

CITY OF SAN JOSE, CALIFORNIA

REGULATIONS FOR
CHAPTER 17.23 INCLUDING APARTMENT RENT ORDINANCE

Initially Adopted by Resolution No. 78413

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Chapter 1

TITLE, REPLACEMENT OF PRIOR REGULATIONS

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

Chapter 2

DEFINITIONS

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

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

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

2.01.3 "Buyout Agreement" means a signed written agreement, resulting from the Buyout Offer, consistent with the requirements of Chapter 14 wherein the Landlord promises to provide consideration in exchange for the Tenant's agreement to voluntarily vacate the Rent Stabilized Unit.

2.01.4 "Buyout Offer" means a Landlord's offer to a Tenant to provide consideration in exchange for the Tenant's agreement to voluntarily vacate the Rent Stabilized Unit.

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

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

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

2.01.8 "Day" means a calendar day. Any day that is not a "Business Day" shall mean a calendar day.

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

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

2.01.11 "Hearing Officer" shall mean a person who conducts administrative hearings on Petitions submitted by Landlords or Tenants pursuant to the provisions of SJMC Chapter 17.23.

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

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

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

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

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

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

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

2.01.19 "Program Staff" shall mean the employees of the City of San José who implement SJMC Chapter 17.23 and its regulations.

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

2.01.21 "SJMC" shall mean San José Municipal Code.

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

Chapter 3

GENERAL

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

3.02. Amendment of Rental Agreement to Remove Housing Services. In accordance with Chapter 7, a Tenant may submit a Petition regarding Housing Service Reductions. During a Hearing on such a Petition, a Hearing Officer shall have the authority to determine whether the Housing Service Reduction impacts an essential or material term or condition of the rental agreement in a manner that constitutes a constructive eviction. *No amendment of a rental agreement to remove Housing Services shall be effective unless the Tenant has received a Tenant Pre-Amendment Notice.*

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

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

Chapter 4

REGISTRATION AND FEE

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

4.02. Annual Registration and Fee.

4.02.1 Mailing of Registration Forms. The Director shall Mail an annual registration form and fee statement to each Landlord of a Rent Stabilized Unit in the City using the City's Code Enforcement database, currently referred to as AMANDA, or any successor database maintained by the City. The failure of a Landlord to receive the registration form shall not excuse the Landlord's late filing of the registration form. (SJMC Section 17.23.900)

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

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

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

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

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

4.03.3 Affordable Rental Units. The rental unit is an Affordable Rental Unit. The form will require the Landlord to provide evidence that the rental unit is an Affordable Rental Unit by providing copies of the recorded affordability restriction or government contract that applies to the unit, and if requested, a copy of the current rent roll showing the affordable rent.

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

4.03.5 Other Exemptions. The rental unit or accommodation is located within a hospital, convent, monastery, extended care facility, emergency residential shelter, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended), fraternity house, sorority house, or in dormitories owned and operated by an institution of higher education, a high school, or an elementary school. The form will require the Landlord to provide evidence establishing that the unit or accommodation is a permitted use within one of the aforementioned facilities, including but not limited to permits, licenses, and ownership documentation

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

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

1. The address of the Rent Stabilized Unit; and
2. The name and address of each person or entity that is the Landlord, or if more than one, each Landlord of the Rent Stabilized Unit; and
3. The occupancy status of the Rent Stabilized Unit and, if occupied, the commencement date of the current tenancy; and
4. History of the Rent charged for the use and occupancy of the Rent Stabilized Unit; and
5. The amount of security deposit charged at the inception of the tenancy.
6. Whether the Rent Stabilized Unit is sub-metered, master-metered, or unmetered.
7. The number of Tenants occupying the unit, and the Tenants' names.
8. Household Services that are being provided at the inception of the Tenancy.

