hearing Decision or remand the Hearing Decision to the Hearing Officer. If the Director remands the Hearing Decision to the Hearing Officer, the Director ~~remand is limited to may~~ ~~identify~~ing specific sections of the Ordinance or Regulations, or specific issues that the Hearing Officer must address ~~or re-evaluate~~ when drafting a reconsidered Hearing Decision. A reconsidered Hearing Decision shall be a final Decision.

Chapter 9

LANDLORD PETITIONS FOR PASS THROUGH OF CHARGES FOR SPECIFIED CAPITAL IMPROVEMENTS; ADMINISTRATIVE DECISIONS AUTHORIZED

9.01. Applicability.

9.01.1 Expedited Petition Process Authorized. The procedures set forth in this Chapter 9 create an expedited review of Specified Capital Improvement Petitions, by which

Landlords may obtain approval for a Specified Capital Improvement pass through. This Chapter does not preclude a Landlord from submitting a fair return Petition and including Specified Capital Improvements within the fair return Petition, although any pass through awarded shall also be considered in determination of a fair return. Tenants are not entitled to submit a Response to a Specified Capital Improvement Petition (as noted in Section 5.03.4 of these Regulations) prior to issuance of an Administrative Decision; Tenants may appeal a Petition Examiner's Administrative Decision as described in Section 9.08.

9.01.2 Properties Ineligible for Any Specified Capital Improvement Pass Through. No cost of a Specified Capital Improvement may be passed through to a Tenant of a Rental Unit ~~if~~ if any of the following conditions exists:

a. ~~The~~ Rental Unit that is in violation of the implied warranty of habitability, including the interpretation of the implied warranty of habitability codified in California Civil Code Section 1941.1, unless the Landlord can prove that such conditions were caused by the Tenant occupying the Rental Unit at the time of the Petition.

~~Within the same year that the Landlord Petitions for a Specified Capital Improvement Pass Through, the CPI-U exceeds five percent (5%) and the Landlord has raised the Tenant's rent accordingly.~~

b. The Petition for Specified Capital Improvement Pass Through was not filed within one-year of the completion of the Capital Improvement work.

~~a.c.~~ The work was performed without a City building permit.

~~9.01.2~~

9.02. Petitions and Notice.

9.02.1 Petition Filing Requirements~~d.~~ A Landlord seeking to pass through all or a portion of costs for a Specified Capital Improvement may file a Specified Capital Improvement Petition on a City petition form with all required supporting documentation. ~~--~~ A Petition cannot be filed until the work is completed. Supporting ~~D~~documentation must be marked on each page with the specific petition form item it is intended to support. The Landlord must provide the following information and supporting documentation as identified below:

a. The type or form of Specified Capital Improvement(s) for which a pass through is requested, identifying the applicable amortization period from Appendix B to these Regulations;

b. Whether a similar Housing Service was previously provided to one or more Tenants to which the Landlord proposes to pass through costs of the Specified Capital Improvement, and if so, a description of the existing Housing Service that was improved or increased by the Specified Capital Improvement;

c. The total cost of the Specified Capital Improvement to the Landlord together with the actual invoices and proof of payment;

d. The number of Rent Stabilized Units, the occupancy status of each Rent Stabilized Unit, and the Rent charged for each Rent Stabilized Unit that benefits from the Specified Capital Improvement;

e. The proposed pro rata, amortized cost of the Specified Capital Improvement to be passed through to each occupied Rent Stabilized Unit.

f. The date that the Specified Capital Improvement(s) was completed.

g. A copy of the building permit(s) and final inspections.

e. _____

9.03. Standards for Specified Capital Improvements Costs Pass Through.

9.03.1 Specified Capital Improvement Costs Passed Through Only To Benefiting Tenant Households. No costs to construct or install a Specified Capital Improvement may be passed on to a Tenant Household unless the Tenant Household benefits from the Specified Capital Improvement. Improvements made to a building shall be considered to benefit all of the Tenants of the building. Improvements made only to a specific unit shall be considered to benefit the Tenant of that unit.

9.03.2 Specified Capital Improvements, Categories. A Specified Capital Improvement must fall into one of the following categories ~~in order~~ to be eligible for a pass through. Appendix B lists the categories that may apply for particular improvements. Improvements that are eligible for multiple categories must show that they are eligible for the specific category claimed.

a. Sustainability, Safety, and Seismic Improvements. Up to one hundred percent (100%) of the costs of Specified Capital Improvements that materially improve sustainability (energy or water conservation), accessibility, safety, or seismic readiness ~~readiness~~ ~~readiness~~. Specified Capital Improvements that materially improve sustainability, safety, or seismic ~~readiness~~, are readiness, are presumed to improve Housing Services and Housing Services functionality. With respect to energy conservation, material improvement for replacements of existing improvement may be shown by evidence that the replacement items exceed specifications of a basic replacement item and the specifications of the existing improvements. Where the City requires an engineered design for seismic work, the cost of the design work by the engineer or architect may be included in the cost to construct the improvements.

b. Major Systems Upgrades. Up to one hundred percent (100%) of the costs of Specified Capital Improvements ~~for major~~ for major systems upgrades that provide new or enhanced housing services to Tenants, as identified in Appendix B, and add Housing Services or enhance Housing Service functionality for Tenants. A Petition Examiner will not authorize any costs in a petition for Specified Capital Improvements to be passed through to a Tenant Household if the Specified Capital Improvement maintains a Housing Service for which a Tenant Household has previously bargained for and provided compensation, or that replaces the same functionality and features of existing Housing Services. A Landlord may petition for,

and a Petition Examiner may grant in whole or in part, those costs of a Specified Capital Improvement that can be attributed to measurably improving upon or increasing the functionality or features of an existing Housing Service.

c. ~~Major Maintenance Replacements.~~ Notwithstanding anything in these Regulations precluding the pass through of charges for Improvements that replace or maintain Housing Services and neither add Housing Services nor improve Housing Services functionality, for petitions filed before January 1, 2023 up to fifty percent (50%) of the costs to construct or install a Specified Capital Improvement, which replaces major improvements so as to maintain existing Housing Services are eligible to be passed through to a beneficiary Tenants. However, any increased costs incurred by the Landlord resulting from such deferred maintenance remains ineligible to be passed through.

~~9.03.3 City Permit and Plans-Review Cost. The Landlord is permitted a pass-through permitted for costs may include up to one hundred percent (100%) of the cost incurred charged by the City for City Planning review of the plans and issuance of the Building Permit.~~

~~Specified Capital Improvement Ineligible for Pass Through. No costs to construct or install a Specified Capital Improvement may be passed on to a Tenant Household within the same year where the CPI-U exceeds 5% and the Landlord has raised the Tenant's rent accordingly.~~

~~9.03.39.03.4 Pro Rata Costs May Be Passed Through to Tenant.~~ Tenant. A Petition Examiner will determine the Tenant Household's pro rata share of the costs of a Specified Capital Improvement, with reference to the extent to the exclusive or shared nature of the benefits of the Specified Capital Improvement.

9.04. Banking of Annual General Increase. The provisions allowing banking in Chapter 13 of the Regulations, if any, shall not apply to any unit subject to a Specified Capital Improvement pass through authorized by this Chapter.

9.05. Guidance for Substantive Determinations. The Petition Examiner shall ascertain which category the alleged Specified Capital Improvement qualifies for, if any, which Tenants benefit from the Specified Capital Improvement, ~~were actually incurred for the Specified Capital Improvement~~ and to what extent the costs of the Specified Capital Improvement may be passed through to Tenants.

