

CITY OF SAN JOSE, CALIFORNIA

MOBILEHOME RENT PROGRAM

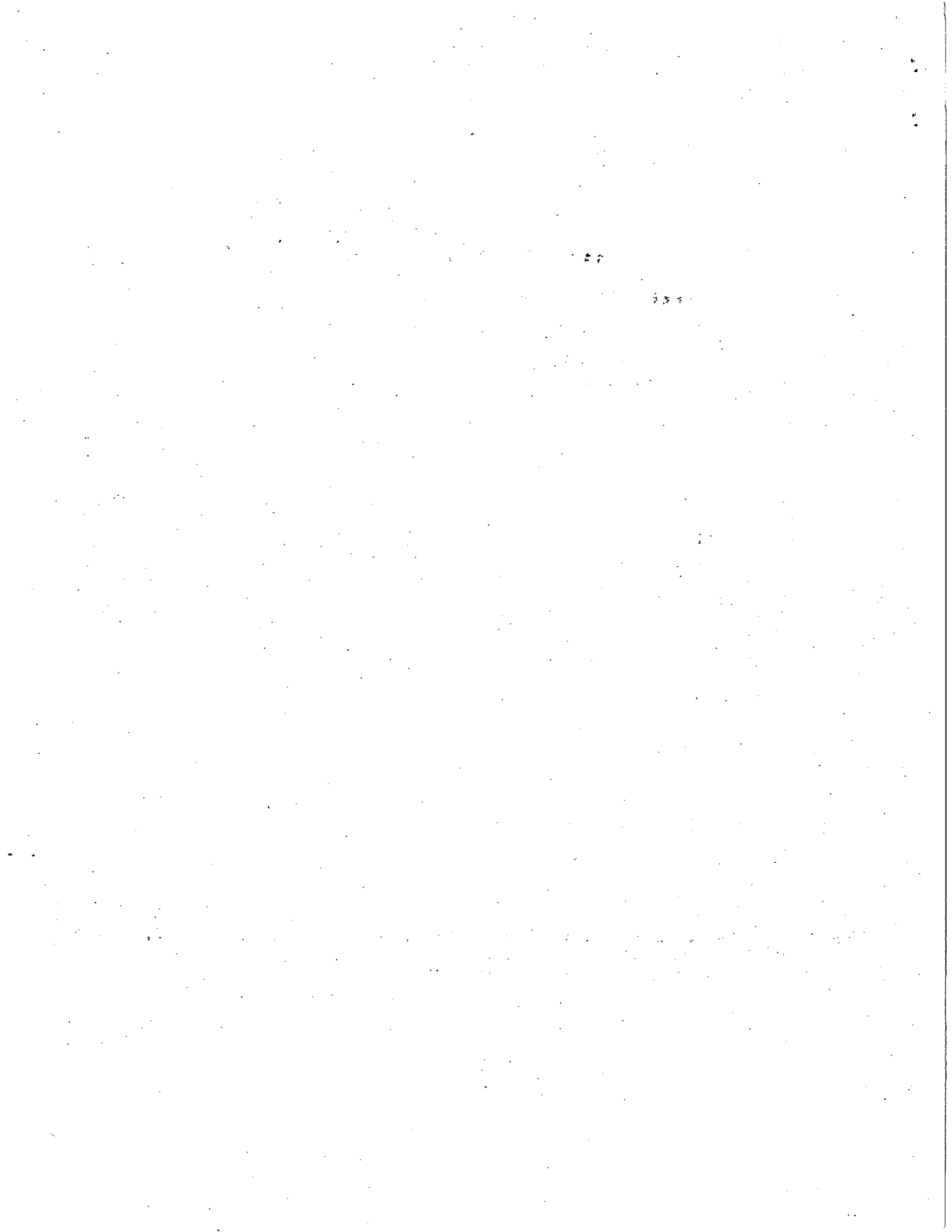
REGULATIONS

APPROVED BY THE MOBILEHOME ADVISORY COMMISSION - DECEMBER 8, 1988

ADOPTED BY THE CITY COUNCIL - JANUARY 17, 1989

AMENDED BY THE RECOMMENDATION OF THE MOBILEHOME ADVISORY
COMMISSION - APRIL 12, 1990, AND
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AMENDED BY THE RECOMMENDATION OF THE MOBILEHOME ADVISORY
COMMISSION - MAY 14, 1992, AND
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Chapter 1

LIMITS AND ELIGIBILITY

This Chapter of the Regulations covers the general limits set by the San Jose Mobilehome Rent Ordinance (San Jose Municipal Code, Chapter 17.22): notice of tenant rights, filing of petitions, deferral of rent increases in excess of 5%, and other related matters.