9. The signature of the Landlord of the Rent Stabilized Unit affirming under penalty of perjury that the information provided in the annual registration is true and correct; and

10. Such other information reasonably requested by the City.

Chapter 5

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

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

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

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

a. Improper Rent Increase or Pass-Through of a Charge. To allege excess Rent was charged or a pass-through of a charge that does not comply with the Apartment Rent Ordinance. (SJMC Section 17.23.350.A)

b. Violation of Apartment Rent Ordinance. To allege any violation of the Apartment Rent Ordinance. (SJMC Section 17.23.350.A)

c. Housing Services Reductions or Housing Code Violations. To allege a reduction of Housing Services or a violation of the City's Housing Code as described in Section 7.09. (SJMC Section 17.23.350.A)

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

a. Fair Return. To allege that the Rent increase otherwise permitted by Apartment Rent Ordinance would not permit the Landlord a Fair Return. (SJMC Section 17.23.350.B)

b. Specified Capital Improvements. To seek expedited approval to pass through all or a portion of the cost of a Specified Capital Improvement that is listed in Appendix B. (SJMC Section 17.23.320.B)

5.02.3 Joint Petition. the following petitions filed by the Tenant for increases may be filed with Landlord agreement.

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

b. A Landlord and Tenant may file a petition for an increase in the Rent of up to five percent (5%) for an additional Tenant (other than the Tenant's spouse, domestic partner, parent, dependent or foster child, or minor in the Tenant's care). Such increases in the maximum allowable Rent, as adjusted, will terminate if the additional occupant leaves. (SJMC Section 17.23.350.C).

c. A Landlord and Tenant may file a petition for an increase in the Rent of up to or an increase in the Rent of up to fifty dollars (\$50) for a second parking space, where only one (1) space was provided under the original rental agreement. (SJMC Section 17.23.350.C).

5.03. Petition Process; All Petitions.

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

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

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

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

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

iv. In addition to the requirements set forth in 5.03, in the case where a Party files a Petition that applies to a Rental Voucher Unit, the petitioner shall adhere to the requirements set forth in SJMC 17.23.350.D.

b. Incomplete Petitions. If the Petition is incomplete, the Program Staff shall provide notice by Mail to the petitioner that the Petition is incomplete and provide a list of deficiencies in the Petition, and/or the supporting documentation, and shall hold the Petition for a thirty (30) day period after Mailing such notice. The petitioner may add to, amend, or revise and re-submit the Petition to the Program Staff within the thirty (30) day period. If the petitioner does not respond to a notice that the Petition is incomplete within the thirty (30) day period, the Petition will be considered withdrawn.

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

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

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

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

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

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

5.03.4 Response to Submitted Petition. The responding party (a Tenant or Tenant Household responding to a Landlord Petition or the Landlord responding to a Tenant Petition) shall have fourteen (14) days from the date of the Mailing of the notice that a complete

Petition was received to submit a Response to a Petition and any supporting documents, except for fair return Petitions, in which case the responding party shall have thirty (30) days for submittal of the Response and any supporting documents. If the responding party provides a Response to the Petition, the Program Staff shall provide notice by Mail to the petitioner that a Response was received. This Section 5.03.4 shall not apply to Specified Capital Improvement Petitions; members of one or more Tenant Households may appeal an Administrative Decision for a Specified Capital Improvement Petition as described in Chapter 9.

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

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

5.06 Hearing Record. After the proceedings under any Chapter are concluded, the City shall hold the official Hearing record.

Chapter 6

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

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

6.02. Issuance of Administrative Decision. After reviewing the complete Petition and any Responses, the Petition Examiner shall either (a) provide an Administrative Decision to the Program Staff or (b) request that Program Staff schedule a hearing under Part 7 for the Petition and any Responses.

6.03. Administrative Decision Contents. The Administrative Decision shall include findings of fact which support the Administrative Decision, and shall specify the following:

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

b. In the case of a downward adjustment in the Rent or Rent credit, for each unit entitled to an adjustment; (i) an itemization of each claim under Section 5.02.1.a or 5.02.1.b proved and the duration of the condition claimed; (ii) the impact of the claimed condition, if any, on the petitioner's effective Rent or Housing Services (e.g., an excess charge has an impact on the effective rent); and (iii) the amount of reduction in Rent attributable to that violation, if any, and the duration of the adjustment.

c. The date on which any adjustment to the Rent is effective for each unit.

d. An explanation of the basis for the Administrative Decision with citations to the Ordinance.

