

Draft Recommendations for the
City of San José Apartment Rent Ordinance

Released for public comment August 14, 2017
UPDATE - Public comment has been extended from September 15, 2017
until September 22, 2017, at 5:00 PM

Please email comments to ARO@sanjoseca.gov or send hard copy comments to the following:

Attention: Rachel VanderVeen, 200 East Santa Clara St., 12th Floor, San José, CA 95113

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Attachments

- A. Chapter 17.23 Apartment Rent Ordinance (Draft)
- B. Regulations for Chapter 17.23 Including Apartment Rent Ordinance (Draft)

Upcoming Public Meetings

- August 24, 2017 Educational Park Branch Library 6:30 – 8:30 PM
- August 31, 2017 City Hall Wing Rooms 2:00 – 4:00 PM
- September 14, 2017 Housing & Community Development Commission 5:45 PM

PURPOSE OF THIS DOCUMENT

The purpose of this document is to provide a summary of the Draft San José Apartment Rent Ordinance (ARO) for public comment as directed by the City Council on April 19, 2016. The draft Ordinance and summary were released on August 14, 2017 and are available for a 30-day public comment period. Written comments are due to City staff by **5 pm on September 15, 2017**.

BACKGROUND

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

On April 19, 2016, an Interim Apartment Rent Ordinance amending the ARO was adopted by City Council. The Housing Department was directed to return to City Council with further amendments making permanent modifications to the ARO. The direction from City council is summarized in the following table. These documents can be found on the Housing Department website at www.sanjoseca.gov/housing.

Council Meeting	Council Direction and Action
April 19, 2016	<p>Direction:</p> <ul style="list-style-type: none">• City Council directed staff to return with amendments making several permanent modifications to the ARO, including lowering the 8% allowable annual rent increase to 5%, eliminating the debt-service pass-through provision, establishing a new Capital Improvement Program, adding a limited capital improvement incentive program, developing a unique amortization process, implementing a rent registry, and developing a voluntary mediation program.• City Council directed staff to return on May 10, 2016 with an urgency ordinance that provided a temporary pause in rent increases to apartments subject to the ARO. http://www.sanjoseca.gov/DocumentCenter/View/55891 (Item 4.1)
May 10, 2016	<p>Direction:</p> <ul style="list-style-type: none">• Staff to return with an ordinance addressing Ellis Act evictions from ARO apartments, demolition of ARO units, and conversion of ARO apartments to condominiums. <p>Action:</p> <ul style="list-style-type: none">• Adopted the Interim Ordinance which reduced the annual allowable rent increase on tenants from 8% to 5%, eliminated rent increases available through the pass-through provisions (including debt-service, capital improvement, rehabilitation, and operations & maintenance) and implemented a fair return petition process.• The Interim Ordinance was approved with an effective date through January 1, 2017. http://www.sanjoseca.gov/DocumentCenter/View/56624 (Item 4.4)

August 30, 2016	<p>Action:</p> <ul style="list-style-type: none"> City Council approved amendments to the existing regulations for the Interim Rent Ordinance (Interim Regulations) providing procedures for the fair return petition process. http://www.sanjoseca.gov/DocumentCenter/View/60440 (Item 4.3)
October 18, 2016	<p>Action:</p> <ul style="list-style-type: none"> City Council adopted an Ordinance extending the termination date for the Interim Ordinance to June 30, 2017. http://www.sanjoseca.gov/DocumentCenter/View/61854 (Item 2.2)
January 31, 2017	<p>Direction:</p> <ul style="list-style-type: none"> City Council approved the City Auditor’s audit of the ARO, including policy direction to eliminate the banking provision in the future ARO and direction to implement a rent registry. http://www.sanjoseca.gov/DocumentCenter/View/65862 (Item 4.2)
April 18, 2017	<p>Direction:</p> <ul style="list-style-type: none"> Staff to return with an Ordinance to remove the ARO exemption for apartments with tenants whose rent is subsidized by any government agency. Staff prepared a policy for Council consideration to tie the annual allowed rent increase for rent controlled units to the Consumer Price Index and allowing banking, consistent with the staff recommendation at the April 19, 2016 meeting. Staff return with a work plan to evaluate whether duplexes should be added to the ARO. http://www.sanjoseca.gov/DocumentCenter/View/68081 (Item 4.3)
May 9, 2017	<p>Action:</p> <ul style="list-style-type: none"> City Council approved an ordinance amending the Interim Ordinance to extend the termination date of the Interim Ordinance until December 31, 2017 and to add a provision amending the definition of Rental Unit to eliminate the exemption for rental apartments with tenants whose rent is subsidized by a government agency. http://www.sanjoseca.gov/DocumentCenter/View/68838 (Item 4.4)

SUMMARY OF THE DRAFT APARTMENT RENT ORDINANCE

Part 1 GENERAL

This section provides a general overview of the Apartment Rent Ordinance.

Part 2 DEFINITIONS

This section provides the definitions that govern the Apartment Rent Ordinance.

Part 3 INITIAL RENT AND RENT INCREASES; PETITIONS AND HEARING PROCESS

This section determines when there is vacancy decontrol and sets limits on the annual rent increases.

Initial Rent and Vacancy Decontrol (Section 17.23.300) – The purpose of this section is to define when vacancy decontrol occurs. Vacancy decontrol allows the landlord to set the initial rental rate for a new tenancy in a Rent Stabilized Apartment.

- Vacancy decontrol occurs in two situations: 1) voluntary vacancy; and 2) for-cause termination. For example, if a tenant was given a notice based on reason(s) from the seven just causes based on tenant actions, the landlord can reset the rent.
- There are five exceptions based on landlord actions that would not allow vacancy decontrol: 1) no cause termination, 2) continuing tenancy, for when existing tenants or members of the tenant household enter into a new rental agreement, 3) tenant buyout by landlord, 4) unlawful landlord activity, and 5) other illegal evasion by landlord.

Limits on Rent Increases (Section 17.23.310) – The purpose of this section is to define the annual rent increases allowed by the ARO. Rent in a rent-stabilized apartment may be increased by the “Annual General Increase” once every twelve months, unless authorized by petition. The draft ARO outlines two options for structuring the Annual General Increase. Option A and B are defined:

- Option A limits the “Annual General Increase” to 100% of the increase in the Consumer Price Index (CPI). The CPI determination is from the April of the calendar year preceding the year with a floor of 2% and ceiling of 5%. As a result, allowable rent increases would change every year based on the fluctuation of CPI. For example, if the CPI is determined to be 3%, the landlord can increase the tenant’s rent by 3% that year. If 12 months later, the CPI increases to 8%, the landlord can only increase the tenant’s rent by the ceiling of 5% because that is the maximum annual increase allowed by the ordinance.
- Option B limits the “Annual General Increase” to be a flat rate of 5% every 12 months. In this case, a landlord can only increase the tenant’s rent at most 5% per year based on the anniversary date of the lease.

Additionally, if Option A above (CPI) is adopted by the City Council, Chapter 13 of the Regulations outlines two options for including a banking provision with the CPI annual general increase. The first option is called the “Maximum Allowable Rent” and the second option is called “Banking of Authorized Annual General Increase.” If Option B above (flat 5%) is adopted, a banking provision will not be included in the Regulations.

Limits on All Fees and Pass-Through Charges (Section 17.23.315) – The purpose of this section is to describe the charges that can be passed through to tenants.

This section eliminates pass-through of utility services charges (such as electricity, natural gas, telephone, water, wastewater, or waste management services) to tenants by “ratio utility building” or similar unmetered allocation arrangements.

Fee Limits: Limits on additional charges are defined as the following:

- The allowable fees and its defined fee allowance include: 1) excess replacement fees no greater than actual replacement costs, 2) excess bounced check fees no greater than fee charge by bank for return of check, and 3) late payment fees no more than 5% of the month rent per payment more than three days late. For example, for excess replacement fees, a landlord can charge for a replacement for a security card only equal to the \$12 actual cost of replacement.
- The charge must be listed as a separate line-item on the rental agreement and rent invoice with copy of the bill the landlord paid for. The additional charge cannot be deemed inclusive in the monthly rent but must be listed separately as a line-item on the rent invoice.
- Security Deposits may not be raised during the tenancy once established so long as any one of the original tenants for when the deposit was set remains on the lease. For example, two tenants signed a lease and the security deposit was set for \$1,000. When one of the tenants moves out and any new tenant moves in, the landlord cannot increase the security deposit so long as the other original tenant remains on the lease.

