

CITY OF SAN JOSE, CALIFORNIA

RENTAL DISPUTE MEDIATION & ARBITRATION PROGRAM

APARTMENT

REGULATIONS

APPROVED BY THE ADVISORY COMMISSION ON RENTS NOVEMBER 17, 1988

ADOPTED BY THE CITY COUNCIL JANUARY 17, 1989

AMENDED THROUGH ADDITION OF CHAPTER 8 ON NOVEMBER 30, 1990

AMENDED THROUGH DELETION OF SECTION 8.06 ON DECEMBER 10, 1991

Chapter 1

LIMITS AND ELIGIBILITY

This portion of the regulations covers the general limits set by the Ordinance: notice of tenant rights, filing of petitions, deferral of rent increases in excess of 8%, and other related matters.

Part 1

ELIGIBILITY

1.01 Eligibility

1.01.01 Rental Units Subject to Review

a. Properties Covered by the Ordinance (SJMC §17.23.150)

A rental unit is a dwelling unit other than a mobilehome or mobilehome lot offered or available for rent in the City of San Jose together with the land and appurtenant buildings thereto, and all housing services, privileges, and facilities supplied in connection with the use or occupancy thereof, which unit is located in a multiple dwelling or guesthouse, as those terms are defined and used in Title 20 of this Code. The term "rental unit" shall not include:

- i. Rooms or accommodations in hotels or guesthouses, which are rented to transient guests for a period of less than thirty (30) days.
- ii. Housing accommodations in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, asylum, nonprofit home for the aged, fraternity house, or sorority house, or in dormitories owned and operated by an institution of higher education, a high school or elementary school;
- iii. Rental units owned or operated by any government agency or whose rent is subsidized by any government agency;
- iv. Rental units located in a building containing two or fewer dwelling units.

b. Decision and Appeal

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. This decision may be appealed to the Director of the Department of Neighborhood Preservation.

1.01.02 Rental Increases Subject to Review

a. Violations of Frequency Limit

Violations of Section 17.23.200 on the frequency of increases are subject to review. (See 1.02)

b. Increases in Excess of 8% (SJMC §§17.23.180, 17.23.190, 17.23.210)

Increases which are in excess of 8% are subject to review with some exceptions. An increase may be over 8% and subject to review because the dollar amount has been raised, or services reduced, or both. The percentage is figured on an annual basis. The exemptions are:

- (1) If the last increase was more than two (2) years before the current increase and the current increase is 21% or less;
- (2) If the increase is after the rental unit has been voluntarily vacated by the tenant. To be vacant, the unit must be untenanted; if a roommate moves, there is no vacancy, unless the landlord and the tenants have prior written agreement that this does create a vacancy. If a tenant moves after receiving a 30-day notice from the landlord, it is not voluntary;
- (3) If the increase is after the eviction of a tenant by court for nonpayment, chronically late payment, or other material violation of a written rental agreement.

Part 2

LIMITS

1.02 Limits

1.02.01 Limits on Frequency of Increases (SJMC §§17.23.190B, 17.23.200)

Rent may not be raised more than once in any twelve month period. It can be raised for a new tenant when the previous tenant moved voluntarily or was evicted [See 1.01.02 (2) (3)]. However, if the rent is raised for the new tenant, it cannot be raised again until the twelve (12) month anniversary date of that tenancy.

1.02.02 Notice of Rent Increase (SJMC §17.23.270)

When a landlord issues a notice of rent increase for more than 8%, the landlord must notify the tenants of their right to use the Rental Mediation and Arbitration Hearing Process, and must supply the address and telephone number of the Commission. This can be included conspicuously in the rent increase notice or done separately at the same time and manner as the rent increase notice. Use of the following recommended wording in a conspicuous manner shall be presumed compliance with this requirement:

IF THE INCREASE IS OVER 8% OR WITHIN 12 MONTHS OF YOUR LAST RENT INCREASE, YOU HAVE THE RIGHT TO UTILIZE THE CITY OF SAN JOSE'S RENTAL MEDIATION AND ARBITRATION HEARING PROCESS. FOR FURTHER INFORMATION CONTACT:

HOUSING DEPARTMENT

Rental Rights and Referrals Program  
200 East Santa Clara Street  
San Jose, CA 95113  
Phone: 408.975.4480

Note: Your petition to the San Jose Rental Dispute Program must be filed prior to the effective date of this increase as stated above. However, you shall have at least ten (10) days after receipt of this notice in which to file a petition with the San Jose Rental Dispute Program.

Part 3

PETITIONS

1.03 Petitions

1.03.01 Tenant Petition (SJMC §§17.23.220, 17.23.240)

Tenants with rent increases subject to review under Section 1.01.02 of these Regulations may file using the form designated by the Commission.

1.03.02 Landlord Petition (SJMC §§17.23.230, 17.23.240)

Landlord may file a petition by sending a cover letter, list of affected tenants and their addresses to the Rental Dispute Program. (It is recommended that a Landlord Cost Worksheet be submitted at the same time.) The landlord must also notify the tenants within five (5) days of filing that the landlord has filed. This notice may be included in the notice of rent increase to tenants.

1.03.03 Deadline (SJMC §17.23.250)

To be eligible, a petition must be filed with the Rental Dispute Program before the increase goes into effect. However, if the tenant receives from the landlord the notice of rent increase ten (10) days or less before the effective date, the tenant has ten (10) days to file. For example, if the tenants receive a 30-day rent increase notice on the 1st, they must file by the 31st; but if the tenants do not receive the notice until the 25th, they have until the 5th of the following month to file.

Part 4

BURDEN OF PROOF

1.04 Burden of Proof

The burden of proof for establishing the reasonableness of the rent increase is on the landlord. Tenants have the burden of proving the existence of service reductions and Housing Code violations.

## Chapter 2

### HEARING PROCESS AND DECISION MAKING

This chapter covers those areas which both mediation and arbitration hearings have in common. General rules for the conduct of hearings and decision making, for instance, are in this chapter.

This chapter is divided into eight (8) parts:

- Part 1 Conduct of Hearings
- Part 2 Service Reductions
- Part 3 The Amount of an Increase
- Part 4 The Timing of an Increase
- Part 5 Decision and Agreements
- Part 6 Failure to Appear and Rescheduling
- Part 7 Notice and Scheduling of Hearings
- Part 8 Appeals

#### Part 1

#### CONDUCT OF HEARINGS

#### 2.01 General Rules for the Conduct of Hearings

##### 2.01.01 Participation in Hearing

Any party 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 mediation 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.

- a. Examples of those who may attend hearings include: owners, property managers, agents, attorneys, tenants, witnesses, paralegals, and designated representatives.
- b. Examples of those who generally may not attend hearings include: tenants not covered by petitions, owners of other buildings, members of the public.
- c. Reporters may attend hearings only with the permission of both parties and at the discretion of the Hearing Officer.

2.01.02 Review and Response to Evidence and Testimony

Each party must have the opportunity to review all evidence and testimony introduced at the hearing and to make a response. The Hearing Officer has the discretion to allow written responses to be submitted.

- a. The hearings and the right of the parties to review case files are the primary method for review of information.
- b. Hearing Officers have the discretion and must consider allowing reasonable recesses to review any new information and documentation.

2.01.03 Records of Hearings

The open sessions of mediation hearings and all of the arbitration hearings will be tape recorded. This record is available for review to both parties. The Hearing Officer has the discretion to allow or disallow the making of other records or transcripts.

2.01.04 Time of Hearing

Hearings shall be scheduled to commence no earlier than 7:00 p.m. and shall close no later than 10:00 p.m., on Mondays through Thursdays which are not holidays, unless the landlord and two-thirds (2/3) of the tenants present and the Hearing Officer agree upon a different day or time.

2.01.05 Participation of the Hearing Officer

The Hearing Officer shall at all times in the conduct of the hearings and in otherwise performing the duties of the Hearing Officer act neutrally and impartially as between the landlord and the tenants. The Hearing Officer shall not solicit, invite, or encourage new or expanded complaints by the landlord or the tenants against the other, having in mind that mediation is the primary purpose of the rent hearing process. Hearing Officers are encouraged to suggest compromises to disputes raised at the hearing.

2.01.06 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.

Part 2

SERVICE REDUCTIONS

2.02 Service Reductions and Housing Code Violations

A service reduction which occurs without a corresponding decrease in rent is an additional rent increase. Housing Code violations must be considered in any determination of what constitutes a reasonable rent increase under the circumstances.