Part 1

ELIGIBILITY

1.01 Eligibility

1.01.01 Rental Units Subject to Review

- (a) Properties Covered by the Ordinance (SJMC 17.22.270, 17.22.190, 17.22.350A)
The ordinance covers rental of mobilehomes and mobilehome lots, located in mobilehome parks in the City of San Jose, for which a plumbing, an electrical or a sewer permit was issued on or before September 7, 1979. The ordinance also covers rental of motorhomes, recreation vehicles and similar units located in mobilehome parks where such units are used for human habitation on a permanent, as opposed to transient, basis.
- (b) Properties Not Covered by the Ordinance (SJMC 17.22.270, 17.22.350, 17.22.360, 17.22.370)
- (1) The ordinance does not cover mobilehomes, mobilehome lots, motorhomes or recreation vehicles located in mobilehome parks for which plumbing, electrical and sewer permits were issued after September 7, 1979.
 - (2) The ordinance does not cover such properties which are owned or operated by a governmental agency.
 - (3) The ordinance does not cover any mobilehome lots which are the subject of rental agreements which meet the requirements of Section 17.22.370 as set out in the ordinance.
 - (4) The ordinance does not cover mobilehomes or mobilehome lots for which rent is subsidized under the Section 8 housing program. (Housing Assistance Payments Program, Public Law 93-383).
- (c) Decision and Appeal
The property is covered if program staff determines that the property is not exempted by definition. This decision may be appealed to the Director of the Department of Neighborhood Preservation.

1.01.02 Rental Increases Subject to Review

Increases which are in excess of 5% are subject to review with some exceptions. The percentage is figured on an annual basis and is rounded off to the nearest one-tenth of one percent. The exceptions are:

- (a) If the last increase was more than two (2) years before the current increase and the current increase is 12% or less (SJMC 17.22.450B);
- (b) If the increase applies to a mobilehome which is owned by the mobilehome park landlord and the increase is after the mobilehome has been vacated voluntarily by the tenant. If a tenant moves after receiving a notice from the landlord pursuant to Section 1946 of the California Civil Code, the vacancy is not voluntary (SJMC 17.22.380B);
- (c) If the increase is after the eviction of a tenant of a mobilehome for nonpayment, chronically late payment, issuance by the tenant of checks drawn against insufficient funds or closed accounts, or other material violation of a written rental agreement (SJMC 17.22.380B);
- (d) If the increase is after the eviction of a tenant of a mobilehome lot for any of the reasons specified in California Civil Code Section 798.56 (SJMC 17.22.380A).

Part 2

LIMITS

1.02 Limits

1.02.01 Limits on Frequency of Increases (SJMC 17.22.650)

Rent may not be raised more than once in any twelve month period, except in the following circumstances:

- (a) in the case of a mobilehome which is owned by the mobilehome park owner which has been occupied by tenants when all of the tenants have legally vacated the mobilehome either voluntarily or pursuant to an eviction proceeding; or
- (b) in the case where a mobilehome is removed from the mobilehome park by its owner at the time of a termination of tenancy either voluntarily or pursuant to an eviction proceeding.

However, if the rent is raised for the new mobilehome resident, it cannot be raised again until the rent increase anniversary date that has been established in the mobilehome park.

1.02.02 Notice of Rent Increase (SJMC 17.22.660)

When a landlord issues a notice of rent increase for more than 5%, the notice must include all of the following:

- (1) Resident's name;
- (2) Mobilehome space number or lot number;
- (3) Notice that the landlord is required to file a petition requesting the rent increase;
- (4) Date the landlord's petition was filed with the Rental Dispute Program;
- (5) Notice that the portion of the rent increase in excess of 5% will not take effect until approved by an Administrative Hearing Officer and a statement of the rent that will be in effect until such approval is received;
- (6) Address and telephone number of the Rental Dispute Program;
- (7) Notice that documentation supporting the rent increase is on file with the Rental Dispute Program and in the mobilehome park office;
- (8) The name and address of the landlord to whom notices are to be sent; and
- (9) A statement of the proposed rent increase expressed as both an actual dollar amount and as a percentage of the current rent.

1.02.03 Notice of Rent Adjustment (SJMC 17.22.615)

The Ordinance requires that the effective date of the Adjusted Base Rent must be the date set forth in the Resolution terminating the suspension of Section 17.22.381. That date is June 6, 1992. This means that all rent adjustments, except when a petition for Fair Return Hearing has been filed, must be implemented no later than June 6, 1992. At the landlord's option the rent adjustment may be made effective at an earlier date such as June 1, 1992, for record-keeping or accounting convenience.

1.02.04 Payment of lump sum in lieu of monthly rebates (SJMC 17.22.613)

The Ordinance provides for the excessive rent rebate to be paid in monthly installments for the same number of months that an excessive interim rent was in effect. If the landlord chooses to make a lump sum payment in lieu of the monthly rebates, the following conditions shall apply:

- (a) The entire amount of the excessive interim rent must be made as a single lump sum payment to the person

who is the owner of the mobilehome on the date the payment is made.

- (b) Any lump sum payment must be made no later than June 6, 1992. Otherwise monthly installments must be made.
- (c) If a mobilehome owner who has received a lump sum payment sells the mobilehome during the period that a rebate would have been in effect if monthly installment had been paid, the mobilehome park owner must notify the buyer of the mobilehome that a lump sum payment was made and that no rebate is in effect.