6.04. Tentative Ruling. The Administrative Decision shall be a tentative ruling and shall acknowledge each Petition, Response, and any relevant supporting documentation, as applicable. The Administrative Decision shall be made on a form that is approved by the Director. The Administrative Decision shall be provided by the Petition Examiner to the Program Staff within twenty (20) Business Days after the applicable deadline for submission of a Response. The Program Staff shall Mail the Administrative Decision on the Petition to the Parties.

6.05. Revisions to Administrative Decision. Each Party will have fourteen (14) Days after the Administrative Decision is Mailed to comment on the Administrative Decision. The Petition Examiner may, in his or her sole discretion, revise or amend the Administrative Decision to correct non-substantive errors (such as typographical errors, mathematical errors, etc.) or to address substantive omissions (such as a failure to address a claim raised in a Petition or Response), after reviewing any comments received from the Parties on the Administrative Decision. The Program Staff shall Mail a copy of the Administrative Decision, with any revisions, to all Parties no more than seven (7) days after the end of the comment period, or notify all Parties by Mail that the Administrative Decision will not be revised. The date of Mailing shall be the date of issuance for the Administrative Decision, which decision shall be final unless appealed.

6.06. Appealing Administrative Decision to the Director. Any Party to a Petition may appeal the Administrative Decision, as it may be revised in accordance with section 6.03, to the Director on a form approved by the Director. Any Party may appeal to the Director within thirty (30) days of the Mailing date of the revised Administrative Decision or notice that the Administrative Decision will not be revised. If no Party appeals to the Director within thirty (30) days, the Administrative Decision will be considered a final Decision. The Director's sole authority upon appeal of an Administrative Decision is to either affirm the Administrative Decision or remand the Administrative Decision to the Petition Examiner. If the Director remands the Administrative Decision to the Petition Examiner, the Director's remand is limited

to identifying specific sections of the Ordinance or Regulations, or specific issues that the Petition Examiner must address when drafting a reconsidered Administrative Decision. A reconsidered Administrative Decision shall be a final Decision.

Chapter 7

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

7.01. Applicability. The procedures set forth in this Chapter 7 apply to Tenant Petitions regarding Housing Service Reductions or Housing Code violations that consist of a breach of the warranty of habitability. In the event that Tenant Petitions are filed or submitted that contain claims under this Part and Part 6, they may be heard together consistent with the procedures in this Part.

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

7.03. Basic Service Level.

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

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

iv. The Landlord's policies of operation and maintenance, repair, and replacement communicated to the tenant at the beginning of the applicable term of tenancy.

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

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

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

7.04. Voluntary Mediation Hearing Process. Prior to scheduling a hearing under Section 7.05, on issues raised in a Tenant Petition for Housing Service Reductions or Housing Code violations, Program Staff shall offer a voluntary Mediation hearing process to the parties. If agreed to by both parties, a Mediation hearing will be scheduled prior to any other hearing process.

7.04.1 For purposes of this Section, "Mediation" or "Mediation hearing" means a meeting in which a Landlord and Tenant have the opportunity to communicate with a Mediator or Hearing Officer and each other in a face-to-face setting at a neutral location in order to resolve a rental housing dispute voluntarily under ground rules designed to protect the confidentiality and neutrality of the communications, and in the absence of a written voluntary agreement, to include an open session to enable the Mediator to make a determination regarding any claims under this Part 7.

7.04.2 Following the initial presentation, the Mediator will meet privately with each side to attempt to work out a voluntary agreement. Private sessions are not recorded and confidential information provided during them shall not be accepted and shall not be used in decision making by the Mediator.

7.04.3 If the parties arrive at a voluntary agreement which resolves the dispute, the Mediator will write that agreement on a City voluntary agreement form and witness the parties' signatures. Any voluntary agreement that includes a Tenant buyout must comply with the Buyout Agreement requirements in the Ordinance and these regulations.

7.04.4 After meeting in private session, the Mediator will meet with both parties together to sign any voluntary agreement or to provide an open session opportunity to present any additional evidence or testimony. Any voluntary agreement reached between the Parties shall be submitted in writing to the City and shall be filed as the resolution of the petition(s).

