



**CITY OF SAN JOSÉ  
HOUSING AND COMMUNITY DEVELOPMENT  
COMMISSION**

**September 8, 2016 AT 5:45 PM  
SAN JOSÉ CITY HALL  
200 E. SANTA CLARA ST.  
LOCATION: WING ROOMS 118-120  
SAN JOSÉ, CA 95113**



Mike Graves, Chairperson  
Melissa Medina, Vice Chair

Commissioners

Michael Fitzgerald	Martha O'Connell	Lee Thompson
Bob Gill	Gary Prideaux	Andrea Wheeler
Davlyn Jones	Alex Shoor	

Members of the public who wish to make comments on any item on the Agenda, or any other item related to the Commission's purview, may be given two (2) minutes. Please note that: (1) the Commission will only be able to discuss comments to items on the Agenda; and (2) the time schedule shown below is approximate and intended only to notify the Commission of the approximate amount of time staff expects each item might take, and items may be heard before or after the times shown.

<b>TIME*</b>	<b>AGENDA ITEM</b>
5:45	(a) <b>Call to Order/Orders of the Day</b>
5:50	(b) <b>Introductions</b>
5:55	(c) <b>Approval of Minutes for the August 11, 2016 Regular Meeting</b> ACTION: Recommend approval of the August 11, 2016 action minutes
6:00	(d) <b>Chair's Report (M. Graves, Chair)</b>
6:05	(e) <b>Winchester Ranch Mobilehome Park - Owner's Proposal for redevelopment of the site and relocation assistance for the current residents (D. Bopf, Housing Department &amp; Lee Arioto)</b> ACTION: Discussion item.
7:05	(f) <b>Revised Amendment to the Rental Dispute Mediation and Arbitration Program Regulations (J. Morales-Ferrand, Housing Department)</b> ACTION: Provide input and potential recommendation to the City Council to approve the revised amendment to the regulations implementing the Interim Apartment Rent Ordinance (Revised Interim Regulations).
7:30	(g) <b>Public Hearing on the FY 2015-16 Consolidated Annual Performance and Evaluation Report (CAPER) of Federally Funded Programs (J. Stagi, Housing Department)</b>

ACTION: Public Hearing and Recommend to the City Council approval of the FY 2015-16 Consolidated Annual Performance and Evaluation Report

- 8:00** (h) **Draft FY 2016-17 HCDC Workplan (D. Bopf, Housing Department)**  
ACTION: Commission input on first draft
- 8:15** (i) **Director's Report (D. Bopf, Housing Department)**
- Community Meeting to Discuss Proposed Amendments to the City's Zoning Code
  - Update on work associated with the Mobilehome Closure Ordinance and the Opt-In/Stay-In Business" Framework
  - Recent City Council Actions on Housing Issues
- 8:25** (j) **Open Forum**
- 8:30** (k) **Adjournment**

*\*HCDC meetings start at 5:45 pm. All other times listed for the specific agenda topics are estimates. Actual start times may deviate from the estimate provided.*

**All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the City of San Jose Housing Department, 200 E. Santa Clara St., 12<sup>th</sup> Floor, San Jose, CA 95113 at the same time that the public records are distributed or made available to the legislative body.**

To request an accommodation for this meeting or an alternative format for any related printed materials, please contact Robert Lopez at 408-975-4402 or [Robert.Lopez@sanjoseca.gov](mailto:Robert.Lopez@sanjoseca.gov) or 408-294-9337 (TTY) as soon as possible, but at least three business days before the meeting.

**Para residentes que hablan español:** Si desea mas información, favor de llamar a Theresa Ramos al 408-975-4475.

**Riêng đối với quý vị nói tiếng Việt :** Muốn biết thêm chi-tiết, xin vui lòng tiếp xúc với Therese Tran, Đ.T. 408-793-5349.

**對於說華語的居民:** 請電 408-975-4450 向 Ann Tu 詢問詳細事宜。說粵語的居民則請撥打 408-975-4425 與 Yen Tiet 聯絡。

**Para sa mga residente na ang wika ay tagalog:** Kung kinakailangan pa ninyo ng inpormasyon, tawagan si Arlene Silverio sa 408-793-5542. Salamat Po.

\*\*\*You can access the agenda and all attachments electronically at the Housing & Community Development Commission website at : <http://www.sanjoseca.gov/index.aspx?NID=1262>

DRAFT

**HOUSING & COMMUNITY DEVELOPMENT COMMISSION**

**REGULAR MEETING ACTION MINUTES**

AUGUST 11, 2016

**MEMBERS PRESENT:** Mike Graves Chair  
 Davlyn Jones Commissioner  
 Michael Fitzgerald Commissioner  
 Martha O’Connell Commissioner  
 Alex Shoor Commissioner (6:09pm)  
 Bob Gill Commissioner  
 Lee Thompson Commissioner  
 Andrea Wheeler Commissioner

**MEMBERS ABSENT:** Melissa Medina Vice Chair  
 Gary Prideaux Commissioner

**STAFF:** Jacky Morales-Ferrand Housing Department  
 Dave Bopf Housing Department  
 Ann Grabowski Housing Department  
 Robert Lopez Housing Department  
 Austin McComb Vice Mayor Herrera’s Office

- (a) **Call to Order/Orders of the Day**—Chair Graves opened the meeting at 5:48pm.
- (b) **Introductions**—Commissioners, staff, and audience introduced themselves.
- (c) **Approval of the Action Minutes for the June 9, 2016 Regular Meeting**

Commissioner O’Connell made the motion to approve the minutes for the June 9 2016 regular meeting with an edit to replace the word “proposal” with “report” in the first recommendation for Item (e). The motion was seconded by Commissioner Thompson and passed (7:0) unanimously.

**(d) Chair’s Report (Chair Graves)**

Chair Graves asked if the Commission could have the Winchester Ranch owner and representative attend a Commission meeting to present their proposal in terms of the park conversion. Ms. Morales-Ferrand replied that they could present at a future meeting and staff will work to put on the agenda.

**(e) Regulations implementing the Interim Amendment to the Apartment Rent Ordinance (D. Bopf, Housing Department)**

Commissioner Shoor made the motion to approve and make a recommendation to the City Council from the Housing & Community Development Commission to adopt the amendment adding Chapter 9, Fair Return Petition Procedures, to the regulations implementing the Apartment Rent Ordinance, Chapter 17. 23 of the Municipal Code, and directing staff to incorporate feedback made by the Commission, which includes: (1) providing training to apartment owners on the Interim Apartment

## **DRAFT**

Rent Ordinance Fair Return Petition Process and the MNOI calculation, (2) notifying tenants in their primary language that a petition has been filed, (3) confirming how a rent increase is applied to leases that do not end at the time of the hearing officers decision, (4) confirming whether the rent increase becomes part of the base year rent or if it is a separate item that is dropped off after the amortization period ends, (5) including the audio tape as part of the "official hearing record", (6) confirming that there is an appeals process in the interim ordinance, and (7) determining whether a 70 day timeline to complete the petition review process can be shortened. Additionally, the Commission requested that staff notify the Commission of any changes made from the feedback given. The motion was seconded by Commissioner Jones. The motion passed unanimously (7-0).

### **(f) Update on the Annual HCDC Retreat (D. Bopf, Housing Department)**

Mr. Bopf updated the Commission on the date of the retreat, which will be Saturday, September 24<sup>th</sup>. Mr. Bopf also commented that the Commission will be able to give input on the workplan at the September Commission meeting.

### **(g) Director's Report (D. Bopf, Housing Department)**

Mr. Bopf gave an update on the HCDC recruitment status, notable that there are still vacancies that need to be filled.

Mr. Bopf commented that notifications had been sent out to request service on the Mobilehome Opt-in/Stay-in Business committee.

Mr. Bopf also gave an overview of recent City Council actions concerning the Housing Department.

### **(h) Open Forum**

No public comment.

### **(i) Adjournment**

Chair Graves adjourned the meeting at 7:29pm.



# Memorandum

**TO:** HOUSING & COMMUNITY  
DEVELOPMENT COMMISSION

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** September 1, 2016

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**SUBJECT: REVISED AMENDMENT TO THE REGULATIONS IMPLEMENTING  
THE INTERIM APARTMENT RENT ORDINANCE**

## RECOMMENDATION

The Commission provide input and potential recommendation to the City Council to approve the revised amendment to the regulations implementing the Interim Apartment Rent Ordinance (Revised Interim Regulations).

## BACKGROUND

On August 30, 2016, the City Council approved the draft Interim Regulations of the Interim Apartment Rent Ordinance (Interim Regulations). The regulations that were approved by the City Council included changes that were recommended by the Housing & Community Development Commission (HCDC) on August 11, 2016. The attached supplemental memorandum describes the changes that were made to the Interim Regulations as a result of HCDC discussion. Additionally, substantive comments were received from the Law Foundation of Silicon Valley and the Tri-County Division of the California Apartment Association after the final draft of the regulations were complete.

The City Council directed staff to do additional outreach and return to the City Council with additional amendments or responses to the feedback provided.

## ANALYSIS

In response to the substantive comments from the Law Foundation of Silicon Valley and the Tri-County Division of the California Apartment Association, portions of the interim regulations have been revised to provide greater clarity regarding noticing, tenant response to a fair return petition, supporting documents and reasonable expenses. Staff is providing the Revised Interim Regulations to the HCDC for additional questions, comments, and to solicit additional input from members of the public.

HOUSING & COMMUNITY DEVELOPMENT COMMISSION

September 1, 2016

**Subject: Revised Amendment to the Regulations Implementing the Interim Apartment Rent Ordinance**

Page 2

**EVALUATION AND FOLLOW-UP**

The Revised Interim Regulations will be recommended to the City Council for approval later this month. The memorandum will include input from the September 8 HCDC meeting.

JACKY MORALES-FERRAND  
Director, Department of Housing

For questions, please contact Jacky Morales-Ferrand, Director, at (408) 535-3855.

**Attachments:**

- A: Revised Amendment to the Regulations
- B: City Council Supplemental dated August 29, 2016
- C: City Council Memorandum dated August 8, 2016
- D: Public Comment Received

AMENDMENT TO THE RENTAL DISPUTE  
MEDIATION AND ARBITRATION PROGRAM REGULATIONS  
Chapter 9 Fair Return Petition Procedures

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**9.01 General Provisions**

9.01.01 Intent

This Chapter is intended to provide procedures for the fair return hearing process provided for in Section 17.23.820 of the Municipal Code of the City of San José and to supplement the provisions in the existing regulations implementing Chapter 17.23 of the Municipal Code. Where procedures differ from the provisions in the existing regulations, these procedures are intended to apply to fair return petitions. These regulations are intended to be harmonized with existing provisions for tenant petitions and service reductions when those petitions are considered in connection with a fair return petition.

9.01.02 Conflicting Provisions

Ordinance No. 29730 adopting Section 17.23.800 through Section 17.23.820 shall control over conflicting provisions in this Chapter.

9.01.03 Notice

It is presumed that a landlord/petitioner's petition contains the correct address for notice, and that notices mailed to that address are received three (3) days after mailing.

**9.02 Petitions and Notice**

9.02.01 Petition Filing Requirement.

After September 1, 2016 a landlord seeking a rent adjustment must file a fair return petition with the Rental Rights and Referrals Program (Program) on a City petition form with all required supporting documentation and obtain a determination of completeness under this Chapter.

9.02.02 Petition and Forms.

Petition and forms shall be as prescribed by the Director with the approval of the City Attorney as to form. All forms shall specify, and all written statements shall be made, under penalty of perjury.

9.02.03 Notice of Petition and Proposed Increase

The landlord must serve on all tenants a City approved notice of the proposed petition filing, requested increase, proposed effective date of increase and tenant's rights to file, prior to filing the Petition.

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9.02.04 Opposition Statements.

A tenant may submit a statement in opposition to the claim(s) made by the petition on a City approved form ("Opposition Statement"). The Opposition Statement should be filed with the Program within 10 days of the date of the City Complete Notice. The Opposition Statement must be accompanied by a proxy form and should include any supporting documentation intended to be presented at the hearing.

9.02.03-05 Supporting Evidence.

A. The owner/landlord must submit with the petition complete at least three (3) sets of copies of all evidence the owner/landlord is relying on to support his or her claim, marked accordingly. Receipts, cancelled checks, and detailed invoices are the best documentation.

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

C. Evidence that may tend to show that rents were unusually low for the quality, location, age, amenities and condition of the housing includes evidence of rents collected in comparable buildings located in the same neighborhood.

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

9.02.0406. Acceptance for Filing; Completeness.

A. A petition will not be accepted for filing for under any of the following circumstances:

1. Where the petition is not made on the City petition form or not correctly completed.
2. Where the petition is not accompanied by three copies of all required supporting documentation.
3. A petition seeking a rent increase was filed for the property within the previous twelve months, including petitions that were subsequently withdrawn.
4. Where the petition is not accompanied by (a) list of all tenants and their addresses, (b) a copy of the City notice from the landlord consistent with Section 17-23-270 to each tenant that the landlord is filing a fair return petition (c) a copy of the completed proxy form and (d) a declaration that he/she has served the

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written notification notice pursuant to Section 9.02.03 on all the tenants prior to filing.

B. Within ten (10) working days after the date of receipt of a petition, or an amended petition, Program staff shall determine whether said petition is complete or whether corrections or additional information is needed. If the petition is complete and there are no corrections or missing documents or information, Program staff shall mail a notice of determination of completeness ("City Complete Notice") to the petitioner/landlord with a copy to the tenants including information regarding tenant petition rights. A delay in the response by Program staff shall not be deemed a determination of completeness.

C. If the petition is determined not to be complete, the Program staff shall mail a notice to the petitioner/landlord listing the additional information or documentation required to complete the petition. Petitioner/Landlord may amend the petition to include the required information or documentation. With respect to 2014 Base Year information or documentation, petitioner/landlord may amend the Petition by submitting a written statement identifying the required information or documentation that is unavailable, and state how it became unavailable, under penalty of perjury. Such a submittal does not relieve the petitioner/landlord of the burden of proof.