9.05.1 Administrative Decision. A Petition Examiner shall review each Specified Capital Improvement petition and provide a written decision describing the following issues:

a. Whether the alleged Specified Capital Improvement qualifies as a Specified Capital Improvement identified on Appendix B and whether it falls within one of the three categories identified in Section 9.03.2;

b. Whether the Specified Capital Improvement is an improvement providing new or improved Housing Services intended to increase sustainability, safety or seismic readiness under Section 9.03.2(a); provides a wholly new Housing Service, or to what extent (percentage) the Specified Capital Improvement measurably improves upon or increases

the functionality or features of an existing Housing Service under Section 9.03.2(b); or replaces major improvements so as to maintain existing Housing Services under Section 9.03.2(c);

c. What costs were incurred by the Landlord for the construction of the Specified Capital Improvement;

e.d. The percentage and total cost of the Specified Capital Improvement that may be passed on to benefitting Tenants;

d.e. The number of units, that benefit from the Specified Capital Improvement;

e.f. The monthly cost of the Specified Capital Improvement per applicable unit and amortized over the applicable amortization period set forth in Appendix B, and subject to the limitations in SJMC Section 17.23.320.B and 17.23.330.

9.06. Petition Examiner Administrative Decision; Notice.

9.06.1 Initial Circulation. Prior to the issuance of the final Administrative Decision, the Petition Examiner may, at his or her discretion, prepare a tentative Decision and circulate a tentative Decision to the Landlord for comment regarding clerical or mathematical errors. All such comments shall be provided to the Petition Examiner within ten (10) days of receipt of the tentative Decision.

9.06.2 Copy to Tenant Household. Upon receipt of an Administrative Decision that authorizes a pass through of Specified Capital Improvement costs to one or more Tenants, a Landlord must provide a copy of the Administrative Decision with any initial written request for payment for the Specified Capital Improvement.

9.06.3 Notice Period. Each initial request for payment of an authorized Specified Capital Improvement cost pass through must provide the Tenant Household with no less than sixty (60) days' notice prior to due date of the first payment of the Specified Capital Improvement cost.

9.06.4 Pass Through Charges Separate from Rent. Because any authorized Specified Capital Improvement cost pass through is separate from Rent, such requests for payment are not subject to the limitation of one Rent increase in a twelve-month period included in Ordinance Section 17.23.310.D. Any pass through charge shall be invoiced with and collected at the same time as the Rent.

9.07. Appeals.

9.07.1 After the Administrative Decision has been issued, Tenants may appeal a by requesting a Hearing on a form approved by the Director. If no Tenant files an appeal within thirty (30) days of the date the City Mails the Administrative Decision, the Administrative Decision shall be final. The appeal must be based on one or more of the following grounds: (a) the improvements were not correctly completed (b) the improvements were not as described in

the petition or (c) the pass through cannot be charged to the Tenant because the implied warranty of habitability has been breached with respect to the Tenant's unit.

9.08. Hearing Procedures.

9.08.1 Notice and Timing of Hearing. Within thirty (30) days of receipt of a Tenant appeal of a Petition Examiner's Administrative Decision, the Program Staff shall assign a Hearing Officer to hear the appeal(s). Program staff shall schedule a Hearing and provide notice to all Parties of the date and time of the Hearing. Hearings shall be scheduled after 6:00 p.m. on weekdays, or at such other time as the Program Staff determines is feasible for Hearing Officers and as needed to allow Parties to participate.

9.08.2 Additional Submissions. The Program Staff shall accept additional submissions of arguments and documentation regarding the appeal of the Administrative Decision up to ten (10) days prior to the Hearing, so long as two (2) complete copies of the submission are provided to the Program Staff and a complete copy of the submission is provided by the submitting Party to all other responding and petitioning Parties.

9.08.3 Hearing Officer Assignments. A Hearing Officer shall be assigned to preside over each Hearing. The Hearing Officer shall have access to the Administrative Decision, the Petition, any Response, and all supporting documentation prior to the Hearing. The Hearing Officer shall accept argument from all Parties on the claims raised in the appeal, the Petition, Response and any additional submissions, and review relevant supporting documentation.

9.08.4 Rescheduling or Alternate Scheduling of the Hearing. 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 prompt notification of Program Staff. Program Staff shall reschedule the Hearing with the originally assigned Hearing Officer unless that Hearing Officer is unavailable.

9.08.5 Effect of Failure to Appear. Failure to appear at the Hearing by the Party that submitted the appeal, or the proxy designated in writing to act for the appellant, shall result in a determination by the Hearing Officer that the appeal has been withdrawn, and in that event the Administrative Decision shall be a final Decision.

9.09. Conduct of Hearing. 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.

9.09.2 Hearing Attendance. The petitioners, any opposing parties, and each party's designated proxies, legal representatives, translators and non-party witnesses may attend the Hearing. The Hearing Officer may limit the attendance at the Hearing of persons not

necessary for the proceedings. There is no child care available and minors who are not witnesses should not be brought to the Hearing.

9.09.3 Ex Parte Communications. There shall be no communication regarding the subject matter of the Petition outside the Hearing between the Hearing Officer and any party or witness. Provided, urgent scheduling issues or similar non-substantive topics may be discussed *ex parte* where necessary. All discussion during the Hearing shall be recorded. Any written communication between or among the Hearing Officer and a Party after the Hearing has commenced shall be provided to all Parties, or if the Party has a proxy, to the proxy.

9.09.4 Records of Hearings. Audio of Hearings will be recorded. This record will be available to all Parties for review. The Hearing Officer has the discretion to allow or disallow the making of other records or transcripts.

9.09.5 Order of Proceedings. A Hearing shall ordinarily proceed in the following manner, unless the Hearing Officer determines that some other order of proceedings would better facilitate the hearing:

a. Submissions after Time Deadlines. If a submission is proffered after the deadline in Section 8.069.08.02, the Hearing Officer may decline to accept the submission into the record unless all parties agree that the late submission is not prejudicial.

b. Length of Hearing. A Hearing schedule shall be established by the Hearing Officer providing for not more than seven (7) hours of Hearing testimony. An extension of this time period may be granted by the Hearing Officer for just cause as determined by the Hearing Officer. In no case may the Hearing last more than ten (10) hours unless the need for translation results in the need for a longer Hearing.

9.09.6 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.

9.09.7 Participation in Hearing. Any Party, its designated proxy or its counsel may attend the hearing and offer evidence and testimony. However, the Hearing Officer may adopt rules to encourage a timely and business-like hearing, such as requiring the Parties, rather than their counsel or other advisors, to be the primary speakers at Hearings, with adequate time given to consult with their counsel or advisor, or, with a large group encouraging representatives, if any, to be the primary spokespersons.

9.09.8 Participation of the Hearing Officer. The Hearing Officer shall at all times in the conduct of the Hearing and in otherwise performing the duties of the Hearing Officer act neutrally and impartially as between the Landlord and the Tenants.

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

- a. A copy of the Petition, Response, and any other documents submitted to support the petition;
- b. Any written submissions by the parties,
- 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. The appeal(s) of the Administrative Decision.
- h. The Hearing Officer's Decision.
- i. All findings of fact and conclusions of law;
- j. Any Administrative Decision provided to the Parties;
- k. All recommended or final decisions, orders, or rulings; and
- l. A recording of the Hearing in a format determined by the Director.

9.09.10 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.

9.10. Decision.

9.10.1 Time for Issuance. The Hearing Officer shall issue a written Decision to all Parties within thirty (30) days after the Hearing based on the arguments and supporting documentation available to the Hearing Officer. 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 Parties for comment regarding clerical or mathematical errors. All such comments shall be provided to the Hearing Officer and the other Parties in writing by the commenter within ten (10) days of receipt of the tentative Decision.

9.10.2 Decision Contents. The Decision shall include findings of fact and conclusions of law which support the Decision, and shall specify the following:

- a. The amount of change to the Rent, if any, for each unit.