1.02.05 Calculation of Adjusted Base Rent (SJMC 17.22.612)

The adjusted base rent should be the amount equal to:

- (a) the pretransfer base rent,
- (b) plus any anniversary date increases actually imposed thereafter,
- (c) less any decreases to base rent actually taken by separation of utility charges from the rent amount pursuant to California Civil Code §798.41.

All of these adjustments should be calculated on the same basis as such adjustments would have been made if there had been no rent increases subject to Section 17.22.610.

Part 3

PETITIONS

1.03 Petitions

1.03.01 Landlord Petition (SJMC 17.22.700)

The landlord shall meet the requirements of Section 17.22.700 as set out in the ordinance. The landlord's cost information shall be presented on a petition form approved by the Commission. The petition shall be accompanied by a copy of any and all documentation upon which the landlord relied in determining the proposed rent increase. Such supporting documentation shall be marked to indicate which line item in the petition the documentation supports.

1.03.02 Place for Filing (SJMC 17.22.700A)

A petition shall be filed with the City Rental Dispute Program by mailing or personally delivering the petition to the address listed below.

Rental Dispute Program
City of San Jose
4 North Second Street, Suite 600
San Jose, CA 95113-1305

1.03.03 Request for Administrative Calculation

- (a) Requests for Administrative Calculation submitted pursuant to SJMC 17.22.616A or pursuant to SJMC 17.22.616B and the notice of Rent Adjustment was served after May 7, 1992, shall be in writing together with a copy of the Notice of Adjustment. The request shall contain the mobilehome address, the name of the mobilehome resident, the date the Notice of Rent Adjustment was received and a brief statement of why the requesting party disagrees with the Notice.
- (b) Requests for Administrative Calculation submitted pursuant to SJMC 17.22.616B where no Notice of Rent Adjustment was received shall be submitted on a form available from the Rental Dispute Program and shall contain the following information to the extent it is available:
 - (1) The name, address and telephone number of the mobilehome owner;

- (2) The name of the mobilehome park;
- (3) The name and address of the mobilehome park owner;
- (4) The name and address of the previous owner of the mobilehome;
- (5) The date or dates of transfer since October 24, 1991;
- (6) The rent charged prior to the transfer(s);
- (7) The rent charged following the transfer(s);
- (8) A statement that the current mobilehome owner has not received a Notice of Adjustment;
- (9) The signature of the current mobilehome owner and the date signed.

The requesting party shall include copies of all relevant documentation including but not limited to documentation of the transfer, documentation of the pretransfer and post transfer rent, and a copy of all rental agreements in effect since October 24, 1991.

Part 4

BURDEN OF PROOF

1.04.01 Burden of Proof (SJMC 17.22.820)

The burden of proof for establishing the reasonableness of a rent increase is on the landlord. The burden of proving the existence of service reductions or Mobilehome Parks Act violations is on the person alleging such reductions or violations.

1.04.02 Burden of Proof for Administrative Calculation of Rent

- (a) When a Notice of Transfer has been filed and no Notice of Correction was filed, there shall be a rebuttable presumption that the information contained in the Notice of Transfer is correct, and a decision may be made without a hearing.
- (b) When a Notice of Transfer was filed and a Notice of Correction was filed, the landlord shall file copies of records demonstrating the amount of rent immediately prior to and following the in-place transfer and the mobilehome owner may present evidence of the amount of the pretransfer rent. The

landlord shall bear the burden of proving by a preponderance of the evidence that the posttransfer rent was legally imposed and that the amounts of rent, adjustment and rebate are legally correct. The Administrative Hearing Officer, following a hearing on such evidence, shall make an Order of Administrative Calculation of Rent based upon the evidence presented.

(c). When no Notice of Transfer was filed and no Notice of Correction was filed, the requesting party shall bear the burden of producing evidence of the following facts with respect to each transfer occurring since October 24, 1991:

- (1) The name, address and telephone number of the mobilehome owner;
- (2) The name of the mobilehome park;
- (3) The name of the mobilehome park owner;
- (4) The name of the previous owner of the mobilehome;
- (5) The date or dates of transfer since October 24, 1991;
- (6) The rent believed to have been charged prior to the transfer(s);
- (7) The rent charged following the transfer(s);

Upon production of such evidence by the requesting party, the landlord shall bear the burden of proving by a preponderance of the evidence that the posttransfer rent was legally imposed and that the amounts of rent, adjustment and rebate are legally correct.

Part 5

FIRM OFFER BASE RENT

1.05.01 Request for Firm Offer Base Rent (SJMC 17.22.400A)

If a mobilehome owner requests that the landlord quote the base rent that would be charged for the rent or lease of the mobilehome lot immediately following the in-place transfer of the mobilehome, the mobilehome owner shall make the request in writing. The request shall include the name and address of the mobilehome owner or mobilehome owner's agent, if any, who is authorized to receive the base rent quote on behalf of the mobilehome owner.