7.04.5 "Mediator" means a Hearing Officer or a person who is certified to have completed at least forty (40) hours of basic mediation training, with subsequent advanced training, and who has also participated as a Mediator or co-Mediator in at least ten mediations conducted under the auspices of a recognized community or commercial mediation program, and is subject to Section 11.01.03. A Mediator shall not own a real estate interest in rental property consisting of three (3) or more units; is not a Tenant of a Rent Stabilized Unit and may not be an employee or an officer of groups or organizations which have or are viewed by significant numbers of tenants or landlords as having taken advocacy positions in landlord/tenant matters.

7.04.6 The voluntary agreement may not require or allow an increase in Rent or a pass through not authorized under the Ordinance. If the voluntary agreement contains a section making a violation of the material terms subject to review by a Petition Examiner under the Ordinance and Regulations, a written claim of violation may be filed within ninety (90) days of the date of the Voluntary Agreement's filing, provided that the party filing the claim has sent a written request to the violating party to perform one or more specific, material items to be performed under the voluntary agreement. The written claim must contain a copy of the request to the violating party and the party making the claim must send a copy of the claim to the violating party. If the Petition Examiner determines that a material term of the voluntary agreement has been violated and contacts with the violating party fail to resolve the issue, the Petition Examiner shall send the parties notice of breach and shall schedule a hearing under Section 7.05.

7.05. 7.04.7 If a voluntary agreement has not been agreed to, the Mediator or Hearing Officer will issue a written decision regarding Housing Service Reductions and or Housing Code violations, and also on any claims raised under Chapter 6 based on the standards in that Chapter. The decision shall be provided by the Mediator or Hearing Officer to the Program Staff within thirty (30) days after the Mediation hearing based on the record. Appeals of the Mediator's or Hearing Officer's decision shall be filed in writing with the Director within ten (10) days of the issuance of the decision. Hearing Authorized.

7.05.1 Initial Hearings. If the Parties opt not to participate in voluntary Mediation, then the Petition review process shall commence with a Hearing

before a Hearing Officer in accordance with the procedures established below. In the event of a referral by a Petition Examiner to a Hearing, the process shall commence with a Hearing before a Hearing Officer pursuant to Section 7.11, *et seq.*

7.05.2 Appeal Hearings. Appeals shall commence with a Hearing before a Hearing Officer. The Hearing Officer shall determine, for a claim under Chapter 7 whether the Housing Service Reductions and/or Housing Code violations in the decision appealed from were shown to have occurred or not, and whether any Rent decrease or Rent credit was determined in accordance with the Ordinance and Regulations and in accordance with the procedures and standards established below. For appeals of claims under other Chapters, the Hearing Officer shall determine whether the claimed activities or violations in the decision appealed from were shown to have occurred or not, and whether any Rent increase, Rent decrease or Rent credit was determined in accordance with the Ordinance and Regulations and in accordance with the procedures and standards established in those Chapters.

7.05.3 Hearing on Claims of Broken Voluntary Agreements. If a Hearing has been scheduled regarding a claim of breach of voluntary agreement, the Hearing Officer shall consider if the voluntary agreement which has been claimed to be broken, has been broken, and if so, may determine an equitable remedy which may compensate for the violation by increasing or decreasing the rent accordingly.

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

7.06.1 The person alleging the service reduction shall prove:

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

7.06.2 The burden of proof shall be met by using evidence only which has a tendency in reason to prove or disprove a disputed fact of consequence in determining the Basic Service Level, or in determining that the actual service level is materially lower than the Basic Service Level.

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

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

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

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

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

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

7.09. Housing Code Violations. Violations of Title 24 of the Municipal Code or Parts 1-9 of Chapter 17.20 of Title 17 of the Municipal Code (collectively, "Housing Code") or of California Civil Code Sections 1941.1 and 1941.2 shall be considered by the Hearing Officer who may reasonably condition, disallow, or reduce Rent based on their severity. An inspection report of a San José Code Enforcement Inspector shall be deemed presumptive, but not conclusive proof of the matters recited therein.