Other fees, charges, and costs that may be passed through to the tenant include:

- 1) If CPI-U is adopted, then 50% of the annual fees imposed on the landlord by the City for administration of the Apartment Rent Ordinance, and
- 2) Charges imposed by governmental agencies or by public utilities subject to regulation by the California Public Utilities Commission upon specific conditions. The following conditions must be satisfied before any other fees, charges, and costs above can be passed through to the tenant:
 - Charges apply to only tenants' usage during occupancy,
 - Charges affect specifically the tenant household apartment and not for common areas or rental apartments,
 - Charges do not exceed the charge attributable to the tenant household.

The tenant has the right to dispute the pass-through of a charge by filing a Petition for any of the following reasons: 1) genuineness of the bill or amount of charge, 2) unauthorized pass-through, 3) dispute of whether tenant benefited during billing period, and 4) error in mathematical calculations.

Exceptions to Limits on Rent Increases and Other Charges (Section 17.23.320) – The purpose of this section is to define allowable charges that the landlord may charge tenants via the petition process. The three types of landlord petitions are described in Section 17.23.350 below)

Pass-Through for Specified Capital Improvements (Section 17.23.330) – The purpose is to allow landlords to petition for a limited pass through of costs for Specified Capital Improvements listed in Appendix B of the Regulations to tenant households. Specified Capital Improvements are defined as:

- Providing new Housing Services or enhanced Housing Service functionality for tenants,
- Increasing the safety, sustainability, or seismic readiness of the rent stabilized apartment, or
- Replacing or maintaining existing Housing Services (sunsets January 1, 2023).

The landlord must petition for and receive an Administrative Decision authorizing a pass-through for any costs to be charged to tenants. For example, if the landlord decides to do a major system upgrade such as installing air conditioning in the apartment complex, up to 100% of the costs can be passed through to beneficiary tenant households over an amortization period of 10 years (Regulations 9.03.2.b).

Petition Process (Section 17.23.350) – The purpose of this section is to define the grounds by which tenants and landlords can submit a Petition, including other specific grounds that may be provided by the Regulations. A summary of the Petition and Hearing Processes can be found in Regulations 3.04.

A tenant can submit a petition on five grounds:

- 1) Improper rent increase,
- 2) Improper pass-through,
- 3) Other violations of the ARO,
- 4) Housing service reductions or housing code violations, and
- 5) Request for additional housing services.

A landlord can submit a petition on three grounds:

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

3) Request for additional housing services.

Joint (Unopposed) Petitions can be filed by a landlord and tenant on two grounds:

- 1) An additional occupant (other than the tenant's spouse or child) for a one-time payment or Security Deposit Increase in the maximum rent allowable of 5% if additional occupants are prohibited in the rental agreement, and
- 2) Second parking space for an increase in the maximum rent allowable of up to \$50 if only one parking space is reserved for the tenant in a written rental agreement.

The Regulations provide details regarding the process related to each of these petitions. Below is a summary of the process described in Chapters 6-10 of the Regulations:

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

Part 4 FEES

This section outlines the fees charged annually against each Rent Stabilized Apartment in the City and describes the late payment penalty, free credit upon transfer, and fee exemptions.

Part 5 ENFORCEMENT

This section describes the enforcement mechanisms for violations of the Apartment Rent Ordinance.

The following sections describe the rights and responsibilities of the of the landlord:

- Retaliatory Eviction (Section 17.23.510) – A landlord may not take retaliatory actions based on rights and responsibilities provided by the Apartment Rent Ordinance.
- Waivers (Section 17.23.520) – The landlord may not require the tenant to waive rights granted under the Apartment Rent Ordinance as a condition of entering into or extending a written or oral rental agreement.
- Disclosure to Purchasers of Real Property (Section 17.23.560) – Any owner of a rent stabilized apartment must disclose to a potential buyer in writing, prior to the close of escrow, the obligations subject to the Apartment Rent Ordinance and implementing regulations.
- Rights and Obligations Cumulative (Section 17.23.580) – Tenants have the right to seek the protections set forth in the Tenant Protection Ordinance. Landlords have the responsibilities to abide by City Ordinances, provide proper noticing, and comply with restrictions on rent.

The following sections describe the penalties and violations:

- Penalties (Section 17.23.500) – The court may assess a civil penalty up to \$2,500 per violation per day, or \$10,000 per violation, payable to the City. If civil action is brought forward under the ordinance, attorneys' fees may be awarded to the prevailing party.
- Excessive Rents Demanded or Received; Civil and Criminal Liability (Section 17.23.530) – Any demand or acceptance of rent by a landlord beyond the maximum Rent allowed would constitute a misdemeanor. In addition, any person who demands or accepts an amount beyond the maximum Rent allowed would be liable to compensate the tenant that same amount impermissibly charged, plus damages totaling no more than \$500 or three times the amount by which was charged (whichever is greater).
- Affirmative Defense Against Unlawful Detainer Actions (Section 17.23.540) – A landlord's non-compliance with the Apartment Rent Ordinance will constitute an affirmative defense for a Tenant of a rent stabilized apartment against any unlawful detainer action.
- Civil Action for Wrongful Eviction (Section 17.12.550) – If a landlord impermissibly evicts a tenant from a rent stabilized apartment, the landlord will be liable to that tenant for a fine up to \$10,000 and reasonable costs incurred by the tenant as a result of the eviction.
- Administrative Citations; Injunction Relief (Section 17.23.570) – The Director of Housing may issue an administrative citation to enforce the rights and responsibilities in the Apartment Rent Ordinance. The City Attorney may also seek injunctive relief for any violations.

Part 6 EVICTIONS – RENT STABILIZED UNITS

This section requires the notices of termination of tenancy documentation and notice submission to the City.

Notices of termination of tenancy – Mandatory notice to City (Section 17.23.600) – A copy of every Notice of Termination must be filed with the City within five days after service to the tenant household and the Notice must be accompanied by a “filing statement” from the landlord.

Part 7 RESERVED

This section formerly provided extensions, but as a result of the adoption of the Tenant Protection Ordinance, this part is being reserved for a future part of the Apartment Rent Ordinance.

Part 8 FAIR RETURN STANDARD

This section outlines the Fair Return standard and allows the landlord to petition for a rent adjustment if the landlord is obtaining less than a fair return. Additionally, this section sets forth the standards in the event that the other increases allowed under the Apartment Rent Ordinance

do not result in a fair return. This section of the draft Apartment Rent Ordinance is similar to the fair return process adopted by the City Council in the Interim Ordinance. The most significant change is the requirement of a landlord to engage an appraiser if data regarding rents in the base year are not available. This provision is described below:

Adjustment of Base Year Net Operating Income (Section 17.23.830) – The purpose of this section is to allow the Hearing Officer to adjust the Base Year Net Operating Income if the Hearing Officer finds that the landlord’s gross income during the Base Year was unusually low. If a claim is made, a notable change to the process is that a landlord must pay for an appraisal of Base Year rents for comparable buildings made by an appraiser selected by the City.

Part 9 RENT REGISTRY

This section requires landlords to comply with the City’s Annual Rent Registry by submitting a registration for each Rent Stabilized Apartment and providing additional information upon the City’s request (Section 17.23.900). The information collected by the City will include rental data from 2014, the Base Year as defined by the Apartment Rent Ordinance. A list of required information is included in Section 4.05 of the Regulations.

PROCESS TO DATE

Staff met with a wide range of stakeholders while developing the proposed new Apartment Rent Ordinance. With the assistance of the California Apartment Association and the Rental Rights Coalition, the Department met with Property owners and Managers of small properties, large properties, and a variety of tenants and tenant advocates on multiple occasions. The Department also hosted 24 public meetings on the proposed Ordinance.