D. If the petition is determined not to be completed correctly, the Program staff shall notify petitioner/landlord in writing of the corrections required to complete the petition. Petitioner/Landlord shall amend the petition to make the corrections. If Petitioner/Landlord disagrees with the corrections, the Petitioner/Landlord may also submit a letter objecting to the corrections.

E. If the Petitioner/Landlord fails to amend or supplement the petition as required by Paragraph C or D within thirty (30) days of the date the notice sent under Paragraph C or D was mailed, the petition shall be deemed to be withdrawn.

F. A staff report shall accompany the NOI petition when it is submitted to the hearing officer, or as soon thereafter as is possible and be available for review by the parties prior to the hearing. The report shall include a list of all petitions filed in the last 12 months, the rate of inflation for the applicable petition period, a list of all unresolved City code violation complaints, and a summary of the petition and evidence submitted.

G. In the event that the petition is complete except for missing Base Year NOI evidence. The owner/landlord may submit a City prescribed form requesting the Program to accept the petition without the complete Base Year NOI evidence. The form will require an affidavit under penalty of perjury indicating that the owner/landlord does not have and cannot obtain this evidence, and a description of how this evidence and may require a filing fee to cover the cost for Program staff to investigate and prepare a report for the Hearing Officer. A modified City Complete notice will be sent in this event. The scheduling of the hearing will occur after the Program staff report is complete.

H. Once the hearing is scheduled, all tenants and the landlord shall be mailed notice of the hearing date and time, and information regarding the availability of the petition, any tenant submitted opposition statements or petitions, supporting documentation, and staff report at City Hall for review.

### 9.03 Scheduling and Appearance

9.03.01 Program staff shall assign an (Arbitration) Hearing Officer to hear the completed fair return petition and the administrative hearing on the petition shall be scheduled within thirty (30) 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 shall be scheduled within 30 days and the hearing thereafter. Notice of the hearing date shall be sent to the Petitioner/Landlord and affected tenants. The notice of the hearing date shall be deposited in the U.S. Mail at least two weeks prior to the hearing date.

9.03.02 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.

9.03.03 Failure to appear by petitioner/landlord or a proxy designated in writing to act for petitioner/landlord shall result in a determination that the petition has been withdrawn.

9.03.04 If tenant petitions also have been filed for service reduction, housing code violations or other violations of the Ordinance, the hearing on NOI petition shall not occur until the mediation hearing for the tenant petitions is completed and period for appeal has ended. If there is an appeal, the appeal shall be heard by the hearing officer assigned for the NOI hearing. The tenant petition hearing on appeal and NOI petition hearings shall be combined unless it is determined to be infeasible by Program staff.

### 9.04 Conduct of Hearing.

#### 9.04.01 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.

#### 9.04.02 Ex Parte Communications.

There shall be no oral communication outside the hearing between the Hearing Officer and any party or witness, except at a prehearing conference, if any, to clarify and resolve issues. All discussion during the hearing shall be recorded on

audiotape. All written communication from the Hearing Officer to a party after the hearing has commenced shall be provided to all parties.

#### 9.04.03 Order of Proceedings.

A hearing on a fair return 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. A brief presentation by or on behalf of landlord, if landlord desires to expand upon the information contained in or appended to the petition for rent adjustment, including presentations of any other affected parties and witnesses in support of the petition;
- B. A brief presentation by or on behalf of opponents to the petition, including presentations of any other affected parties and witnesses in opposition to the petition;
- C. A brief presentation of the results of any Program investigations or staff reports in relation to the petition, if any, requested by Hearing Officer;
- D. Rebuttal by landlord.

#### 9.04.04 Speakers' Presentations.

The presentation of each person speaking during a hearing shall be concise and to the point; visual and other presentation aids may be used as deemed appropriate by the Hearing Officer, provided that the presenter furnishes such materials in advance for inclusion in the hearing record. Notwithstanding Regulation section 3.04.02, the Hearing Officer shall establish equitable time limits for presentations at a hearing.

#### 9.04.05 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.

#### 9.04.06 Hearing Record.

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

- A. A copy of the petition and documents submitted to support the petition;
- B. Any written responses to the petition received from one or more affected parties tenants;
- 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. All findings of fact and conclusions of law;
- H. Any tentative decisions provided to the parties for comment and any comments received;
- I. All recommended or final decisions, orders, or rulings; and
- J. Hearing audiotape(s)

**9.04.07 Proof.**

The landlord has the burden of proof to establish that a rent adjustment is required in order to provide the landlord with a fair return. The determinations regarding the quantum of proof required to meet the burden shall be made with respect to the following guidelines:

- A. The burden of proof shall be satisfied by persuading the Hearing Officer that the fact sought to be proven is more probable than some other fact.
- B. The burden of proof shall be met by using evidence only which has a tendency in reason to prove or disprove a disputed fact of consequence.
- C. Evidence shall be received with the petition for expenses alleged in the petition and made available for review by the parties prior to the first hearing unless the evidence is ordered to be submitted by the Hearing Officer.
- D. Moreover, no rent adjustment shall be granted unless supported by the preponderance of the relevant and credible evidence noted in the hearing record and no rent adjustment shall be supported solely by hearsay evidence.

**9.04.08 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.

**9.05 Decision.**

9.05.01 Within thirty (30) days after the close of the hearing, the Hearing Officer shall issue a final decision, approving, partially approving, or disapproving the rent adjustment requested by the fair return petition. 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 owner/landlord and affected parties for comment regarding clerical or mathematical errors. Any such comments shall be provided to the Hearing Officer and parties in writing by the commenter.

9.05.02 The decision shall include findings of fact and conclusions of law which support the decision, and shall specify the following:

- A. The amount of the rent increase, if any, for each unit.
- B. In the case of a downward adjustment in the rent, an itemization of each reduction in service on which the reduction is based, and the amount of reduction attributable to that housing service. An itemization of housing code violation shall be listed separately and the amount of reduction attributable to that violation. This provision is not intended to prohibit service reductions allowed under the Ordinance and regulations that cannot be readily itemized in this manner.
- C. Any conditions which are placed on the award;
- D. The date on which any adjustment to the rent is effective for each unit.
- E. At the option of the Hearing Officer, any determinations for service reductions or other tenant petitions appealed to the Hearing Officer.
- F. The cover page of the decision will provide that the date the decision is issued is the date of mailing.

9.05.03 Voluntary Agreements. The Hearing Officer may recess the hearing to allow for the negotiation of a Voluntary Agreement. Voluntary Agreement negotiations are not recorded. Voluntary Agreements shall be executed on an approved City form and be consistent with Chapter 1-8 of the regulations, however, the Voluntary Agreement shall not set the base year net operating income and/or its component elements, or the fair return.

#### **9.06 Guidance for Substantive Determinations**

9.06.01 In calculating net operating income expenses for capital expenditures and replacement of facilities, materials or major equipment necessary to maintain the same level of services as previously provided may be allowed except insofar as such expenses are compensated by insurance proceeds or other sources. 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, below provided that the Hearing Officer may use 7 years for unlisted items, or such other period as is determined to be reasonable and consistent with the purposes of the Ordinance.

**IMPROVEMENT AMORTIZATION PERIOD IN YEARS**

- Air Conditioner 10
- Major Appliances (other than those listed) 7
- Cabinets 10
- Dishwasher 7
- Doors 10
- Dryer 7
- 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
- Drywall 10
- Plumbing 10
- Pumps 10
- Refrigerator 10
- Roofing 10
- Security System 10
- Stove 10
- Stucco 10
- Washing Machine 7
- Water Heater 7

9.06.02 Expenses for maintenance and repair are reasonable and normal where they are consistent within 10% 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.

**9.06.03 Reasonableness Generally**

A. Expenses must be reasonable.

B. Expenses arising from intentionally deferred maintenance or repairs will generally not be reasonable.

C. Expenses must be out of pocket and not reimbursed by any source in order to be reasonable.

D. Expenses that vary more than 10% different from prior years must be accompanied by a written justification and other documentation acceptable to the Hearing Officer for the variation in order to be reasonable. If the Hearing Officer determines that the variation or timing of expenses is not reasonable, then such expenses is not consistent with the purposes of the Ordinance, these expenses may be reallocated or amortized as the Hearing Officer determines to be consistent with the Ordinance.

E. Financing expenses for capital expenditures and replacement of facilities, materials or major equipment will be reasonable if they are for a period not exceeding the amortization period and the annual interest rate does not exceed 3.5%. Any financing with an interest rate in excess of 3.5% must be reasonable under the circumstances and must be documented to the satisfaction of the ~~hearing~~ Hearing officer ~~Officer~~.

F. Expenses should be documented by original contemporaneous and complete invoices or other similar documents that identify the provider, cost, address of work, dates, and the nature of the work performed from licensed businesses and be provided along with cancelled checks or other as proof of payment thereof. It is anticipated that such documents will identify the provider, cost, address of work, dates and the nature of the work performed.

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

~~will generally not be reasonable.~~

### **9.07 Definitions**

9.07.01 All undefined capitalized terms shall be defined as provided in the Interim Ordinance and if not defined therein, in the fair return petition form.

9.07.02 "Beyond the Control of the Owner" shall mean not precipitated by voluntary actions, such as ~~owner~~ landlord's issuance of notices to vacate without cause, but not including voluntary vacancies or vacancies after an unlawful detainer proceeding.

9.07.03 "Capital Expenses" shall mean expenses for capital expenditures and replacement of facilities, materials or major equipment necessary to maintain the same level of services as previously provided.

9.07.04 "Capital Improvements" are building, unit or property additions or modifications that improve the housing services to tenants from the level of services as previously provided.

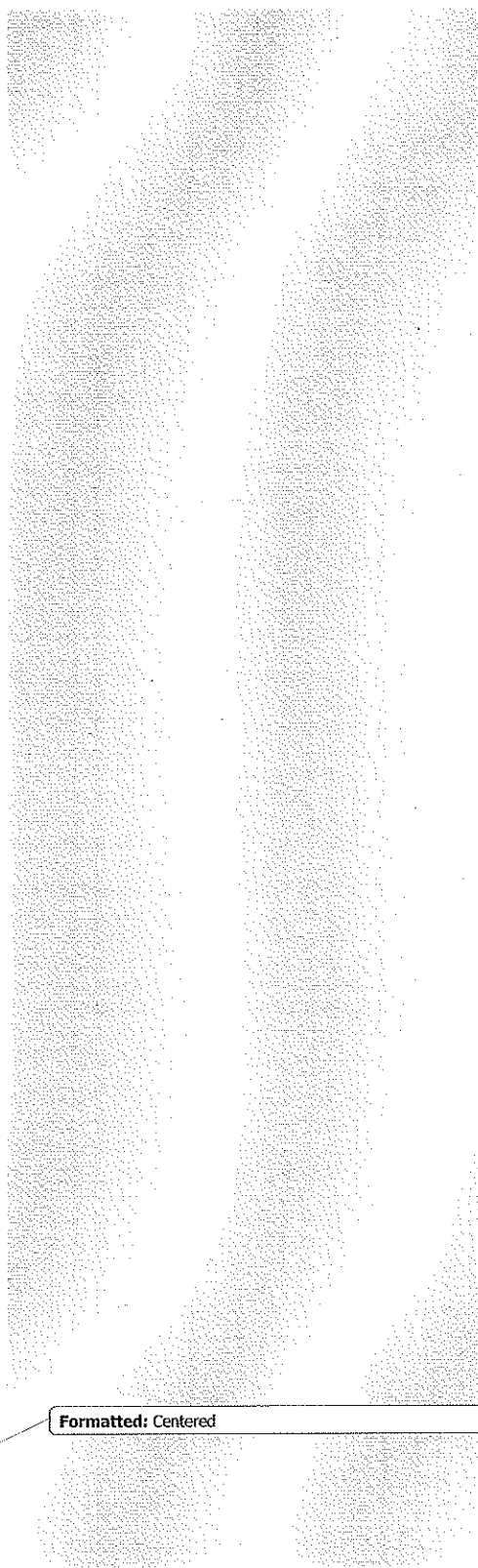
9.07.05 "Current Year" shall mean the 12 month period ending the month prior to the submittal of a fair return petition. Alternatively, the ~~petitioner~~landlord may request to use an alternative current year that ended no more than 3 months prior to the submittal of the petition, but in that event the CPI for the Current Year shall be adjusted backwards accordingly.

9.07.06 "Director" shall mean the City of San Jose's Director of Housing.

9.07.07 "Mail" shall mean to deposit in the U.S. Mail, 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.

9.07.08 "Rental Rights and Referrals Program staff" or "Program Staff" shall mean the employees of the City of San José who implement Municipal Code Chapter 17.23 and its regulations.

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# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** August 29, 2016

Approved

*D. D. Syl*

Date

*8/29/16*

## SUPPLEMENTAL

**SUBJECT: APPROVAL OF THE REGULATIONS IMPLEMENTING THE INTERIM ORDINANCE AMENDING THE APARTMENT RENT ORDINANCE**

### REASON FOR SUPPLEMENTAL

This purpose of this memorandum is to provide a summary of public comment on the draft regulations implementing the Interim Ordinance from the Housing and Community Development Commission (HCDC), Hearing Officers, and the general public. Subsequent changes to the draft regulations are also included.

### BACKGROUND

Per Section 2.08.2840.B.1 of the San José Municipal Code, it is a function of the HCDC to make recommendations to the City Council regarding regulations pertaining to the Apartment Rent Ordinance (Chapter 17.23 of the Municipal Code.) On Thursday, August 11, 2016, the HCDC reviewed and provided input on the draft regulations implementing Interim Apartment Rent Ordinance hearing process. The Housing Department requested a deferral of this item from the August 23, 2016 City Council meeting to the August 30, 2016 meeting to allow for additional public comment.

### COMMISSION RECOMMENDATION/INPUT

The Commission provided feedback and questions to staff on how the interim regulations will be implemented. The Commission voted unanimously (7-0) to recommend that the City Council approve the amendment adding Chapter 9, Fair Return Petition Procedures, to the regulations implementing the Apartment Rent Ordinance. As part of the action, the Commission recommended that staff incorporate feedback made by the Commission, which included: (1)

providing training to apartment owners on the Interim Apartment Rent Ordinance Fair Return Petition Process and the MNOI calculation, (2) notifying tenants in their primary language that a petition has been filed, (3) confirming how a rent increase is applied to leases that do not end at the time of the hearing officers decision, (4) confirming whether the rent increase becomes part of the base year rent or if it is a separate item that is dropped off after the amortization period ends, (5) including the audio tape as part of the "official hearing record", (6) confirming that there is an appeals process in the interim ordinance, and (7) determining whether a 70 day timeline to complete the petition review process can be shortened. Additionally, the Commission requested that staff inform the Commission of any changes made from the feedback given.