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

7.11. Hearing Procedures.

7.11.1 Notice and Timing of Hearing. Within thirty (30) days of a decision by one or more Parties to opt not to participate in voluntary Mediation, a referral for hearing by a Petition Examiner or the receipt of a timely appeal, the Program Staff shall assign a Hearing Officer, schedule a Hearing and provide notice by Mail to all Parties of the date and time of the

Hearing. Hearings shall be scheduled after 6:00 p.m. on weekdays, or at such other time as the Program Staff determines is feasible for Hearing Officers and as needed to allow Parties to participate.

7.11.2 Additional Submissions. The Program Staff shall accept additional submissions of arguments and documentation regarding the claims raised in the Petition up to three (3) days prior to the Hearing, so long as two (2) complete copies of the submission are provided to the Program Staff and a complete copy of the submission is provided by the submitting Party to all other responding and petitioning Parties.

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

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

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

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

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

7.12.3 Ex Parte Communications. There shall be no oral communication regarding the subject matter of the Petition outside the Hearing between the Hearing Officer and any party or witness (e.g. urgent scheduling issues or other non-substantive topics may be discussed *ex parte*). All discussion during the Hearing shall be recorded. Any written

communication between or among the Hearing Officer and a Party after the Hearing has commenced shall be provided to all Parties, or if the Party has a proxy, to the proxy.

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

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

a. Submissions after Time Deadlines. If a submission is proffered after the deadline in Section 7.11.2, the Hearing Officer may decline to accept the submission into the record unless all parties agree that the late submission is not prejudicial.

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

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

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

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

7.12.9 Hearing Record. During the proceedings under this Chapter, the Hearing Officer with the assistance of Program Staff shall maintain an official Hearing record, which shall constitute the exclusive record for decision. The Hearing record and decision shall include:

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

b. Any written submissions by the parties,

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

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

7.13. Decision.

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

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

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

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

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

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

Chapter 8

LANDLORD FAIR RETURN PETITIONS; HEARINGS AUTHORIZED

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

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

8.02.1 Petition Filing Requirement. A Landlord seeking a rent increase in excess of the amount allowed under SJMC Section 17.23.310 on fair return grounds must file a fair return Petition on a City petition form with all required supporting documentation. Documentation must be marked on each page with the specific petition form item it is intended to support. In the event of a petition with claims under SJMC Section 17.23.830.C, the landlord must also arrange for retaining the City selected appraiser prior to the scheduling of a hearing.

8.02.2 Supporting Evidence. A Petition for a fair return must include at least three (3) sets of copies of all evidence the Landlord is relying on to support his or her claim,

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

a. Tax returns and ledgers may be submitted as part of the supporting evidence, however, tax returns alone are not accepted as sufficient evidence for Current Year claims, or for any year less than three (3) years prior to the Current Year. Copies of contemporaneously prepared ledgers alone are not accepted as sufficient evidence for the Current Year.

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

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

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

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

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

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

8.03. Pre-submittal Meeting. The Director may, at his or her discretion, authorize Program Staff to hold an informational meeting with a petitioner for a fair return Petition (as described in Section 8.02.2 of these Regulations), upon submission of a fair return Petition and after Initial Notice to the Parties is provided in accordance with Section 5.03.1.a of these Regulations. No representation by Program Staff at such a meeting shall be binding on a Hearing Officer.

8.04. Fair Return Hearings.

8.04.1 Program Staff shall assign a Hearing Officer, who shall hear the completed fair return Petition within forty (40) days of the Mailing of the notice of determination of completeness. The Hearing Officer may elect to hold a prehearing conference with the parties. In the event the Hearing Officer elects to hold a pre-hearing conference, the pre-hearing conference and hearing shall each be scheduled within forty (40) days of the Mailing of the notice of determination of completeness. Notice of the hearing date shall be sent to the landlord and tenants. The notice of the hearing date shall be Mailed at least two (2) weeks prior to the Hearing date.

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

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

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

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

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

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

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

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

8.05.5 a list of all unresolved City code violation complaints,

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

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

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

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

8.05.10 a summary of the petition and evidence submitted.