Past Public Meetings:

• September 30, 2015	Advisory Committee – Roosevelt Community Center	6:00 – 8:30 PM
• October 7, 2015	Advisory Committee – Roosevelt Community Center	6:00 – 8:30 PM
• October 14, 2015	Advisory Committee – Roosevelt Community Center	6:30 – 8:30 PM
• October 17, 2015	Advisory Committee – San José High School	10:00 – 2:00 PM
• October 21, 2015	Advisory Committee – San José City Hall Wing Rooms	6:15 – 8:30 PM
• October 28, 2015	Advisory Committee – San José City Hall Council Chambers	6:00 – 8:30 PM
• October 31, 2015	Advisory Committee – San José City Hall Council Chambers	10:00 – 2:00 PM
• December 7, 2015	Advisory Committee – San José City Hall Council Chambers	6:00 – 9:00 PM
• January 27, 2016	Advisory Committee – San José City Hall Wing Rooms	6:00 – 9:00 PM
• February 17, 2016	Advisory Committee – San José City Hall Council Chambers	6:00 – 9:00 PM
• March 16, 2016	Advisory Committee – San José City Hall Council Chambers	6:00 – 9:00 PM
• March 21, 2016	Housing and Community Development Commission	5:45 PM
• August 11, 2016	Housing and Community Development Commission	5:45 PM
• September 8, 2016	Housing and Community Development Commission	5:45 PM
• November 7, 2016	Cypress Community Center	5:00 – 9:00 PM
• November 14, 2016	San José City Hall Wing Rooms	5:00 – 9:00 PM
• November 16, 2016	Bascom Community Center	5:00 – 9:00 PM
• December 5, 2016	Housing and Community Development Commission	5:45 PM
• March 2, 2017	Housing and Community Development Commission	5:45 PM
• April 13, 2017	Housing and Community Development Commission	5:45 PM
• June 26, 2017	San José City Hall Wing Rooms	6:30 – 8:30 PM
• July 11, 2017	Cypress Community Center	6:30 – 8:30 PM
• July 12, 2017	San José City Hall Wing Rooms	9:00 – 11:00 AM
• July 17, 2017	Seven Trees Community Center	6:30 – 8:30 PM

Chapter 17.23 APARTMENT RENT ORDINANCE

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PART 9	RENT REGISTRY

PART 1. GENERAL

17.23.010 Title.

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

17.23.020 Policy and purposes declaration.

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

17.23.030 Scope and application.

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

17.23.040 Regulations; Forms authorized.

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

17.23.050 Notice of Apartment Rent Ordinance to Tenant Households.

A. Each Landlord shall post a written notice and maintain such posting, on a form approved by the Director, of the applicability of the Apartment Rent Ordinance in a conspicuous location within each building containing one or more Rent Stabilized Units. The Landlord shall have complied with this requirement by posting Notice of the Apartment Rent Ordinance with a notice to tenants posted in accordance with subsections (1) or (2) of Civil Code Section 1962.5(a) or if posted immediately adjacent to the posting of the Residential Occupancy Permit in compliance with Section 17.20.620.

B. Each Landlord shall notify the Tenant Household of the applicability of the Apartment Rent Ordinance prior to entering an oral or written rental agreement for a Rent Stabilized Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this Section 17.23.340(B) by providing one copy of the Notice of Apartment Rent Ordinance to the Tenant upon entering an oral or written rental agreement for the Rent Stabilized Unit.

17.23.060 Limit on Electronic Payment.

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

PART 2. DEFINITIONS

17.23.100 General.

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

17.23.105 Administrative Decision.

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

17.23.110 Affordable Rental Unit.

"Affordable Rental Unit" means each Rental Unit that is owned or operated by any government agency, or any individual Rental Unit for which the Rent is limited to no more than affordable

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

17.23.112 Annual General Increase.

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

17.23.115 Base Year.

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

17.23.120 Capital Improvements.

"Capital Improvements" means building, unit or property additions or modifications that replace or enhance an existing physical feature of a Rent Stabilized Unit or of a building containing a Rent Stabilized Unit or that provides new Housing Services to the Tenants as compared to the level of services as previously provided.

17.23.121 Commission.

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

17.23.122 Consumer Price Index.

"Consumer Price Index" means the Consumer Price Index for all urban consumers in the San Francisco-Oakland all items index (1982-84 equals 100), as reported by the Bureau of Labor Statistics of the United States Department of Labor.

17.23.123 Covered Property.

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

17.23.124 Current Year.

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

17.23.125 Director.

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

17.23.126 Ellis Act Ordinance.

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

17.23.127 For-Cause Termination.

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

17.23.130 Gross Income.

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

17.23.131 Guest Room.

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

17.23.132 Guesthouse.

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

17.23.135 Hearing Officer.

"Hearing Officer" shall have the meaning provided in Section 6.06.01 of the Regulations.

17.23.136 Housing Services.

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

17.23.140 Landlord.

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

17.23.145 Multiple Dwelling.

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

17.23.146 Municipal Code.

"Municipal Code" means the San José Municipal Code.

17.23.150 Net Operating Income.

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

17.23.151 Notices.

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

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

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

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

D. "Notice of Termination" means the notice informing a Tenant Household of the termination of its tenancy provided in Section 17.23.600 and in accordance with Civil Code section 1946.1 and Code of Civil Procedure section 1162, as amended.

17.23.155 Operating Expenses.

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

17.23.160 Petition.

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

17.23.161 Petition Examiner.

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

17.23.165 Regulations.

"Regulations" means the regulations adopted pursuant to Section 17.23.040.

17.23.166 Rent.

"Rent" means the consideration, including any funds, labor, bonus, benefit, or gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental

Unit, including Housing Services, or for the assignment of a lease or rental agreement for a Rental Unit, including subletting.

17.23.167 Rent Stabilized Unit.

- A. "Rent Stabilized Unit" means a Rental Unit in any Guesthouse or in any Multiple Dwelling building for which a certificate of occupancy was issued on or prior to September 7, 1979 or that was offered or available for rent before this date.
- B. The following shall not be considered Rent Stabilized Units:
1. Rooms or accommodations in hotels, motels, or guesthouses which are legally rented to transient guests for a period of less than thirty days consistent with the Municipal Code, except those rooms or accommodations subject to Part 2.5 of Chapter 20.80;
 2. Housing accommodations in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended), fraternity house or sorority house, or in dormitories owned and operated by an institution of higher education, a high school or elementary school;
 3. Affordable Rental Units; and
 4. Rental Units in a building containing only one or two dwelling units.

17.23.168 Rental Unit.

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

17.23.170 Section.

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

17.23.171 Security Deposit

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

17.23.172 Specified Capital Improvements.

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

17.23.175 Tenant.

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

17.23.176 Tenant Household.

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

17.23.177 Tenant Protection Ordinance.

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

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

17.23.300 Initial Rent and Vacancy Decontrol.

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

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

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

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

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

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

17.23.310 Limits on Rent Increases.

A. Annual Rent Increase Limit. The Rent of any Rent Stabilized Unit may not be increased by more than the Annual General Increase unless otherwise authorized by Petition.

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

OPTION A: The monthly Rent charged for the previous twelve (12) months for the Rent Stabilized Unit multiplied by a percentage equal to one hundred percent of the increase in the Consumer Price Index measured from the April of the calendar year preceding the year in which the increase is effective to the April of the calendar year in which the increase is effective, but in no event greater than five percent (5%) nor less than two percent (2%).

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

C. Rent Increase Frequency Limit. Not more than one Rent increase, including the Annual General Increase and any increase authorized by a final Administrative Decision or Hearing Officer Decision after a Petition, may be imposed in any twelve-month period.

17.23.315 Limits on All Fees and Pass Through Charges

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

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

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

2. Excess Bounced Check Fees. No Landlord shall charge a Tenant a fee for a dishonored ("bounced") check that exceeds the fee charged by the bank for the return of the check.

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

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

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

1. There exists a dispute as to the genuineness of the bill or the amount of the charge.
2. The pass through of the charge is not authorized under this Chapter.
3. There exists a dispute as to whether the Tenant had the right to use and occupy the Rental Unit during the billing period or any portion of the billing period.
4. Mathematical errors in the relevant calculations.