### HCDC Input

The Commission provided input and asked questions on the draft regulations. The Commission's questions and staff responses are provided as an Attachment to this memorandum. Items that have been added to the Interim Regulations and/or incorporated into the Department's implementation workplan, per the Commission input, are discussed below.

Staff requested feedback from the Commission on whether it would be helpful to provide technical assistance to apartment owners to explain the fair return petition and the Interim Ordinance. The Commission agreed that training would be a necessary and valuable resource. Staff intends to schedule public workshops in early fall.

The Commission discussed language access practices, specifically considering the language access needs of tenants. The Commission asked if petition notices would be provided to tenants in their native language. In response to the Commission's request, the Fair Return Petition form, which will be created to implement the Interim Ordinance, will include multi-lingual information on the availability of oral translation. Staff will develop tenant notice forms for use by owners consistent with the City's Language Access Plan, in conjunction with the roll-out of the fully-modified ARO program.

The Commission requested that audio recordings of the administrative hearing be included as part of the official hearing record. Section 9.04.06 of the regulations has been amended to include audio tapes as part of the official hearing record.

The Commission also asked whether the 70-day hearing timeframe was prudent, and if there were efficiencies that could be found to reduce the time required to come to a final decision by the Hearing Officer. Staff responded that the timeframe sets a target by which most all decisions should be final. In doing so, it helps manage expectations for all parties. The timeframe recognizes the difficulties in scheduling hearings between multiple parties, and the potential for these evidence-based fair return hearings to take more time than the current pass-through hearings. In many instances, the timeframe will be shorter. As the fair return petition are processed, staff will analyze processing time data to identify areas where the process can be shortened.

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Hearing Officer Input

It should also be noted that the Program's experienced contract Hearing Officers also provided feedback on the draft regulations and integration of the draft regulations with the standards that were previously in effect. Since the release of the initial draft regulations, additional clarifying language was added to Regulations Section 9.05.02 (B) to reflect further Hearing Officer input.

Public Input

On August 25, 2016, the Housing Department held a public meeting to receive feedback on the draft regulations. No one from the public requested any modifications. The public comment focused on the clarification of operational details of the draft regulations, which staff addressed.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

*/s/*  
JACKY MORALES-FERRAND  
Director, Department of Housing

For questions, please contact Jacky Morales-Ferrand, Housing Director at (408) 535-3855.

Attachment

## Attachment

### **HCDC Questions with Staff Responses on the Interim Apartment Rent Ordinance Regulations**

1. Training should be provided to owners on the Interim Apartment Rent Ordinance (IARO) fair return petition process and the MNOI calculation.

Response: *The Department will offer training on the MNOI and IARO process. An announcement with training dates and locations will be distributed within the next two weeks.*

2. Notices that a petition has been filed should be provided in the primary language of the residents.

Response: *The Fair Return Petition form will include multi-lingual information on the availability of oral translation. The Department will develop tenant notice forms for use by owners in multiple languages consistent with the City's Language Access Plan for the fully-modified ARO Program.*

3. How are rent increases approved by a hearing officer applied to leases that do not end at the time of the hearing officer's decision? When is the rent increase applied?

Response: *Rent increases can only be applied once in a 12-month period. A rent increase that originated through a successful Fair Return Petition would not be applied until at least 12 months have passed from the prior increase.*

4. Does a rent increase become part of the base year rent or, is it a separate item that is dropped off after the amortization period ends?

Response: *If the petition is based on the claim that the NOI has not increased at the rate of inflation, the base year rent would not be adjusted. If the petitioner has petitioned on the basis that he or she was not receiving a fair return in the base year, the hearing officer may adjust the base year rent (if the burden of proof is met and the findings are made).*

5. Section 9.04.06 lists the items that are part of the official hearing record. The audio tape should be included as part of the official record.

Response: *The draft interim regulations have been amended to include audio tapes as part of the official hearing record.*

6. Section 9.0.5 mentions the potential for "appeals". However, the Interim Ordinance does not include an appeals process.

Response: *This section refers to an appeal from a Mediation Hearing Officer determination regarding a tenant petition. Per the existing Ordinance, tenant petitions will still go to mediation and have the ability to go to arbitration. Owner Fair Return petitions will have a single "arbitration" petition.*

7. The 70-day timeline completing the completing the petition review seems a bit excessive.

*Response: The Housing Department will work to minimize the amount of time it takes to complete the process by analyzing data in terms of where in the petition process can potentially be streamlined.*

8. The interim ordinance mentions keeping three years of data back to 2014. What happens if an owner does not have three years of data? Is there an alternative process?

*Response: The Interim Ordinance requires landlords to keep their base year (2014) records so that the base year net operating income can be determined. The Ordinance does not require them to keep three years of records. If a landlord does not have the 2014 records, they can submit other evidence regarding their base year net operating income, however, they will still need to meet the burden of proof regarding that income.*



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** August 8, 2016

Approved

*D. D. Sy L*

Date

*8/10/16*

**SUBJECT: APPROVAL OF THE REGULATIONS IMPLEMENTING THE INTERIM AMENDMENT TO THE APARTMENT RENT ORDINANCE**

## RECOMMENDATION

Adopt a resolution approving the amendment to the existing regulations to add Chapter 9 which provides the procedural direction needed for the interim fair return hearing process implemented by the Interim Ordinance amending Chapter 17.23 of Title 17 of the San José Municipal Code (Apartment Rent Ordinance).

## OUTCOME

Adoption of the amendment adding Chapter 9 to the existing regulations will provide needed procedural guidance for the implementation of the fair return hearing process established in the Interim Apartment Rent Ordinance adopted by the City Council on May 17, 2016.

## BACKGROUND

On April 19, 2016, the City Council considered changes to the City's Apartment Rent Ordinance (ARO). After extensive discussion and public comment, 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, and implementing a rent registry. City Council also directed staff to develop and bring back an Anti-Retaliation & Protection Ordinance for approval in fall 2016. The City Council also directed staff to return on May 10, 2016 with an urgency ordinance that provides a temporary pause in rent increases to apartments subject to the ARO.

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At the May 10, 2016, the City Council meeting the Interim Apartment Rent Ordinance (Interim Ordinance) was adopted. Based on the significant workload associated with implementing the permanent changes to the ARO, the City Council concluded that an Interim Ordinance was necessary to transition to the new ARO provisions and to reduce uncertainty for both tenants and landlords. The Interim Ordinance (Attachment A) became effective on June 17, 2016 and will be in effect until January 1, 2017 or 60 days after the permanent ordinance is in place, whichever is earlier.

The adopted Interim Ordinance reduced the annual allowable rent increase on tenants from 8% to 5%, eliminated rent increases available through the pass-through provisions (including debt-service, capital improvement, rehabilitation, and operations & maintenance) after September 1, 2016, and implemented a fair return petition process. A capital improvement pass-through will return as a mechanism for rent increases once the permanent ordinance is approved by the Council.

Many of the necessary updates and changes to the ARO to implement the Interim Ordinance can be completed by Housing Department staff. However, amending the regulations to add a chapter implementing the fair return petition process (petition process) requires review by the Housing and Community Development Commission and subsequent approval by the City Council. The Interim Ordinance Regulations, which includes the chapter implementing the fair return petition process, are provided as Attachment B to this memorandum.

## **ANALYSIS**

The amendment to the regulations will provide direction to allow the Hearing Officers to conduct fair return petition hearings called for under the Interim Ordinance.

### *Fair Return Petition Process*

Although the annual 5% increase should provide the vast majority of owners with a fair return, the fair return petition process is available for owners who can show that they are not receiving a fair return because their current net operating income is less than their net operating income adjusted for inflation (as measured by the Consumer Price Index, San Francisco Bay Area-All Urban Consumers) or that the 2014 base year net operating income did not provide a fair return.

The proposed regulations provide the timeframe associated with the fair return petition process. Under the proposed regulations, the time from when a petition is received until the hearing officer issues a determination, should take no longer than 70 days. An exception to this timeframe would be in cases in which the hearing is rescheduled for unforeseen circumstances by one of the parties. After receiving a petition, staff will respond with a determination of completeness within 10 days, and in the case of a complete application, will schedule a hearing within 30 days of that determination being made. A single hearing may occur over multiple days,

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depending on the specifics of the petition and property in question. A hearing officer will have 30 days to issue their determination after the close of the hearing.

### **EVALUATION AND FOLLOW-UP**

Upon adoption of the amendment to the regulations, the City Attorney's Office will provide mandatory training to the existing group of contracted administrative hearing officers who will preside over petition hearings. If requested, the Housing Department will set up training sessions to provide owners with technical assistance on the fair return petition process. When staff returns to the City Council with the proposed final ARO and its regulations, data on the number of petitions received under the interim ordinance will be provided to the City Council. Staff intends to return with the proposed ARO before the end of the calendar year. This will complete the majority of work on item no. 2 on the City Council's ordinance and policy priorities list.

### **PUBLIC OUTREACH**

This action will be considered by the Housing & Community Development Commission on August 11, 2016. It will also be posted on the City's Council Agenda website for the August 23, 2016 Council Meeting.

### **COORDINATION**

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

### **COMMISSION RECOMMENDATION**

Pursuant to Section 7.01 of the existing regulations, the proposed amendment will be presented to the Housing and Community Development Commission at their regularly scheduled meeting on August 11, 2016, for approval of the amendment and a recommendation to the City Council. A supplemental memo will be released with their recommendation(s) to the Council.



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**CEQA**

Exempt, Section 15061(b)(3) No potential for causing a significant effect on the environment.  
File No. PP16-051.

/s/

JACKY MORALES-FERRAND  
Director, Department of Housing

For questions, please contact Jacky Morales-Ferrand, Director, at (408) 535-3855.

Attachments:

A: Interim Ordinance (For information only; approved May 17, 2016)

B: Interim Ordinance Regulations

## Part 8 - INTERIM REGULATION OF RENT INCREASES

## Attachment A

## 17.23.800 - Interim limit on rent increases.

Notwithstanding Section 17.23.180 and Section 17.23.210 of Chapter 17.23, Title 17:

- A. No increase or combination of increases to the rent charged to a tenant of a rental unit may exceed five percent, subject to Section 17.23.810; and
- B. Rent may not be increased more than once in any twelve-month period; and
- C. A landlord must invoke the hearing process referred to in Section 17.23.230 in order to seek any increase in excess of the five percent increase allowed without review pursuant to Section 17.23.800.
- D. A landlord may set the initial rent for a new tenant immediately after a vacancy occurring pursuant to Section 17.23.190.B.

(Ord. 29730.)

## 17.23.810 - Deadline for petitions and awards; limit on awards.

- A. No landlord may petition for a rent increase due to debt service costs or for other pass-through costs listed in Section 17.23.440 after September 1, 2016.
- B. Notwithstanding Section 17.23.440.A.3, any award for a petition filed for an increase listed under Section 17.23.440.A after the effective date of the ordinance from which this part is derived shall not include any increase in excess of approved reasonable pass-through costs plus no more than two percent of the monthly rent.

(Ord. 29730.)

## 17.23.820 - Fair return after September 1.

- A. After September 1, 2016, a landlord may petition for a rent increase in excess of the five percent increase allowed pursuant to Section 17.23.800 by invoking the hearing process referred to in Section 17.23.230 in order to seek a fair return as described in this section. An "arbitration" hearing will be held for a fair return petition, and tenants may file service reduction petitions. A fair return petition will be filed on a city approved form and must include copies of all documents and information on which the landlord relies to establish that the base year net operating income was unusually low. Department staff will review the petition submittal for completeness, and respond to the landlord within ten business days with a list of additional documents or information required. If the landlord declares under penalty of perjury that the information or documents are not available to the landlord,

department staff shall proceed with scheduling the hearing. The hearing officer may require additional documentation. The burden of proof is on the landlord to show that the base year net operating income did not provide a fair return.

- B. For the purposes of determining the rent increase necessary to provide the landlord with a fair return, it shall be presumed that the net operating income (determined by subtracting the actual reasonable operating expenses from the gross income), received by the landlord in 2014 (the "base year"), provided the landlord with a fair return.
1. A fair return is that amount required for the landlord to maintain the base year net operating income adjusted for inflation.
  2. The adjustment for inflation shall be sum of a percentage of the annual increases to the Consumer Price Index, San Francisco Bay Area-All Urban Consumers for the petition period, prorated as needed. The applicable percentage of the Consumer Price Index is one hundred percent.
  3. The petition period shall be the period between January, 2014 and the filing date of the landlord petition.
- C. 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 or expenses were unusually high or low for that building or complex in the base year as described in this section. 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 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 that improved the housing services during the base year, which were not reflected in the base year rent levels;
    - b. Substantial repairs were made due to damage caused by uninsured disaster or vandalism;
    - c. Maintenance and repair were below accepted standards or resulted from the intentional deferral of other repairs or work, which deferral caused significant deterioration of housing services, the building or individual units. If the time since the deferred work was performed significantly exceeds the amortization periods established by the regulations, it shall be presumed that it was intentionally deferred; and
    - d. Other expenses were unreasonably high or low, notwithstanding prudent business practice.
  2. The landlord's gross income during the base year was disproportionate. 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 two factors in making this finding:
    - a.