- b. Any conditions which are placed on the award including conditions and limitations imposed for violation of SJMC Chapter 17.23.
- c. The date on which any adjustment to the rent is effective for each unit.
- d. An explanation of the basis for the Decision with citations to the Ordinance, including:
 - i. an itemization of each Specified Capital Improvement from which the Tenant Household benefits and on which the adjustment is based;
 - ii. the amount of the adjustment attributable to each Specified Capital Improvement; and
 - iii. the duration of the adjustment based on the amortization schedule identified in Appendix B.
- e. The cover page of the decision will provide that the date the decision is issued is the date of ~~m~~Mailing.

9.10.3 Applicability of Decision. The Decision of a Hearing Officer shall not apply to a Tenant who has not filed a Petition ~~or~~and has not been included in a Landlord's Petition.

9.11. Hearing Officer Decision is Final. The Decision of a Hearing Officer upon an appeal of a Petition Examiner's Administrative Decision is final.

Chapter 10

JOINT REQUESTS FOR ADDITIONAL HOUSING SERVICES

10.01 Joint Petitions for One-Time Fee or Deposit Increase. Tenants may file petitions jointly with their Landlord requesting certain new or additional Housing Services listed in Section 10.01.1 in exchange for the payment of a one-time fee that does not exceed five percent (5%) of the Tenant's then-current monthly Rent or payment of additional Security Deposit, provided the total Security Deposit will not to exceed the limits in California Civil Code Section 1950.5. Such Petitions shall be made on forms provided by the Director, and Program Staff shall have the authority to approve or deny such joint Petitions; provided, however, that Program Staff shall only deny a Petition for additional Housing Services upon making the finding that either the Tenant or the Landlord have not freely consented to the request, e.g., in situations with evidence of duress, misrepresentation, or other acts of misconduct.

10.01.1 New or Additional Housing Services. A new or additional These services may include a pet, where pets were prohibited or limited under the rental agreement. Additionally, , ~~or~~ other privileges or services that were expressly excluded or prohibited by the Tenant's written rental agreement may constitute a new or additional housing service, except for those services

~~that include, are not additional occupants, or additional parking, or and other services that are not a component of the Basic Service Level.~~

10.02 Joint Petitions for a Rent Increase Due to Additional Occupants. ~~A~~ Landlord and Tenant may file a petition for an increase in the ~~maximum Rent allowable~~ of up to 5% for an additional ~~occupant~~ Tenant (other than the Tenant's spouse, parent or dependent or foster child). Such increase shall terminate in the event the additional Tenant vacates the unit.

10.03 Joint Petitions for a Rent Increase Due to Additional Parking Space. A Landlord and Tenant may file a petition for an increase in the ~~maximum Rent allowable~~ of up to \$50 for a second parking space. Where the Covered Property contains or is required to contain enough parking for each rent stabilized unit to have one space, one parking space shall be part of the Basic Service Level. The second space in the petition may not be the first space needed for another unit's Basic Service Level or a space required for guest parking by the Covered Property's permit.

Chapter 11

HEARING OFFICERS

11.01.1 Designation of Hearing Officers. Hearing Officers are those individuals who, having met the criteria established in these Regulations, are ~~offered and have executed~~ acting under a contract with the City of San José, and also those Program Staff designated as Hearing Officers for specific purposes.

11.01.2 Selection Criteria. Hearing Officers must meet the following minimum criteria:

- a. Be a member of the California Bar or a nationally recognized arbitration association, such as the American Association of Arbitrators;
- b. Have successfully performed mediations, arbitrations, or hearings similar to those of this program;
- c. Have successfully mediated, arbitrated, or adjudicated rental disputes or have had other experience or training showing the capability to deal with the issues which are found in rental dispute hearings in this program;
- d. Shall not own a real estate interest in rental property consisting of three or more units;
- e. May not be an employee or an officer of groups or organizations which have or are viewed by significant numbers of tenants or landlords as having taken advocacy positions in landlord/tenant matters.

11.01.3 Disqualification from Cases. A Hearing Officer or Mediator shall disqualify himself or herself from hearing a case and can be disqualified by Program Staff at the request of one of the Parties if:

- a. The Hearing Officer knows or has reason to know he or she has a financial interest affected by the determination or award;
- b. The Hearing Officer is related to one of the Parties or their representatives to the third degree;
- c. The Hearing Officer has been retained or employed by one of the Parties within the past two (2) years, or has given advice to one of the Parties relative to the issues involved in the hearing;
- d. It appears probable that the Hearing Officer by reason of bias or prejudice cannot provide a fair and impartial hearing;
- e. The Hearing Officer is a party to the hearing.

A Hearing Officer is not disqualified from hearing a case where one or more of the Parties have appeared before the Hearing Officer in an earlier Hearing. The Parties may waive their right to the disqualification of a Hearing Officer by a written statement accepting the Hearing Officer's services.

11.01.4 Review of Hearing Officers' Performance. The Program Staff will periodically review the performance of Hearing Officers and Mediators, will schedule Hearing Officer training and will inform the Director of the execution and termination of Hearing Officers' contracts.

11.01.5 Petition Examiners. The Director's designees are designated as Petition Examiners and any Hearing Officer may serve as a Petition Examiner, provided that he or she may not hold the Hearing in the event his or her Administrative Decision is appealed.

Chapter 12

ENFORCEMENT AND IMPLEMENTATION

This chapter deals with those actions of the City taken in prosecuting misdemeanor violations of the Ordinance. Tenants have, under the Enforcement Section of the Ordinance, additional civil rights not covered by this chapter. This chapter also deals with implementation and administrative appeals.

12.01. Prevention. When complaints are received of an alleged violation which has not yet occurred or is in the process of occurring, Program Staff may attempt to prevent the potential violation by making contact with the Landlord or Tenant as applicable.

12.02. Implementation. The City Manager, Director of Department of Housing and their designees have the responsibility of implementing these regulations unless otherwise indicated.

12.03. Appeal. Administrative actions by Program Staff may be appealed to the Director of the Department of Housing.

Chapter 13 (CPI MAR OPTION-A)

MAXIMUM ALLOWABLE RENT

13.01. Maximum Allowable Rent, Defined. The maximum allowable rent for a Rent Stabilized Unit shall be the sum of either (a) the Rent lawfully in effect on _____, the effective date of this Ordinance, or (b) the initial rental rate for a new tenancy agreed to by Landlord and Tenant after an event that created a valid decontrol of the Rent Stabilized Unit in accordance with SJMC Section 17.23.300, plus any Annual General Increases authorized since that time for which the Landlord has provided adequate notice to the Tenant Household, plus any increases or decreases in Rent authorized by Petition. The maximum allowable rent for a Rent Stabilized Unit is exclusive of any authorized pass-through costs that may be imposed on Tenants under the SJMC.

13.02. Additional Annual Rent Increases to Receive Maximum Allowable Rent (Catch Up). If the posted Consumer Price Index is less than 5%, Aa Landlord may increase the Rent for any Rent Stabilized Unit to the maximum allowable rent as provided in this Section.

13.02.1 ~~at any time Rent may be increased pursuant to these Regulations without regard to the~~ Th imposition of this increase together with the Annual General Increase may not result in an actual percent increase above the Rent charged for the previous twelve (12) months for the Rent Stabilized Unit that would be charged to the Tenant that is more than five percent (5%).

~~13.02.~~ 13.02.2 If the Consumer Price Index is 5% or more no increase is allowed under this Section.

13.03. Maximum Allowable Rent, Database. In conjunction with the annual registration of each Rent Stabilized Unit, the Director may calculate and publish the maximum allowable Rent for each Rent Stabilized Unit.