E. Security Deposit

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

17.23.320 Exceptions to Limits on Rent Increases and Other Charges.

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

B. Pass Through Awards for Landlord Specified Capital Improvements Petitions. A Landlord may impose a pass through charge in addition to Rent to the extent authorized in a final Administrative Decision or Hearing Officer Decision on a Landlord Specified Capital Improvements Petition filed in accordance with Section 17.23.330. Provided however, in no event may the total monthly amount imposed for Specified Capital Improvements exceed three percent (3%) of the monthly Rent validly charged for the Rent Stabilized Unit on the date of the filing of the Petition. Charges for Specified Capital Improvements shall not be considered Rent for purposes of this Chapter and shall not increase when Rent increases, nor shall they be considered part of Rent for the purpose of calculation of the Annual General Increase. Following

a valid vacancy decontrol of Rent for a Rent Stabilized Unit in accordance with Section 17.23.300, any awarded charges for Specified Capital Improvements for that unit shall expire.

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

D. Other Fees, Charges, and Costs that May Be Passed Through to Tenants.

1. Pass Through of Annual Fees imposed under Chapter 17.23. A Landlord may pass through to a Tenant a share of annual charges imposed on the Landlord by City under Section 17.23.400 for the Tenant's Rental Unit. [OPTIONAL.To be added if Rent Increase is based on CPI.]

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

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

3. Conditions to Pass Through Charges to Tenants. No charge described in subsection 1 or 2 of Section 17.23.330.D may be passed through to any Tenant pursuant to this Section unless all of the following conditions are satisfied:

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

- c. No Landlord may require a Tenant to pay any amount of any charge that is attributable to common areas or Rental Units other than the Tenant Household's Rental Unit; and
- d. No Landlord may require a Tenant to pay more than its share of the charge attributable to that Tenant's Rental Unit that is permitted to be passed through to Tenant.

17.23.330 Petitions for Pass Through for Specified Capital Improvements.

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

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

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

C. No Pass Through for Improvements to Maintain Existing Housing Services. The following may not be passed through to the Tenant unless explicitly authorized by the Regulations: (1) the costs of a Specified Capital Improvement that replaces an existing physical feature of a Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit) with a physical feature of similar kind and quality; or (2) the costs of a Specified Capital Improvement that maintains a similar level of functionality as a prior physical feature of a Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit).

17.23.350 Petition Process.

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

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

C. Joint (Unopposed) Petitions. There is hereby established a Joint Petition process, which process and procedures shall be set forth in the Regulations. A Landlord and Tenant may file a petition to request approval of a one-time payment or Security Deposit increase pursuant to Section 17.23.320.C. Subject to the conditions in the Regulations, a Landlord and Tenant may file a petition for an increase in the maximum Rent allowable of up to 5% for an additional occupant (other than the Tenant's spouse or child) if additional occupants are prohibited in the written rental agreement or an increase in the maximum Rent allowable of up to \$50 for a second parking space if only one parking space is reserved for the tenant in a written rental agreement.

PART 4. FEES

17.23.400 Fee - Rental unit.

The costs of providing and administering the Apartment Rent Ordinance shall be reimbursed to the general fund by imposition of a fee chargeable against each Rental Unit in the City of San José subject to the provisions of the Apartment Rent Ordinance.

17.23.410 Fee - Penalty for late Payment.

A. Apartment Rent Ordinance Fee.

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

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

B. Late Payment Penalty. Whoever fails, for more than thirty days after date of notice, to pay the Apartment Rent Ordinance fee required hereunder shall, in addition to said fee, pay an

additional penalty assessment as determined by resolution of the City Council. No portion of the fee or any penalty or fee for late submissions authorized by this Section, or any portion thereof, may be passed-through to the Tenant Household.

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

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

PART 5. ENFORCEMENT

17.23.500 Penalties.

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

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

17.23.510 Retaliatory Eviction.

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

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

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

17.23.520 Waivers.

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

B. Waiver of Rights. It shall be unlawful for a Landlord to attempt or seek to waive, or to waive, in a written or oral rental agreement, the rights granted a Tenant under this chapter prior

to the execution of, or as a condition of entering into or extending, a written or oral rental agreement.

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

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

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

17.23.540 Affirmative Defense Against Unlawful Detainer Actions.

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

17.23.550 Civil Action for Wrongful Eviction.

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

17.23.560 Disclosure to Purchasers of Real Property.

A. Any Owner, as that term is defined in Part 10 of this Chapter 17.23, of a Rent Stabilized Unit shall disclose to a potential buyer in writing, prior to the close of escrow that the Rent Stabilized Unit is subject to this Chapter 17.23 and implementing regulations. Upon request by the City, such Owner or former Owner shall provide the City with a copy of such written disclosure.

B. Failure of an Owner to make the disclosure set forth in Section 17.23.850 shall in no way excuse a purchaser of a Rent Stabilized Unit from any right, responsibility, or obligation under this Chapter 17.23.

17.23.570 Administrative Citations; Injunctive Relief.

A. The Director may enforce the rights and responsibilities created by this Chapter 17.23 and the Regulations, including issuance of an administrative citation in accordance with Chapter 1.15 of the San José Municipal Code.

B. The City Attorney may seek injunctive relief to restrain or enjoin any violation of this Chapter or the Regulations.

17.23.580 Rights and Obligations Cumulative.

1. Rental in Violation of City Ordinance. If a Landlord rents a Rent Stabilized Unit; (a) in violation of the City's Short Term Rental Ordinance, Part 2.5 of Chapter 20.80 or for an unpermitted non-residential use, (b) in material violation of the City's Housing, Fire or Building Codes, Chapter 17.20, or Title 24, or (c) in violation of the implied warranty of habitability, such rental shall also be considered a violation of this Chapter and may give rise to any of the remedies or penalties identified in this Part 5.

2. Tenant Protections. Tenants shall have the right to seek the protections set forth in the Tenant Protection Ordinance in addition to any remedies available under Parts 1 through 9 of this Chapter.

3. Failure to Provide a Notice of Termination; Evasion. If a Landlord fails to comply with Section 17.23.600, requires a Tenant to enter into a new lease under another name, or otherwise seeks to evade the restrictions on Rent in this Chapter such actions shall also be considered a violation of this Chapter and may give rise to any of the remedies or penalties identified in this Part 5.

4. Additional Rights and Obligations. The rights and obligations set forth in Parts 1 through 9 of this Chapter are in addition to those set forth in any other Part or Chapter of the Municipal Code.

PART 6. EVICTIONS – RENT STABILIZED UNITS

17.23.600 Notices of termination of tenancy - Mandatory notice to city.

A. Copy of Notice of Termination to City. A copy of each and every Notice of Termination issued to a Tenant Household of a Rent Stabilized Unit shall be filed with the Director within five (5) days after the service thereof on the Tenant Household.

B. Supplement to Notice of Termination of Tenancy Filing. The copy of the Notice of Termination provided to the Director shall be accompanied by a "filing statement" from the

Landlord or property manager, made under penalty of perjury, setting forth all of the following information in a form approved by the Director:

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

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

D. Notice of Re-Rental to the City. Where a Tenant Household has vacated a Rent Stabilized Unit after receipt of such Notice of Termination, such Landlord shall be required to provide the Director with the following information in a form approved by the Director:

1. The amount of Rent that the subsequent Tenant Household is currently paying each month; and
2. The physical address of the Rent Stabilized Unit; and
3. The name, mailing address, email address, and phone number of each adult member of the subsequent Tenant Household if available to the Landlord; and
4. Copies of the written rental agreement (if any) between the Landlord and Tenant; and
5. Copies of all Rent receipts held by the Landlord for the subsequent Tenant Household and that Tenant Household's predecessor(s); and
6. Such other information as may be reasonably requested by the City.

E. Use of Personal Information. Personal information about Tenants and Tenant Households received by the City pursuant to this Section shall be used for investigation and prosecution of violations of the Municipal Code or other applicable laws. Unless the City receives permission from such individuals, city staff shall not otherwise provide such information to third parties unless required to do so by law or court order.

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

17.23.605 Cumulative rights and obligations.

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

PART 7. RESERVED

PART 8. FAIR RETURN STANDARD

17.23.800 Purpose.

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

7.23.810 Fair Return Standard

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

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

C. Calculation of CPI. The Consumer Price Index ("CPI") for the Base Year shall be 251.985, which equals the annual average for 2014 reported by the Bureau of Labor Statistics for the CPI index for all urban consumers for all items for the San Francisco-Oakland-San Jose area. The CPI for the Current Year shall be the annual average for the Current Year reported by the Bureau of Labor Statistics for the CPI index for all urban consumers for all items for the San Francisco-Oakland-San Jose area.