The gross income during the base year was unusually low because some residents had unusually low rents for the quality, location, age, amenities and condition of the housing. Rent less than seventy-five percent of 2014 fair market rent as determined by the U.S. Department of Housing and Urban Development for the San José Sunnyvale Santa Clara metropolitan area can be considered unusually low for units in buildings without housing code violations; and

- 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.
- D. In determining the rent increase required to provide the landlord with a fair return, the administrative hearing officer shall determine:
1. The fair return in accordance with Section 17.23.820.B.
  2. The gross income required to produce the fair return.
  3. The rent increase needed to produce the required gross income.
- E. For the purposes of determining the net operating income, operating expenses shall include the following expenses in connection with the operation of the rental units:
1. Annual fees assessed under Chapter 17.23 to the extent that they cannot be passed through to tenants under Chapter 17.23;
  2. Business license fees, real property taxes, utility costs, insurance;
  3. Normal and reasonable repair and maintenance expenses for a rental unit and the buildings or complex of buildings of which it is a part together with common areas, which 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.
  4. Reasonable management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting, other managerial expense. Management expenses are presumed to be six percent of gross income, unless established otherwise. Management expenses in excess of eight percent 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;
  5. Attorney's fees and costs incurred in connection with successful good faith attempts to recover rents owing and successful good faith unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from tenants; and legal expenses of a nature are necessarily incurred in dealings with respect to the normal operation of the rental units, building or complex to the extent such expenses are not recovered from adverse or other parties. If, on the basis of substantial evidence, it is determined that these expenses will not reoccur annually, the hearing officer may amortize those expenses over a period of five years;
- 6.

Capital Improvements and replacement of facilities, materials or equipment necessary to maintain the same level of services as previously provided, except to the extent such costs are compensated by insurance proceeds or other sources, and subject to the condition that said expenses shall be amortized in accordance with the standards for capital improvements in the regulations.

- F. For the purposes of determining the net operating income, operating expenses shall not include:
1. Avoidable and unnecessary expense increases since the base year including maintenance and repair work which resulted from the intentional deferral of other repairs or work, which deferral caused significant deterioration of housing services, the building or individual units;
  2. Debt service, including mortgage interest and principal payments;
  3. Fees, other than fees expressly authorized by subsection E. of this section;
  4. Penalties, fees or interest awarded for violation of this chapter or any other law;
  5. Legal expenses, except as authorized by subsection E. of this section including attorneys' fees and costs, incurred in relation to administrative or judicial proceedings in connection with this chapter and legal expenses, where the pass-through of the expenses would constitute a violation of public policy;
  6. Depreciation of the rental unit or rental units.
  7. Any expenses for which the landlord has been reimbursed by any utility rebate or discount, security deposit, insurance settlement, judgment for damages, settlement or any other method or device.
- G. For the purposes of determining the net operating income, gross income shall be the sum of the following:
1. Gross rents, calculated on the basis of one hundred percent occupancy, adjusted for uncollected rents due to vacancy and bad debts to the extent such are reasonable and beyond the control of the landlord;
  2. Income from laundry facilities, garage or parking fees, or other services, if not included in rent; and
  3. Costs of (or related to) utilities paid directly to the landlord by the tenants, if not included in rent; and
  4. Interest from security and cleaning deposits (except to the extent paid to tenants); and
  5. All other income or consideration received or receivable in connection with the use or occupancy of the rental unit
- H. The hearing officer's decision shall include a determination in accordance with the provisions of this part of the amount of the rent increase, if any, which is required to provide the landlord with a fair return. The hearing officer's allowance or disallowance of any proposed rent increase or portion thereof may be reasonably conditioned in any manner necessary to effectuate the purposes of this chapter.

(Ord. 29730.)

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

(Ord. 29730.)

17.23.840 - No waiver.

The provisions of this part may not be waived, and any term of any lease, contract, or other agreement which purports to waive or limit a tenant's substantive or procedural rights under this part are contrary to public policy, unenforceable, and void.

(Ord. 29730.)

17.23.850 - Termination of Interim regulation.

The provisions of this part will terminate on the earlier of: sixty days after the effective date of an ordinance amending Chapter 17.23 to decrease the annual allowable rent increase to five percent, revise the cost pass-through process and require registration of rents or units or January 1, 2017.

(Ord. 29730.)

AMENDMENT TO THE RENTAL DISPUTE  
MEDIATION AND ARBITRATION PROGRAM REGULATIONS

Chapter 9 Fair Return Petition Procedures

**9.01 General Provisions**

9.01.01 Intent

This Chapter is intended to provide procedures for the fair return hearing process provided for in Section 17.23.820 of the Municipal Code of the City of San José and to supplement the provisions in the existing regulations implementing Chapter 17.23 of the Municipal Code. Where procedures differ from the provisions in the existing regulations, these procedures are intended to apply to fair return petitions. These regulations are intended to be harmonized with existing provisions for tenant petitions and service reductions when those petitions are considered in connection with a fair return petition.

9.01.02 Conflicting Provisions

Ordinance No. 29730 adopting Section 17.23.800 through Section 17.23.820 shall control over conflicting provisions in this Chapter.

9.01.03 Notice

It is presumed that a petitioner's petition contains the correct address for notice, and that notices mailed to that address are received three (3) days after mailing.

**9.02 Petitions**

9.02.01 Petition Filing Requirement.

After September 1, 2016 a landlord seeking a rent adjustment must file a fair return petition with the Rental Rights and Referrals Program (Program) on a City petition form with all required supporting documentation and obtain a determination of completeness under this Chapter.

9.02.02 Petition and Forms.

Petition and forms shall be as prescribed by the Director with the approval of the City Attorney as to form. All forms shall specify, and all written statements shall be made, under penalty of perjury.

9.02.03 Supporting Evidence.

A. The owner must submit with the petition complete at least three (3) sets of copies of all evidence the owner is relying on to support his or her claim,

marked accordingly. Receipts, cancelled checks, and detailed invoices are the best documentation.

B. Tax returns 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 are not accepted as sufficient evidence for the Current Year.

C. Evidence that may tend to show that rents were unusually low for the quality, location, age, amenities and condition of the housing include evidence of rents collected in comparable buildings located in the same neighborhood.

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

#### 9.02.04. Acceptance for Filing; Completeness.

A. A petition will not be accepted for filing for under any of the following circumstances:

1. Where the petition is not made on the City petition form or not correctly completed.
2. Where the petition is not accompanied by all required supporting documentation.
3. A petition seeking a rent increase was filed for the property within the previous twelve months, including petitions that were subsequently withdrawn.
4. Where the petition is not accompanied by (a) list of all tenants and their addresses, (b) a copy of the City notice from the landlord consistent with Section 17-23-270 to each tenant that the landlord is filing a fair return petition (c) a copy of the completed proxy form and (d) a declaration that he/she has served the written notification on all the tenants.

B. Within ten (10) working days after the date of receipt of a petition, or an amended petition, Program staff shall determine whether said petition is complete or whether corrections or additional information is needed. If the petition is complete and there are no corrections or missing documents or information, Program staff shall mail a notice of determination of completeness to the petitioner. A delay in the response by Program staff shall not be deemed a determination of completeness.

C. If the petition is determined not to be complete, the Program staff shall mail a notice to the petitioner listing the additional information or documentation required to complete the petition. Petitioner may amend the petition to include the required information or documentation. With respect to 2014 Base Year information or documentation, petitioner may amend the Petition by submitting a written statement identifying the required information or documentation that is unavailable, and state how it became unavailable,



under penalty of perjury. Such a submittal does not relieve the petitioner of the burden of proof.

D. If the petition is determined not to be completed correctly, the Program staff shall notify petitioner in writing of the corrections required to complete the petition. Petitioner shall amend the petition to make the corrections. If Petitioner disagrees with the corrections, the Petitioner may also submit a letter objecting to the corrections.

E. If the Petitioner fails to amend or supplement the petition as required by Paragraph C or D within thirty (30) days of the date the notice sent under Paragraph C or D was mailed, the petition shall be deemed to be withdrawn.

F. A staff report shall accompany the NOI petition when it is submitted to the hearing officer and be available for review by the parties. The report shall include a list of all petitions filed in the last 12 months, the rate of inflation for the applicable petition period, a list of all unresolved City code violation complaints, and a summary of the petition and evidence submitted.

G. In the event that the petition is complete except for missing Base Year NOI evidence. The owner may submit a City prescribed form requesting the Program to accept the petition without the complete Base Year NOI evidence. The form will require an affidavit under penalty of perjury indicating that the owner does not have and cannot obtain this evidence, and a description of how this evidence and may require a filing fee to cover the cost for Program staff to investigate and prepare a report for the Hearing Officer. The scheduling of the hearing will occur after the Program staff report is complete.

### 9.03 Scheduling and Appearance

9.03.01. Program staff shall assign an (Arbitration) Hearing Officer to hear the completed fair return petition and the administrative hearing on the petition shall be scheduled within thirty (30) 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 shall be scheduled within 30 days and the hearing thereafter. Notice of the hearing date shall be sent to the Petitioner and affected tenants. The notice of the hearing date shall be deposited in the U.S. Mail at least two weeks prior to the hearing date.

9.03.02 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.

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

9.03.04 If tenant petitions also have been filed for service reduction, housing code violations or other violations of the Ordinance, the hearing on NOI petition shall not occur until the mediation hearing for the tenant petitions is completed and period for appeal has ended. If there is an appeal, the appeal shall be heard by the hearing officer assigned for the NOI hearing. The tenant petition hearing on appeal and NOI petition hearings shall be combined unless it is determined to be infeasible by Program staff.

#### 9.04 Conduct of Hearing.

##### 9.04.01 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.

##### 9.04.02 Ex Parte Communications.

There shall be no oral communication outside the hearing between the Hearing Officer and any party or witness, except at a prehearing conference, if any, to clarify and resolve issues. All discussion during the hearing shall be recorded on audiotape. All written communication from the Hearing Officer to a party after the hearing has commenced shall be provided to all parties.

##### 9.04.03 Order of Proceedings.

A hearing on a fair return 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. A brief presentation by or on behalf of landlord, if landlord desires to expand upon the information contained in or appended to the petition for rent adjustment, including presentations of any other affected parties and witnesses in support of the petition;
- B. A brief presentation by or on behalf of opponents to the petition, including presentations of any other affected parties and witnesses in opposition to the petition;
- C. A brief presentation of the results of any Program investigations or staff reports in relation to the petition, if any;
- D. Rebuttal by landlord.

##### 9.04.04 Speakers' Presentations.

The presentation of each person speaking during a hearing shall be concise and to the point; visual and other presentation aids may be used as deemed appropriate by the Hearing Officer, provided that the presenter furnishes such

materials in advance for inclusion in the hearing record. Notwithstanding Regulation section 3.04.02, the Hearing Officer shall establish equitable time limits for presentations at a hearing.

**9.04.05 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.

**9.04.06 Hearing Record.**

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

- A. A copy of the petition and documents submitted to support the petition;
- B. Any written responses to the petition received from affected 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. All findings of fact and conclusions of law;
- H. Any tentative decisions provided to the parties for comment and any comments received; and
- I. All recommended or final decisions, orders, or rulings.

**9.04.07 Proof.**

The landlord has the burden of proof to establish that a rent adjustment is required in order to provide the landlord with a fair return. The determinations regarding the quantum of proof required to meet the burden shall be made with respect to the following guidelines:

- A. The burden of proof shall be satisfied by persuading the Hearing Officer that the fact sought to be proven is more probable than some other fact.
- B. The burden of proof shall be met by using evidence only which has a tendency in reason to prove or disprove a disputed fact of consequence.
- C. Evidence shall be received with the petition for expenses alleged in the petition and made available for review by the parties prior to the first hearing unless the evidence is ordered to be submitted by the Hearing Officer.
- D. Moreover, no rent adjustment shall be granted unless supported by the preponderance of the relevant and credible evidence noted in the

hearing record and no rent adjustment shall be supported solely by hearsay evidence.

#### 9.04.08 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.

#### 9.05 Decision.

9.05.01 Within thirty (30) days after the close of the hearing, the Hearing Officer shall issue a final decision, approving, partially approving, or disapproving the rent adjustment requested by the fair return petition. 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 owner and affected parties for comment regarding clerical or mathematical errors. Any such comments shall be provided to the Hearing Officer and parties in writing by the commenter.

9.05.02 The decision shall include findings of fact and conclusions of law which support the decision, and shall specify the following:

A. The amount of the rent increase, if any, for each unit.

B. In the case of a downward adjustment in the rent, an itemization of each reduction in service on which the reduction is based, and the amount of reduction attributable to that housing service. An itemization of housing code violation shall be listed separately and the amount of reduction attributable to that violation.

C. Any conditions which are placed on the award;

D. The date on which any adjustment to the rent is effective for each unit.

E. At the option of the Hearing Officer, any determinations for service reductions or other tenant petitions appealed to the Hearing Officer.

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

9.05.03 Voluntary Agreements. The Hearing Officer may recess the hearing to allow for the negotiation of a Voluntary Agreement. Voluntary Agreement negotiations are not recorded. Voluntary Agreements shall be executed on an approved City form and be consistent with Chapter 1-8 of the regulations, however, the Voluntary Agreement shall not set the base year net operating income and/or its component elements, or the fair return.

### **9.06 Guidance for Substantive Determinations**

9.06.01 In calculating net operating income expenses for capital expenditures and replacement of facilities, materials or major equipment necessary to maintain the same level of services as previously provided may be allowed except insofar as such expenses are compensated by insurance proceeds or other sources. 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, below provided that the Hearing Officer may use 7 years for unlisted items, or such other period as is determined to be reasonable and consistent with the purposes of the Ordinance.

#### **IMPROVEMENT AMORTIZATION PERIOD IN YEARS**

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

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

9.06.02 Expenses for maintenance and repair are reasonable and normal where they are consistent within 10% 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.

9.06.03 Reasonableness Generally

- A. Expenses must be reasonable.
- B. Expenses arising from deferred maintenance will generally not be reasonable.
- C. Expenses must be out of pocket and not reimbursed by any source in order to be reasonable.
- D. Expenses that vary more than 10% different from prior years must be accompanied by a written justification and other documentation acceptable to the Hearing Officer for the variation in order to be reasonable; if the Hearing Officer determines that the variation is not consistent with the purposes or the Ordinance, these expenses may be reallocated or amortized as the Hearing Officer determines to be consistent with the Ordinance.
- E. Financing expenses for capital expenditures and replacement of facilities, materials or major equipment will be reasonable if they are for a period not exceeding the amortization period and the annual interest rate does not exceed 3.5%. Any financing with an interest rate in excess of 3.5% must be reasonable under the circumstances and must be documented to the satisfaction of the hearing officer.
- F. Expenses should be documented by contemporaneous and complete invoices from licensed businesses and provided along with cancelled checks as proof of payment thereof. It is anticipated that such documents will identify the provider, cost, address of work, dates and the nature of the work performed.
- G. Expense claims based on cash payments and payments to affiliated entities will generally not be reasonable.