1.05.02 Form of Firm Offer Base Rent Quote (SJMC 17.22.400B)

If a mobilehome owner requests that the landlord quote the base rent described in Section 1.05.01 above, the landlord shall provide a written base rent quote to the mobilehome owner. The written quote shall be in letter form addressed to the mobilehome owner or, if the mobilehome owner has designated an authorized agent in the request for a base rent quote, to such authorized agent, and shall contain the following:

- (a) The base rent quote.
- (b) The adjusted base rent, if any, in any case where the rent increase anniversary date for the mobilehome park falls within the one hundred fifty-day period.
- (c) The date the mobilehome owner's request was received.
- (d) The date the quote is given.
- (e) The name, address and signature of a person authorized to give the quote.
- (f) The address of the property, including the space number, for which the quote is given.
- (g) The date the quote expires.

1.05.03 Time of Firm Offer Base Rent Quote (SJMC 17.22.400B)

The landlord shall provide the written base rent quote to the mobilehome owner or the mobilehome owner's authorized agent within five (5) working days of the landlord's receipt of the mobilehome owner's written request. For the purposes of this section, "provide" means personally serve or mail the quote. "Mail" means that the quote shall be sent by registered or certified mail, return receipt requested, or by first class mail, postage prepaid,

addressed as specified in the mobilehome owner's request for the quote. Any quote that is mailed shall be accompanied by a proof of service by mail specifying the date on which the quote was mailed. If personally served or if sent by registered or certified mail, the quote shall be deemed provided on the date actually received by the mobilehome owner or the authorized agent. If sent by first class mail, the quote shall be deemed provided on the fifth day after deposit in the United States mail or, if said fifth day is a day on which there is no mail service, on the first day following said fifth day on which there is mail service. (See, SJMC 17.22.1000.)

1.05.04 Time Firm Offer Remains in Effect (SJMC 17.22.400C)

The base rent quote provided by the landlord shall be a firm offer of base rent that would be charged by the landlord upon the in-place transfer of the mobilehome. The firm offer shall remain in effect for not less than one hundred fifty (150) days from the date the landlord provides the quote to the mobilehome owner or the authorized agent, except as follows:

- (a) The firm offer base rent quote shall expire upon an in-place transfer to a new owner-occupant of the mobilehome if such transfer occurs within one hundred fifty (150) days of the date the landlord provides the quote. The firm offer base rent shall apply to such new owner-occupant, but shall not automatically apply to a subsequent owner-occupant even if a second transfer occurs within the one hundred fifty-day period.
- (b) If the rent increase anniversary date for the mobilehome park falls within the one hundred fifty-day period, the firm offer base rent shall be adjusted by the rent increase that is permitted on the anniversary date. This adjustment shall not extend the one hundred fifty-day period beyond the original expiration date.

1.05.05 In-Place Transfer to Mobilehome Dealer

If the transferee is a mobilehome dealer or mobilehome broker who is not an owner-occupant of the mobilehome, the one hundred fifty-day period shall not expire upon an in-place transfer but shall remain in effect until the original expiration date or the date of transfer from the dealer/broker to an owner-occupant, whichever occurs first. (See Section 1.05.04 above.) If the one hundred fifty-day period expires prior to a transfer from the dealer/broker, the dealer/broker may request a new firm offer base rent quote from the landlord and the dealer/broker shall be deemed an authorized agent for the purposes of this Part 5.

Chapter 2

HEARING PROCESS AND DECISION MAKING

General rules for the conduct of hearings and decision making are in this chapter.

This chapter is divided into eight (8) parts:

- Part 1 Conduct of Hearings
- Part 2 Service Reductions
- Part 3 The Amount of an Increase
- Part 4 The Timing of an Increase
- Part 5 Decision and Agreements
- Part 6 Failure to Appear and Rescheduling
- Part 7 Notice and Scheduling of Hearings
- Part 8 Appeals
- Part 9 Referrals Directly to Arbitration.

Part 1

CONDUCT OF HEARINGS

2.01 General Rules for the Conduct of Hearings

2.01.01 Participation in Hearing (SJMC 17.22.790D, 17.22.800)

Any party or such party's 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 counsels or other advisors, to be the primary speakers at hearings, with adequate time given to consult with their counsels or advisors, or, in the case of a large group, encouraging representatives, if any, to be the primary spokespersons.

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

2.01.02 Review and Response to Evidence and Testimony

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

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

2.01.03 Records of Hearings (SJMC 17.22.790F)

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

2.01.04 Participation of the Hearing Officer

The Hearing Officer shall at all times in the conduct of the hearings and in otherwise performing his or her duties act neutrally and impartially as between the landlord and the residents. The Hearing Officer shall not solicit, invite, or encourage new or expanded complaints by the landlord or the residents against the other.

2.01.05 Relief from Default

The Hearing Officer may relieve any party from his failure to state his claim adequately 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, or any addition thereto or revision thereof, filed pursuant to the relief so granted.