17.23.820 Calculations of Gross Income and Operating Expenses

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

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

B. Adjustments of Gross Income.

1. Vacancy and Unpaid Rent. Rents shall be adjusted for uncollected rents due to vacancy and unpaid Rent to the extent such are reasonable and beyond the control of the Landlord. Adjustments pursuant to this section are subject to the limitation that the ratio of uncollected Rents due to vacancies and unpaid Rent in the Current Year shall not exceed the ratio in the Base Year, unless the Landlord can demonstrate that the higher ratio is reasonable, is not the outcome of asking Rents exceeding market rents, and will likely be reoccurring.
2. Separately Charged Fees. Gross Income shall be adjusted to include other fees and charges not included in Rent that are paid to the Landlord or Landlord's designee by Tenants. If the Landlord collects any fees or charges that are not allowed under the Apartment Rent Ordinance, this fact may be considered in the determination on the Petition. In no event shall the collection of unauthorized fees or charges in the Base Year or Current Year be applied so as to result in a Rent increase to the Tenant.
3. Owner Occupied Rental Units or Rental Units Otherwise Not Rented at Market Levels. If a Rent Stabilized Unit is not rented in an arm's length transaction during the Base Year or Current Year or a portion thereof, the potential market rental income for such Rent Stabilized Units shall be included in calculating adjustments to Gross Income, which income shall be estimated based on the Rents of comparable Rental Units on the Covered Property, or if there are no comparable Rental Units on the Covered Property, the current market rents of comparable Rental Units in the immediate area.
4. Increases in Rent Based on Vacancy Decontrol. The Rent of Rent Stabilized Units that received a Rent increase following a valid vacancy decontrol pursuant to Civil Code section 1954.53 at any time from the first date of the Petition's Current Year through the date of the last hearing on the Petition, shall be computed at the Rent Stabilized Unit's new Rent after vacancy, for all twelve months of the Petition's Current Year. In addition, if the Rent Stabilized Unit is eligible for an Annual General Increase during any month of the Current Year, the general adjustment shall be included for such months.

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

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

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

1. Annual fees assessed under Chapter 17.23 to the extent that they are not passed through to Tenants;
2. Business license fees;
3. Real property taxes;
4. Utility costs paid by the Landlord to the extent that they are not passed through to Tenants;
5. Insurance;
6. Normal and reasonable repair and maintenance expenses for one or more Rental Units and the Covered Property. Repair and maintenance expenses shall include, but not be limited to, building maintenance including carpentry, painting, plumbing and electrical work, supplies, equipment, refuse removal, and security services or systems, cleaning, fumigation, landscaping, and repair or replacement of furnished appliances, drapes, and carpets;
7. Reasonable management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting, other managerial expense. Management expenses are presumed to be six percent (6%) of Gross Income, unless established otherwise. Management expenses in excess of eight percent (8%) of Gross Income are presumed to be unreasonable and shall not be allowed unless it is established that such expenses do not exceed those ordinarily charged by commercial management firms for similar residential properties;
8. Attorneys' fees and costs that are:

a. Incurred in connection with successful good faith attempts to recover Rents owed or with successful good faith unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from Tenants;

b. Legal expenses that are necessarily incurred in dealings with respect to the normal operation of the Rent Stabilized Units or Covered Property, to the extent such expenses are not recovered from adverse or other parties;

Reasonable and necessary costs incurred in obtaining a Rent increase pursuant to this Chapter, including administrative or judicial proceedings in connection with this Chapter, except where the pass-through of such expenses would constitute a violation of public policy or would contravene the exclusion in Section 17.23.820.D.5. Any attorneys' fees and costs included in Operating Expenses pursuant to this Section shall be amortized over a period of five (5) years, unless it is demonstrated that an alternate amortization period would be more reasonable and more consistent with the purposes of this Chapter.

9. Replacement of facilities, materials or equipment not included in Section 17.23.820.C.6 necessary to maintain the same level of services as previously provided, to the extent that they are not passed through to Tenants and subject to the condition that said expenses shall be amortized in accordance with the standards for Operating Expense amortization in the Regulations.

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

1. Avoidable and unnecessary expenses incurred during or since the Base Year including expenses for additional maintenance and repair work which would not have been necessary if the maintenance had not been unreasonably deferred by the Owner or a prior Owner;

2. Debt service, including mortgage interest and principal payments and other expenses associated with obtaining debt services, including but not limited to appraisal and title insurance costs;

3. Fees, other than fees expressly authorized by Section 17.23.820.C;

4. Penalties, fees or interest imposed for violation of this Chapter or any other law;

5. Legal expenses excluded as set forth in this Chapter or the Regulations;

6. Contributions to lobbying efforts or organizations which lobby on behalf of apartment owners on local, state or federal legislative issues;

7. Depreciation;

8. Any expenses for which the Landlord has been or was eligible for reimbursement by any rebate or discount, security deposit, insurance, judgment for damages, settlement or any other method or device;

9. Any expense incurred in conjunction with the purchase, sale, lease (but not including individual rental agreements with Tenants) financing or re-financing of the building that contains the Rent Stabilized Units, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.; and

10. Any other expense that does not benefit the Covered Property, including, but not limited to, the cost of or forming a corporation, partnership or other entity or buying out a stockholder or partner of the Landlord.

E. Adjustments to Operating Expenses.

1. Interest Allowance for Amortized Expenses. Allowances for amortized Operating Expenses shall include an interest allowance as provided in the Regulations.

2. Adjustment of Unusually Low or High Expenses. A claimed expense(s) for a particular type of Operating Expense shall be adjusted if the claimed expense(s) is:

- a. Not representative of the annual recurring level of the expense; or
- b. In the case of Base Year expenses, not a reasonable representation of average expenditures for that item in the years preceding and following the Base Year; or
- c. In the case of Current Year expenses, is not a reasonable estimate of future recurring annual expenditures for that item,

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

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

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

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

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

17.23.830 Adjustment of Base Year Net Operating Income

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

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

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

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

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

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

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

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

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

- a. The Gross Income during the Base Year was unusually low because some Tenants had unusually low Rents for the quality, location, age, amenities and condition of the housing as compared to the Rent for comparable units without housing violations in the immediate area in which the Rent Stabilized Unit is located. In the event that a claim is made pursuant to this section, the Landlord shall pay for an appraisal of Base Year rents for comparable buildings made by an appraiser selected by the City. The appraisal, which shall be presented as evidence, shall be conducted in a manner consistent with the standards in the Regulations.
- b. The Gross Income during the Base Year was significantly lower than normal because of destruction of all or part of the premises and/or temporary eviction for construction or repairs;
- c. There was a special relationship between the Landlord and Tenant (such as a family relationship) resulting in abnormally low rent charges;
- d. The Rents had not been increased for five years preceding the Base Year;
- e. The Tenant lawfully assumed maintenance responsibilities in exchange for low Rent increases or no Rent increases; or
- f. Other special circumstances which establish that the Rent was not set as the result of an arms-length transaction.

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

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

Section 17.23.850 Allocation of Rent Increases

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

Section 17.23.860 Authority to Insure a Fair Return

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

17.23.870 Landlords to Retain 2014 Records.

Landlords are required to keep all financial records for 2014 which may be necessary for making a Net Operating Income determination. Failure to retain such records of Base Year Operating Expenses may result in the loss of the ability to demonstrate the need for a fair return Rent increase after September 1, 2016.

PART 9. RENT REGISTRY

17.23.900 Rent Registry.

- A. Rent Registration. The Landlord shall complete and submit to the Director a registration for each Rent Stabilized Unit on a City approved form, annually unless some other interval is specified by the City in the Regulations.
- B. Copy of Registration to Tenant. If requested by the City, each Landlord shall provide to an adult member of the Tenant Household of a Rent Stabilized Unit a true and correct copy of the completed registration form that pertains to their Rent Stabilized Unit within ten (10) days of submission to the Director. The Landlord may redact any information that does not pertain to that Rent Stabilized Unit except the name and address of the Landlord.
- C. Regulations. The Regulations adopted by the City Manager for the implementation and administration of this Chapter 17.23 may address the contents and submission of registrations, including deadline for submissions by Landlords.
- D. Implementation of an Alternate Registry Procedure. Notwithstanding Section 17.23.900(A), the City Council by resolution may at any time after the second annual registration cycle is complete change to another interval for, or vacancy-based, registration.
- E. Landlord Tenant Collusion. It shall be a violation of this Chapter to report an amount of Rent for a Rent Stabilized Unit to the Director other than the actual amount paid by the Tenant Household for the use and occupancy of the Rent Stabilized Unit.

