

Dear Landlord/Manager:

This brochure is intended to answer several common questions about the Rental Rights and Referrals Mediation and Arbitration Ordinance and the hearing process. Copies of the Ordinance and the Program Regulations can be provided at your request.

Rental Dispute Mediation and Arbitration Ordinance

The Rental Rights and Referrals Mediation and Arbitration Ordinance became effective on September 7, 1979. It regulates rent increases on most tri-plexes and larger multiple dwelling units, which were first rented before September 7, 1979. The Ordinance sets limits on the amount and frequency of rent increases. Either landlords or tenants may file a petition with the Rental Rights and Referrals Program regarding rent increases, which may exceed those limits.

Hearing Process

A Notice of Petition and a Notice of Hearing are issued whenever a petition is received which is eligible for inclusion in the hearing process. Many of these rental disputes are resolved prior to the hearing, however. If they are resolved, the person who filed the petition may cancel the hearing.

If the petition claims that a rent increase in excess of 8% has been proposed, then the amount in excess is deferred until the dispute is settled or a hearing officer issues a written decision. When a petition has been filed landlords should not demand or accept a rent increase in excess of 8% unless a Hearing Officer has authorized it.

Either the landlord or the tenant may request that the hearing be rescheduled. Hearings may be rescheduled when the request is made at least 7 days prior to the hearing. Hearings may also be rescheduled with less notice if one of the parties is prevented from attending by circumstances beyond their control (such as illness). The parties may also appoint someone to appear on their behalf, and a form is enclosed with the hearing notice for this purpose.

The hearings are normally held at 7:00 P.M., Monday through Thursday in a conference room at San Jose's City Hall. The hearings are not public meetings, and may be attended by the hearing officer, the landlord and tenant(s) and their witnesses and representatives. (City staff may also attend for evaluation purposes).

The hearing process involves both an initial hearing and an appeal hearing. Although both are actually administrative hearings, they are called the "Mediation Hearing" and the "Arbitration Hearing." These hearings are conducted by hearing officers designated by the City.

The Mediation Hearing is for the dual purpose of helping the parties to negotiate a settlement of their dispute and to consider evidence and testimony. Although hearing officers may change the format of the hearing, they often begin with an introduction and short presentations by each of the parties. The hearing officer will then turn the tape recorder off and meet privately with each of the parties in order to discuss a settlement. The hearing officer will go between each of parties, transmitting the offer and counter offers until either an agreement or an impasse is reached. If the parties do agree to settle their dispute, the hearing officer will help them to put their agreement into writing and will witness the execution of the agreement.

If an agreement is not reached, the tape recorder will be turned back on and the parties will have an opportunity to present additional evidence.

The hearing officer may continue the hearing to an additional day, if necessary, and may allow the parties to submit written arguments or documents by a set deadline.

If the Mediation Hearing does not result in an agreement, the Hearing Officer will issue a written decision within 10 days of the hearing (or of the deadline for written arguments or documents). This decision will set the amount of the rent increase and is legally binding. (Decisions on service reductions, which may be a type of rent increase, will set the amount of any credit against rent payments). The Rental Rights and Referrals Program will mail the decision to the parties, and either of the parties may appeal the decision within 7 days of the date on which it was mailed to them.

The mediation decision remains in effect when an appeal is filed. If the decision allows or disallows a rent increase, then that decision must be followed until and unless the Arbitration Hearing Officer changes it.

An Arbitration Hearing will be scheduled when a timely appeal is made. The Arbitration Hearing is similar to the Mediation Hearing, but focuses more on the evidence and decision-making, and less on negotiating a settlement. The landlord and tenant may submit new evidence, but cannot present new claims such as additional costs or service reductions. (Since new evidence may be presented, the Arbitration decision is often somewhat different from the Mediation decision). The Arbitration Hearing Officer will issue a final and legally binding decision within 17 days of the close of the hearing.

The petition, any retained evidence, audio tape recordings, other case materials and copies of decisions are public records. They may be examined and copied at the Rental Rights and Referrals Program during normal business hours. (The cost of copying records must be deposited with the Rental Rights and Referrals Program before the copies are made).

Frequency Limits

Section 17.23.200 of the Ordinance limits rent increases to once within any twelve-month period, with two exceptions; rent may be increased when a tenant moves voluntarily or is evicted by a court. If rent is raised after a voluntary vacancy, then it should not be increased again for 12 months.

Amount Limits

Rent increases in excess of 8% (or 21% if the rent has not been raised for **more than 24 months**) are subject to the hearing process.

Rent increases in excess of 8% may be justified by claims that costs have increased, including a portion of any increase in debt service costs. If the rent increase is not justified by cost increases the hearing officer may consider a wide variety of other economic and financial information provided by the landlord and tenant. The Landlord Cost Worksheet provides more information on this topic. It is enclosed with Hearing Notices on rent increases in excess of 8% and can also be provided on request.

Notice Requirements

The Ordinance requires, whenever rent is increased in excess of 8% that the landlords include a statement in the rent increase notice or attaches it to the rent increase notice. The statement must inform the tenant that they have the right to file a petition, the name, address and telephone number of the Rental Rights and Referrals Program, and the filing deadline. Sample rent increase notices, which comply with this requirement, are available on request.

The Ordinance also provides for civil suits by tenants when this notice requirement is not met. Section 17.23.540 provides for the recovery of the excess rent increase and damages, as determined, in the larger amount of \$500 or three times the rent increase.

New Owners

New owners of rental property may request, within 90 days of purchase that hearings on rent increases go directly to the Arbitration Hearing. The new owner is limited claiming an increase in debt service costs and must have notified the tenants that any petition would go directly to Arbitration. New owners are given no other exceptions to the law.

Rental Rights and Referrals Mediation and Arbitration Fee

A cost recovery regulatory fee on each rental unit covered by the Ordinance funds the administration and operation of the Rental Rights and Referrals Program. This fee is billed to landlords annually. The amount of the fee is reviewed by the Housing and Community Development Commission and is set by the City Council.

Landlords may claim exemptions from this fee by filing an application with the Rental Rights and Referrals Program by September 15 of each year. Exemptions are granted for owner occupied units, units whose rent is subsidized by a government agency and for other reasons. Units that are occupied by a manager or other employee are not exempt.

This fee is a valid operation and maintenance cost and may be included in those costs claimed in hearings. The Ordinance does not authorize including this fee as a surcharge or special assessment on the tenantsrent.

Further Information

For further information, a copy of the Ordinance or Regulations, or answers to questions about a specific situation, contact the Rental Rights and Referrals Program at 975-4480 or by writing or visiting the Program at 200 East Santa Clara Street, San José, CA 95113.