2.02.01 Basic Service Level

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:
  - (1) The nature and quality of original construction of improvements, fixtures, and equipment;
  - (2) The age of the improvements, fixtures, and equipment;
  - (3) The condition of the improvements, fixtures, and equipment at the beginning of the applicable term of tenancy;
  - (4) The landlord's policies of operation and maintenance, repair, and replacement communicated to the tenant at the beginning of the applicable term of tenancy.

2.02.02 Service Reductions

A 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 premises is thereby measurably reduced.

2.02.03 Allegations of Service Reductions

Each allegation of service reduction shall be made in a separate writing, signed by the tenant claiming it, and filed with the Rental Dispute Program or the Hearing Officer during or prior to the first mediation hearing. Each allegation of a service reduction shall state:

- 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 allegation is signed by the tenant.

2.02.04 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:

- a. The person alleging the service reduction shall prove:
  - (1) The Basic Service Level for the particular service for the particular rental unit; and
  - (2) The actual service level for the particular service for the particular rental unit; and
  - (3) That the actual service level is, or was, materially lower than the Basic Service Level; and
  - (4) That the 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.
- b. The burden of proof shall be satisfied by persuading the Hearing Officer that the fact sought to be proven is more probable than some other fact.
- c. 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.
- d. Proof shall be received only for service reductions alleged in a claim filed with the Rental Dispute Program or the Hearing Officer during or prior to the first hearing.
- e. Proof of service reduction shall be received only for that period of time since the last rent increase which complied with the requirements of Ordinance Sections 17.23.200 and 17.23.270.

2.02.05 Determining Value of Unreasonable Service Reductions

If the Hearing Officer finds that a service reduction has occurred which was or is unreasonable under the circumstances, the Hearing Officer shall determine the monetary value to be assigned to the service reduction by applying the following standards and procedures:

- a. The Hearing Officer shall determine the percentage reduction in usability of the rental unit caused by the service reduction, commencing with the accrual date.

- b. In determining the percentage reduction of usability, the Hearing Officer shall consider the following factors:
  - (1) The area affected;
  - (2) The amount of time the occupant is exposed to the condition;
  - (3) The degree of discomfort the condition imposes;
  - (4) The extent to which such a condition causes tenants to find the premises uninhabitable and leave; and
  - (5) Similar factors.
- c. 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.

2.02.06 Consequences of a Service Reduction Unreasonable Under the Circumstances

- a. If the value of the service reduction is determined in a proceeding to determine reasonableness of a pending rent increase, the value of the service reduction shall be applied as a credit against the rent increase otherwise cost justified;
- b. If the value of the service reduction is determined in a proceeding not involving a determination of reasonableness of a pending rent increase, the value of the service reduction shall be applied as a credit against the tenant's obligation to pay current rent.

2.02.07 Housing Code Violations

Violations of the San Jose Housing Code or of Sections 1941.1 and 1941.2 of the California Civil Code shall be considered by the Hearing Officer who may reasonably condition, disallow, or reduce a rent increase based on their severity.

An inspection report of a San Jose Code Enforcement Inspector shall be deemed presumptive, but not conclusive proof of the matters recited therein.

2.02.08 Findings

In making any determination that an alleged service reduction exists or not, is reasonable or unreasonable under the circumstances, or has a particular monetary value, or that a Housing Code violation exists or not, or has a particular monetary value, in any fact finding report or arbitration award, the Hearing Officer shall make and include a specific finding of the facts upon which the determination is based.

2.02.09 Hearing on Service Reduction Claims

Hearing on service reduction claims shall be scheduled only at the earlier of the effective date of a monetary rent increase or twelve months after the last increase, except when the service reduction may result in a violation of the San Jose Housing Code or Civil Code, Sections 1941.1 or 1941.2.

Part 3

THE AMOUNT OF RENT INCREASE

2.03 Cost Analysis

Rent increases may be found to be reasonable when based on the pass-through of certain costs of capital improvements; increased costs of maintenance and operation; costs of rehabilitation and/or partial pass-through of the increased costs of debt service. The landlord has the option to present costs for debt service only; or for operation and maintenance, capital improvements, and rehabilitation costs; or for both. (The cost categories presented at arbitration must be the same as at mediation.) The Hearing Officer has the discretion to require cost information from categories not initially presented by the landlord, if that information is necessary to resolve issues such as the service reductions.

2.03.01 General Principles

- a. Cost figures must be established to the reasonable satisfaction of the Hearing Officer;
- b. Costs are "out-of-pocket" costs which have been incurred or obligated.

- c. Projections or estimates of future costs may not be accepted by the Hearing Office for use in this cost analysis, but may be considered as an economic and financial factor. (See, Section 2.03.07.)
- d. If the allowable cost is equal to or greater than the petitioning tenant's rent increase, that increase is cost justified.
- e. If a rent increase is cost justified and neither service reductions nor Housing Code violations are present, that rent increase is reasonable.

2.03.02 Increases in Operation and Maintenance Expenses, Capital Improvements and Rehabilitation Costs.

a. Operation and Maintenance Expenses

- (1) These expenses are out-of-pocket costs which have been incurred or obligated, including increase in interest expense due to change of variable rate mortgage. Labor by the owner is not accepted as cost but may be considered as a economic and financial factor. (See, Section 2.03.07.)
- (2) To show a cost increase, information must be shown for two (2) consecutive twelve month periods. The later period may terminate no later than the effective date of the increase and no earlier than three months prior to the effective date.
- (3) Each of the costs must bear a reasonable relationship to the purpose for which they were incurred and the value of the real property.
- (4) When mandated County or City fees or service charges take effect between anniversary dates, then the landlord may pass on to the incurred costs of these fees and service charges at the next rent anniversary date.
- (5) Required supporting documents: receipts, invoices, and some instances, cancelled checks.

b. Capital Improvement Expenses

- (1) These improve the value of the property, convert it to a new use, or extend its useful life. The cost must be incurred in the twelve (12) months prior to the rent increase, must be averaged on an per unit basis and be amortized over a period of not less than 60 months.
- (2) Required supporting documents: receipts, invoices, and/or accepted bid or contracts.

c. Rehabilitation Expenses

- (1) These are repair costs done in order to comply with an order of the Department of Neighborhood Preservation or the Fire Department, or to repair damage resulting from fire, earthquake or other natural disaster. These costs must have been incurred in the twelve (12) months prior to the rent increase, must be averaged on an per unit basis and may be amortized over not less than 36 months.
- (2) Required supporting documents: receipts, invoices, and/or accepted bid or contracts.

d. Proposed rental increases consisting of not more than five percent (5%) of the monthly rent plus the pass-through of costs of capital improvements, increased costs of maintenance and operation, and/or costs of rehabilitation shall be deemed reasonable when established to satisfaction of the Hearing Officer in accordance with this section.

2.03.03 Increase in Debt Services

a. The "current debt service cost" is defined as the sum of:

- (1) Periodic payments of principal and interest calculated as monthly payments (payments of taxes and insurance are operating costs).
- (2) Balloon payments of interest amortized over the term of the loan.
- (3) Loan Origination Fees (points) amortized over the term of the loan.

- (4) Loan Broker's Fee paid separately divided by the term of the loan of 36 months whichever is less. If amortized as part of the loan, it must be included as periodic payments.
- b. The increased Debt Service Costs must be from a loan incurred in the twelve months prior to the rent increase; however, if increases in debt service have been deferred so as to become effective at a future date in excess of a twelve (12) month period, those costs may be applied as they become effective.
- c. Balloon payments of principal shall be disallowed.
- d. Required supporting documents: copies of all Notes (1st, 2nd, and 3rd), copies of Deed of Trust, excrow statement, appraisal of subject property as of the date of last loan, proof of previous loan and preliminary report (for new owner only).
- e. Pass-through of Increase Debt Service
- (1) The value of the property is established by a lender's appraisal as defined by regulation 2.03.06; if the aggregate loan amount divided by the value of the property is .7 or less, then no more than 80% of the cost increase may be passed on to the tenants.
- (2) If the loan to value ratio is over .7, then a smaller proportion may be passed on to the tenants. The current loan cost is first prorated by dividing the cost by the LV and multiplying by .7. The old loan cost is then subtracted to determine the allowable cost increase which is multiplied by a factor to determine the total eligible pass-through. The LV Factor schedule is shown below:

LV	Factor	LV	Factor	LV	Factor
71	79.5%	81	71.5%	91	61.5%
72	79.0%	82	70.5%	92	60.5%
73	78.5%	83	69.5%	93	59.5%
74	78.0%	84	68.5%	94	58.5%
75	77.5%	85	67.5%	95	57.5%
76	76.5%	86	66.5%	96	56.0%
77	75.5%	87	65.5%	97	54.5%
78	74.5%	88	64.5%	98	53.0%
79	73.5%	89	63.5%	99	51.5%
80	72.5%	90	62.5%	100	0.0%

- f. All or any portion of the increased costs of debt service which exceeds the amount allowed by the above section, may be allowed, disallowed, or reduced by the Hearing Officer upon application of economic and financial factors (the standards of Section 17.23.44(C) of the Ordinance).