17.23.910 Registration Processing Fee and Procedures

- A. Costs Reimbursed for Registration. The costs of obtaining and processing the registration required this Part may be reimbursed to the general fund by imposition of a separate fee chargeable against each Rent Stabilized Unit in the City of San José.
- B. The procedures for Registration shall be established in the Regulations and the City Council shall set any registration fee by resolution.

C. The City Manager shall adopt a schedule of fees to recover the costs incurred by the City for late submissions of either the registration submission required under this Part or a registration fee imposed by this Part, or both. The late fees authorized by this Section 17.23.910 are non-exclusive remedies and in no way limit or otherwise prohibit from other actions to ensure compliance with this Chapter 17.23, including but not limited to those actions authorized in Part 5 of Chapter 17.23

DRAFT

CITY OF SAN JOSÉ, CALIFORNIA

REGULATIONS FOR
CHAPTER 17.23 INCLUDING APARTMENT RENT ORDINANCE

Draft for Public Review – Release Date: August 14, 2017

DRAFT

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Chapter 1

TITLE, REPLACEMENT OF PRIOR REGULATIONS

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

Chapter 2

DEFINITIONS

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

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

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

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

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

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

2.01.6 "Day" means a calendar day.

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

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

2.01.9 "Hearing Officer" shall mean a person, under contract with the City who conducts administrative hearings on Petitions submitted by Landlords or Tenants pursuant to the provisions of SJMC Chapter 17.23. Any action or determination attributed to the Hearing Officer hereunder that is taken prior to an appeal of the Administrative Decision shall mean the Petition Examiner.

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

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

2.01.12 "Mail" shall mean to deposit in the U.S. Mail with first class postage prepaid, including but not limited to, deposit in a U.S. mail postal box. Program staff may also "mail" documents and notices by utilizing certified or registered mail or with commercial package or courier services, in which case an item is mailed when it is deposited with or in the drop box of the service. If the Parties to a petition have consented to notice by email and provided email addresses, notice may be given by email with such notice deemed complete at the time of the email is sent by electronic transmission.

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

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

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

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

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

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

2.01.19 "SJMC" shall mean San José Municipal Code.

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

Chapter 3

GENERAL

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

3.02. Amendment of Rental Agreement to Remove Housing Services. In accordance with Chapter 7, a Tenant may submit a Petition regarding Housing Service Reductions. During a

Hearing on such a Petition, a Hearing Officer shall have the authority to determine whether the Housing Service Reduction impacts an essential or material term or condition of the rental agreement in a manner that constitutes a constructive eviction. *No amendment of a rental agreement to remove Housing Services shall be effective unless the Tenant has received a notice of Tenant Rights.*

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

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

Chapter 4

REGISTRATION AND FEE

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

4.02. Annual Registration and Fee.

4.02.1 Mailing of Registration Forms. The Director shall mail an annual registration form and fee statement to each Landlord of a Rent Stabilized Unit in the City using the City's Code Enforcement database, currently referred to as AMANDA, or any successor database maintained by the City. The failure of a Landlord to receive the registration form shall not excuse the Landlord's late filing of the registration form. (SJMC Section 17.23.910)

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

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

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

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

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

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

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

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

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

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

1. The address of the Rent Stabilized Unit; and
2. The name and address of each person or entity that is the Landlord, or if more than one, each Landlord of the Rent Stabilized Unit; and
3. The occupancy status of the Rent Stabilized Unit and, if occupied, the commencement date of the current tenancy; and
4. The Rent charged for the use and occupancy of the Rent Stabilized Unit; and
5. The rent charged for the use and occupancy of the Rent Stabilized Unit in the Base Year; and
6. The signature of the Landlord of the Rent Stabilized Unit affirming under penalty of perjury that the information provided in the annual registration is true and correct; and
7. Such other information reasonably requested by the City.

Chapter 5

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

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

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

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

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

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

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

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

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

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

c. A Landlord and Tenant may file a petition for an increase in the maximum Rent allowable of up to or an increase in the maximum Rent allowable of up to \$50

for a second parking space, where only one space was provided under the original rental agreement.

5.03. Petition Process; All Petitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 6

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

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

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

6.03. Revisions to Administrative Decision. Each Party will have ten (10) days after the Administrative Decision is mailed to comment on the Administrative Decision. The Petition Examiner may, in his or her sole discretion, revise or amend the Administrative Decision to correct non-substantive errors (such as typographical errors, mathematical errors, etc.) or to address substantive omissions (such as a failure to address a claim raised in a Petition or Response), after reviewing any comments received from the Parties on the Administrative Decision. The Program Staff shall provide a copy of any revised Administrative Decision to all Parties no more than seven (7) days after the end of the comment period, or notify all Parties that the Administrative Decision will not be revised.

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

Chapter 7

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

7.01. Applicability. The procedures set forth in this Chapter 7 apply to Tenant Petitions regarding Housing Service Reductions or Housing Code violations that consist of a breach of the warranty of habitability.

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

7.03. Basic Service Level.

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

- a. Civil Code Sections 1941.1 and 1941.2 and other applicable codes and statutes;
- b. The Landlord's implied warranty of habitability;
- c. Express or implied agreement between Landlord and Tenant;
- d. The level of service consistent with subsections (a), (b), and (c) above and implied by:
 - i. The nature and quality of original construction of improvements, fixtures, and equipment;
 - ii. The age of the improvements, fixtures, and equipment;
 - iii. The condition of the improvements, fixtures, and equipment at the beginning of the applicable term of tenancy;
 - iv. The Landlord's policies of operation and maintenance, repair, and replacement communicated to the tenant at the beginning of the applicable term of tenancy.

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

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

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

7.04. Voluntary Mediation Process.

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

7.04.2 For purposes of this Section, "Mediation" means a meeting in which a Landlord and Tenant have the opportunity to communicate with a Mediator and each other in a face-to-face setting at a neutral location in order to resolve a rental housing dispute under ground rules designed to protect the confidentiality and neutrality of the communications.

7.04.3 "Mediator" means a person who is certified to have completed at least forty hours of basic mediation training, with subsequent advanced training, and who has also participated as a Mediator or co-Mediator in at least ten mediations conducted under the auspices of a recognized community or commercial mediation program, and who has agreed (in a form acceptable to the Director) to a statement of mediation ethics and principles, including an

acknowledgment of the duty to disclose any conflicts of interest in any specific case A Mediator shall not own a real estate interest in rental property consisting of three or more units; and may not be an employee or an officer of groups or organizations which have or are viewed by significant numbers of tenants or landlords as having taken advocacy positions in landlord/tenant matters..

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

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

7.05. Hearing Authorized. If voluntary Mediation does not result in a resolution of the issues raised in the Petition, or if the Parties opt not to participate in voluntary Mediation, then the Petition review process shall commence with a Hearing before a Hearing Officer in accordance with the procedures established below.

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

7.06.1 The person alleging the service reduction shall prove:

- a. The Basic Service Level for the particular Housing Service for the particular Rental Unit; and
- b. The actual service level for the particular Housing Service for the particular Rental Unit; and
- c. That the actual service level is, or was, materially lower than the Basic Service Level; and
- d. That the Housing Service Reduction occurred within the twelve (12) month period immediately preceding the date of filing the petition commencing the proceeding in which the issue is being heard.

7.06.2 The burden of proof shall be met by using evidence only which has a tendency in reason to prove or disprove a disputed fact of consequence in determining the Basic

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

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

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

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

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

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

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

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

7.10. Findings. In making any determination that an alleged Housing Service Reduction exists, or has a particular monetary value, or that a Housing Code violation exists or not, or has a particular monetary value, any Decision shall make and include a specific finding of the facts upon which the determination is based.