**9.07 Definitions**

9.07.01 All undefined capitalized terms shall be defined as provided in the Interim Ordinance and if not defined therein, in the fair return petition form.

9.07.02 "Beyond the Control of the Owner" shall mean not precipitated by voluntary actions, such as owner's issuance of notices to vacate without cause,

but not including voluntary vacancies or vacancies after an unlawful detainer proceeding.

9.07.03 "Capital Expenses" shall mean expenses for capital expenditures and replacement of facilities, materials or major equipment necessary to maintain the same level of services as previously provided.

9.07.04 "Capital Improvements" are building, unit or property additions or modifications that improve the housing services to tenants from the level of services as previously provided.

9.07.05 "Current Year" shall mean the 12 month period ending the month prior to the submittal of a fair return petition. Alternatively, the petitioner may request to use an alternative current year that ended no more than 3 months prior to the submittal of the petition, but in that event the CPI for the Current Year shall be adjusted backwards accordingly.

9.07.06 "Director" shall be the City of San Jose's Director of Housing.

9.07.07 "Mail" shall mean to deposit in the U.S. Mail, 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.

9.07.08 "Rental Rights and Referrals Program staff" or "Program Staff" shall mean the employees of the City of San José who implement Municipal Code Chapter 17.23 and its regulations.

**From:** Melissa Morris [REDACTED] >  
**Sent:** Monday, August 29, 2016 12:23 PM  
**To:** The Office of Mayor Sam Liccardo; District1; District2; District3; District4; District5; Oliverio, Pierluigi; District7; Herrera, Rose; District9; District 10; City Clerk; Grabowski, Ann; Morales-Ferrand, Jacky; Greene, Shasta; Lujano, Jose; Parra-Garcia, Sabrina; Castro, Huascar; Shih, Stacie  
**Cc:** Diana Castillo; Kyra Kazantzis  
**Subject:** Item 4.3—Approval of the Regulations Implementing the Interim Amendment to the Apartment Rent Ordinance (August 30, 2016, City Council Meeting)

Dear Mayor and City Councilmembers,

I am writing on behalf of the Law Foundation of Silicon Valley to urge you to approve the regulations implementing the interim amendment to the Apartment Rent Ordinance. Although we would have preferred more time to review and comment on these regulations, we acknowledge the necessity of adopting regulations before September 1. The interim ordinance, which Council approved in May, requires the City to transition from the ARO's previous system of pass-throughs to the interim ARO's fair return process beginning September 1, 2016; as such, the City should approve these regulations in order to effectuate the interim ordinance.

These interim regulations will provide an opportunity for both the City and stakeholders to evaluate the fair return methodology and process; our experience during this interim period can inform the long-term changes to the ARO and its regulations that will be adopted later this year.

As the City implements the regulation, the City notice described in section 9.02.04(A)(4) should, in addition to the requirements of section 17.23.270, include an explicit statement of the tenant's right to oppose the petition, the process for opposing the petition, all relevant timelines for opposing the petition, and the process for obtaining copies of the petition and all related documents from the Rental Rights and Referrals Program.

We also support the recommendation of the HCDC that notices be provided to tenants in their preferred language. Whether through the regulation, through its implementation, or both, the City must make this process accessible to both tenants and landlords who have limited English proficiency. We look forward to working with the City to ensure that both the interim program and the long-term changes to the ARO are implemented in such a way that the ARO's protections are accessible to tenants in our diverse community.

Sincerely,

**Melissa A. Morris | Senior Attorney**  
**Fair Housing Law Project | Public Interest Law Firm**

  
**Law Foundation** OF SILICON VALLEY  
Advancing Justice in Silicon Valley

[REDACTED]  
San Jose, California 95112  
[www.lawfoundation.org](http://www.lawfoundation.org)







California Apartment Association

[REDACTED]  
Sacramento, CA 95814

[REDACTED] • caanet.org

August 30<sup>th</sup>, 2016

**Via Electronic Mail Only**

Mayor Sam Liccardo and Council  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

Dear Mayor Liccardo:

The California Apartment Association (CAA) is requesting that Council delay the implementation of the proposed guidelines for the Fair Rate of Return petition process. We are concerned about the hurried nature in which the proposed guidelines have been introduced, the lack of outreach conducted by the Housing Department to property owners and the failure to reach out to industry partners for feedback on the guidelines.

Recognizing the complexity of this issue, we enlisted the assistance of our attorneys to conduct a legal review of the guidelines. In that review, which is attached to this letter, you will find a number of concerns that would merit further study. The attached legal memo explains why there is time for further study in the section titled 'No Urgency to Pass Proposed Regulations.'

In the effort to achieve the shared goal of developing a petition process that is unambiguous and straightforward, we are requesting the Council to grant the additional time for the Housing Department to review and address our concerns.

Sincerely,

[REDACTED]

Anil Babbar  
Vice President  
California Apartment Association, Tri-County Division

cc: Jacky Morales Ferrand  
Shasta Greene



Stephen D. Pahl  
Karen K. McCay  
Fenn C. Horton  
Catherine S. Robertson  
Servando R. Sandoval  
Ginger L. Sotelo

Sonia S. Shah  
Helene A. Simvoulakis-Panos  
John A. List  
Julie E. Bonnel-Rogers  
Matthew J. Wendt  
Eric J. Stephenson  
Lerna Kazazic

Sarahann Shapiro  
Theresa C. Lopez  
*Special Counsel*

225 West Santa Clara St., Suite 1500, San José, California 95113-1752 • Tel: 408-286-5100 • Fax: 408-286-5722

11620 Wilshire Blvd., Suite 900, Los Angeles, California 90025-1706 • Tel: 424-217-1830 • Fax: 424-217-1854

## MEMORANDUM

**TO:** Interested Parties

**FROM:** Pahl & McCay

**DATE:** August 29, 2016

**RE:** Legal Concerns Regarding Proposed Amendment to San José Rent Control Regulations to add Chapter 9 Fair Return Petition Provisions

At the request of the California Apartment Association (“CAA”),<sup>1</sup> below please find a summary of legal, procedural and practical concerns relating to the proposed amendment to the Rental Dispute Mediation and Arbitration Program Apartment Regulations of the City of San José to add “Chapter 9 Fair Return Petition Procedures.”<sup>2</sup> According to the Memorandum of August 8, 2016, from Jacky Morales-Ferrand to the Honorable Mayor and City Council, the purpose of the proposed amendment is to provide “the procedural direction needed for the interim fair return hearing process implemented by the Interim Ordinance amending Chapter 17.23 of Title 17 of the San José Municipal Code (Apartment Rent Ordinance)” (hereinafter referred to as the “Interim Ordinance”).

While the rental housing industry strongly agrees that such direction is needed given the ambiguities of the Interim Ordinance (which were previously raised with City staff), CAA urges the City Council not to rush to pass regulations which, as set forth below, do not provide the needed guidance. Instead, CAA asks that the City provide the impacted individuals and businesses and their advocates the time necessary to review and address their concerns with City staff about the proposed regulations so that informed decisions can be made and all those impacted by the proposed regulations will be able to know and understand their rights and responsibilities under the Interim Ordinance, which should be the goal of all concerned.

<sup>1</sup> This Memorandum has been prepared with the understanding that it is intended to be communicated to interested parties by CAA. By sharing this analysis with such interested parties, neither CAA nor its counsel intend to waive the attorney-work product privilege or the attorney-client communication privilege with respect to any other analyses or communications exchanged between CAA and Pahl & McCay, a Professional Law Corporation.

<sup>2</sup> This Memorandum relates only to the proposed regulations. There remain several legal and practical concerns with the Interim Ordinance which became effective on June 17, 2016, which are not addressed herein.

Interested Parties  
August 29, 2016  
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No Urgency to Pass Proposed Regulations

The Housing Department has indicated that it is “critical” for the proposed regulations to be passed at the August 30, 2016, Council Meeting so that they are in place on September 1, 2016; however, such is not the case. As the Council is aware, the Interim Ordinance provides, in pertinent part, that “[a]fter September 1, 2016, a landlord may petition for a rent increase in excess of the 5% increase allowed pursuant to Section 17.23.800 *by invoking the hearing process referred to in Section 17.23.230* in order to seek a fair return as described in this section.” [Interim Ordinance § 17.23.820(a) (emphasis added)]. As such, in the unlikely event any landlord files a fair return petition prior to the implementation of any new regulations, the landlord may proceed under the petition process already set forth in the Interim Ordinance.

In addition, it is our understanding that the Housing Department has not even finalized the Fair Return Petition (“FRP”) form mandated by the proposed regulations. No such form has been posted on the City’s website and staff at the Housing Department indicated on Monday, August 29, 2016, over the telephone that the FRP form is not available because “they are still working on it,” and the “ordinance has not been drawn up yet.”

The proposed regulations state that a FRP must be presented on a City Petition Form. [Proposed Reg. § 9.02.01]. In fact, it states that a petition “will not be accepted for filing . . . where the petition is not made on the City petition form . . .” [Proposed Reg. § 9.02.04(A)(1)]. If the form is not ready by September 1, 2016, there is no need for the implementing regulations to be in place by that date, since there would be no possible way for a landlord to submit a FRP until the form is completed.

CAA recognizes that implementation of the Interim Ordinance is a daunting task and there is still much to do, but implementation of regulations which contain legal, procedural and practical deficiencies will not assist hearing officers, landlords or tenants in navigating this new process. The following is a summary of the major concerns identified so far by the rental housing industry with the proposed regulations, which should be addressed by City staff before implementing regulations are adopted by the City Council. CAA desires to work with City staff with respect to these concerns in order to ensure an understandable and fair process for the implementation of the City Council’s policy decisions contained within the Interim Ordinance.

Regulations Change the Evidentiary Standard for Landlord FRPs Only

Section 17.23.320 of the existing Ordinance provides that “any party or their counsel may appear and offer such documents, testimony, written declaration or other evidence as may be pertinent to the proceeding.” The existing regulations state that “conformity to judicial rules of evidence is not necessary.” [Existing Reg. § 3.04.05(a)]. Contrary to these existing provisions, the new proposed regulations determine, in advance, what may and may not be considered by the

Interested Parties  
August 29, 2016  
Page 3

hearing officer and impose evidentiary hearsay rules, apparently only on landlords, in what has heretofore been a relatively informal process.<sup>3</sup>

For example, Proposed Regulation 9.02.03 provides that contemporaneously prepared ledgers are not accepted as sufficient evidence for the Current Year regardless of who prepared the statements, how they were prepared or whether there is any doubt whatsoever as to their contents. Instead, the City staff apparently wants every landlord in every case to present individualized receipts, cancelled checks and detailed invoices of every expense for a property, no matter the size of the property or the number of expenses incurred, mandating the hearing officer to sift through each of them one by one to determine whether the expense was “reasonable.” If such a protracted process is required by regulations, each FRP could take weeks if not months to complete. While there may be circumstances where a hearing officer doubts the veracity of a general ledger or other financial statement, and thus requires additional documentation, to hold at the outset that all such statements may not be used is, to excuse the expression, unreasonable.

Similarly, the Proposed Regulations state that “[e]xpenses should be documented by contemporaneous and complete invoices from licenses business and provided along with cancelled checks as proof of payment thereof.” [Proposed Reg. 9.06.03(F)]. Not all work done on a property requires licensed contractors. In addition, the Proposed Regulations do not take into consideration non-vendor work such as increases in the number on-site staff or increases in on-site staff compensation, neither of which will be supported by invoices from licensed contractors. Are those, too, now being excluded from operating expenses? The Proposed Regulations seem to be designed to address only a limited subset of the expenses of the typical rental property in an effort to prevent owners from ever succeeding on a FRP.

In addition, the Proposed Regulations appear to prevent the parties from being given full opportunity to present relevant evidence and testimony. Proposed Regulation 9.04.04 provides, in pertinent part, that “[n]otwithstanding Regulation section 3.04.02, the hearing Officer shall establish equitable time limits for presentations at a hearing.” Regulation 3.04.02 provides, in pertinent part, that “[t]he parties will be given full opportunity to present relevant evidence and testimony.” The Proposed Regulations appear to require individual invoices, receipts, and cancelled checks for each and every expense and then modify a party’s right to be given a full opportunity to present relevant evidence and testimony. One can only wonder why such a limitation is being imposed when the evidentiary burden is being increased.

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<sup>3</sup> Proposed Reg. § 9.04.07(D) states no rent adjustment shall be supported solely by hearsay evidence, significantly increasing the burden of proof for landlords, while allowing tenants to present entire claims solely on hearsay testimony.



Interested Parties

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Regulations Impose Evidentiary Burdens that May Be Insurmountable for Most Landlords

The Proposed Regulations state that “evidence of rents collected in comparable buildings located in the same neighborhood” may tend to show that “rents were unusually low for the quality, location, age, amenities and condition of the housing.” [Proposed Reg. § 9.02.03(C)]. The Proposed Regulations also indicate that the “Hearing Officer may also evaluate reasonableness by considering whether such expenses are in keeping with expenses for buildings of similar configuration and age.” [Proposed Reg. § 9.06.02]. What the Proposed Regulations do not address, however, is how any landlord is to gather and present such evidence.

There is no subpoena power within the Ordinance and there is no mechanism for compelling competing landlords to provide their financial data. Even if a neighboring landlord were willing to voluntarily provide its financial information, the burden would be significant since contemporaneous ledgers apparently cannot be considered. Further, owners of other buildings are generally prohibited from attending hearings. [Existing Reg. § 2.01.01(b)].

Regulations Do Not Adequately Address Tenant Notice Requirements

Proposed Regulation 9.02.04(A)(4) states, in pertinent part that a:

[P]etition will not be accepted for filing . . . where the petition is not accompanied by . . .

(b) [A] copy of the City notice from the landlord consistent with Section 17.23.270 to each tenant that the landlord is filing a fair return petition . . . and

(d) [A] declaration that he/she has served written notification on all the tenants.”