Part 2

SERVICE REDUCTIONS

2.02 Service Reductions and Housing Code Violations

A service reduction which occurs without a corresponding decrease in rent is an additional rent increase. Service reduction claims may be submitted for consideration by a Hearing Officer only if the claimant is a party to a rental dispute hearing. Mobilehome Parks Act violations must be considered in any determination of what constitutes a reasonable rent increase under the circumstances.

2.02.01 Basic Service Level

The landlord is required to furnish to the tenant a basic level of housing services, herein called the "Basic Service Level." The Basic Service Level for a particular housing service for a particular rental unit is established by:

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

2.02.02 Service Reductions

A service reduction occurs when the landlord has breached his obligation to furnish to the tenant the Basic Service Level and the tenant's usability of the premises is therefore measurably reduced.

2.02.03 Allegations of Service Reductions

Each allegation of service reduction shall be made in a separate writing, signed by the resident claiming it, and filed with the City

Rental Dispute Program by the date specified by the City Rental Dispute Program pursuant to Section 17.22.770C as set out in the ordinance. Each allegation of a service reduction shall state:

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

2.02.04 Proof of Service Reductions

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

- (a) The person alleging the service reduction shall prove:
 - (1) The Basic Service Level for the particular service for the particular rental unit; and
 - (2) The actual service level for the particular service for the particular rental unit; and
 - (3) That the actual service level is, or was, materially lower than the Basic Service Level.
- (b) The burden of proof shall be satisfied by persuading the Hearing Officer that the fact sought to be proven is more probable than some other fact.
- (c) The burden of proof shall be met by using evidence only which has a tendency in reason to prove or disprove a disputed fact of consequence in determining the Basic Service Level, or the actual service level is materially lower than the Basic Service Level.

- (d) Proof shall be received only for service reductions alleged in a claim filed with the Commission or the Hearing Officer during or prior to the first hearing.
- (e) Proof of service reduction shall be received only for that period of time since the last rent increase which complied with the requirements of Ordinance Sections 17.22.650 and 17.22.660.

2.02.05 Determining Value of Unreasonable Service Reductions (SJMC 17.22.590)

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

- (a) The Hearing Officer shall determine the percentage reduction in usability of the rental unit caused by the service reduction, commencing with the accrual date.
- (b) In determining the percentage reduction of usability, the Hearing Officer shall consider the following factors:
 - (1) The area affected;
 - (2) The amount of time the occupant is exposed to the condition;
 - (3) The degree of discomfort the condition imposes;
 - (4) The extent to which such a condition causes tenants to find the premises uninhabitable and leave; and
 - (5) Similar factors.
- (c) The Hearing Officer shall apply the percentage reduction to the monthly rent, divide by 30, and multiply the resulting sum by the number of days commencing from the accrual date to the date of restoration of the service reduction condition to the Basic Service Level, to determine the value of the service reduction.

2.02.06 Consequences of a Service Reduction Unreasonable Under the Circumstances

If the value of the service reduction is determined in a proceeding to determine reasonableness of a pending rent increase, the value of the service reduction shall be applied as a credit against the rent increase which is otherwise cost justified.

2.02.07 Mobilehome Parks Act Violations

Violations of the Mobilehome Parks Act or of Sections 1941.1 and 1941.2 of the California Civil Code shall be considered by the Hearing Officer who may reasonably condition, disallow, or reduce a

rent increase based on their severity. An inspection report of the San Jose Code Enforcement Inspector shall be deemed presumptive, but not conclusive, proof of the matters recited therein.

2.02.08 Findings

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

Part 3

THE AMOUNT OF RENT INCREASE

2.03 Cost Analysis

2.03.01 Landlord as Lessee From Owner

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

- (a) The landlord shall establish:
 - (1) The identity of the owner and the landlord and of each person and entity comprising each; and
 - (2) The relationship between the owner and the landlord; and
 - (3) Whether the owner and the landlord should be deemed a single entity or separate entities.
- (b) The owner and the landlord shall be deemed a single entity if the Hearing Officer finds that:
 - (1) The landlord or the owner is the agent of the other; or
 - (2) The landlord or the owner owns a controlling interest in the other; or
 - (3) The landlord or the owner is the alter ego of the other.
- (c) If the Hearing Officer finds that the Owner and the landlord shall be deemed a single entity:
 - (1) All costs, expenses, and obligations relating to ownership, operation, maintenance, capital improvements,

rehabilitation, or debt service, of the property, paid or incurred by either the owner or the landlord to any third party, shall be deemed costs, expenses, and obligations of the landlord; and

- (2) No costs, expenses, or obligations related to ownership, operation, maintenance, capital improvements, rehabilitation, or debt service, of the property, and generated only between the owner and the landlord by reason of their lease agreement, shall be included as costs, expenses, or obligations of the landlord.
- (d) If the Hearing Officer finds that the owner and the landlord shall be deemed separate entities:
- (1) No costs or expenses of ownership, operation, maintenance, debt service, capital improvements or rehabilitation, paid or incurred by the owner, shall be attributable to the landlord; and
 - (2) Rent incurred by the landlord and payable to the owner shall be deemed a cost of maintenance and operation of the landlord; and
 - (3) Costs of debt service incurred by the landlord on any security or financing device applicable to the landlord's leasehold interest in any property identified in prior San Jose Municipal Code Section 17.22.080 or 17.22.085, shall be deemed debt service of the landlord, and not a cost of the landlord's operation and maintenance.
- (e) The landlord shall have the burden of proving the status claimed by the landlord; i.e., whether the owner and the landlord shall be deemed a single entity or separate entities.