7.11. Hearing Procedures.

7.11.1 Notice and Timing of Hearing. Within thirty (30) days of a decision by one or more Parties to opt not to participate in voluntary Mediation or completion of voluntary

Mediation without resolution, the Program Staff shall provide notice to all Parties of the date and time of the Hearing. The date of the Hearing shall be scheduled for twenty (20) to thirty (30) days after completion of voluntary Mediation or the decision to opt not to participate in voluntary Mediation. Hearings shall be scheduled after 6:00 p.m. on weekdays, or at such other time as the Program Staff determines is feasible for Hearing Officers and as needed to allow Parties to participate.

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

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

7.11.4 Rescheduling or Alternate Scheduling of the Hearing. Requests for rescheduling of the Hearing will be considered if they are for reasons beyond the control of the requester and are received by Program Staff at least seven (7) days before the Hearing date. Additionally, requests for rescheduling based on a Party's medical emergency or similar significant conflicts may be allowed by Program Staff if they were clearly unforeseen upon documentation of the unforeseen event and the prompt notification of Program Staff. Program Staff shall reschedule the Hearing with the originally assigned Hearing Officer unless that Hearing Officer is unavailable.

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

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

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

7.12.3 Ex Parte Communications. There shall be no oral communication regarding the subject matter of the Petition outside the Hearing between the Hearing Officer and

any party or witness (e.g. urgent scheduling issues or other non-substantive topics may be discussed *ex parte*). All discussion during the Hearing shall be recorded. Any written communication between or among the Hearing Officer and a Party after the Hearing has commenced shall be provided to all Parties, or if the Party has a proxy, to the proxy.

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

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

a. Submissions after Time Deadlines. If a submission is proffered after the deadline in Section 8.06.02, the Hearing Officer may decline to accept the submission into the record unless all parties agree that the late submission is not prejudicial.

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

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

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

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

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

a. A copy of the Petition, Response, and any other documents submitted to support the petition;

b. Any written submissions by the parties,

- the Hearing;
- c. All exhibits, papers, and documents offered either before or during the Hearing;
 - d. A list of participants present at the Hearing;
 - e. A summary of all testimony upon which the decision is based;
 - f. A statement of all materials officially noticed;
 - g. The appeal(s) of the Administrative Decision.
 - h. The Hearing Officer's Decision.
 - i. All findings of fact and conclusions of law;
 - j. Any Administrative Decision provided to the Parties;
 - k. All recommended or final decisions, orders, or rulings; and
 - l. A recording of the Hearing in a format determined by the Director.

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

7.13. Decision.

7.13.1 Time for Issuance. The Hearing Officer shall issue a written Decision to all Parties within thirty (30) days after the Hearing based on the arguments and supporting documentation available to the Hearing Officer. Prior to the issuance of the final Decision, the Hearing Officer may, at his or her discretion, prepare a tentative Decision and request the Program Staff to comment regarding clerical or mathematical errors and to circulate a tentative Decision to the Parties for comment regarding clerical or mathematical errors. All such comments shall be provided to the Hearing Officer and the other Parties in writing by the commenter within ten (10) days of receipt of the tentative Decision.

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

- a. The amount of change to the Rent, if any, for each unit.
- b. In the case of a downward adjustment in the Rent, for each unit entitled to an adjustment; (a) an itemization of each reduction in Housing Services on which the reduction is based, the amount of reduction attributable to that Housing Service, and the duration of the adjustment; and (b) an itemization of each code violation on which the reduction is based, the amount of reduction attributable to that violation, and the duration of the adjustment.

- c. Any conditions which are placed on the award including conditions and limitations imposed for violation of SJMC Chapter 17.23;
- d. The date on which any adjustment to the rent is effective for each unit.
- e. An explanation of the basis for the Decision with citations to the Ordinance.
- f. The cover page of the decision will provide that the date the decision is issued is the date of mailing.

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

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

Chapter 8

LANDLORD FAIR RETURN PETITIONS; HEARINGS AUTHORIZED

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

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

8.02.1 Petition Filing Requirement. A Landlord seeking a rent increase in excess of the amount allowed under SJMC Section 17.23.310 on fair return grounds must file a fair return Petition on a City petition form with all required supporting documentation. Documentation must be marked on each page with the specific petition form item it is intended to support.

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

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

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

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

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

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

a. Appraisal Requirement. If the Landlord Petition claims that the Base Year Gross Income is unusually low because some Tenants had unusually low Rents for the quality, location, age, amenities and condition of the Rental Units as compared to Rents for comparable units, the Landlord shall be required to pay the costs of an appraisal determining the Base Year rents for comparable buildings at the time of, and as a condition to, filing a Petition. The City shall select the appraiser to prepare such appraisal and shall provide the appraiser with instructions on the scope of the appraisal which shall include Base Year rents for at least three comparable buildings containing Rent Stabilized Units located in the same neighborhood as the Covered Property for which the Petition has been submitted. The appraisal shall be prepared by an Appraisal Institute Certified Appraiser with experience appraising rental property in the City. The appraisal will fully explain the appraiser's determination of comparability and any adjustments made by the appraiser between the property that is the subject of the Petition and the comparable properties. (SJMC Section 17.23.830)

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

8.03. Pre-submittal Meeting. The Director may, at his or her discretion, authorize Program Staff to hold an informational meeting with a Petitioner to discuss supporting evidence

for a fair return Petition (as described in Section 8.02.2 of these Regulations), upon submission of a fair return Petition and after Initial Notice to the Parties is provided in accordance with Section 5.03.1.a of these Regulations. No representation by Program Staff at such a meeting shall be binding on a Hearing Officer.

8.04. Fair Return Hearings.

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

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

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

8.04.4 Petition withdrawals must be made in writing and the reason for withdrawal provided. Program Staff will notify Tenants of the withdrawal of a Petition. A new Petition for a property that was the subject of a withdrawn Petition shall be heard by the previously assigned Hearing Officer, unless Program Staff determines that is not feasible.

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

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

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

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

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

8.05.5 a list of all unresolved City code violation complaints,

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

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

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

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

8.05.10 a summary of the petition and evidence submitted.

8.06. Conduct of Hearing.

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

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

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

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

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

a. Submissions after Time Deadlines. If a submission is proffered after the deadline in Section 6.03.02, the Hearing Officer may decline to accept the submission into the record unless all parties agree that the late submission is not prejudicial.

b. Length of Hearing. A Hearing schedule shall be established by the Hearing Officer providing for not more than ten (10) hours of Hearing testimony. An extension of this time period may be granted by the Hearing Officer for just cause as determined by the

Hearing Officer. Just cause may include but is not limited to Hearing a fair return Petition where the Base Year records are unavailable.

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

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

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

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

- a. A copy of the Petition and documents submitted to support the petition;
- b. Any written submissions by the parties,
- c. All exhibits, papers, and documents offered either before or during the Hearing;
- d. A list of participants present at the Hearing;
- e. A summary of all testimony upon which the decision is based;
- f. A statement of all materials officially noticed;
- g. The appeal(s) of the Administrative Decision.
- h. The Hearing Officer's Decision.
- i. All findings of fact and conclusions of law;
- j. Any Administrative Decision provided to the Parties;
- k. All recommended or final decisions, orders, or rulings; and
- l. A recording of the Hearing in a format determined by the Director.

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

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

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

8.07.2 Reasonable Maintenance and Repair Expenses. Expenses for maintenance and repair are reasonable and normal where they are consistent within ten percent (10%) [***To be updated***] from year to year. The Hearing Officer may also evaluate reasonableness by considering whether such expenses are in keeping with expenses for buildings of similar configuration and age.

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

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

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

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

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

8.07.6 Calculation of Base Year CPI. The Consumer Price Index ("CPI") for the Base Year shall be 251.985. (Section 17.23.810.D.)