Section 17.23.20, requires landlords to provide tenants notice of their right to utilize the rental dispute mediation and arbitration hearing process; the time limits within which to file a petition and the current address and telephone number of the City’s program offices, none of which, except maybe the address and phone number, is relevant to a landlord’ FR Petition.

Further, Section 17.23.270 only applies whenever a landlord notifies a tenant or tenants of a proposed rent increase which exceeds eight percent [sic] of the then current rent of such tenant. Even reading this as exceeding five percent, the Interim Ordinance mandates that “a landlord must invoke the hearing process referred to in 17.23.230 in order to seek any increase in excess of the five percent increase allowed without review pursuant to Section 17.23.800. [Interim Ordinance § 17.23.800(C)]. Since the Interim Ordinance requires a landlord to invoke the hearing process before issuing a notice of rent increase, the provisions of 17.23.270 do not



Interested Parties

August 29, 2016

Page 5

provide any guidance as to how or when a tenant is being notified. Any proposed regulation should clarify this issue, not create more confusion, which is the case with the currently proposed regulations.

Proposed Reg. 9.06.02: "Reasonableness" Generally

Subsection B provides that "deferred maintenance" will generally not be reasonable (Proposed Reg. 9.06.03(B)), but deferred maintenance is not defined and it is unclear how the City is distinguishing between deferred maintenance and capital improvements.

Subsection E arbitrarily determines that financing expenses of 3.5% or less may be reasonable, but any financing expenses in excess of 3.5% "must be reasonable under the circumstances and must be documented to the satisfaction of the hearing officer." [Proposed Reg. 9.06.03(F)]. There is no factual justification for the 3.5% as the amount of interest may vary depending on the size of the property, the financial wherewithal of the owner and what is being financed. In addition, the Proposed Regulation begs the question what must be documented, the circumstances or the amount of the interest rate? What are the standards of reasonableness to be applied? The regulations put forth an alleged "standard" without any clear guidance to those governed by the Ordinance except the hope that a "reasonable" hearing officer be assigned to the case.

Subsection G also arbitrarily determines that payments to affiliated entities will generally not be reasonable; however, there is no factual basis for such a regulatory determination. If the work is being done by an affiliate at competitive pricing to a third party vendor, why should such expenses not be considered? If an owner of a rental property also owns a roofing company, the expense of the roof, if competitively priced, would be a bona fide expenditure that should be considered when calculating "reasonable" expenses.

Presentation and Use of Newly Required "Staff Report" is Highly Suspect

The Housing Department has imposed an additional level of review and analysis of a landlord's FRP by mandating in the regulation that "[a] staff report shall accompany the NOI petition when it is submitted to the hearing officer and be available for the review by the parties." [Proposed Reg. 9.02.04(F)]. The regulation does not state when it will be available to the parties and whether landlords will have the opportunity to address the reports contents. Further, it appears that City staff will now be participating in the proceedings as the regulations require "a brief presentation of the results of any Program investigations or staff reports in relation to the petition, if any." [Proposed Reg. § 9.04.03(C)]. We are unclear as to what the "if any" refers since staff reports would be mandated by the Proposed Regulations, but, more importantly, presentation by City staff at the hearing is highly likely to bias the purportedly neutral hearing officer, who is selected and assigned by City staff.

**From:** Anna Salas

**Sent:** Tuesday, August 30, 2016 10:45AM

**To:** The Office of Mayor Sam Liccardo; District1; District2, District3: District4; District5; Oliverio, Pierluigi; District7; Herrera, Rose; District9; District 10; City Clerk; Grabowski, Ann; Morales-Ferrand, Jacky; Greene, Shasta; Lujano, Jose; Parra-Garcia, Sabrina; Castro, Huascar; Shih, Stacie

**CC:** Diana Castillo; Kyra Kazantzis

**Subject:** Item 4.3-Approval of the Regulations Implementing the Interim Amendment to the Apartment Rent Ordinance (August 30, 2016, City Council Meeting)

Dear Mayor and City Councilmembers,

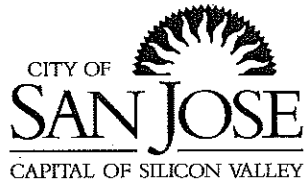
I am writing to urge you not to approve the regulations implementing the interim amendment to the Apartment Rent Ordinance. The added proposed Regulations would incur increase time and cost to the small business owner. Undo City Regulations are burdensome and time consuming to all of us small property owners.

As for myself, I want to concentrate on finding buyers and sellers and not be over burden with more time consuming regulations. Some of my clients are already stating that they might want to concentrate their property search in other jurisdictions with less regulations were a small business owner can invest with more confidence and less hurdles. Additional regulations are costly and time consuming and drive potential clients away.

Therefore, please do not approve the Regulations Implementing the Interim Amendment to the Apartment Rent Ordinance Item 4.3 on today's agenda (August 30, 2016).

Sincerely,

Anna Salas, Realtor



# Memorandum

**TO:** HOUSING AND COMMUNITY  
AND DEVELOPMENT  
COMMISSION

**FROM:** David Bopf

**SUBJECT:** SEE BELOW

**DATE:** September 1, 2016

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**SUBJECT: PUBLIC HEARING FOR THE FY 2015-2016 CONSOLIDATED ANNUAL PERFORMANCE EVALAUTION REPORT (CAPER)**

## RECOMMENDATION

That the Housing and Community Development Commission:

1. Hold the first of two Public Hearings on the FY 2015-2016 CAPER
2. Recommend City Council approval of the FY 2015-2016 CAPER

## OUTCOME

This is the first of two public hearings required to accept the FY 2015-2016 CAPER. This hearing will provide the public and the Housing and Community Development Commission with the opportunity to provide feedback on the report and accomplishments identified within the report. The Commission will make recommendations to the City Council to accept or reject the FY 2015-16 CAPER.

## EXECUTIVE SUMMARY

This memorandum summarizes the accomplishments contained within the FY 2015-2016 CAPER. The CAPER describes the progress towards achieving the housing and community development goals identified in the City's five-year Consolidated Plan (2015-2020) and the FY 2015-2016 Annual Action Plan. The highlights include achievements in the four areas of need identified in the five-year Consolidated Plan. These include: 1) Increase and Preserve Affordable Housing; 2) Respond to Homelessness and its Impact on the Community; 3) Strengthening Neighborhoods; and (4) Promote Fair Housing Choices.



The accomplishments reflect measures stated in agreements with service providers. They summarize only the goals associated with the federal funds provided to address these areas. In most instances, the funds are leveraged with other City funding sources. However in the case of Fair Housing, the federal funds are currently the only resource available to address this need.

For FY 2016-16, the City expended over \$21 Million in federal funds. In aggregate these federal funds achieved the following milestones.

- 2,536 individuals accessed public services at least once, such as overnight shelter services, meals for seniors, neighborhood leadership classes, or legal representation.
- 133 households received transitional or long-term rental assistance.
- 2,079 properties were improved, as a result of either the Minor Repair program or enhanced code enforcement services.
- 234 affordable apartments were funded that will serve thousands of low-income residents over the next thirty years.
- 9 capital improvement projects in predominately low-income neighborhoods that will benefit thousands of individuals over the useful life of these investments.

Unfortunately, the amount of federal funding provided does not come close to meeting the total requirement for each area of need. Nonetheless, the federal resources help leverage local funding to provide a greater impact in addressing the needs of the community and have a tremendous impact on the lives of those fortunate enough to be served or impacted through these programs.

## **BACKGROUND**

As the tenth largest city in the country, San José receives federal funds directly from HUD as an entitlement community. Administered by the City's Department of Housing, the funds are vital in helping the Department to meet its mission to strengthen and revitalize San José's communities through housing and neighborhood investments.

In order to qualify for these funds, HUD requires that the City complete the following three documents:

1. A Five-Year Consolidated Plan (Five-Year Plan), which documents the City's housing needs and its strategies for meeting those needs during a five year period. The City Council approved the FY 2015-20 Consolidated Plan in May 2015.
2. An Annual Action Plan (Annual Plan), which details the investment strategy in each of the five years within a Consolidated Plan cycle to meet identified priorities. The City Council approved the current FY 2016-17 Annual Action Plan in May 2016 for the second year of the 2015-20 cycle.

3. A Consolidated Annual Performance and Evaluation Report (CAPER), which summarizes the City's progress in meeting the objectives of its respective Annual Plans. The draft FY 2015-16 CAPER is available on the Housing Department's website at the following location -[www.sanjoseca.gov/CAPER](http://www.sanjoseca.gov/CAPER).

These three documents include information on the City's use of federal funds, including the Community Development Block Grant (CDBG), Home Investment Partnership (HOME) Program, Emergency Solutions Grant (ESG), and Housing Opportunities for People with AIDS (HOPWA). The FY 2015-2016 CAPER reports on the progress made towards achieving the housing and community development goals identified in the City's *Five-Year Consolidated Plan (2015-2020)* and the *FY 2015-2016 Annual Action Plan*. These Plans guide the funding priorities for San José's federal housing grant programs, which are administered by the City's Housing Department and overseen by the U.S. Department of Housing and Urban Development (HUD).

The September 8, 2016, the Housing and Community Development Commission meeting will provide an opportunity for public input on the CAPER and for the Commission to consider feedback on the report. On September 13, 2016, the City Council will conduct the second and final public hearing on the CAPER and consider approval of the report. If approved, staff will submit the final report including any public comments to HUD by the September 30, 2015 deadline.

## ANALYSIS

The City received a total allocation of \$12 million in Federal funding from CDBG, HOME, HOPWA, and ESG programs for FY 2015-16. Since experiencing significant reductions in FY 2011-12, federal funding levels have remained relatively consistent over the past few years. The City leveraged the FY 2015-16 allocations with other funds and program resources in order to provide vital resources for activities identified as the areas of greatest need in the 2015-2020 Consolidated Plans. These include the following:

1. Increase and Preserve Affordable Housing;
2. Respond to Homelessness and its Impact on the Community;
3. Strengthening Neighborhoods; and
4. Promote Fair Housing Choices

Major accomplishments achieved during the 2015-16 Fiscal Year are highlighted in the following sections. Each set of annual goals in the 2015-16 Annual Action Plan are measured against progress toward the goals set in the 5-year Consolidated Plan. The specific activities funded during the 2015-16 Fiscal Year (FY) were identified as funding priorities to address the four areas of need and demonstrate impact in the community.

It should be noted that each of the federal grants has specific requirements on how funds can be used to meet the goals/areas of need.

CDBG: As the largest and most flexible of the four federal grants, the Community Development Block Grant (CDBG) funds are divided into three categories. These include Public Services,

Administration, and Community Development Investment (CDI) Activities. The CDI category is further delineated into construction projects and non-construction projects.

HOME: These funds must be used to provide affordable housing opportunities.

ESG: The Emergency Solutions Grant (ESG) must be used for solutions to address homelessness.

HOPWA: The HOPWA grant must be used to fund agencies that provide housing and support services to low income individuals living with HIV/AIDS.

A summary of the expenditures by goal and program is provided in Table A below. It should be noted that the total expenditures of \$21.7 Million exceeds the funds allocated for FY 2015-16. This is due to the inclusion of expenditures in “program income” which must be spent before the current year allocation. Program income consists primarily of construction loan repayments from loans originated in prior years. Additionally, the City is required to allocate approximately \$2 million annually to repay the federal government for Section 108 loans made to the City’s former Redevelopment Agency for various private development projects. When the loans were executed, CDBG funds were identified as the collateral funding source for this repayment obligation. Until another source of funding is identified, CDBG will continue to be the source of this annual repayment through 2026. This represents approximately 25% of the City’s annual CDBG CDI allocation.

Table A

2015-16 Federal Grant Expenditures by Goal and Program					
Goal	CDBG	HOME	ESG	HOPWA	Total*
Responding to Homelessness	\$810,278	\$537,794	\$710,047		\$2,058,119
Increase and Preserve Affordable Housing Opportunities	\$1,904,131	\$9,844,895		\$745,900	\$12,494,926
Strengthening Neighborhoods	\$3,432,141				\$3,432,141
Fair Housing	\$396,600				\$396,600
Section 108	\$1,837,206				\$1,837,206
Administrative	\$1,296,288	\$92,408	\$25,300	\$22,077	\$1,436,072
<b>Total</b>	<b>\$9,676,644</b>	<b>\$10,475,097</b>	<b>\$735,347</b>	<b>\$767,977</b>	<b>\$21,655,064</b>

\*The total expenditure amounts may differ from the amounts reflected in the annual budget due to timing differences regarding the treatment of program commitments and encumbrances.

### INCREASE AND PRESERVE AFFORDABLE HOUSING OPPORTUNITIES

For FY 2015-16, the City spent \$12.5 Million in federal funds to provide affordable housing opportunities. Specifically, the City assisted in the construction of 37 new apartments, affordable to extremely low-income (\$33,500 annually for a family of four), very low-income (equal to \$55,800 annually for a family of four), and low-income families (\$79,250 annually for a family of four). Although new affordable housing construction fell below the first year goal of 80 apartments constructed, the City committed \$10.5 Million in HOME funds toward the development of new affordable housing. These investments along with previous commitments of

federal funds, positions the City to significantly exceed the 5-year goal of constructing 160 new federally funded affordable apartments.

The City also invested \$3 Million of CDBG funds toward the acquisition and rehabilitation of the Plaza Hotel; a forty-nine unit SRO residential facility that will house formerly homeless individuals. Acquisition was completed in FY 2015-16 with the rehabilitation set for completion in FY 2016-17. In addition, the City purchased a parcel in South San José to support development of up to 32 new affordable apartments.

The City was also able to assist or retain housing for 72 households through the Housing for People With Aids (HOPWA) program. This greatly exceeded the projected goal of 25 households assisted. With 72 households served, the program has reached 65% of the five-year goal in the first year.

A Summary of funds expended to acquire land, construct or rehabilitate properties to provide new affordable housing opportunities, is provided as Table B.