Chapter 13 (CPI STANDARD BANKING OPTION)

BANKING OF AUTHORIZED ANNUAL GENERAL INCREASE

1.01. Purpose. This Chapter authorizes and regulates how Landlords may delay implementation of, or "bank," increases in Rent for a Rent Stabilized Unit that is authorized by the Annual General Increase, in order to impose all or a portion of that Annual General Increase as a component of a future Rent increase. Rent for a Rent Stabilized Unit may be increased only once in any twelve (12) month period. (SJMC Section 17.23.310(C).) This Chapter further authorizes and regulates how Landlords may combine one or more increases in Rent under the SJMC.

13.04. Banking Defined; Notice to Tenant Required. Prior to banking any Annual General Increase in Rent, a Landlord must, at the outset of the tenancy, provide written notice to

the Tenant that the Landlord has the right to bank rent increases. Prior to the date that is twelve (12) months after the last Annual General Increase taken by the landlord, the Landlord shall provide written notice to the Tenant of the amount of the Annual General Increase the Landlord intends to bank, expressed both as a percentage of annual Rent and the actual dollar amount of the rent increase. When a Landlord delays implementation of an authorized Annual General Increase in Rent for a Rent Stabilized Unit for more than twelve (12) months after the first date the Annual General Increase may be implemented under the Ordinance, the Annual General Increase for that Rent Stabilized Unit will be considered tentatively banked by the Landlord for potential future use. Failure to provide notice of banking to a Tenant will invalidate the banking of a rent increase.

13.05. Accounting of Banked Rent Increases per Rent Stabilized Unit. At its sole discretion, a Landlord may bank one or more Annual General Increases in Rent authorized for a Rent Stabilized Unit in accordance with this Chapter. Landlords must maintain an accounting of banked Rent increases on a per-unit basis.

13.05.1 Banked Increases Carryover. Any Rent increase banked for a Rent Stabilized Unit may be carried over for one or more years, subject to the maximum carryover limit described in Section 12.04 of these Regulations.

13.05.2 Annual General Increases Ineligible for Banking. No Annual General Increase may be banked for a Rent Stabilized Unit when the Tenant Household is subject to a charge for pass through of costs for a Specified Capital Improvement authorized by an Administrative Decision pursuant to Chapter 9 of these Regulations, inclusive of any year for which the costs of the Specified Capital Improvement are amortized.

13.05.3 Carryover Invalid upon Unit Decontrol. Any Rent increases banked for a Rent Stabilized Unit carried over from prior years are eliminated upon the valid decontrol of that Rent Stabilized Unit as defined in SJMC Section 17.23.300.

13.06. Maximum Carryover Limit for Banked Increases.

A Landlord may carryover from one year to the next, prior and current Annual General Increases not to exceed ten percent (10%) of annual Rent. Any portion of an Annual General Increase that would exceed the maximum carryover limit for banked increases may not be carried over from one year to the next and so must be implemented to raise Rent or shall be deemed waived.

13.07. Maximum Rent Increase and Specified Capital Improvement Pass Through Allowed.

The maximum combined Rent and pass-through increase allowed, including any banked Rent increases and any pass-through charge increases related to Specified Capital Improvements or fair return Petitions, cumulatively may not exceed eight percent (8%) of the Rent charged for the previous twelve (12) months for the Rent Stabilized Unit, which increase shall be due in equal, monthly installments. [Chapter 14](#)

TENANT BUYOUT OFFERS AND AGREEMENTS

14.01. City-Disclosure of Rights Form. Immediately prior to making a Buyout Offer, the Landlord shall provide the Tenant-s with a City Disclosure- Form, which shall include the following information:

- a. A statement explaining that the unit is subject to the Apartment Rent Ordinance and Tenant Protection Ordinance and providing contact information for the Program.
- b. A statement explaining that Tenants may request the Landlord provide a copy of the Buyout Agreement in the Tenant’s primary language and a box that the Tenant can complete to make such a request.
- c. A statement explaining that the Tenant has the right to not enter into a Buyout Agreement.
- d. A statement explaining that the Tenant has the right to seek an attorney prior to and during negotiations for a Buyout Agreement.
- e. A statement explaining that the Tenant has the right to provide counter offers and engage in counter negotiations with the Landlord.
- f. A statement explaining that the Tenant has the right to cancel any Buyout Agreement within 45 days of the date of the execution of the Buyout Agreement, without penalty.
- g. A statement explaining that exercising the right to rescind after vacating the unit, will not entitle a Tenant to move back into the unit.
- h. A statement that some types of termination of tenancy may entitle the Tenant to relocation benefits and that the Tenant may contact Program Staff for more information.
- i. Any other statements that are consistent with the implementation of Part 7 of the Apartment Rent Ordinance.
- j. A space for each Landlord and Tenant to sign and date.

14.02. Buyout Agreement. All Buyout Agreements shall be written and signed by both the Landlord and all involved Tenants. If requested, the Landlord shall provide the Tenant a translated Buyout Agreement or a translated copy of the Buyout Agreement in the Tenant’s primary language. The aBuyout Agreement shall include the following statements, which are to be written in at least 12pt Bold Font:

- a. “You have the right not to enter into this Buyout Agreement.”²²
- b. “You may choose to speak with an attorney before signing this agreement.
- c. You may also contact the -City Housing Department prior to signing this agreement.”²²
- d. “You have the right to cancel any Buyout Agreement within 45 days from the date of signing this Buyout Agreement without penalty. To cancel this agreement, you must send, via U.S. mail, the Landlord a signed and dated notice indicating that you are cancelling the agreement, or words to that effect. However, if you have already moved out, cancelling this Buyout Agreement will not entitle you to move back in.”²²

Upon execution of the Buyout Agreement, the Landlord must provide all Tenant signatories an executed copy of the Buyout Agreement.

14.03. Rescission of Buyout Agreement. -The Tenant has the right to rescind a signed Buyout Agreement without penalty, if one of the following conditions are met:

- a. 45 days have not passed from the date the Landlord and Tenant signed the Buyout Agreement; or
- b. The Landlord failed to comply with the Buyout Offer requirements as set forth in §Section14.01 of this section; or
- c. The Landlord failed to comply with the Buyout Agreement requirements set forth in §Section14.02 and/or §Section14.04 of this section; or
- d. Any other circumstances under State and/or Federal law that would permit the rescission of a contractual agreement.

All rescissions must be Mailed to the Landlord and must include a statement that the Tenant has rescinded the Buyout Agreement. } Where a Tenant successfully rescinds a Buyout Agreement, a remedy shall not include displacing a subsequent tenant or existing tenants in the affected unit.

14.04. Filing Requirements. The Landlord must file the fully executed Buyout Agreement, as well as the fully executed Disclosure Form, with Program sStaff within ~~60~~30 days from the date that the Tenant and Landlord signed the Buyout Agreement. Program staff shall comply with the following procedure with respect to the filed Buyout Agreements

- a. Buyout Agreements-- shall be held in a separate file. .
- b. The City must maintain the Tenant's personal identifying information as confidential and in a manner consistent with the California Civil Code 1947.7(g).
- c. Subject to the limitations in subsection b, Program Staff may collect data from the Buyout Agreements—including, but not limited to, the amount of consideration paid.
- ==.

14.05. Exemptions: Any and all agreements made to settle a pending Unlawful Detainer shall not be considered Buyout Offers or Buyout Agreements under this Chapter or the Ordinance.-.