8.07.7 Calculation of Current Year CPI.

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

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

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

- a. a calculation of the allowable rent adjustment pursuant to the fair return standard,
- b. a breakdown of the base year and current year income and expense by category
- c. a computation of the percentage adjustment of the base year net operating income showing the steps underlying the calculation
- d. The amount of change to the Rent, if any, for each unit;
- e. Any conditions which are placed on the award including conditions and limitations imposed for violation of SJMC Chapter 17.23;
- f. The date on which any adjustment to the rent is effective for each unit;
- g. An explanation of the basis for the Decision with citations to the Ordinance, which must include:
 - i. A calculation of the amount of change to the Rent pursuant to the fair return standard;
 - ii. An itemization of Base Year and Current Year income and expenses by category;

iii. A calculation of the percentage adjustment of the Base Year net operating income (including the steps underlying the calculation); and

h. The cover page of the decision will provide that the date the decision is issued is the date of mailing.

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

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

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

Chapter 9

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

9.01. Applicability.

9.01.1 Expedited Petition Process Authorized. The procedures set forth in this Chapter 9 create an expedited review of Specified Capital Improvement Petitions, by which Landlords may obtain approval for a Specified Capital Improvement pass through. This Chapter does not preclude a Landlord from submitting a fair return Petition and including Specified Capital Improvements within the fair return Petition, although any pass through awarded shall also be considered in determination of a fair return. Tenants are not entitled to submit a Response to a Specified Capital Improvement Petition (as noted in Section 5.03.4 of these Regulations) prior to issuance of an Administrative Decision; Tenants may appeal a Petition Examiner's Administrative Decision as described in Section 9.08.

9.01.2 Properties Ineligible for Any Specified Capital Improvement Pass Through. No cost of a Specified Capital Improvement may be passed through to a Tenant of a Rental Unit if that Rental Unit that is in violation of the implied warranty of habitability, including the interpretation of the implied warranty of habitability codified in California Civil

Code Section 1941.1, unless the Landlord can prove that such conditions were caused by the Tenant occupying the Rental Unit at the time of the Petition.

9.02. Petitions and Notice.

9.02.1 Petition Filing Required. A Landlord seeking to pass through all or a portion of costs for a Specified Capital Improvement may file a Specified Capital Improvement Petition on a City petition form with all required supporting documentation. Documentation must be marked on each page with the specific petition form item it is intended to support. The Landlord must provide the following information and supporting documentation as identified below:

- a. The type or form of Specified Capital Improvement(s) for which a pass through is requested, identifying the applicable amortization period from Appendix B to these Regulations;
- b. Whether a similar Housing Service was previously provided to one or more Tenants to which the Landlord proposes to pass through costs of the Specified Capital Improvement, and if so, a description of the existing Housing Service that was improved or increased by the Specified Capital Improvement;
- c. The total cost of the Specified Capital Improvement;
- d. The number of Rent Stabilized Units, the occupancy status of each Rent Stabilized Unit, and the Rent charged for each Rent Stabilized Unit that benefits from the Specified Capital Improvement;
- e. The proposed pro rata, amortized cost of the Specified Capital Improvement to be passed through to each occupied Rent Stabilized Unit.

9.03. Standards for Specified Capital Improvements Costs Pass Through.

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

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

- a. Sustainability, Safety, and Seismic Improvements. Up to one hundred percent (100%) of the costs of Specified Capital Improvements that materially improve sustainability, safety, or seismic readiness . Specified Capital Improvements that improve

sustainability, safety, or seismic readiness, are presumed to improve Housing Services and Housing Services functionality.

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

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

9.03.3

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

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

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

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

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

b. Whether the Specified Capital Improvement is an improvement providing new or improved Housing Services intended to increase sustainability, safety or seismic readiness under Section 9.03.2(a); provides a wholly new Housing Service, or to what extent (percentage) the Specified Capital Improvement measurably improves upon or increases the functionality or features of an existing Housing Service under Section 9.03.2(b); or replaces major improvements so as to maintain existing Housing Services under Section 9.03.2(c) ;

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

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

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

9.06. Petition Examiner Administrative Decision; Notice.

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

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

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

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

9.07. Appeals.

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

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

9.08. Hearing Procedures.

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

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

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

9.08.4 Rescheduling or Alternate Scheduling of the Hearing. Requests for rescheduling of the Hearing will be considered if they are for reasons beyond the control of the requester and are received by Program Staff at least seven (7) days before the Hearing date. Additionally, requests for rescheduling based on a Party's medical emergency or similar significant conflicts may be allowed by Program Staff if they were clearly unforeseen upon documentation of the unforeseen event and the prompt notification of Program Staff. Program Staff shall reschedule the Hearing with the originally assigned Hearing Officer unless that Hearing Officer is unavailable.

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

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

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

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

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

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

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

a. Submissions after Time Deadlines. If a submission is proffered after the deadline in Section 8.06.02, the Hearing Officer may decline to accept the submission into the record unless all parties agree that the late submission is not prejudicial.

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

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

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

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

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

- a. A copy of the Petition, Response, and any other documents submitted to support the petition;
- b. Any written submissions by the parties,
- c. All exhibits, papers, and documents offered either before or during the Hearing;
- d. A list of participants present at the Hearing;
- e. A summary of all testimony upon which the decision is based;
- f. A statement of all materials officially noticed;
- g. The appeal(s) of the Administrative Decision.
- h. The Hearing Officer's Decision.
- i. All findings of fact and conclusions of law;
- j. Any Administrative Decision provided to the Parties;
- k. All recommended or final decisions, orders, or rulings; and
- l. A recording of the Hearing in a format determined by the Director.

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

9.10. Decision.

9.10.1 Time for Issuance. The Hearing Officer shall issue a written Decision to all Parties within thirty (30) days after the Hearing based on the arguments and supporting documentation available to the Hearing Officer. Prior to the issuance of the final Decision, the Hearing Officer may, at his or her discretion, prepare a tentative Decision and request the Program Staff to comment regarding clerical or mathematical errors and to circulate a tentative Decision to the Parties for comment regarding clerical or mathematical errors. All such comments shall be provided to the Hearing Officer and the other Parties in writing by the commenter within ten (10) days of receipt of the tentative Decision.

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

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

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

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

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

Chapter 10

JOINT REQUESTS FOR ADDITIONAL HOUSING SERVICES

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

10.01.1 New or Additional Housing Services. These services may include a pet, where pets where prohibited or limited under the rental agreement, or other privileges or services that were expressly excluded or prohibited by the Tenant's written rental agreement, are not additional occupants or additional parking and are not a component of the Basic Service Level.

10.02 Joint Petitions for a Rent Increase Due to Additional Occupants. A Landlord and Tenant may file a petition for an increase in the maximum Rent allowable of up to 5% for an additional occupant (other than the Tenant's spouse or child).

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

Chapter 11

HEARING OFFICERS

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

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

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

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

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

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

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

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

Chapter 12

ENFORCEMENT AND IMPLEMENTATION

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

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

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

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

Chapter 13 (OPTION A)

MAXIMUM ALLOWABLE RENT

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

13.02. Annual Rent Increases to Receive Maximum Allowable Rent. A Landlord may increase the Rent for any Rent Stabilized Unit to the maximum allowable rent at any time Rent may be increased pursuant to these Regulations without regard to the actual percent increase above the Rent charged for the previous twelve (12) months for the Rent Stabilized Unit that would be charged to the Tenant.

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

Chapter 13 (OPTION B)

BANKING OF AUTHORIZED ANNUAL GENERAL INCREASE

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

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

potential future use. Failure to provide notice of banking to a Tenant will invalidate the banking of a rent increase.

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

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

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

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

13.04. Maximum Carryover Limit for Banked Increases.

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

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

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

APPENDIX A

CAPITAL IMPROVEMENT AMORTIZATION PERIOD IN YEARS

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

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

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APPENDIX B

SPECIFIED CAPITAL IMPROVEMENTS
AMORTIZATION PERIOD IN YEARS

Category or Type of Specified Capital Improvement	Amortization Period (Years)	Section Reference (§9.03.2)
ADA Improvements	10	a
Air Conditioning	10	b
Conservation (Water, Solar, submeter)	10	a
Fire Alarm System	10	a
Fire Escape	10	a
Fire Sprinklers / Fire Suppression	10	a
Heating	10	c
Insulation	10	a, b, or c
Plumbing	10	c
Pumps	10	c
Security System	10	a or b
Seismic Retrofits, including foundation repairs	10	a
Windows	10	a, b, or c
Stairwell / Balcony Replacement	10	c
Roofing	10	c