2.03.04 Cost Presentation

Costs shall be summarized by the landlord or representative on the "Landlord Cost Worksheet" and "Summary of Cost Calculations" (Appendix c) for presentation to a Hearing Officer. Any supporting documentation must be clearly marked to indicate which line on the "Landlord Cost Worksheet" is supported by the documentation. The Commission may revise the "Landlord Cost Worksheet" and the "Summary of Cost Calculations" from time to time.

2.03.05 Burden of Proof

The landlord has the burden of proof to establish the cost justification of a proposed rent increase.

- a. The burden of proof shall be satisfied by persuading the Hearing Officer that the fact sought to be proven is more probable than some other fact.
- b. The burden of proof shall be met by using evidence only which has a tendency in reason to prove or disprove a disputed fact of consequence in determining a cost justification.
- c. Proof shall be received only for cost categories alleged in a claim filed with the Rental Dispute Program or the Hearing Officer during or prior to the first mediation hearing.

2.03.06 Lender's Appraisal

A lender's appraisal for the purpose of establishing the value of the property pursuant to Section 17.23.440 B of the Ordinance shall meet the following requirements:

a. Format.

The appraisal shall be prepared on the usual short form (1-4 page) format commonly used by institutional lenders or licensed real estate brokers to establish the value of property, or as may be approved by landlord, Hearing Officer and 2/3 of the tenants present at the hearing.

b. Factual Data.

The lender's appraisal shall include a statement of the facts upon which it is based, including:

- (1) Description of Property. A description of the property, including both a legal description of the land, and of the improvements thereon.
- (2) Neighborhood. A description of the neighborhood in which the property is located.
- (3) Other Data. Other data considered by the appraiser, including terms of financing, if known.

c. Appraisal Methods.

The lender's appraisal shall include the appraiser's independent application of each of the following three (3) methods:

- (1) Market Comparison Approach. This approach shall consider recent sales and listings or similar type properties in the area analyzed to form an opinion of value by this approach.
- (2) Cost Approach. This approach shall consider the value of the land, assumed vacant, added to the depreciated replacement cost of the improvements.
- (3) Income Approach. This approach shall consider the estimated potential net income capitalized into value as an indication by this approach.

d. Value Conclusion.

The lender's appraisal shall include the appraisal's reconciliation of the values indicated by the three (3) appraisal methods, including the logic and reasoning supporting the lender's appraisal, and the dollar figure concluded as the value of the property.

e. Signature and Certification.

The lender's appraisal shall include the signature of the appraiser and the certification as to the appraiser's qualifications.

f. Appraiser's Qualifications.

A lender's appraisal may be performed by an employee or agent of the institutional lender or licensed real estate loan broker negotiating the loan, or an appraiser who is a tested, certified, and designated member of a nationally recognized professional appraisal organization, or real estate broker licensed by the State of California who has the following qualifications:

- (1) Prior experience in the sale or appraisal of comparable properties within the past five (5) years; and
- (2) Having no relationship to any of the parties to the sale, either as an agent, co-worker, relative to the first degree, partner or associate, within the two (2) years preceding the appraisal.
- (3) Who is not, and during the previous twelve (12) months has not been, an officer or employee of the City of San Jose.

g. Challenge of Lender's Appraisal.

A lender's appraisal may not be made by the Hearing Officer, but the Hearing Officer may require the landlord to furnish an additional lender's appraisal if the Hearing Officer finds that:

- (1) The lender's appraisal fails to meet the requirements, or the appraiser does not have the qualifications set forth in Paragraph (a) above,; or
- (2) The lender's appraisal includes a substantial and material error or omission which substantially and materially affects the reliability of the appraisal.

h. In the event there is no lender's appraisal the Hearing Officer shall presume that the purchase price is the equal to the lender's appraisal if the landlord and two-thirds of the tenants present jointly stipulate to this presumption.

2.03.07 Economic, Financial, and Other Factors

If the rent increase is not cost justified, the Hearing Officer will determine what is reasonable by taking into consideration any relevant factors presented by either party. These factors include the following:

a. Vacancy and Bad Debt Losses.

The degree to which vacancy and bad debt losses are not offset by retention of deposits, court judgments, or increases to new tenants.

b. Property Valuation.

For the purposes of Section 2.03.07 of these Regulations, and Section 17.23.440 C of the Ordinance:

- (1) The market value of any property shall be established pursuant to Articles 1 and 2 of Chapter 1 of Division 7 of the California Evidence Code now in effect or as hereafter amended. As of the date of adoption of this regulation these provisions are set forth in Evidence Code Sections 800-805, 810 and 823, copies of which are attached as Appendix B.
- (2) For the purpose of justifying any rent increase as reasonable under the circumstances, the property valuation date shall be sufficiently near the effective date of any related rent increase as to be reasonably reliable as evidence of value as of the effective date of the relevant rent increase.

c. Hardship to Tenants (SJMC §17.23.450).

The Hearing Officer shall consider the economic and financial hardship imposed on the present tenant or tenants of the rental unit or units to which such increases apply.

2.03.08 Landlord as Lessee From Owner.

If the landlord is a lessee of any rental unit from the owner of the rental unit, in determining whether any rent increase to a tenant of the rental unit is reasonable under the circumstances, the following regulations shall apply:

- a. The landlord shall establish:
  - (1) The identity of the owner and the landlord and of each person and entity comprising each; and
  - (2) The relationship between the owner and the landlord; and
  - (3) Whether the owner and the landlord shall be deemed a single entity or separate entities.
- b. The owner and the landlord shall be deemed a single entity if the Hearing Officer finds that:
  - (1) The landlord or the owner is the agent of the other; or
  - (2) The landlord or the owner owns a controlling interest in the other; or
  - (3) The landlord or the owner is the alter ego of the other.
- c. If the Hearing Officer finds that the owner and the landlord shall be deemed a single entity:
  - (1) All costs, expenses, and obligations relating to ownership, operation, maintenance, capital improvements, rehabilitation, or debt service, of the property, paid or incurred by either the owner or the landlord to any third party, shall be deemed costs, expenses, and obligations of the landlord; and
  - (2) No costs, expenses, or obligations related to ownership, operation, maintenance, capital improvements, rehabilitation, or debt service, of the property, and generated only between the owner and the landlord by reason of their lease agreement shall be included as costs, expenses, or obligations of the landlord.
- d. If the Hearing Officer finds that the owner and the landlord shall be deemed separate entities:
  - (1) No costs or expenses of ownership, operation, maintenance, debt service, capital improvements, or rehabilitation, paid or incurred by the owner, shall be attributable to the landlord; and

- (2) Rent incurred by the landlord and payable to the owner shall be deemed a cost of maintenance and operation of the landlord; and
  - (3) Costs of debt service incurred by the landlord on any security or financing device applicable to the landlord's leasehold interest in any property identified in Ordinance Section 17.23.080, shall be deemed debt service of the landlord, and not a cost of the landlord's operation and maintenance.
- e. The landlord shall have the burden of proving the status claimed by the landlord; i.e., whether the owner and the landlord shall be deemed a single entity or separate entities.

Part 4

THE TIMING OF AN INCREASE

2.04 Multiple Rent Increases

Section 17.23.240 prohibits, after September 7, 1979, more than one (1) increase in a twelve (12) month period.

2.04.01 Evidence

Hearing Officers shall consider evidence establishing that there has been more than one (1) increase within a twelve (12) month period. When it is found that there has been more than one (1) increase, the second and subsequent increases must be disallowed in their entirety, regardless of the amount or percentage.

2.04.02 Voluntary Vacancy or Eviction

The Ordinance permits rent to be increased following a voluntary vacancy or an eviction for a material violation of a written rental agreement. Rent will be presumed to have been increased when a tenant moves in and, unless the landlord establishes that it was not increased, the Hearing Officer will disallow any other increases within the twelve (12) months after the tenant moved in.

2.04.03 Annexation

When rental units are annexed into the City of San Jose, rent increases prior to the annexation are not subject to review, but do establish a twelve (12) month period for future increases. For example, if rent is increased in July and the property is annexed in August, the rent may not be increased until the following July.