APPENDIX A

Need to update

CAPITAL IMPROVEMENT AMORTIZATION PERIOD IN YEARS

Air Conditioner	10
Major Appliances (other than those listed)	7
Cabinets	10
Dishwasher	7
Doors	10
Dryer	7
Drywall	10
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
Plumbing	10

Pumps	10
Refrigerator	10
Roofing	10
Security System	10
Stove	10
Stucco	10
Washing Machine	7
Water Heater	7

DRAFT

APPENDIX B

SPECIFIED CAPITAL IMPROVEMENTS AMORTIZATION PERIOD IN YEARS

<u>Category or Type of Specified Capital Improvement</u>	<u>Amortization Period (Years)</u>	<u>Section Reference (§9.03.2)</u>
<u>ADA Improvements</u>		<u>a</u>
<u>Ramps</u>	<u>10</u>	
<u>Driveway Egress</u>	<u>10</u>	
<u>Elevators</u>	<u>20</u>	
<u>Air Conditioning</u>	<u>10</u>	<u>b</u>
<u>Conservation</u>	<u>10</u>	<u>a</u>
<u>Drought Tolerant Landscape</u>	<u>5</u>	
<u>Submetering</u>	<u>10</u>	
<u>Solar power panels</u>	<u>10</u>	
<u>Fire Prevention</u>		<u>a</u>
<u>Fire Alarm System</u>	<u>10</u>	
<u>Fire Escape</u>	<u>10</u>	
<u>Fire Sprinklers/Retardant System</u>	<u>10</u>	
<u>Heating</u>		<u>c</u>
<u>Central</u>	<u>10</u>	
<u>Wall-Mounted</u>	<u>10</u>	
<u>Insulation</u>	<u>10</u>	<u>a, b, or c</u>
<u>Paving</u>	<u>10</u>	<u>c</u>
<u>Plumbing</u>		<u>c</u>
<u>Fixtures</u>	<u>10</u>	
<u>Partial Re-pipe</u>	<u>10</u>	
<u>Sump Pump</u>	<u>10</u>	
<u>Roofing</u>		<u>c</u>
<u>Aluminum Roof Coating</u>	<u>5</u>	
<u>Fiber Cement</u>	<u>20</u>	
<u>Asphalt</u>	<u>20</u>	
<u>Modified Bitumen</u>	<u>20</u>	
<u>Tar</u>	<u>30</u>	
<u>Security System (including security gates and fencing)</u>	<u>10</u>	<u>a or b</u>
<u>Seismic Retrofits*</u>		<u>a</u>
<u>Foundation Repair</u>	<u>20</u>	
<u>Foundation Replacement</u>	<u>20</u>	
<u>Foundation Bolting</u>	<u>20</u>	
<u>Iron or Steel Work</u>	<u>20</u>	
<u>Masonry-Chimney Repair</u>	<u>20</u>	
<u>Shear Wall Installation</u>	<u>20</u>	
<u>Soft Story Retrofit</u>	<u>20</u>	

*Required architectural and engineering cost may be included.

Windows

10

a, b, or c

Stairwell & Balcony Replacement

10

c

Hand Rail Upgrade

10

Guard Rail Upgrade

10

DRAFT

APPENDIX B

SPECIFIED CAPITAL IMPROVEMENTS
AMORTIZATION PERIOD IN YEARS

Category or Type of Specified Capital Improvement	Amortization Period (Years)	Section Reference (§Section9.03.2)
ADA Improvements	10	a
Air Conditioning	10	b
Conservation (Water, Solar, submeter)	10	a
Fire Alarm System	10	a
Fire Escape	10	a
Fire Sprinklers / Fire Suppression	10	a
Heating	10	e
Insulation	10	a, b, or e
Plumbing	10	e
Pumps	10	e
Security System	10	a or b
Seismic Retrofits, including foundation repairs	10	a
Windows	10	a, b, or e
Stairwell / Balcony Replacement	10	e
Roofing	10	e

Summary of Apartment Rent Ordinance Meetings from June 6, 2017 to October 5, 2017

Housing & Community Development Commission – 2 Total

September 14, 2017	San José City Hall Wing Rooms	5:45 PM
October 5, 2017	San José City Hall Wing Rooms	5:45 PM

Public Meetings – 7 Total

June 26, 2017	San José City Hall Wing Rooms	6:30 – 8:30 PM
July 11, 2017	Cypress Community Center	6:30 – 8:30 PM
July 12, 2017	San José City Hall Wing Rooms	9:00 – 11:00 AM
July 18, 2017	Seven Trees Community Center	6:30 – 8:30 PM
August 16, 2017	District 2 – Hosted by Councilmember Jimenez	6:30 – 8:30 PM
August 24, 2017	Educational Park Branch Library	6:30 – 8:30 PM
August 31, 2017	San José City Hall Wing Rooms	2:00 – 4:00 pm

Stakeholder Meetings – 15 Total

June 6, 2017	Renters' Coalition
June 7, 2017	Housing Providers
June 9, 2017	Renters' Coalition
August 24, 2017	Santa Clara County Housing Authority Board
August 31, 2017	PACT: People Acting in Community Together
September 7, 2017	Latinos United for a New America (LUNA) & Santee Neighborhood
September 11, 2017	California Apartment Association Tri-County
September 13, 2017	Bay Area Homeowner Network (BAHN)
September 14, 2017	Burbank/Sherman Oaks Neighborhood Association
September 15, 2017	Renters' Coalition
September 15, 2017	Hearing Officers
September 21, 2017	Sacred Heart Community Service
September 21, 2017	Apartment Owner
September 21, 2017	Colonial Gardens Apartment Owners
September 22, 2017	California Apartment Association Tri-County

Total Meetings: 24

Annual General Increase Research

- **Economic Roundtable Study – “San José ARO Study – Final Report” (April 2016)** –Between 1990 and 2014, average real ARO rents (i.e. adjusted for inflation) increased approximately 11%. This means that rents were increased at a rate that exceeded the rate of inflation during this period. However, for most of the 25 years, average ARO rent increases tracked the rate of inflation. The exceptional increases occurred during the dot.com era and the most recent few years when rent increases have exceeded the rate of inflation. During those boom years, market and ARO rents increased significantly faster than the rate of inflation. Specifically, ARO rents increased at faster rate than market rents (43% increase in ARO rents v. 35% increase in market rents from 1990 to 2014). The study also provided data on how vacancy decontrol allows landlords to raise rents to market prices for a substantial number of apartments every year. This allows landlords to increase rents to market price. The full report can be reviewed here: <http://www.sanjoseca.gov/DocumentCenter/View/55649>
- **City Auditor’s Report** – The City Auditor concluded that the adopted annual rent increase limit of 5% only protects tenants from the most extreme periods of rent spikes. Therefore, the 5% has no stabilizing effect during most years because it exceeds what landlords can actual charge. San José is one of a few California cities to use a flat percentage to limit general annual rent increases. Most peer cities tie general rent increases to the rental market. For example, Palm Springs limits rents to 75% of the increase in the CPI-U for that area. The City Auditor’s modeling shows that relying on a flat percentage to limit annual rent increases has the benefit of cutting rent spikes during periods of high inflation. However, while rent control tenants were provided some stability when the market produced the most extreme rent increases, rents did not necessarily stabilize rents become more “affordable” even for long-term tenants over time. The full report can be reviewed here: <http://www.sanjoseca.gov/DocumentCenter/View/62894>
- **SPUR’s Housing Agenda for San José (August 2017)** – The San Francisco Bay Area Planning and Urban Research Association (SPUR) is a leading civic planning organization. In August 2017, SPUR released a report laying out steps that San José can take to address the chronic housing shortage. According to the study, of the nine Bay Area counties, four have seen median rents grow far above and beyond inflation (Alameda, Napa, San Mateo, and Santa Clara). Santa Clara County has seen the largest gap between the growth in its median rent and growth in its median income. This means that unless the market trends change, residents who live and work in Santa Clara County are less likely to be able to afford median rental costs. The full report can be viewed here: http://www.spur.org/sites/default/files/publications_pdfs/SPUR_Room_for_More.pdf

Historic CPI-U Chart

CPI-All Urban Consumers (Current Series) Original Data Value

Series Id: CUURA422SA0

Not Seasonally Adjusted

Series: All items in San Francisco-Oakland-San Jose, CA, all urban

Title: consumers, not seasonally adjusted

Area: San Francisco-Oakland-San Jose, CA

Item: All items

Base: 1982-84=100

Period:

Years: 1979 to 2017

Year	Apr	%
1979	67.9	8.3
1980	79.2	16.6
1981	87.9	11.0
1982	97.2	10.6
1983	97.4	0.2
1984	102.9	5.6
1985	107.5	4.5
1986	110.4	2.7
1987	114.8	4.0
1988	118.7	3.4
1989	125.4	5.6
1990	130.7	4.2
1991	135.8	3.9
1992	141.6	4.3
1993	146.8	3.7
1994	148.0	0.8
1995	151.5	2.4
1996	153.9	1.6
1997	159.6	3.7

Year	Apr	%
1998	164.6	3.1
1999	172.2	4.6
2000	178.7	3.8
2001	189.1	5.8
2002	193.0	2.1
2003	197.3	2.2
2004	198.3	0.5
2005	202.5	2.1
2006	208.9	3.2
2007	215.842	3.3
2008	222.074	2.9
2009	223.854	0.8
2010	227.697	1.7
2011	234.121	2.8
2012	238.985	2.1
2013	244.675	2.4
2014	251.495	2.8
2015	257.622	2.4
2016	264.565	2.7
2017	274.589	3.8

Source: <https://data.bls.gov/pdq/SurveyOutputServlet>

Average CPI 1979-2017	3.9	last 38 years
Average CPI 1998-2017	2.8	last 20 years
Average CPI 2008-2017	2.4	last 10 years

Summary of Rent Increase Limits in Other Cities

Table 1: Cities with Annual Increases Tied to Consumer Price Index (CPI)

City	CPI	Other Provisions
Los Angeles	100% of CPI-U ¹ with 3% min, 10% max	Allows an additional 1% for utilities. A commission can allow for additional increases.
Palm Springs	75% CPI-U	
Santa Monica	75% CPI-U	No banking provisions
Richmond	100% of CPI-U	
Berkeley	65% CPI-U	No banking provisions
East Palo Alto	80% CPI-U	With banking provisions
Mountain View	CPI-U with 2% min, 5% max	
Oakland	Average of percentage increase in CPI-All Items ² and CPI-Less Shelter ³ with 10% max	No rent increases in any 5-year period can exceed 30%, unless those increases were composed solely of CPI adjustments. With banking provisions
San Francisco	60% CPI-U with 7% max	
West Hollywood	75% CPI-U	No banking provisions
Los Gatos	70% CPI-U or 5%, whichever is greater	No banking provisions

¹ "CPI—U" means the Consumer Price Index—For All Urban Consumers (CPI-U) is for all items for all urban consumers for the San Francisco-Oakland-San Jose-Area published by the U.S. Department of Labor Statistics.

² "CPI—All items" means the Consumer Price Index—All items for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics..

³ "CPI—Less shelter" means the Consumer Price Index—All items less shelter for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics.

Table 2: Cities with Annual Increases Tied to Fixed Percentage

City	Percent	Other Provisions
Beverly Hills	3%	
Hayward	5%	With banking provisions
San Jose	5%	No banking provisions

Capital Improvement Petition Process Summary

Management Partners

September 2017

	Berkeley	Los Angeles	West Hollywood	San Francisco
Definition of Capital Improvement	A capital improvement shall be any improvement to a unit or property which materially adds to the value of the property, appreciably prolongs its useful life or adapts it to new use and has a useful life of more than one year and a direct cost of \$200.00 or more per unit affected, or \$1,500.00, whichever is less. Except as provided in subsection (E) (2), no rent adjustment shall be granted under this section for routine repair, replacement or maintenance.	A capital improvement as defined in the Ordinance is the addition or replacement improvements to a rental unit or common areas of the housing complex containing the rental units, provided such new improvement has a useful life of five (5) years or more. (LAMC 151.02)	A building improvement shall mean a substantial change in the housing accommodations such as would materially increase the rental value in a normal market and will provide tenants with a benefit or service which they had not previously enjoyed. Replacement of facilities, materials or equipment so as to maintain the same level of services as previously provided shall not constitute a building improvement (municipal code 17.08.010)	Capital Improvements are improvements which materially add to the value of the property, appreciably prolong its useful life, or adapt it to new uses, and which may be amortized over the useful life of the improvement of the building.
Calculation for Maximum Increase in Rent with Capital Improvement	The calculation rate for the City of Berkeley is set by the type of Capital Improvement. The calculation rate is 1.042% for capital improvements, 1.187% for exterior painting or siding and .927% for the other major repairs. Calculation: Rent Increase Amount = [Out-of-Pocket Cost of Capital Improvement + Self-Labor Cost] x [Calculation Rate] ÷ [Number of affected units]	Calculation: Monthly Rent Increase per Unit = [Amortized Cost] ÷ [Units Benefited] Amortized cost is the invoice total cost for the capital improvement divided by two then divided by 60.	No Standard Calculation Allowable increase is determined during Hearing.	Calculation: Monthly Cost per Unit = [Total Improvement Cost with Interest ÷ 120] ÷ [Number of Units Benefited] Interest rates are posted by Program staff annually.
Process for Approval (Forms and policy directives for Capital Improvement petition)	Petition with Hearing if Tenant Objects Landlord files a petition for a rent increase with rent program. Rent Board reviews petition and sends a notice to all tenants. If a tenant objects a hearing is scheduled. If no tenant objects, the rent board issues and administrative decision on the case. Hearing decisions are made by a hearing officer. Appeals go to the Rent Stabilization Board.	Administrative Review Process Landlord submits application to staff for approval.	Petition and Hearing Process Landlord files an application with rent program (no building improvement specific application). Hearing decision from hearing examiner. Appeals go to Rent Commission.	Petition and Hearing Process Petition by landlord. Hearing decision from administrative law judge. Appeals go to Rent Board Commission.

Capital Improvement Estimated Costs for Specific Projects

Table 1: Complete Copper Re-pipe

Depends on # of bathrooms and laundry hook ups, copper pipe

	4-plex	10-plex	50-unit
Total cost	\$15,500 - \$25,000	\$28,000 - \$35,000	\$150,000 - \$175,000
Pass-through (50%)	\$7,750 - \$12,500	\$14,000 - \$17,500	\$75,000 - \$87,500
10-yr amortization monthly cost	\$64.58 - \$104.16	\$116.67 - \$145.83	\$625 - \$729.17
Monthly cost/units	\$16.15 - \$26.04	\$11.67 - \$14.58	\$12.50 - \$14.58

Table 2: Water Main Meter

	4-plex 1.5-2.0 " service with fire sprinklers	10-plex 2" - service with fire sprinklers	50-unit 3"-4" service with fire sprinklers
Total cost	\$14,000 - \$16,000	\$18,000 - \$22,000	\$20,000 - \$40,000
Pass-through (100%)	\$14,000 - \$16,000	\$18,000 - \$22,000	\$20,000 - \$40,000
10-yr amortization monthly cost	\$116.67 - 133.33	\$150.00 - \$183.33	\$166.67 - \$333.33
Monthly cost/units	\$29.17 - \$33.33	\$10.00 - \$18.33	\$3.33 - \$6.67

Table 3: Complete Roof Replacement & Gutters

	4-plex Simple gable 2 story, 40-year composition shingles	10-plex 40-year composition shingle re roof	50-unit Re-roof composition shingle
Total cost	\$16,000 - \$24,000	\$25,000 - \$35,000	\$75,000 - \$90,000
Pass-through (50%)	\$8,000 - \$12,000	\$12,500 - \$17,500	\$37,500 - \$45,000
10-yr amortization monthly cost	\$66.67 - \$100.00	\$104.17 - \$145.83	\$312.50 - \$375.00
Monthly cost/units	\$16.67 - \$25.00	\$10.42 - \$14.58	\$6.25 - \$7.50