Part 4

THE TIMING OF AN INCREASE

2.04 Multiple Rent Increases

More than one (1) increase in a twelve (12) month period is prohibited except as provided in Section 2.04.02 below. (SJMC 17.22.650).

2.04.01 Evidence

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

2.04.02 Voluntary Vacancy or Eviction (SJMC 17.22.380)

The Ordinance permits rent to be increased following a voluntary vacancy or an eviction in accordance with the Mobilehome Residency Law. Rent will be presumed to have been increased when a tenant moves in. When a new rent has been established following a voluntary vacancy or an eviction, the landlord shall give the new resident written notice of the park anniversary date and state in such notice that the rent may be raised at the anniversary date.

2.04.03 Annexation

When property which contains rental units subject to review (set forth in 1.01.01a of these Regulations) is annexed into the City of San Jose, rent increases prior to the annexation are not subject to review, but do establish a twelve (12) month period for future increases. For example, if rent is increased in July and the property is annexed in August, the rent may not be increased until the following July.

2.04.04 Agreements

Parties may not agree and Hearing Officers shall not allow voluntary agreements that call for more than one (1) increase in a twelve (12) month period. (This section does not apply to qualified rental agreements which meet the requirements listed in 1.01.01 b. (3).)

2.04.05 Consolidation of Anniversary Dates (SJMC 17.22.670)

There shall be only one rent increase anniversary date per mobilehome park per twelve-month period.

Part 5

DECISIONS AND AGREEMENTS

2.05 Applicability of Determinations and Voluntary Agreements

2.05.01 Effective Date

Unless otherwise set by the Hearing Officer, determinations, awards, and voluntary agreements shall be effective as of the effective date of the increase originally proposed by the landlord and shall extend for twelve (12) calendar months.

2.05.02 Rent Agreements

During an administrative hearing, a landlord and tenant may make a voluntary agreement for an agreed rent to continue one or more years. Rental agreements which meet the criteria set out in Section 17.22.370 of the ordinance will not be covered by the provisions of the ordinance.

Part 6

RESCHEDULING

2.06 Failure to Appear and Reschedule

2.06.01 Failure To Appear and To Be Represented

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

- (a) No Appearance by the Landlord or his Representative
When the landlord or his representative does not appear at the hearing, the rent increase will be determined to be unreasonable.
- (b) No Appearance by Residents
The written determination of the Hearing Officer shall apply to all affected residents irrespective of whether or not such residents or their representatives have participated in the hearing.

Part 7

NOTICE AND SCHEDULING OF HEARINGS

2.07 Notice and Scheduling of Hearings (SJMC 17.22.770)

Within ten (10) working days of the receipt of a valid petition, the Rental Dispute Program will notify, in writing, all parties in the case of the hearing time, place, date and assigned Hearing Officer. The Rental Dispute Program will establish, and notify the parties in writing of, the deadline for submission of evidence.

Part 8

APPEALS

2.08 Appeals (SJMC 17.22.1020)

Appeals to the Director of Neighborhood Preservation shall be made in writing to said Director within ten (10) working days of the action or decision of the City Rental Dispute Program. The appeal shall set forth the grounds upon which the appellant believes the action or decision of the City Rental Dispute Program should be reversed.

Chapter 3

HEARING PROCESS

This chapter covers the conduct of hearings and assignment of Hearing Officers. Part One covers administrative hearings on the reasonableness of rent increases. Part Two provides guidelines for the conduct of hearings. Part Three covers the assignment of Hearing Officers and related matters.

Part 1

ADMINISTRATIVE HEARINGS

3.01 Conduct of Administrative Hearings

3.01.01 Purpose of Administrative Hearing (SJMC 17.22.750)

The purpose of the administrative hearing is to make a determination of the allowable rent increase.

3.01.02 Voluntary Agreement

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

Part 2

CONDUCT OF HEARINGS

3.02 Conduct of Hearings-General

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

3.02.01 Introduction

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

3.02.02 Presentation by the Parties (SJMC 17.22.790)

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

3.02.03 Evidence and Testimony

(a) Evidence.

Evidence submitted will be retained by the Hearing Officer for use in making the award. If original documents are submitted, the party submitting them should provide a copy for retention. The Hearing Officer will be the judge of the relevance of the evidence. Conformity to judicial rules of evidence is not necessary. A list of this evidence (exhibits) will be prepared and made a part of the record.

(b) Testimony.