2.04.04 Agreements

Parties may not agree and Hearing Officers shall not allow voluntary agreements that call for more than one (1) increase in a twelve (12) month period, except as specified in Section 17.23.325 of the Municipal Code.

Part 5

DECISIONS AND AGREEMENTS

2.05 Applicability of Determinations and Voluntary Agreements

2.05.01 Eligible Petitions

The determination or award of a Hearing Officer shall not apply to a tenant who has not filed an eligible petition or has not been included in a landlord's petition.

2.05.02 Effective Date

Unless otherwise set by the Hearing Officer, rent increases shall be effective as of the effective date of the increase originally proposed by the landlord.

2.05.03 Decision/Award Effective Date

For the purpose of establishing a uniform date of issuance from which to count the time allowed for appeal, the cover page will read "Date Issued \_\_\_\_\_", that date being the date of mailing.

Part 6

RESCHEDULING

2.06 Failure to Appear and Reschedule

2.06.01 Failure To Appear and To Be Represented

Depending on the circumstances, failure to appear or to be represented can result in the increase being determined unreasonable or the case being closed.

- a. No Appearance by the Landlord or Representative. When the landlord or the landlord's representative does not appear at the hearing, the rent increase will be determined to be unreasonable.
- b. No Appearance by Tenants. When a tenant fails to appear or be represented at a mediation hearing where a voluntary agreement is concluded with the remaining tenants, the petition of the tenant who failed to appear will be considered to have been withdrawn.

When a tenant fails to appear or be represented at a hearing which results in a written determination, that determination will include all petitioning tenants.

2.06.02 Rescheduling

Rescheduling of hearings causes a delay in the resolution of the dispute and inconveniences the parties. However, a rescheduling is sometimes appropriate.

- a. Request by One of the Parties. A hearing may be rescheduled at the request of a landlord or a tenant once for reasonable cause, when the request is made to the Rental Dispute Program at least seven (7) days before the scheduled hearing date.
- b. Request by One of the Parties. A hearing may be rescheduled when one of the parties is unable to attend due to reasons beyond the party's control and the request is made to the Rental Dispute Program within four (4) days after the scheduled hearing date.

Part 7

NOTICE AND SCHEDULING OF HEARINGS

2.07 Notice and Scheduling of Hearings

2.07.01 Scheduling of Arbitration Hearings

An Arbitration Hearing Officer shall be assigned to hear a case within seven (7) days of an appeal to arbitration. The arbitration hearing shall be scheduled within thirty (30) days of the appeal.

Part 8

APPEALS

2.08 Appeals

Appeals to arbitration of a Mediation Hearing Officer's determination and appeals to the Department Head of administrative action shall be filed in writing at the program offices within seven (7) days of the issuance of the determination or the administrative actions.

Chapter 3

HEARING PROCESS

This chapter covers the conduct of hearings and assignment of Hearing Officers. Part One covers the mediation phase. Part Two covers arbitration on the reasonableness of rent increases, while Part Three covers arbitrations of claims of broken voluntary agreements. Part Four covers those aspects common to both mediation and arbitration hearings on the reasonableness of rent increases. Part Five covers the assignment of Hearing Officers and related matters

Part 1

MEDIATION

3.01 Conduct of Mediation Hearings

3.01.01 Purpose of Mediation

The purpose of the mediation hearing is to give the parties an opportunity to resolve the dispute voluntarily and to determine if the increase is reasonable.

3.01.02 Private Sessions

Following the initial presentation, the Hearing Officer 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 Hearing Officer.

3.01.03 Voluntary Agreements

If the parties arrive at a voluntary agreement which resolves the dispute, the Hearing Officer will write that agreement on a voluntary agreement form and witness the parties' signatures. Voluntary agreements must specify the agreed upon rent, shall not call for more than one increase a year except as provided in Section 17.23.325 of the Municipal Code, and may include any other item the parties agree upon.

3.01.04 Closing Session

After meeting in private session, the Hearing Officer will meet with both parties together to sign any voluntary agreement or to provide an opportunity to present any additional evidence or testimony.

3.01.05 Determination of Reasonableness

If a voluntary agreement is not possible, or if one of the parties does not want to seek a voluntary agreement, the Hearing Officer will make a written decision on whether or not the rent increase is reasonable.

Part 2

ARBITRATION

3.02 Conduct of Arbitration Hearings

3.02.01 Purpose of Arbitration

The purpose of arbitration is to determine if a rent increase which has been appealed from mediation is reasonable, and to determine if a voluntary agreement which has been claimed to be broken, has been broken, and if so, to determine an equitable remedy.

3.02.02 Voluntary Agreement

An Arbitration Hearing Officer may recess the hearing for the purpose of allowing the parties to negotiate a voluntary agreement to resolve the dispute. At the request of the parties, the Hearing Officer may also assist the parties in coming to and preparing a written voluntary agreement.

Part 3

ARBITRATION OF AGREEMENT

3.03 Conduct of Hearings on Claims of Violation of a Voluntary Agreement.

Voluntary agreement forms contain a section making violation of the agreement subject to the hearing process under these Regulations and the provisions of Title 17, Chapter 17.23 of the Municipal Code. Hearings for this purpose are similar to those described in Section 3.04. Some differences are caused by the nature of these hearings. This section covers these differences.

3.03.01 Appeal

- a. Before appealing for a hearing, a letter must be sent asking that the agreement be followed. This letter should point out where it is not being followed: for example, "fix the stove" or "remove the wrecked car".
- b. Appeals may be made by any party in writing and must include a copy of the letter described above.

3.03.02 Processing

A copy of the appeal will be sent to both parties with a notice of the time, place and date of the hearing.

3.03.03 Clarification of Issues

After the introduction, the Hearing Officer will ask the party who filed the appeal to state the issue. For example, "John Doe signed an agreement that he would fix the stove/remove a wrecked car by June 15. He has not done that."

3.03.04 Verification

The Hearing Officer will determine if the agreement has been violated.

3.03.05 Remedies

If the Hearing Officer finds the agreement has been violated, the Hearing Officer will issue an award which compensates for the violation by increasing or decreasing the rent accordingly.

Part 4

CONDUCT OF HEARINGS

3.04 Conduct of Hearings--General

This section provides guidelines for the conduct of hearings. Requirements which are unique to mediation or arbitration hearings are covered in Section 3.01, 3.02, and 3.03.

The Hearing Officer may change the order, delete or add items in order to conduct the hearing in a timely fashion or at the request of the parties.

3.04.01 Introduction

The Hearing Officer will introduce himself or herself, identify the parties, circulate a sign-in sheet, request any proxies to be turned in or representatives to be identified, and will briefly explain the hearing process. The Hearing Officer may administer an oath to the parties and witnesses.

3.04.02 Presentation by the Parties

The parties will be given full opportunity to present relevant evidence and testimony. When one party has made its presentation, the remaining party will be given an opportunity to make its presentation.

3.04.03 Response to Evidence and Testimony

The parties will be given reasonable opportunity to respond to new documentation and issues. The Hearing Officer has the discretion to recess the hearing or to allow the submission of written statements.

3.04.04 Request for Additional Information

The Hearing Officer may request the submission of additional documentation or other information. When this request is made, the hearing is recessed until the submission deadline for the administrative purpose of receiving the additional information. In the event that the requested information is not provided or is incomplete, the Hearing Officer may proceed to the making of the determination or award.

3.04.05 Evidence and Testimony

- a. Evidence. Evidence submitted will be retained by The Hearing Officer for use in making the award (or for use in the arbitration) and will become a part of the permanent record. If a party submits original documents that party should also provide a copy of the documents for retention. The Hearing Officer will be the judge of the relevance of the evidence. Conformity to judicial rules of evidence is not necessary. A list of this evidence (exhibits) will be prepared and made a part of the record.
- b. Testimony. The Hearing Officer will be the judge of the relevance of testimony. A list of the names and addresses of any witnesses will be kept and made a part of the record.

3.04.06 Timing and Content of Determination or Award

- a. The mediator's determination shall be issued within ten (10) days of the close of the hearing, and the arbitrator's award shall be issued within seventeen (17) days of the close of the hearing. The allowance of time to submit additional information or written statements is a recess of the hearing to this deadline.

- b. The mediator's determination and the arbitrator's award must identify the parties and make a clear statement of:
- (1) Whether or not the proposed increase is reasonable;
  - (2) If a portion is reasonable, the dollar amount;
  - (3) Any conditions which are placed on the award;
  - (4) An attached summary of cost calculations.
  - (5) Statement of facts found to exist on which the decision is based. For example, the costs allowed, service reductions, Housing Code violations, and economic and financial factors.