Table B

<b>Increase and Preserve Affordable Housing Opportunities (New Development, Acquisition, and/or Rehabilitation)</b>			
<b>Project</b>	<b>Status</b>	<b>Federally-funded Affordable Apartments Added or Under Construction</b>	<b>Total Affordable Apartments Added or Under Construction</b>
Japantown Seniors	Completed	37	74
Donner Lofts	Under Construction	43	101
The Met North	Under Construction	47	70
Second Street Studios	Pre-development	58	134
The Plaza Acquisition and Rehabilitation	Pre-development	49	49
Gallup/Mesa Land Acquisition	Acquisition Complete	TBD	TBD
<b>TOTAL</b>		<b>234</b>	<b>428</b>

## **RESPOND TO HOMELESSNESS AND ITS IMPACTS ON THE COMMUNITY**

Based on the 2015 San José homeless census and survey, approximately 4,000 homeless individuals reside in San José on any given night. This represents a decrease of 15% from 2013. In spite of the improvement, 69% of those counted remain unsheltered. Therefore, efforts to end homelessness remain a top priority in San José. The City expended \$2.1 Million in federal CDBG, HOME and ESG funds toward services and housing for the homeless.

A summary of the major outcomes in responding to homelessness is provided in Table C.

Table C

<b>Respond to Homelessness and Its Impacts on the Community</b>			
<b>Projects</b>	<b>Agency</b>	<b>Unduplicated Individuals/ Households Served</b>	<b>Outcomes</b>
HOME Rental Assistance	The Health Trust	46 households	46 homeless individuals/households were provided a rental subsidy to ensure they paid no more than 30% of their income towards housing costs. All clients received case management services.
Citywide Outreach & Shelter	HomeFirst	305 individuals	31% of clients (33 of 106 individuals exiting program) contacted via street/encampment outreach and exited the program, moved from street to permanent housing destinations or temporary destinations (Emergency Shelter or Transitional Housing), and some institutional destinations.
Downtown Outreach Program	PATH	184 individuals	40% of clients (74 individuals) contacted via street/encampment outreach moved from street to temporary destinations (Emergency Shelter or Transitional Housing), and some institutional destinations (e.g. foster care, long-term care facility). 157 individuals completed an assessment and were added to the Community Queue to be matched with housing opportunities as they become available.
Rapid Rehousing and Supportive Services	Bill Wilson Center Consortium	491 individuals	66% of clients (59 of 89 individuals receiving case management services) served through these programs, gained or increased employment or non-employment cash income. 46% of clients (41 of 89 individuals receiving case management services) served through emergency shelter and/or supportive services exited to permanent housing destinations.
<b>Total</b>	<b>1,026 individuals/households served</b>		

Under the HOME funded Tenant Based Rental Assistance (TBRA) program and ESG funded Rapid Rehousing program, 61 homeless individuals and families received subsidies to assist them in obtaining permanent housing. In spite of falling below the annual goal of 215, this is a significant accomplishment given the challenging rental market in San José.

While San José continued to support outreach services citywide, the City also funded a new service provider in FY 2015-16 to establish homeless outreach and engagement programs in downtown San José and to establish a dedicated community outreach and mobile case management team. Between the citywide and downtown programs, 2,596 outreach contacts were achieved, exceeding the goal of 1,350.

In the case of Homelessness programs and services, City staff has adopted County wide outcome indicators for homeless programs and services which have been established by the Counties County Continuum of Care (CoC). The CoC, is a multi-sector group of stakeholders, including City staff, who are charged with coordinating large scale implementation of efforts to end homelessness in the County. Some of the key outcomes obtained in FY 2015-16 include:

- 37% of clients contacted via street/encampment outreach moved from street to permanent housing destination or temporary destinations (Emergency Shelter or Transitional Housing), and some institutional destinations. This far exceeds the goal of 10%.
- 46% of clients served through the Rapid Rehousing and Supportive Service Program exited to permanent housing destinations.

## **STRENGTHENING NEIGHBORHOODS**

Activities pertaining to strengthening neighborhoods were solely funded through CDBG in FY 2015-16. This category provides funding for programs, services and projects that contribute to viable urban communities through decent housing; suitable living environments and expanded economic opportunities. These objectives were addressed in conjunction with the funding priorities identified by the community. These include the following programs.

### **Public Services Projects**

Senior Services - The City funded two services to support the needs of senior residents in San José. Through the City's CDBG program, the City funded the Meals on Wheels Program and the Senior Isolation to Inclusion Program. The two programs combined to serve over 76,822 meals, coordinated 10,013 assisted door-to-door transportation services, and provided just over 244,800 hours of caregiver respite services. The two programs combined to serve 807 low-income seniors in FY 2015-16. One example of a key outcome for these services is that: 96% of the low-income dependent seniors (666 individuals) served by the Senior Isolation to Inclusion Program have improved their independent living skills and remained in their homes and out of a nursing home for at least six months.

Neighborhood Services: The City funded three non-profit agencies combined to provide 47 leadership development training sessions to support leadership development training for 173 residents and potential future community leaders. One example of a key outcome includes: 86% participants of CommUniverCity's Community Leadership Program indicated they are more prepared to assume positions of leadership as a result of participation in the program.

A summary of the obtained outcomes for addressing the goal of Strengthening Neighborhoods is provided in Table D1-2. Capital Projects completed this period are described after the two Tables.

Table D-1

<b>Strengthening Neighborhoods Public Services</b>			
<b>Projects</b>	<b>Agency</b>	<b>Unduplicated Individuals/ Households Served</b>	<b>Outcomes</b>
Senior Isolation to Inclusion	Catholic Charities	694 Individuals	81% of clients (562 seniors) served by the program have demonstrated a 10% increase in socialization and subsequent decrease in depression/isolation after participating in the program for at least three months. 96% of the low-income dependent seniors (666 individuals) served by this program have improved their independent living skills and remain in their homes and out of a nursing home for at least six months.
Meals on Wheels	The Health Trust	113 Individuals	85% of the seniors served (96 individuals) reported that they looked forward to the daily visit from the driver "all" or "some" of the time. 80% of the clients served (90 individuals) reported that they visit with their driver "frequently" or "occasionally", increasing their socialization and decreasing isolation.
Mayfair Neighborhood Engagement	Somos Mayfair	100 individuals	74% of the community leaders and participants in community activities increased their leadership at home and in the community.
Santee Neighborhood Engagement & Leadership Program	Franklin McKinley Children's Initiative/ Catholic Charities	46 individuals	86% of participants demonstrated increased leadership in their community. 88% of participants demonstrated an increase in self-governing practices. 82% of participants demonstrated an increase in ownership of their community.
CommUniverCity Community Leadership Program	CommUniverCity	27 individuals	86% participants indicated they are more prepared to assume positions of leadership as a result of participation in the program.
<b>Total</b>	<b>980 individuals served</b>		

**Community Development Investment (CDI) - Non-Construction Projects**

Encampment and Place-based Cleanup Program - The City funded the San José Streets Team (SJST), a non-profit agency with the goal of creating opportunities for homeless individuals to gain skills to help them succeed. SJST provides job training and placement for homeless individuals while linking them to services such as case management and shelter services. Through the Encampment and Place-based Cleanup Program, 2,280 Cubic yards of trash and debris were removed from streets, creeks, and encampments; over 4,200 hours of case management were provided to 120 homeless and formerly homeless individuals and over 3,000 hours of employment development services were provided to 120 program participants. One of the key outcomes of this program includes: Thirty three individuals graduated from the program and retained employment for at least three months.

Targeted Code Enforcement: The City funded targeted Code Enforcement within the three place-based neighborhoods as well as hot spots in neighborhoods identified in the Mayors Gang Prevention Task Force (MGPTF) FY 2015-16. Within these areas, Code Enforcement performed enhanced multi-family inspections as well as surveys focusing on blighted conditions of residential properties. Code Enforcement conducted 5,647 inspections and re-inspections, which resulted in 2,655 notices sent to property owners and 4,286 violations corrected. One key outcome includes: 87% of substandard housing violations identified by inspectors were corrected within 120 calendar days from the date inspectors notified the property owners of the violations.

Minor Repair Program - The City's Minor Repair Program assisted 259 low-income San José residents with 1,843 repairs. Some of the key outcomes of this program include: 91% of households served report improved safety conditions in their home. 96% of households served report improved accessibility and mobility in their home as a result of the improvement.

A summary of the obtained outcomes for addressing the goal of Strengthening Neighborhoods via CDI Non-Construction projects is provided in Table D-2.

Table D-2

Strengthening Neighborhoods Non-construction CDI			
Project	Agency	Neighborhoods / Population Served	Outcome
Encampment and Place-Based Clean Up	San Jose Streets Team	Santee Five Wounds/ Brookwood Terrace Mayfair MGPTF Hotspots Encampments	Removed 2,280 cubic yards of trash and debris from the City's Place-Based Initiative (PBI) neighborhoods, homeless encampments, and neighborhood hotspots identified by MGPTF. Provided 4,248 hours of case management and 3,089 hours of employment development services to 120 homeless and formerly homeless individuals. 19 homeless participants were placed in permanent housing and 33 individuals graduated from the program and retained employment for at least three months.
Code Enforcement	City - PBCE	Santee Five Wounds/ Brookwood Terrace Mayfair MGPTF Hotspots	89% of blight violations identified by inspectors were corrected within 60 calendar days from the date inspectors notified the property owners of the violations. 87% of substandard housing violations identified by inspectors were corrected within 120 calendar days from the date inspectors notified the property owners of the violations.
Minor Repair Program	Rebuilding Together	259 low income households city-wide	91% of households have improved safety conditions in their home. 96% of households have improved accessibility and mobility in their home as a result of the improvement.

Programs and Services in this category are funded from CDI and do not count toward the Public Service funding limits



### **Community Development Investment (CDI) – Capital Improvement Projects**

Capital improvement projects are selected as a means to improve the infrastructure of selected, low-income neighborhoods. Due to the complexity of planning, procurement, and construction, Capital Projects often span multiple fiscal years. In 2015-16, the City committed funding to a number of projects that include pedestrian safety improvements at intersections throughout East San José, ADA upgrades to curb ramps within CDBG eligible neighborhoods, and improvements to a non-profit homeless service provider's facility. However, the focus of this report is the projects that were completed this past fiscal year. Completed projects for this period include:

LED Lighting - Completion of the two year project to replace low-pressure sodium street lights in lower-income neighborhoods with LED lights to improve visibility and safety in those communities. In FY 2015-16, 183 lights were retrofitted.

The Five Wounds Art Walk Project - an interactive multi-media art exhibit between San José High Academy and Olinder Elementary School designed to educate neighborhood residents about water pollution and its effects on the City's storm drain system.

The Santee Drop-in Center and Play Structure Project - was originally approved in the 2013-14 Annual Action Plan. This project was a collaboration between the City and the Franklin McKinley School District to create community space on School District property within the Santee community. After long delays in the bidding and construction process, construction of the center began in the summer of 2015 and was completed in February 2016. Since opening, several community meetings have been held at the facility as well as ongoing educational programs to support the Santee community.

A summary of all of the capital projects funded is included as an **Attachment A** to this memo.

### **PROMOTING FAIR HOUSING CHOICES**

The Fair Housing Act which is enforced by HUD, prohibits discrimination when renting, buying or securing financing for any housing. Federal protection covers discrimination because of race, color, national origin, religion, sex, disability and the presence of children. Fair Housing covers most housing whether publically or privately funded. As an entitlement City, San José must ensure that all programs are administered in a manner that affirmatively furthers the policies of the Fair Housing Act.

San José has funded the services of a non-profit fair housing consortium comprised of five different non-profit agencies to help fulfill the City's Fair Housing requirements. The Consortium offers a comprehensive and coordinated Fair Housing Program that includes, discrimination complaint intake and investigation, enforcement and litigation services, and general fair housing education. Between the five consortium members, the consortium provided 96 fair housing investigations, 191 client briefings and 98 legal representations, and 62 fair housing presentations. Key outcomes for this project include:

90% of participants became more familiar with the laws governing fair housing following fair housing presentations provided via this program.

80% of complainants reported improved access or availability of housing through the provision of legal services via this program.

### Increased Focus on Fair Housing

With the beginning of a new funding cycle in FY 2016-17, the Housing Department issued a new Request for Proposal that included Fair Housing Services. The result was a funding award to a re-organized Fair Housing Consortium. Although the lead agency and most of the original consortium members remain, the Consortium has modified agency roles and service delivery models to provide more efficient and effective service delivery. One of the primary changes to the service delivery is the addition of screening and surveying for disparate impact. This new service allows the consortium to delve deeper into potential discrimination related to poor rental housing conditions and retaliation complaints.

It should be noted that the City devotes only \$400,000 annually to address these Fair Housing issues. This is due to the pressing demands of other funding priorities. Unlike the other main areas of need identified in the City's Consolidated Plan, the City does not provide additional resources to address fair housing issues. Thus, the funds available for this purpose fall well short of the need. In April of last year, City Council approved a modified Apartment Rent Ordinance. As part of the action approving the Ordinance, the City Council directed staff to bring back recommendation for a new Anti-Retaliation & Protection Ordinance in the fall of 2016. This provides the potential avenue for new resources to help address fair housing issues.

Lastly, the Housing Department will be finalizing and submitting an updated Analysis of Impediments to Fair Housing Choices (AI). As an entitlement City that regularly receives federal funding, HUD requires jurisdiction to periodically evaluate impediments to fair housing and document efforts overcome those impediments identified. In 2020, the Affirmatively Furthering Fair Housing (AFFH) will replace the AI. The AFFH will use data to better understand the factors that cause or maintain segregation, racially concentrated areas of poverty, and significant disparities in access to opportunity, and disproportionate housing needs.

### Public Hearing/Approval Process Summary

HUD requires that jurisdictions hold one public hearing and a 15-day public review period to receive public comments on the draft CAPER. The document's public review and comment period runs from August 22, 2016 through September 8, 2016. The City will hold two public hearings on the document: one at the September 8, 2016 Housing and Community Development Advisory Commission meeting, and another at the September 13, 2016 City Council meeting.