The Hearing Officer will be the judge of the relevance of testimony. A list of the names and addresses of any witnesses will be kept and made a part of the record.

3.02.04 Continuance for Receipt of Written Argument and Evidence (SJMC 17.22.790E)

If two continuances of the hearing have not already occurred, the Hearing Officer may continue the hearing. All continuances must be for no longer than ten (10) days from the session at which the continuance is ordered by the Hearing Officer. If two continuances have already occurred, an additional continuance may be had only with the written consent of all parties to the case.

(a) Written Argument.

If the purpose of the continuance is to receive written argument, another hearing session need not be scheduled. The Hearing Officer's decision will be due no later than the fifteenth day from the written argument receipt deadline set by the Hearing Officer.

(b) Evidence.

If the purpose of the continuance is to accept further evidence, another hearing session shall be set in order for opposing parties to question or respond to the additional information.

3.02.05 Timing and Content of Determination or Award (SJMC 17.22.810)

(a) The Hearing Officer's decision shall be submitted to the City Rental Dispute Program within fifteen (15) working days of the close of the hearing.

(b) With respect to Administrative Calculations of Rent pursuant to SJMC 17.22.616 the Hearing Officer's decision must identify the parties and make a clear statement of the following:

- (1) The dollar amount of the adjusted base rent;
- (2) The dollar amount of the monthly rebate of excessive rent increase;
- (3) The number of months that the rebate is to be in effect.
- (4) The date of the Order; and
- (5) A statement that the adjusted base rent and the rebate will be effective on the thirty-fifth (35th) day following the date of the Order.
- (6) Where applicable pursuant to the provisions of Section 17.22.618, the cost of the hearing.
- (7) A statement of facts found to exist on which the decision is based.

(c) With respect to all other types of decisions, the Hearing Officer's decision must identify the parties and make a clear statement of the following:

- (1) The allowable rent increase;
- (2) Any conditions which are placed on the payment of the rent increase;
- (3) A summary of the fair and reasonable return calculations or a statement of the applicable percentage increase for consolidation;
- (4) A statement of facts found to exist on which the decision is based.

Part 3

HEARING OFFICERS

3.03 Hearing Officers

3.03.01 Designation of Hearing Officers

Hearing Officers are:

- (a) Persons who meet the criteria established in Section 3.03.02 and have executed a contract as an Administrative Hearing Officer with the City of San Jose; or

- (b) Rental Dispute Program staff members who have been appointed by the Human Services Administrator to determine the eligibility for a hearing of Requests for Administrative Calculation submitted pursuant to SJMC § 17.22.616 and to make Orders of Administrative Calculation of Rent pursuant to SJMC §17.22.616(C)(1). The jurisdictional authority of staff members appointed hereunder shall be strictly limited to the issue of administrative calculations of rent pursuant to §17.22.616(C)(1).

3.03.02 Selection Criteria

Hearing Officers must meet the following criteria:

- (a) Have received forty (40) hours formal training in mediation;
- (b) Have successfully performed mediations or hearings similar to those of this program;
- (c) Have successfully mediated rental disputes or have had other experience or training showing the capability to deal with the issues which are found in rental dispute hearings in this program;
- (d) Shall not own a real estate interest in rental property consisting of three or more units;
- (e) May not be an employee or an officer of groups or organizations which have or are viewed by significant numbers of tenants or landlords as having taken advocacy positions in landlord/tenant matters.
- (f) Shall meet one or more of the following qualifications:
 - (1) Appointment to the American Arbitration Association's Panel of Arbitrators.
 - (2) Completion of a Juris Doctor or equivalent degree from a School of Law with proof of a course in arbitration.
 - (3) Completion of three (3) arbitrations for a public entity such as the California Youth Authority or the Superior Court.

3.03.03 Assignment to Cases

Hearing Officers should be assigned to cases by Rental Dispute Program staff on a fair and equitable basis, with due regard for each Hearing Officer's availability and experience.

3.03.04 Disqualification from Cases

A Hearing Officer shall disqualify himself or herself from hearing a case and can be disqualified by program staff at the request of one of the parties if:

- (a) The Hearing Officer knows or has reason to know he has a financial interest affected by his 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, 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; or
- (e) The Hearing Officer is a party to the hearing.

3.03.05 Prior Appearance by Party

A Hearing Officer is not disqualified from hearing a case solely because one or more of the parties have appeared before the Hearing Officer in an earlier hearing.

3.03.06 Waiver of Disqualification

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

3.03.07 Review of Hearing Officers' Performance

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

Chapter 4

ENFORCEMENT AND IMPLEMENTATION

This Chapter deals with those actions of the City taken in prosecuting misdemeanor violations of the Ordinance. Tenants have, under Section 17.22.2030 of the Ordinance, additional rights not covered by this Chapter. This Chapter also deals with implementation and administrative appeals.