Part 5

HEARING OFFICERS

3.05 Hearing Officers

3.05.01 Designation of Hearing Officers

Hearing Officers are those individuals who, having met the criteria established in Section 3.05.02, are offered and have executed a contract with the City of San Jose, and also those program staff designated as Hearing Officers for specific purposes.

3.05.02 Selection Criteria

Hearing Officers must meet the following criteria:

- a. Have received forty (40) hours formal training in mediation;
- b. Have successfully performed mediations or hearings similar to those of this program;

- c. Have successfully mediated 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.

3.05.03 Assignments to Cases

Cases should be assigned by program staff equitably and fairly, with due regard for each Hearing Officer's availability and experience.

- a. Hearing Officers may be assigned either mediation or arbitration cases, but to the extent possible, should not be assigned to arbitrate cases they have mediated. Arbitration assignments should be made at the discretion of program staff to Hearing Officers who meet one of the following qualifications:
  - 1. Appointment to the American Arbitration Association's Panel of Arbitrators;
  - 2. Completion of a Juris Doctor or equivalent degree from a School of Law with proof of a course in arbitration; or
  - 3. Completion of three (3) arbitrations for a public entity such as the California Youth Authority or the Superior Court.

3.05.04 Disqualification from Cases

A Hearing Officer 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.

3.05.05 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.

3.05.06 The parties may waive their right to the disqualification of a Hearing Officer by a written statement accepting the Hearing Officer's services.

3.05.07 Review of Hearing Officers' Performance

The program staff will periodically review the performance of Hearing Officers and will inform the Advisory Commission on Rents of the execution and termination of Hearing Officers' contracts.

3.05.08 Program Hearing Officers

The Director of Neighborhood Preservation and/or the Director's delegate is designated as a Hearing Officer for the purpose of:

- a. Acceptance of documentation and written statements;
- b. The conduct of hearings when a Hearing Officer is unable to attend, and if the holding of the hearing by a Program Hearing Officer is acceptable to the parties, and neither party is an employee or officer of the City of San Jose.
- c. The conduct of hearings when the party with the burden of proof is anticipated to fail to appear. If the party with the burden of proof does appear, the hearing will be conducted by a contractual Hearing Officer.

## Chapter 4

### 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.

#### 4.01 Investigation of Misdemeanor Violations

Program staff will receive and review complaints of violations. In the event that the investigation shows that a probable violation has or is in the process of occurring and that it is not possible to prevent, a request will be made to the City Attorney for review and possible prosecution.

#### 4.02 Prevention

When complaints are received of an alleged violation which has not yet occurred or is in the process of occurring, it is the policy of this program to prevent it, when possible, by informational contacts with the landlord.

#### 4.03 Implementation

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

#### 4.04 Appeal

Administrative actions by program staff may be appealed to the Director of the Department of Neighborhood Preservation. Individuals also have the right to present information and recommendations on the implementation of these regulations to the Advisory Commission on Rents.

## Chapter 5

### PUBLIC ACCESS TO PROGRAM RECORDS

This portion of the regulations contains the exclusive procedure for public access to records of the Rental Dispute Mediation and Arbitration Program. It sets forth regulations governing the inspection of the records of the program by members of the public and the obtaining of copies of such records by members of the public.

5.01 Definitions as Used in This Chapter

- 5.01.01 "The Ordinance" means Chapter 17.23 of Title 17 of the San Jose Municipal Code.
- 5.01.02 "The Program" includes the activities of the Advisory Commission on Rents, the staff of the Rental Dispute Program, the hearing officers appointed thereby, and other personnel of the City of San Jose to the extent they are involved in the administration or operation of The Ordinance.
- 5.01.03. "Person" includes any natural person, corporation, partnership, firm, or association.
- 5.01.04 "Records" includes any writing containing information relating to The Program.
- 5.01.05 "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, symbols, or any combination thereof, and all papers, maps, magnetic or paper tapes, photographic films or prints, magnetic or punched cards, disks, drums, or other documents.

5.02 Records Open to Inspection

All Records of The Program are open to inspection at all times during the office hours of the Rental Dispute Program, and every person has a right to inspect all Records of The Program except as hereinafter provided.

5.03 Exemptions of Particular Records

Nothing in these regulations shall be construed to require disclosure of records that are:

- 5.03.01 Preliminary drafts, notes, inter-agency or intra-agency memoranda which are not retained by The Program in the ordinary course of business, provided that the public interest in withholding such Records clearly outweighs the public interest in disclosure;
- 5.03.02 Records pertaining to pending litigation in which any person involved in the administration or operation of The Program is a party, or to claims made pursuant to the Government Code of the State of California, commencing with Section 810, until such litigation or claim has been fully adjudicated or otherwise settled;

- 5.03.03 Personnel Records pertaining to personnel of The Program, medical Records, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;
- 5.03.04 Records the disclosure of which is specifically exempted or prohibited pursuant to provisions of Federal and State law, including, but not limited to, provisions of the Evidence Code of the State of California relating to privilege. Nothing in this section is to be construed as preventing any person having custody or control of any Record from opening such Record to public inspection upon written authorization of the Human Services Administrator, unless disclosure is otherwise prohibited by law.

5.04 Justification for Withholding Records

Any person having custody or control of any Record shall justify withholding any Record by demonstrating that the Record in question is exempt under the express provisions of these regulations, or the applicable provisions of the Public Records Act as amended, commencing with Section 6250 of the California Government Code, or that on the facts of the particular case the public interest served by not making the Record public clearly outweighs the public interest served by disclosure of the Record.

5.05 Copies of Records: Determination of Compliance With Requests; Notice; Reasons

Upon any request for a copy of Records, the person to whom the request is directed shall determine within 10 days after the receipt of said request whether to comply with the request and shall immediately thereafter notify the person making the request of such determination and the reasons therefore. Said notification shall be in writing. Any notification of a denial of any request for Records shall set forth the names and titles or positions of each person responsible for the denial. Any notification of denial of any request for Records shall also set forth the right of the person requesting the Records to seek an order in the Superior Court requiring the production and inspection of such Records, pursuant to Government Code Section 6259.

5.06 Reasonably Segregable Portions After Deletion of Exempt Portions

Any reasonably segregable portion of a Record shall be provided to any person requesting such Record after deletion of the portions which are exempt under these regulations or by law.

5.07 Copies of Records

Any person may receive a copy of a Record under the Ordinance request, subject to the procedure set forth herein.

5.08 Requests For Records, To Whom Made

Initial requests for copies of Records under these Regulations shall be made in writing to the Rental Dispute Program. If the Rental Dispute Program determines it does not have custody or control of a Record, it shall attempt to ascertain the custodian thereof and notify the requesting party of the identity and location of the actual custodian. Any further request for such Record shall be made to the actual custodian.

5.09 Location of Awards

The staff of the Rental Dispute Program shall maintain for immediate access by the public a copy of each and every Award issued under The Program, and all such Awards shall be readily accessible to any person desiring to inspect them.

5.10 Copies of Awards; Access and Duplication; Costs

Any person seeking access to or duplication of the Records is required to complete a Record Access Request Form, a copy of which is attached as Appendix A to these regulations, and incorporated herein by reference. Access and duplication of Records shall be governed by the following criteria:

- a. Access and duplication of Records shall be accomplished in the presence of a Rental Dispute Program staff person or their agent and shall be governed by the following criteria:
- b. Five (5) working days will be the access time allowed for requests for small to moderate amounts (not exceeding 100 pages or 5 tapes) of individual case files and tape recordings on file in the offices of the Rental Dispute Program.
- c. Original material exceeding the limitations of 5.10 b. or in storage will be accessed as follows:
  - (1) Upon receipt of a written request for the material, the Rental Dispute Program will determine the amount of time and the cost necessary to provide the duplicates.
  - (2) Within ten (10) working days this estimate will be written and forwarded to the requestor.

- (3) Upon deposit of the estimated cost, duplication will proceed. If actual costs are greater than estimated, payment of the additional amount is required prior to release of the copies. If actual costs are less than estimated, a refund will be provided.
- (4) Fees for duplication will be set according to the schedule established by the Neighborhood Preservation Department at the time of the submission of the Annual Budget. In the event that no schedule is established the Program will abide by the schedule set by the City Clerk for duplication of documents in their office.
- (5) Lacking a parallel service, tapes will be duplicated at the charge of \$1.00 per tape plus the replacement of a blank C-90 cassette tape.
- (6) There will be charge for requested documents less than 6 pages or the following: the ordinance, the regulations, questions and answers, petitions and the agenda packet consisting of the agenda, statistics and minutes.