Table 4: Solar PV System

	4-plex	10-plex	50-unit Medium 20KVA system
Total cost	\$25,000 - \$35,000	\$35,000 - \$45,000	\$50,000 - \$75,000
Pass-through (100%)	\$25,000 - \$35,000	\$35,000 - \$45,000	\$50,000 - \$75,000
10-yr amortization monthly cost	\$208.33 - \$291.67	\$291.67 - \$375.00	\$416.67 - \$625.00
Monthly cost/units	\$52.08 - \$72.92	\$29.16 - \$37.50	\$8.33 - \$12.50

Table 5: Seismic Upgrade

For a building with a sound foundation - not including foundation repairs

	4-plex	10-plex	50-unit
Total cost	\$8,000 - \$18,000	\$18,000 - \$30,000	\$40,000 - \$75,000
Pass-through (50%)	\$4,000 - \$9,000	\$9,000 - \$15,000	\$20,000 - \$35,500
10-yr amortization monthly cost	\$33.33 - \$75.00	\$75.00 - \$125.00	\$166.67 - \$295.83
Monthly cost/units	\$8.33 - \$18.75	\$7.50 - \$12.50	\$3.33 - \$5.92

Note: These numbers are only estimations.

Summary of Utility Billing Petitions

From 2012-2017 Submitted to the Rental Rights and Referrals Program

Month/ Year	# Units Petitioning	Summary
March 2015	3	Mediation: Landlord agreed in Voluntary Agreement to give a full refund of all moneys paid to the Multifamily Utility Company for pass-through of utilities for 2 of the units. No further bills will be charged or sent to all 3 units.
April 2015	3 (separate outcomes)	<p>Mediation, 1st unit: Landlord agreed in Voluntary Agreement to reimburse tenant \$995.46 and to reverse any utility charges through April 2015.</p> <p>2nd unit: In a Voluntary Agreement, “this agreement is in full settlement of all claims of Tenants against Landlord related to prior utility billing and past rent increases. Tenants waive all claims and forever release landlord... from any and all liability relating to the utility billing and rent increases issued prior to the execution of this Agreement.”</p> <p>3rd unit: In a decision, it was found that petition was not filed in a timely manner, as it was filed after the effective date of the increase.</p>
December 2016 (mediation)	1	<p>Mediation: In a decision, it was found that the Landlord must refund all of the money they paid for such bills, which was a total of \$978.01 from the receipt of fifteen different billing statements from Multifamily Utility Company.</p> <p>Arbitration: In a Voluntary Agreement, it was agreed that there will be no utility bill through July 31, 2017. Utilities, starting on August 1, 2017 shall not exceed \$79.10 per month until the next anniversary date, which is August 1, 2018. The landlord will credit the Tenant \$978.01 for the month of March 2017 for prior utilities paid.</p>
February 2017 (arbitration)		
April 2016 (1 st mediation)	1	1st Mediation: In a mediation decision, it was determined that the petitioners can appeal the intended change to the method of calculating the monthly utility bill. The petitioners did appeal.
May 2017 (arbitration)		Arbitration: In a decision, the tenants were awarded the sum of \$1801.25 as a rent credit for utility pass-through and other charges. In addition, they were also credited the monies paid for the months of February and March of 2016.
May 2017 (2 nd mediation)		2nd Mediation: The Landlord did not violate the San Jose Municipal Code by charging the Tenants for water, sewer, gas and trash. These charges were not for penalties for excessive water usage so the Landlord did not have to comply with the requirements of Section 17.23.205. The monthly charges of \$103.75 never fluctuated and began when the Tenants first

moved in. The Landlord may continue to bill the Tenants for these utility charges, providing that the amount does not exceed \$103.75.

November 2016	1	Mediation: Landlord agreed in a Voluntary Agreement to refund the tenant \$2,351.46 for utility pass-through.
November 2016	4	Mediation: In a Voluntary Agreement parties agreed that all monies paid for utilities paid to UtilitySmart will be refunded and the tenants will no longer have to pay the bills.
January 2017 (mediation)	13 (9 pending hearing due to a lack of utility billing documents)	Mediation: All monies paid to UtilitySmart Arbitration: Pending decision
February 2017 (mediation)		Mediation: All monies paid to UtilitySmart Arbitration: Pending decision
September 2015 (mediation)	1	Mediation: The mediator determined that the landlord violated the ARO for trying to pass through utility charges to the tenant, and also cannot charge for utilities as proposed under the Utility Addendum from 6/18/15.
October 2015 (arbitration)		Arbitration: The arbitrator determined that the utility pass-through was a rent increase and subsequent increases must be disallowed.
February 2017 (mediation)	4	Mediation: 1 st unit: Landlord will refund \$739.71 to one tenant no later than 4/15/17. Remaining units: All moneys paid to NWP, through rent credit Arbitration: Pending decision
February 2017	1	Mediation: In a decision, it was found that the total amount of rent via utility payments overcharged and paid is \$1,922.09. The tenant may receive a rent credit for this.
March 2017 (mediation)	2	Mediation: In a decision, it was found that the total amount of rent via utility payments overcharged and paid is \$1,922.09. The tenant may receive a rent credit for this.
March 2017	1	Mediation: In a decision, it was found that the Landlord violated the San Jose Municipal Code by having the Tenant pay for the water, trash and sewer bills that were issued to the Landlord. The Landlord must refund to the Tenant \$2,792.72 and may not pass through charges for water, trash and sewer charges to this Tenant in the future.

Total petitioning units

44

Estimated Utility Costs Over Time

Average Apartment Operating Expenses in 2015 for Buildings with 5 Units or More Built before 1980		
Expense	Average / Apt / Month	Expense / Income Ratio
R.E. Taxes and Assessments*	\$183	14.9%
Insurance	\$30	2.4%
Landscape	\$7	0.6%
Maintenance	\$53.86	4.3%
Management	\$66	5.4%
Trash	\$21	1.7%
Water	\$32	2.6%
Other	\$19	1.6%
Total Operating Expenses	\$411	33.5%
Rental Income	\$1,226	

Estimated Trash Collection Costs		
Monthly Rate	32 Gallon Push Cart More Common in Complexes of 3 or less	3 Cubic Yard Bin More Common in Complexes of 3 or more units
2014-2015	\$29.95	\$201.54
2016-2017	\$33.19 (+10.82%)	\$237.99 (+18.10%)

San Jose Water Company Rates Residential – 5 units or more			
Year	Quantity Rate/100 cubic feet	1" Meter	2" Meter
2013	3.2807	\$32.07	\$102.63
2014	3.4554	\$33.94 (+5.84%)	\$108.62 (+5.84%)
2015	3.567	\$35.15 (+3.56%)	\$112.45 (+3.53%)
2016			
2017	4.7642	\$42.37 (+20.55%)	\$135.68 (+20.66%)

Source: "San José ARO Study" by Economic Roundtable and Rate Decisions of the California Public Utilities Commission (CPUC)

San Jose Business Tax		
Residential Landlords: Rental Units 1	Through June 30, 2017	Effective July 1, 2017
Base Tax	\$150	\$195
Incremental Tax: 1-2	N/A (Not Counted)	\$0 (Base Tax applied)
Incremental Tax: 3-35	\$5 (31+)	\$10
Incremental Tax: 36-100	\$5	\$15
Incremental Tax: 101-500	\$5	\$20
Incremental Tax: 501+	\$5	\$25

Source: City of San José

Source: "San José ARO Study" by Economic Roundtable

*This projection includes assessments and other costs billed along with property taxes. These costs include sanitary sewer charges \$22.62 month and Storm Water assessments \$4.30/month