4.01 Investigation of Misdemeanor Violations

Program staff will receive and review complaints of violations of San Jose Municipal Code Sections 17.22.2000, 17.22.2010, and 17.22.2020. In the event that the review shows that a probable violation has or is in the process of occurring and that it is not possible to prevent, a request will be made to the City Attorney for investigation and possible prosecution.

4.02 Prevention

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

4.03 Implementation

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

4.04 Appeal

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

Chapter 5

PUBLIC ACCESS TO PROGRAM RECORDS

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

5.01 Definitions as Used in This Chapter

- 5.01.01 "The Ordinance" means Chapter 17.22 of Title 17 of the San Jose Municipal Code.
- 5.01.02 "The Program" includes the activities of the Mobilehome Advisory Commission, the staff of the Rental Dispute Program, the Hearing Officers, and other personnel of the City of San Jose to the extent they are involved in the administration or operation of The Ordinance.
- 5.01.03 "Person" includes any natural person, corporation, partnership, firm, or association.
- 5.01.04 "Records" includes any writing containing information relating to the Program.
- 5.01.05 "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, symbols, or any combination thereof, and all papers, maps, magnetic or paper tapes, photographic films or prints, magnetic or punched cards, disks, drums, or other documents.

5.02 Records Open to Inspection

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

5.03 Exemptions of Particular Records

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

- (1) Preliminary drafts, notes, inter-agency or intra-agency memoranda which are not retained by the Program in the ordinary course of business, provided that the public interest in

withholding such Records clearly outweighs the public interest in disclosure;

- (2) Records pertaining to pending litigation in which any person involved in the administration or operation of the Program is a party, or to claims made pursuant to the Government Code of the State of California, commencing with Section 810, until such litigation or claim has been fully adjudicated or otherwise settled;
- (3) Personnel Records pertaining to personnel of The Program, medical Records, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;
- (4) Records the disclosure of which is specifically exempted or prohibited pursuant to provisions of Federal and State law, including, but not limited to, provisions of the Evidence Code of the State of California relating to privilege. Nothing in this section is to be construed as preventing any person having custody or control of any Record from opening such Record to public inspection upon written authorization of the Human Services Administrator, unless disclosure is otherwise prohibited by law.

5.04 Justification for Withholding Records

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

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

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

5.06 Reasonably Segregable Portions After Deletion of Exempt Portions

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

5.07 Copies of Records

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

5.08 Requests For Records, To Whom Made

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

5.09 Location of Awards

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

5.10 Copies of Awards; Access and Duplication; Costs

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

- (a) Access and duplication of Records shall be accomplished in the presence of a Rental Dispute Program staff person or agent and shall be governed by the following criteria:
- (b) Five (5) working days will be the access time allowed for requests for small to moderate amounts (not exceeding 100 pages or 5 tapes) of individual case files and tape recordings on file in the offices of the Rental Dispute Program.

- (c) Original material exceeding the limitations of 5.10.b or in storage will be accessed as follows:
- (1) Upon receipt of a written request for the material, the Rental Dispute Program will determine the amount of time and the cost necessary to provide the duplicates.
 - (2) Within ten (10) working days this estimate will be written and forwarded to the requestor.
 - (3) Upon deposit of the estimated cost, duplication will proceed. If actual costs are greater than estimated, payment of the additional amount is required prior to release of the copies. If actual costs are less than estimated, a refund will be provided.
 - (4) Fees for duplication will be set according to the schedule established by the Neighborhood Preservation Department at the time of the submission of the Annual Budget. In the event that no schedule is established, the Program will abide by the schedule set by the City Clerk for duplication of documents in the City Clerk's office. Copies of the ordinance, the regulations, Questions and Answers, Petition Forms, Record Request Forms, Commission Agenda-Minutes-Statistics Packets, and copies consisting of less than six (6) pages shall be made available to the public free of charge.
 - (5) Lacking a parallel service, tapes will be duplicated at the charge of \$1.00 per tape plus the replacement of a blank C-90 cassette tape.

Chapter 6

DEFINITIONS

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

6.01 Award

The written decision of a Hearing Officer.

6.02 Day

A calendar day.

6.03 Determination

A written decision by a Hearing Officer.

6.04 Fact Finding

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

6.05 Document Dating

6.05.01 File, Filing Date

Filed means either the personal delivery of the document to be filed with the Commission, in which event the date of filing is the date of delivery; or the mailing of the document to be filed with the Commission, in which event the date of filing is the date of postmark.

6.05.02 Decision/Award Effective Date

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

6.06 Hearing Officer

Hearing Officer shall mean a person, designated by the Commission and the rules thereof, who presides over administrative hearings regarding rental increase disputes pursuant to the provisions of the Mobilehome Rent Ordinance.

6.07 Party

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

6.08 Petition

An informational form, requesting a hearing, filed by a landlord in accordance with the procedures and requirements set out in the Mobilehome Rent Ordinance.

6.09 Program staff

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

APPENDIX "A"

RENTAL DISPUTE PROGRAM

Public Record Request

Name _____ Date _____

Address _____ Phone _____

File Requested _____
 Address _____ Effective Date _____

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

 Signature