## Chapter 6

### DEFINITIONS

This chapter contains definitions of the more commonly used words and phrases found in the Ordinance and these Regulations.

Award. The written decision of a Hearing Officer.

Commission. The Advisory Commission on Rents.

Day. A calendar day.

Determination. A written decision by a Hearing Officer.

Fact Finding. The action of a Hearing Officer in establishing that certain facts, such as costs or service reductions, exist.

File, Filing Date. Filed is either the personal delivery of the document to be filed with the Rental Dispute Program, in which event the date of filing is the date of delivery; or the mailing of the document to be filed with the Rental Dispute Program, in which event the date of filing is the date of postmark.

Hearing Officer. Hearing Officer shall mean a person, under contract to the City who conducts administrative hearings on rental increase disputes pursuant to the provisions of Chapter 17.23 of the San Jose Municipal Code.

Party. A landlord or tenant(s) who is involved in the hearing process.

Petition. A Rental Dispute Mediation and Arbitration petition.

Program staff. The staff of the Rental Dispute Program and the Department of Neighborhood Preservation assigned to implement the Rental Dispute Mediation and Arbitration Ordinance.

Vacancy. Untenanted. A rental unit is vacant when there are no tenants living there. However, a landlord and tenants may, by prior written agreement, agree that a move-out by one roommate creates a vacancy as to all tenants of that rental unit.

## Chapter 7

### ADOPTION OF REGULATIONS

#### 7.01 Adoption of Regulations.

No regulation of the Advisory Commission on Rents shall become effective, unless and until there has been substantial compliance with the following procedure:

- a. The agenda of each meeting of the Commission at which the propose regulation is to be considered shall include a brief statement identifying the proposed regulation and its subject matter.
- b. The proposed changes, accompanied by the staff recommendations and rationales, will be included in the Commission agenda packet.
- c. The Commission will approve and adopt a recommendation to the City Council to amend a regulation by the vote of four (4) Commissioners present. The vote to approve the revision and the vote to adopt a recommendation to the City Council may be considered at separate meetings, if preferred.
- d. If the Commission wishes the Council to adopt an emergency regulation the Commission should comply with the following conditions:
  - (1) The proposed regulation shall be accompanied by:

- (a) a written statement by the Director, Department of Neighborhood Preservation, of the City of San Jose, setting forth the facts constituting the emergency and reasons why the proposed regulation should be adopted at the first meeting of the Commission at which it is considered; and
  - (b) a written opinion of the City Attorney setting forth the legal reasons for the proposed regulation.
- (2) The facts justifying the emergency action consist of:
- (a) a change in the Ordinance applicable to regulations adopted by the Commission, or
  - (b) a written City Attorney opinion invalidating or interpreting any regulation, or
  - (c) a ruling or decision of any court affecting any regulation or the Ordinance under which regulations are adopted.



AMENDMENT TO THE RENTAL DISPUTE  
MEDIATION AND ARBITRATION PROGRAM REGULATIONS

Chapter 8

PASSTHROUGH OF PENALTIES FOR  
EXCESS WATER USAGE

8.01 General Provisions.

8.01.01 The landlord of a rental unit covered by the Ordinance may pass through to the tenant of such rental unit the excess water usage penalties imposed by the water company supplying water to such rental unit.

8.01.02 For the purpose of these Regulations, "excess water usage penalties" means the penalties imposed by the water company for the use of water in excess of the water allocation established by the water company for the multi-family residence in which the rental unit is located.

8.01.03 No passthrough of excess water usage penalties shall be made by any landlord except in accordance with these Regulations and Section 17.23.205 of the Ordinance.

8.02 Calculation of Passthrough.

8.02.01 The landlord may pass through no more than one-half of the penalty imposed by the water company.

- 8.02.02 The amount of the penalty that may be passed through to the tenant or tenants of a single rental unit shall be determined by dividing one-half of the penalty imposed by the water company by the number of rental units in the building or complex covered by the water bill issued by the water company.
- 8.02.03 If a rental unit was vacant during the period covered by the water bill, the landlord shall pay the portion of the excess water usage penalty that would otherwise be passed through to the tenant of that rental unit.
- 8.02.04 If a rental unit was vacant during a portion of the period covered by the water bill, the landlord shall pay the portion of the excess water usage penalty attributable to the period the rental unit was vacant. That portion shall be determined by dividing the number of days the rental unit was vacant by the number of days in the period covered by the water bill.
- 8.02.05 For the purpose of this Section 8.02 of these Regulations, a rental unit is "vacant" when no tenant has the right to physically occupy the rental unit pursuant to a lease, rental agreement or other arrangement with the landlord. The rental unit is not deemed vacant merely because the tenant has not yet exercised the right of occupancy, because the tenant is absent from the premises, or because the tenant has sublet the rental unit.

8.03 Notification and Payment.

8.03.01 Any landlord who desires to pass through an excess water usage penalty shall notify the tenant of the amount due from the tenant by mailing notice of the passthrough to the tenant. The passthrough notice shall be mailed within thirty (30) days of the date the landlord pays the penalty to the water company and shall include:

- (1) A copy of the water bill containing the penalty.
- (2) A statement that the penalty has been paid by the landlord.
- (3) Notice of the tenant's right to file a request for review by the Rental Dispute Program on the following grounds:
  - (a) The tenant disputes the legitimacy of the water bill or disputes whether the landlord has paid the penalty.
  - (b) The tenant claims the rental unit was vacant during the time, or a portion of the time, covered by the water bill.
  - (c) The tenant claims there are mathematical or clerical errors in the calculation of the tenant's share of the penalty.
  - (d) The tenant claims the passthrough payment schedule has been incorrectly applied.

- (4) The time by which the tenant's request for review must be filed.
  - (5) The address and telephone number of the Rental Dispute Program.
- 8.03.02 If the passthrough notice is made in connection with a bill for rent, the passthrough shall be itemized as a separate line item on the rent bill.
- 8.03.03 The tenant shall pay the passthrough amount to the landlord within thirty (30) days of the postmark date on the notice of the passthrough or, if the passthrough is made in connection with a bill for rent, at the time the rent payment is made provided that the tenant's payment shall not be due less than thirty (30) days from the date of the passthrough notice.
- 8.03.04 If the water bill covers more than a one-month period, the landlord may divide the passthrough amount payable by the tenant into a number of payments equal to the number of months covered by the water bill. The passthrough notice shall specify the dates such multiple payments are due to the landlord.
- 8.03.05 The landlord and the tenant may mutually agree in writing to a payment schedule for the passthrough that differs from the schedule set forth in 8.03.03 and 8.03.04 above.

8.03.06 If a tenant vacates the rental unit prior to the payment of the passthrough, the entire unpaid balance of the passthrough shall be due and payable at the time the tenant vacates the rental unit. The unpaid balance of the passthrough may be treated by the landlord in the same manner as any other balance due from the tenant.

8.04 Appeal.

8.04.01 If a tenant disputes the passthrough of the excess water usage penalty, the tenant may file a written request for review with the Rental Dispute Program. Such request for review must be filed within thirty (30) days of the postmark date on the notification of the passthrough (8.03.01 above) and shall state the grounds upon which the request is made. If the tenant cannot demonstrate the postmark date on the notification of the passthrough the postmark date shall be presumed to be the date stated in the notification.

8.04.02 If a tenant files a request for review, the payment of the passthrough shall be suspended pending the decision of the Human Services Administrator and, if that decision is appealed, the decision of the hearing officer. If the decision of the Human Services Administrator, or the hearing officer on appeal, is that the tenant is to pay all or a portion

of the passthrough, the payment shall be due to the landlord immediately upon the issuance of the decision.

8.04.03 Review by the Rental Dispute Program shall be on the following grounds only:

- (1) The tenant disputes the legitimacy of the water bill paid by the landlord or disputes whether the landlord has actually paid the penalty.
- (2) The tenant claims the rental unit was vacant during the time, or a portion of the time, covered by the water bill.
- (3) The tenant claims there are mathematical or clerical errors in the calculation of the tenant's share of the penalty.
- (4) The tenant claims the passthrough payment schedule set forth in 8.03.03 or 8.03.04 has been incorrectly applied.

8.04.04 Within ten (10) working days of receipt of the tenant's request for review, or such other time as reasonably necessary, the Rental Dispute Program shall notify the landlord in writing of the tenant's request for review. A copy of the notice to the landlord shall be mailed to the tenant at the same time the notice is mailed to the landlord.