Upon City Council approval, the CAPER will be submitted to HUD by the September 30, 2016 due date. The draft and final CAPER documents will be posted on the San José Housing Department's website at: [www.sanjoseca.gov/CAPER](http://www.sanjoseca.gov/CAPER)

Housing and Community Development Commission

September 8, 2016

**Subject: FY 2015-2016 Consolidated Annual Performance Evaluation Report**

Page 12

A public notice regarding the aforementioned public review and comment period was published in the *San José Mercury News*, *El Observador*, *Vietnam Daily News*, *The World Journal* (Chinese), and the *Philippine News* on August 19, 2016.

For questions, please contact James Stagi, Grants and Neighborhood Programs Administrator at (408) 535-8238.

/s/

David Bopf

Interim Assistant Director of Housing

## ATTACHMENT A

### Strengthening Neighborhoods – Capital Projects

Project	Agency	Status	Neighborhoods/ Population Served	Outcome
Five Wounds Art Walk	City - ESD	Completed	Five Wounds/ Brookwood Terrace	At the completion of the project 79% of residents surveyed indicated they knew there is a creek near their home, compared to 62% before the project. 70% of residents surveyed understood that trash that enters the storm drain goes into the creek untreated, compared with 64% before the project. 59% of residents indicated they noticed more art in their neighborhood, compared to 46% before the project.
Santee Drop-In Center and Playground	Franklin-McKinley School District	Completed	Santee	97% of residents surveyed reported the new park in their neighborhood improved their quality of life. 100% of resident's surveyed reported access to a community center improved their quality of life. 49% of residents surveyed reported the increase in parking in their neighborhood improved their quality of life.
LED Lights	City - DOT	Under Construction	Santee Five Wounds/ Brookwood Terrace Mayfair	81% of residents surveyed (n=85) rated the overall new LED lighting level (brightness, visibility), appearance (color), and feel (ambiance) as good or excellent as compared to the previous "low pressure sodium" (LPS) lighting. The City estimates a 60% savings in energy use for each streetlight converted from low-pressure sodium to LED lighting.
Five Wounds/ Brookwood Terrace Pedestrian Safety Improvements	City - PW	Under Construction	Five Wounds/ Brookwood Terrace	Will be reported when completed
Five Wounds/ Brookwood Terrace Road Humps	City - PW	Under Construction	Five Wounds/ Brookwood Terrace	Will be reported when completed
ADA Ramps	City - DOT	Under Construction	Santee Five Wounds/ Brookwood Terrace Mayfair	Will be reported when completed
Mayfair Community Garden Enhancement	City - PRNS	Under Construction	Mayfair	Will be reported when completed
Recovery Café Rehabilitation	Recovery Café	Funded	Homeless Individuals	Will be reported when completed
Library Facility Improvements	City - Library	Under Construction	Various low-income neighborhoods	Will be reported when completed

Housing & Community Development Advisory Commission  
 Draft Workplan for FY 2016-17

HCDC Meeting: 9/8/16  
 Agenda Item: (h)

#	Objective for FY 2016-17	Actions	Subject	Meeting Date*	Status
1	Consolidated Annual Performance and Evaluation Report (CAPER)	Public Hearing of the FY 2015-16 Consolidated Annual Performance and Evaluation (CAPER) – and Possible Recommendation to City Council to Approve Report	Housing and Community Development	September, 2016	
2	Update on Affordable Housing Impact Fee	Provide input to staff on initial recommendations regarding the update on the affordable housing impact program	Housing and Community Development	October, 2016	
3	Adopt FY 2016-17 Workplan for the Commission	Review, discuss, and adopt a FY 2016-17 Workplan based on work completed at Annual Retreat.	Administrative	October, 2016	
4	FY 2017-18 Annual Action Plan Funding Strategies	Review and possible recommendation on funding strategies for 2017-18 Annual Action Plan	Housing and Community Development	October, 2016	
5	Apartment Rent Ordinance Regulations and forms	Provide input on Apartment Rent Ordinance regulations to implement the potential modifications to the ARO.	Apartment Rent Ordinances	October 2016	
6	Density Bonus & Secondary Units	Provide input on proposed changes to the Zoning Code relating to density bonus and secondary dwelling units.	Housing and Community Development	October 2016	
7	Analysis of Impediments	Provide input to staff regarding analysis of impediments, then in October a recommendation to City Council.	Housing and Community Development	October 13, 2016/November 10, 2016	
8	General Plan 2040 Implementation	Provide input on general plan implementation, including text amendments, urban villages, affordable housing, and mobilehome parks	Housing and Community Development	December 2016/January 2017	
9	Fully Modified ARO Draft Ordinance & Regulations	Provide input and consider approval of the fully modified draft Apartment Rent Ordinance and Regulations	Apartment Rent Ordinance	January, 2017	
10	Ellis Act Ordinance	Provide input and consider approval of the Ellis Act Ordinance	Apartment Rent Ordinance	January 2017	

#	Objective for FY 2016-17	Actions	Subject	Meeting Date*	Status
11	Mobilehome Park Opt-in/Stay in Business Concept	Provide input on potential Opt-in/stay in business concept.	Mobilehome	January 2017	
12	Draft ARPO regulations and forms	Provide input to staff and recommendation to City Council regarding Anti retaliation & protection Ordinance regulations & forms (ARPO)	Housing and Community Development	February 2017	
13	Preliminary Recommendations for award of FY 2017-18 Federal Grants	Review and potential recommendation to City Council regarding award of federal funds to nonprofit grant recipients pursuant to Needs Assessment for Five-Year Consolidated Plan	Housing and Community Development	Winter/Spring 2017	
14	Annual Action Plan funding priorities	Review and possible recommendation on funding strategies for 2017-18 Annual Action Plan	Housing and Community Development	February 2017	
15	Rental Rights and Referral Program Budget (Fee) Recommendations	Review, discuss, and provide recommendation to the Housing Department on the RRR Program annual fee structure and staffing levels (Mobilehomes and Apartments)	Apartment & Mobilehome Rent Ordinances	March 2017	
16	Public Hearing – Input on FY 2017-18 Annual Action Plan	Hold Public hearing on the Annual Action Plan (Required per Citizen Participation Plan prior to publication)	Housing and Community Development	Spring 2017	
17	Public Hearing and Recommendation on FY 2017-18 Annual Action Plan	Public Hearing and possible Recommendation on 2016-17 Annual Action Plan and Housing Trust Fund	Housing and Community Development	Spring 2017	
18	Commission Nominations	Nominate and select Chair/Vice Chair	Administrative	June, 2017	
19	Mobilehome Park Preservation	Provide input to staff and recommendation to City Council regarding Mobilehome Park Preservation, include discussion of general plan text amendments and MHP closure ordinance	Mobilehome Ordinances	TBD	
20	Dispersion Analysis & Policy	Provide input on proposed updates to the City's Dispersion Policy for affordable housing.	Housing and Community Development	TBD	

#	Objective for FY 2016-17	Actions	Subject	Meeting Date*	Status
21	Senior Services	Provide input and possible recommendation on use of federal funds for senior services	Housing and Community Development	TBD	
22	Potential Teacher Housing per Mayors Direction	Provide input and possible recommendation on a program for teacher housing	Housing and Community Development	TBD	
23	Incentives for apartment owners to provide Housing to homeless Veterans	Provide input on procedures and outreach regarding housing of homeless vets	Housing and Community Development	TBD	
24	Homeless Issues Updates	Provide updates and input on homeless policy issues.	Housing and Community Development	As required	
25	Proposed State/Federal Legislation	Federal/State Legislation. Discussion and possible recommendations on proposed legislation and ballot measures pertaining to subjects under to the purview of the Commission	Housing and Community Development	As required	
26	Quarterly Housing Reports	Review various reports on housing data (for what purpose, recommendation?)	Housing and Community Development	As required	

*\*Items marked by an asterisk in the Meeting Date column are “time-certain” items that have been noticed for the specific date indicated. All other dates listed are for planning purposes only and may be heard at a different date than that listed on the workplan.*

## **Housing and Community Development Commission**

**2.08.2840 - Functions, powers and duties.** The commission shall have the following functions, powers, and duties:

A. Housing and community development advisory functions.

1. Study, review, evaluate and make recommendations to the city council and the department of housing of the City of San José, pertaining to the following matters:
  - a. Existing housing programs and policies in the City of San José.
  - b. New programs and policies that would further the City of San José's housing and community development goals.
  - c. The City of San José's progress in meeting its housing goals.
2. Submit recommendations and reports to the city council and the city manager regarding housing policy in the City of San José as the city council or the city manager may from time to time request.
3. Hold public hearings in order to provide for meaningful citizen participation in the development and implementation of the consolidated plan.
4. Make such studies, and submit to the city council such reports or recommendations respecting affordable housing and community development matters, as the council may from time to time require or request.
5. Develop proposals and recommendations to the city council for use of housing and community development funds.

B. Functions related to Chapters 17.22 and 17.23.

1. Make recommendations to the city council regarding rules and regulations and amendments thereto which are necessary for the operation and administration of Chapter 17.22 or Chapter 17.23.
2. Make recommendations to the city council regarding changes in Chapter 17.22 or Chapter 17.23.
3. Pursuant to 17.23.490, make recommendations to the city council regarding the amount of the fee necessary to recover the costs of administering Chapter 17.23.
4. Pursuant to 17.22.910, make recommendations to the city council regarding the amount of the fee necessary to recover the costs of administering Chapter 17.22.
5. Make recommendations to staff regarding updates of the forms used in implementing Chapter 17.22 or Chapter 17.23.
6. Conduct such studies and submit to the city council and the city manager such reports or recommendations respecting mobilehome parks and mobilehome living in the City of San José as the council or the city manager may from time to time request.
7. Make recommendations to the city council regarding changes in provisions of Title 20 of this Code relating to mobilehomes and mobilehome parks.



## **Housing and Community Development Commission**

- **2.08.2810 - Members.**

The commission shall consist of thirteen members.

- **2.08.2820 - Special eligibility requirements.**

A. One member shall be a person recommended by an organization of owners of San José mobilehome parks.

B. One member shall be a person recommended by an organization of residents of San José mobilehome parks.

C. One member shall be an owner or manager of a residential rent stabilized property.

D. One member shall be a tenant of a residential rent stabilized rental unit.

E. At least five members shall represent low income households, which for the purposes of this requirement means a person who meets one or more of the following criteria:

1. The person is a member of a low- or moderate-income household as defined by HUD as at or below eighty percent of the area median income pursuant to 24 CFR 92.2.

2. The person is an elected member of a neighborhood organization in a low- or moderate-income neighborhood (fifty-one percent of the neighborhood is at or below eighty percent of the area median income as defined by HUD).

3. The person is a resident of a city council designated neighborhood targeted under the place-based neighborhoods initiative to receive federal funding.

4. The person is employed by an organization which has as its primary purpose to serve the interests of low-income residents.

F. The commission should also include members with experience related to development, lending, community development, homeless services, or federal funding.

## **Housing and Community Development Commission**

Per the approve City Council Template – accessible through our Intranet

<http://www.sjcity.net/index.aspx?NID=292>

Commission Recommendation/Input comes immediately following the Coordination Section

### **COORDINATION** (Mandatory)

Statement indicating City Departments and/or Offices that have been consulted with for the preparation of the report. The Attorney's Office and the Manager's Budget Office should particularly be mentioned when applicable. (Do not include any agencies, departments or offices that anticipate talking to - only those who have **actually** been coordinated.

### **COMMISSION RECOMMENDATION/INPUT** (Mandatory)

Statement indicating the City commission action on the item being heard by Council. Include the outcome of any votes if taken. Also, include any additional relevant input, suggestions or concerns made by the commission.

NOTE: We need to include items taken to other commissions. For example, if we take an item to the Senior Commission, we would include that feedback in this section.

### **Commission Recommendation – Example text**

This item was not heard by the Housing and Community Development Commission as it did not fall under the functions, powers and duties of the Commission, as delineated in Section 2.08.2840 of the San José Municipal Code.

The Housing Department has provided the Housing and Community Development Commission (HCDC) with multiple updates on the AHIF since the Council established the program.

On April 14, 2016, the Housing and Community Development Commission voted to recommend approval of the FY 2016-17 Annual Action Plan to the City Council, with the modification of the Evans Lane project called out on page 32 of the Plan, to be changed to permanent affordable housing with the priority on victims of domestic violence, veterans, and families. The motion passed 9-0-1 by vote. Since no funding is being proposed for this project via this Action Plan, all reference to this project has been deleted from the Plan.

As mentioned in the Analysis section above, sub-section D, the Housing and Community Development Commission (HCDC) held a special meeting on March 21, 2016 to provide recommendations to the City Council on the draft recommendations to modify the ARO. The HCDC voted to recommend to the City Council approval of staff's recommendations. However, instead of staff's recommendation to create an Anti-Retaliation & Protection Ordinance, the HCDC voted instead to recommend to the City Council the creation of a Good Cause eviction ordinance.

# Housing and Community Development Commission

**HCDC Meeting: 9/8/16**  
**Agenda Item: (i)**

**Upcoming Meetings and Events**

**Community Meetings to Discuss Proposed Amendments to the City's Zoning Code** – Staff from the Housing Department and Planning, Building and Code Enforcement (PBCE) will be hosting a series of community meetings to discuss proposed amendments to the City's Zoning Code to establish regulations for 1) homeless shelters at places of religious and non-religious assembly, and 2) overnight parking by homeless individual and families in the parking lots of religious and non-religious assembly. The meetings are scheduled as follows:

Day	Date	Time	Location
Thursday	September 15, 2016	6:30-8:30pm	Vineland Branch Library Community Room 1450 Blossom Hill Road San José, CA 95118
Wednesday	September 21, 2016	6:30-8:30pm	Roosevelt Community Center Classrooms 1 and 2 901 East Santa Clara Street San José, CA 95116
Thursday	September 22, 2016	10:00am – Noon	San José City Hall Wing Room 120 200 East Santa Clara Street San José, CA 95113
Monday	September 26, 2016	6:30-8:30pm	Bascom Community Center Community Room 1000 South Bascom Avenue San José, CA 95128
Thursday	September 29, 2016	6:30-8:30pm	Mayfair Community Center Chavez Hali 2039 Kammerer Avenue San José, CA 95116

For more information, please contact Ray Bramson, Homelessness Response Team Manager in the Housing Department, at 408-535-8234, or Dipa Chundur, Project Manager in PBCE at 408-535-7688.