**Average Apartment Operating Expenses
in 2015 for Buildings with 5 Units or More Built before 1980**

Expense	Average / Apt / Month	% Increase	\$ Increase	Total Amount	Difference between Rental Income & Operating Costs
R.E. Taxes and Assessments	\$183	2%	\$3.64	\$186.64	
Insurance	\$30	3.8%	\$1.14	\$31.14	
Landscape	\$7	3.8%	\$0.27	\$7.27	
Maintenance	\$53.86	3.8%	\$2.05	\$55.91	
Management	\$66	3.8%	\$2.51	\$68.51	
Trash	\$21	18%	\$3.78	\$24.78	
Water	\$32	32%	\$10.24	\$42.24	
Other	\$19	3.8%	\$0.72	\$19.72	
Total Operating Expenses	\$411		\$24.35	\$432.35	
Rental Income (if by 5%)	\$1,226	5%	\$61.30	\$1,287.30	\$61.30 – \$24.35 = \$36.95
Rental Income (if by CPI at 3.8%)	\$1,226	3.8%	\$46.59	\$1,272.59	\$46.59 – \$24.35 = \$22.24
Rental Income (if by CPI at 2%)	\$1,226	2%	\$24.52	\$1,250.52	\$24.52 – \$24.35 = \$0.17

Jurisdictions with Joint Petition Process for Additional Occupants

	Los Angeles	Berkeley	Richmond	San Francisco
Jurisdiction	Los Angeles Municipal Code Amended by Ord. No. 181,744	Regulation 1270	Interim Petition for Maximum Allowable Rent Increase or Decrease	Part 6 – Rent Increase Justifications
Amount	10% increase	10% increase	A hearing examiner will closely evaluate a request and the proof provided in accordance with Rent Board rules and regulations.	Prohibited
Restrictions	<ul style="list-style-type: none"> • Shall not apply for the first minor dependent child (or first minor dependent children of a multiple birth) added to an existing tenancy. • Shall rental unit shall not be eligible for a rent increase until the additional tenant has maintained residence in the rental unit for a minimum of thirty consecutive days. • If the landlord had actual or constructive knowledge of the additional tenant's occupancy of the rental unit for more than 60 days and has failed to notify the tenant of the increase. 	<ul style="list-style-type: none"> • If the number of tenants allowed by the lease or rental agreement and actually occupying a unit as a principal residence has increased above the base occupancy level for that unit, then the rent ceiling for the unit shall be increased by 10% for each additional tenant above the base occupancy level, in addition to any rent ceiling adjustment to which the landlord is otherwise entitled. A petition seeking rent adjustments solely for increased tenants will be processed. • No rent ceiling increase for additional tenants for any additional tenant who is a spouse, registered domestic partner, child, or parent of any of the original tenants. 	<p>Landlords and Tenants may file a petition for an increase or decrease in the Maximum Allowable Rent by completing the following form and submitting all required proof (RMC 11.100.070(c)). A hearing examiner will closely evaluate a request and the proof provided in accordance with Rent Board rules and regulations.</p> <p>Basis for Reasonable Return Petition: Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules</p>	Rent Board Rules and Regulations prohibit landlords from charging more rent solely for additional occupants, including a newborn child. This constitutes an unlawful rent increase, even if the lease or rental agreement provides for the additional charge.

Jurisdictions with Tenant Buy Out Provisions

	Los Angeles	Santa Monica	Berkeley	San Francisco
Ordinance	<p>Ordinance # 184673 Tenant Buyout Notification Program (LAMC 151.31)</p> <ul style="list-style-type: none"> Starting January 25, 2017, written Buyout Agreements must meet the RSO requirements. 	<p>Santa Monica Municipal Code Chapter 4.56 Tenant Harassment 4.56.050 Buyout offers and agreements.</p> <ul style="list-style-type: none"> January 2015 Council added buyout 	<p>Berkeley Municipal Code Section 13.79.050</p> <ul style="list-style-type: none"> Effective April 30, 2016, the City of Berkeley has enacted new rights and obligations to tenants and landlords entering into "buyout" agreements. 	<p>37.9E Tenant Buyout Agreements</p>
Buy Out Definition	<p>Provides for regulation, monitoring and enforcement of voluntary vacancies of RSO rental units occurring pursuant to a Buyout Agreement.</p> <p>A Buyout Agreement is a written agreement where a landlord pays a tenant money or other consideration to voluntarily move out of a Rent Stabilization Ordinance (RSO) unit. A Buyout Agreement is not an eviction notice.</p>	<p>Landlord must inform a tenant of certain rights before offering any form of compensation in exchange for a tenant's agreement to voluntarily vacate a controlled rental unit (a "buyout offer"). The information must be given in writing to each tenant in a unit with respect to which a buy-out offer is made, on a form approved by the Administrator or his or her designee. The landlord must retain a copy of the form, along with a record of when it was given to the tenant, for at least five years after it is signed as provided for by paragraph (4), below.</p>	<p>Such agreements include any promise to permanently vacate a controlled rental unit in Berkeley for compensation from the landlord. Landlords must provide tenants with a written disclosure of tenants' rights prepared by the Rent Board prior to making any buyout offer. Tenants have the right to rescind any buyout agreement at any time during the first 30 days after all parties sign.</p> <p>Mandatory language regarding the right to rescind must be included in the agreement itself. After the 30 day window to rescind has expired, the landlord must file the buyout agreement with the Rent Board (no later than 60 days after all parties sign). Failure to comply with any of the provisions above renders the agreement voidable at the option of the tenant at any time.</p>	<p>Prior to commencing Buyout Negotiations for a rental unit, the landlord shall provide each tenant in that rental unit a written disclosure, on a form developed and authorized by the Rent Board.</p> <p>A tenant shall have the right to rescind a Buyout Agreement for up to and including 45 days after its execution by all parties. In order to rescind a Buyout Agreement, the tenant must, on or before the 45th day following the execution of the Buyout Agreement by all parties, hand deliver, email, or place in the mail a statement to the landlord indicating that the tenant has rescinded the Buyout Agreement.</p>
Link	<p>http://hcidla.lacity.org/buyout-agreements</p>	<p>https://www.smgov.net/uploadedFiles/Departments/Rent Control/Fo rms and Petitions/Buyout Rights Disclosure Form.pdf</p>	<p>https://www.cityofberkeley.info/Rent Stabilization Board/Home/Tenant Buyout Ordinance.aspx</p>	<p>http://sfrb.org/379e-tenant-buyout-agreements</p>

Exploration of Duplex Inclusion Work Plan
(Tenant Protection Ordinance & Apartment Rent Ordinance)

Action Item	Estimated Time to Complete (1 month increments)									
	1	2	3	4	5	6	7	8	9	10
Research property tax information (2 months)										
1. Identify addresses for all owners of duplexes	■									
2. Identify owner occupied units in duplexes		■								
Bill Owners to Collect the Annual Fee (6 months)										
3. Create billing system			■	■						
4. Develop billing materials					■					
5. Provide customer service to owners receiving the bill						■				
6. Collect revenue in appropriate accounts							■			
7. Send delinquent billings								■		
8. Reconcile accounts									■	
Consider Including Duplexes Under the Tenant Protection Ordinance and Apartment Rent Ordinance (3 months)										
9. Research implications of extending the Tenant Protection Ordinance and Apartment Rent Ordinance to duplexes					■	■	■			
10. Prepare an update to the Tenant Protection Ordinance and Apartment Rent Ordinance							■	■		
11. Prepare documents for City Council consideration								■	■	
Update Website (1 month)										
12. Update current information on the website to include duplexes									■	
Public Outreach to Duplex Owners and Tenants (3 months)										
13. Hold meetings to discuss with tenants and landlords on proposed ordinance changes					■	■	■			
14. Hold meetings to educate tenants and landlords on their rights and responsibilities								■	■	■