8.04.05 The landlord and the tenant shall submit any written documentation, including evidence and argument, to the Rental Dispute Program within ten (10) working days of the postmark date of the notice specified in 8.04.04 above. The landlord must submit at least a copy of the water bill containing the penalty that was passed through, proof that the penalty has been paid by the landlord, a statement of the number of rental units covered by the bill, and documentation showing the tenant's right to occupy the rental unit during the period covered by the water bill.

8.04.06 The landlord and the tenant may review the documentation submitted by the other at the Rental Dispute Program Office during the normal business hours of the Program. Any rebuttal documentation shall be submitted within fifteen (15) working days of the postmark date of the notice specified in 8.04.04 above.

8.04.07 The Human Services Administrator, or said Administrator's designee, shall review the documentation submitted by the landlord and the tenant and, within twenty-five (25) days of the postmark date of the notice specified in 8.04.04 above, shall mail a written decision to the landlord and to the tenant.

8.04.08 The landlord or the tenant may appeal the decision of the Human Services Administrator by filing a written notice of appeal to the Rental Dispute Program within seven (7) days of the postmark date of the decision of the Administrator. Grounds for appeal shall be only:

- (1) There is a dispute regarding the legitimacy of the water bill paid by the landlord or a dispute as to whether the landlord paid the penalty.
- (2) There is a dispute regarding whether the rental unit was vacant during any time covered by the water bill.
- (3) There is a claim of mathematical or clerical error in the calculation of the tenant's share of the penalty.

8.04.09 The appeal shall be heard by a hearing officer using the arbitration procedure used in cases involving breach of a Voluntary Agreement.

8.05 Refund.

8.05.01 If the landlord receives a refund of the excess water usage penalty paid to the water company, or a refund of a portion thereof, the landlord shall refund the passthrough to the tenants. The amount of the refund to the tenants shall be a prorata amount based on the portion of the excess water usage penalty paid by the tenants.

8.05.02 The landlord may refund the amount of the refund to the tenant directly or may offset the rent payable by the tenant. In the case of a rent offset, the landlord shall list the refund as a separate line item on the rent bill, if applicable.

APPENDIX A

RENTAL DISPUTE MEDIATION AND ARBITRATION

Public Record Request

Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

File Requested \_\_\_\_\_ Address \_\_\_\_\_ Effective Date \_\_\_\_\_

EVERY PERSON who is guilty of stealing, willfully destroying, mutilating, alteri or falsifying, removing or secreting the whole or any part of the records of The Commission, or who permits any other person to do so, is punishable by imprisonment in the state prison, or a county jail not exceeding one year or by a fine not exceeding \$1,000.00 or by both such fine an imprisonment, pursuant to Government Code Sections 6200 and 6201

Signature \_\_\_\_\_

For Office Use Only

Identification Type \_\_\_\_\_

<u>ACCESS</u>	>	<u>DUPLICATING</u>			
	>				
<u>Office Files</u>	>	Photocopying			
	>				
Date Provided _____	>	_____ x _____	=	_____	
	>	Pages Rate		_____	
	>			_____	
Warehouse Files	>	Printshop Billing	=	_____	
	>				
Est. Provision Date _____	>	Assembly			
	>	Date Provided _____	>	_____ x _____	
= _____	>	Hour		Rate	
	>				
<u>PAYMENT</u>	>				
	>				
Estimated Cost _____	>	_____ x _____	=	_____	
	>	Labor OH			
Deposit _____	>				
	>				
Actual Cost _____	>	_____ x _____	=	_____	
	>	Labor Fringe			
Minus Deposit _____	>	TOTAL		_____	
	>				
Amount Due _____	>				
	>				
ate Paid _____	>	<u>TAPES</u>			
	>				
Refund _____	>	_____ x _____	=	_____	
	>	Tapes Service Charge			
	>	TOTAL		_____	

APPENDIX B  
EVIDENCE CODE GUIDELINES

ARTICLE 1  
Expert and Other Opinion Testimony  
Generally

Opinions of nonexperts.S.800.  
Opinions of experts.S.801.  
Reasons for opinions.S.802.  
Exclusion of opinions based on improper matter.s.803.  
Opinion based on opinion or statement of another.S.804.  
Ultimate issue.s.805.

Sec.800. Opinions of Nonexperts.

If a witness is not testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is permitted by law, including but not limited to an opinion that is:

- (a) Rationally based on the perception of the witness; and
- (b) Helpful to a clear understanding of his testimony.

Sec.801. Opinions of Experts.

If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

- (a) Related to subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and
- (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

Sec.802. Reasons for Opinions.

A witness testifying in the form of an opinion may state on direct examination the reasons for his opinion and the matter (including, in the case of an expert, his special knowledge, skill experience, training, and education) upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion. The court in its discretion may require that a witness before testifying in the form of an opinion be first examined concerning the matter upon which his opinion is based.

Sec.803. Exclusion of Opinions Based on Improper Matter.

The court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or in significant part on matter that is not a proper basis for such an opinion. In such case, the witness may, if there remains a proper basis for his opinion, then state his opinion after excluding from consideration the matter determined to be improper.

Sec.804. Opinion Based on Opinion or Statement of Another.

- (a) If a witness testifying as an expert testifies that his opinion is based in whole or in part upon the opinion or statement of another person, such other person may be called and examined by any adverse party as if under cross-examination concerning the opinion or statement.
- (b) This section is not applicable if the person upon whose opinion or statement the expert witness has relied is (1) a party, (2) a person identified with a party within the meaning of subdivision (d) of Section 776, or (3) a witness who has testified in the action concerning the subject matter of the opinion or statement upon which the expert witness has relied.
- (c) Nothing in this section makes admissible an expert opinion that is inadmissible because it is based in whole or in part on the opinion or statement of another person.
- (d) An expert opinion otherwise admissible is not made inadmissible by this section because it is based on the opinion or statement of a person who is unavailable for examination pursuant to this section.

Sec 805. Ultimate Issue

Testimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of the fact.

ARTICLE 2  
Evidence of Market Value of Property

Applicability. S.810  
Value of property defined. S. 811.  
Substantive law on compensation unchanged S.812.  
Opinion testimony-View-Other evidence. S.813.  
Basis for opinion, generally. S.814.  
Sale price. S.815.  
Sale price of comparable property. S.816.  
Rental value-Lease terms. S.817.  
Rental value of comparable property. S.818.  
Capitalized value of reasonable net rental value. S.819.  
Improvements. S.820.  
Improvements in vicinity. S.821.  
Matters inadmissible and not proper basis for opinion. S.822.  
Value where no relevant market. S.823.

Sec.810. Applicability.

- (a) Except where another rule is provided by statute, this article provides special rules of evidence applicable to any action in which the value of property is to be ascertained.
- (b) This article does not govern ad valorem property tax assessment or equalization proceedings.

c.811. Value of Property Defined.

As used in this article, "value of property" means market value of any of the following:

- (a) Real property or any interest therein.
- (b) Real property or any interest therein and tangible personal property valued as a unit.

Sec.812. Substantive Law on Compensation Unchanged.

This article is not intended to alter or change the existing substantive law, whether statutory or decisional, interpreting the meaning of "market value," whether denominated "fair market value" or otherwise

Sec.813. Opinion Testimony--View--Other Evidence.

- (a) The value of property may be shown only by the opinions of any of the following:
  - (1) Witnesses qualified to express such opinions.
  - (2) The owner or the spouse of the owner of the property or property interest being valued.
  - (3) An officer, regular employee, or partner designated by a corporation, partnership, or unincorporated association that is the owner of the property or property interest being valued, if the designee is knowledgeable as to the value of the property or property interest.
- (b) Nothing in this section prohibits a view of the property being valued or the admission of any other admissible evidence (including but not limited to evidence as to the nature and condition of the property and, in an eminent domain proceeding, the character of the improvement proposed to be constructed by the plaintiff) for the limited purpose of enabling the court, jury, or referee to understand and weigh the testimony given under subdivision (a); and such evidence, except evidence of the character of the improvement proposed to be constructed by the plaintiff in an eminent domain proceeding, is subject to impeachment and rebuttal.
- (c) For the purposes of subdivision (a), "owner of the property or property interest being valued" includes, but is not limited to, the following persons:
  - (1) A person entitled to possession of the property.
  - (2) Either party in an action or proceeding to determine the ownership of the property between the parties if the court determines that it would not be in the interest of efficient administration of justice to determine the issue of ownership prior to the admission of the opinion of the party.

Sec.814. Basis for Opinion, Generally.

The opinion of a witness as to the value of property is limited to such an opinion as is based on matter perceived by or personally known to the witness or made known to the witness at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property, including but not limited to the matters listed in Sections 815 to 821, inclusive, unless a witness is precluded by law from using such matter as a basis for an opinion.

Sec.815. Sale Price.

When relevant to the determination of the value of property, a witness may take into account as a basis for an opinion the price and other terms and circumstances of any sale or contract to sell and purchase which included the property or property interest being valued or any part thereof if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation, except that in an eminent domain proceeding where the sale or contract to sell and purchase includes only the property or property interest being taken or a part thereof, such sale or contract to sell and purchase may not be taken into account if it occurs after the filing of the lis pendens.

Sec.816. Sale Price of Comparable Property.

When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the price and other terms and circumstances of any sale or contract to sell and purchase comparable property if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation. In order to be considered comparable, the sale or contract must have been made sufficiently near in time to the date of valuation, and the property sold must be located sufficiently near the property being valued, and must be sufficiently alike in respect to character, size, situation, usability, and improvements, to make it clear that the property sold and the property being valued are comparable in value and that the price realized for the property sold may fairly be considered as shedding light on the value of the property being valued.

Sec.817. Rental Value--Lease Terms.

- (a) Subject to subdivision (b), when relevant to the determination of the value of property, a witness may take into account as a basis for an opinion the rent reserved and other terms and circumstances of an lease which included the property or property interest being valued or any part thereof which was in effect within a reasonable time before or after the date of valuation, except that includes only the property or property interest being taken or a part thereof, such lease may not be taken into account in the determination of the value of property if it is entered into after the filing of the lis pendens.
- (b) A witness may take into account a lease providing for a rental fixed by a percentage or other measurable portion of gross sales or gross income from a business conducted on the leased property only for the purpose of arriving at an opinion as to the reasonable net rental value attributable to the property or property interest being valued as provided in Section 819 or determining the value of a leasehold interest.

Sec.818. Rental Value of Comparable Property.

For the purpose of determining the capitalized value of the reasonable net rental value attributable to the property or property interest being valued as provided in Section 819 or determining the value of a leasehold interest, a witness may take into account as a basis for his opinion the rent reserved and other terms and circumstances of any lease of comparable property if the lease was freely made in good faith within a reasonable time before or after the date of valuation

Sec.819. Capitalized Value of Reasonable Net Rental Value.

When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the capitalized value of the reasonable net rental value attributable to the land and existing improvements thereon (as distinguished from the capitalized value of the income or profits attributable to the business conducted thereon).

Sec.820. Improvements.

When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the value of the property or property interest being valued as indicated by the value of the land together with the cost of replacing or reproducing the existing improvements thereon, if the improvements enhance the value of the property or property interest for its highest and best use, less whatever depreciation or obsolescence the improvements have suffered.

Sec.821. Improvements in Vicinity.

When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the nature of the improvements on properties in the general vicinity of the property or property interest being valued and the character of the existing uses being made of such properties.

Sec.822. Matters Inadmissible and Not Proper Basis for Opinion.

- (a) In an eminent domain or inverse condemnation proceeding, not withstanding the provisions of Sections 814 to 821, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property:
  - (1) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain.

- (2) The price at which an offer or option to purchase or lease the property or property interest being valued or any other property was made, or the price at which such property or interest was optioned, offered, or listed for sale or lease, except that an option, offer, or listing may be introduced by a party as an admission of another party to the proceeding; but nothing in this subdivision permits an admission to be used as direct evidence upon any matter that may be shown only by opinion evidence under Section 813.
  - (3) The value of any property or property interest as assessed for taxation purposes or the amount of taxes which may be due on the property, but nothing in this subdivision prohibits the consideration of actual or estimated taxes for the purpose of determining the reasonable net rental value attributable to the property or property interest being valued.
  - (4) An opinion as to the value of any property or property interest other than that being valued.
  - (5) The influence upon the value of the property or property interest being valued of any non-compensable items of value, damage, or injury.
  - (6) The capitalized value of the income or rental from any property or property interest other than that being valued.
- (b) In an action other than an eminent domain or inverse condemnation proceeding, the matters listed in subdivision (a) are not admissible as evidence, and may not be taken into account as a basis for an opinion as to the value of property, except to the extent permitted under the rules of law otherwise applicable.

ec.823. Value where No Relevant Market.

Notwithstanding any other provision of this article, the value of property for which there is no relevant market may be determined by an method of valuation that is just and equitable.

APPENDIX C

PROPERTY ADDRESS Total No. of Units in Complex Effective Date

LANDLORD COST WORKSHEET

PART I.

<u>A. OPERATION &amp; MAINTENANCE ***</u>	<u>Year</u>	<u>Year</u>	<u>Increase (Decrease)</u>
1. Advertising	_____	_____	_____
2. Rental & Travel	_____	_____	_____
3. Cleaning	_____	_____	_____
4. Commissions	_____	_____	_____
5. Gardening	_____	_____	_____
6. Insurance	_____	_____	_____
7. Maintenance	_____	_____	_____
8. Legal & Accounting	_____	_____	_____
9. Utilities	_____	_____	_____
10. Refuse Removal Garbage Service	_____	_____	_____
11. Security	_____	_____	_____
12. Taxes, Permits & Fees	_____	_____	_____
13. Property Management Fees	_____	_____	_____
14.	_____	_____	_____
15.	_____	_____	_____
16.	_____	_____	_____
17.	_____	_____	_____
18.	_____	_____	_____
TOTAL	=====	=====	=====

B. CAPITAL IMPROVEMENTS

<u>Item</u>	<u>Date</u>	<u>Cost</u>	
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
TOTAL		=====	=====

\*\*\* Two 12-month periods ending no later than the effective date of the increase.

PROPERTY ADDRESS \_\_\_\_\_

C. REHABILITATION

	<u>Item</u>	<u>Date</u>	<u>Cost</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
	<u>Total</u>		=====

PART II - DEBT SERVICE

	<u>Previous Loans</u>	<u>Annual Cost</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
	=====	=====

	<u>Current Loans</u>	<u>Date</u>	<u>Terms</u>	<u>Annual Cost</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
	=====			=====

Lender's Appraisal as of last loan \_\_\_\_\_

PART III - ALLOCATION OF COSTS (Fill] out either by units or by cost per square foot)

<u># of Units</u>	OR	<u>Total Sq. Feet in Building</u>	
		<u>Apartment #</u>	<u>Sq. Ft.</u>
_____		_____	_____
_____		_____	_____
_____		_____	_____
_____		_____	_____
_____		_____	_____

Signature of Owner \_\_\_\_\_ Date \_\_\_\_\_

Home Phone Number \_\_\_\_\_

Work Phone Number \_\_\_\_\_

SUMMARY OF COST CALCULATIONS

I. DEBT SERVICE

1. <u>Cost</u>	Term	Monthly
Points	+ _____	= _____
Loan Broker's Fee	+ _____	= _____
Balloon Interest	+ _____	= _____
Periodic Payments	+ _____	= _____
CURRENT COST OF DEBT SERVICE	_____	_____

2. Loan to Value Ratio

$$\frac{\text{Total Principal} + \text{Appraised Value}}{\text{LV}} = \text{_____}$$

3. If Loan to Value is 70% or Less

$$\frac{\text{Total Debt Service Cost} - \text{Previous Loan Cost}}{\text{Increase in Debt Service Cost}} \times .8 = \text{Pass Through} + \frac{\text{No. of units (or sq.ft.)}}{\text{Cost to Tenant}} = \text{_____}$$

4. If Loan Value is Over 70% - Prorate New Debt Service

$$\frac{\text{Total Debt Service Cost}}{\text{LV}} \times .7 = \text{Prorated Cost} - \frac{\text{Previous Loan Cost}}{\text{Increase in D.S. Cost}} \times \text{Factor} = \text{Pass Through}$$

$$\text{Pass Through} + \frac{\text{No. of units}}{\text{Cost to Tenant per unit}} = \text{_____}$$

OR

$$\text{Pass Through} + \frac{\text{Total Sq. Ft. of Complex}}{\text{Cost to Tenant per sq. foot}} = \text{_____}$$

II. COST COMPUTATION

Increase in Operation & Maintenance	+ 12 =	_____
Total Capital Improvements	+ 60 =	_____
Total Rehabilitation	+ 36 =	_____
TOTAL ALLOWABLE COST		_____
Total Increase	+ _____ =	_____
	No. of Units	Cost to Tenant

III.

Apt. No.	Prior Rent	+ 5%	Oper. & Maint. C.I. & Rehab.	+ Debt Service	= New Rent
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

5 % is added only if Operation & Maintenance, Capital Improvements, and Rehabilitation expenses are presented.