8.06. Conduct of Hearing.

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

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

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

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

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

a. Submissions after Time Deadlines. If a submission is proffered after the later of the deadline in Section 7.11.2 or, the date for submissions set in the pre-hearing conference, if any, the Hearing Officer may decline to accept the submission into the record unless all parties agree that the late submission is not prejudicial.

b. Length of Hearing. A Hearing schedule shall be established by the Hearing Officer providing for not more than ten (10) hours of Hearing testimony. An extension of this time period may be granted by the Hearing Officer for just cause as determined by the Hearing Officer. Just cause may include but is not limited to Hearing a fair return Petition where the Base Year records are unavailable.

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

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

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

8.06.9 Hearing Record. During the proceedings under this Chapter, the Hearing Officer with the assistance of Program Staff shall maintain an official Hearing record, which shall constitute the exclusive record for decision. The Hearing record and decision shall include:

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

- k. All recommended or final decisions, orders, or rulings; and
- l. A recording of the Hearing in a format determined by the Director.

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

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

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

8.07.2 Reasonable Maintenance and Repair Expenses. Expenses for maintenance and repair are reasonable and normal where they are consistent within ten percent (10%) from year to year, or otherwise shown to be consistent with the annual recurring level of expenses. The Hearing Officer may also evaluate reasonableness by considering whether such expenses are in keeping with expenses for buildings of similar configuration and age.

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

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

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

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

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

8.07.6 Calculation of Base Year CPI-U. The Consumer Price Index For All Urban Consumers ("CPI-U") for the Base Year shall be 251.985. (Section 17.23.810.D.)

8.07.7 Calculation of Current Year CPI-U.

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

8.07.8 Lost or Missing Base Year Information.

Without modifying the burden of proof, in the event that the Landlord has been granted a hearing with missing base year records under Section 8.02.3, the Hearing Officer shall have the discretion to consider all information on the Gross Income in the Base Year that may be introduced by the Landlord, Tenant or the Tenant Household, City staff, and/or the Hearing Officer.

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

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

- a. a calculation of the allowable rent adjustment pursuant to the fair return standard,
- b. a breakdown of the base year and current year income and expense by category
- c. a computation of the percentage adjustment of the base year net operating income showing the steps underlying the calculation
- d. The amount of change to the Rent, if any, for each unit;
- e. Any conditions which are placed on the award including conditions and limitations imposed for violation of SJMC Chapter 17.23;

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

g. An explanation of the basis for the Decision with citations to the Ordinance, which must include:

i. A calculation of the amount of change to the Rent pursuant to the fair return standard;

ii. An itemization of Base Year and Current Year income and expenses by category;

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

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

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

8.08.3 Effective Date of Rent Adjustments. Unless otherwise set by the Hearing Officer, any rent increases allowed in a Decision shall not be effective until all of the following are completed: (a) the Landlord provides notice to the Tenant of such increase pursuant to Civil Code Section 827 and (b) twelve (12) months have passed since the last increase in the Tenant's Rent. In the event of a rent decrease, the Decision shall specify the effective date of the rent decrease.

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

Chapter 9

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

9.01. Applicability.

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

9.01.2 Properties Ineligible for Any Specified Capital Improvement Pass Through. No cost of a Specified Capital Improvement may be passed through to a Tenant of a Rental Unit if any of the following conditions exists:

- a. The Rental Unit is in violation of the implied warranty of habitability, including the interpretation of the implied warranty of habitability codified in California Civil Code Section 1941.1, unless the Landlord can prove that such conditions were caused by the Tenant occupying the Rental Unit at the time of the Petition.
- b. The Petition for Specified Capital Improvement Pass Through was not filed within one-year of the completion of the Capital Improvement work.
- c. The work was performed without a City building permit.

9.02. Petitions and Notice.

9.02.1 Petition Filing Requirements. A Landlord seeking to pass through all or a portion of costs for a Specified Capital Improvement may file a Specified Capital Improvement Petition on a City petition form with all required supporting documentation. A Petition cannot be filed until the work is completed. Supporting documentation must be marked on each page with the specific petition form item it is intended to support. The Landlord must provide the following information and supporting documentation as identified below:

- a. The type or form of Specified Capital Improvement(s) for which a pass through is requested, identifying the applicable amortization period from Appendix B to these Regulations;
- b. Whether a similar Housing Service was previously provided to one or more Tenants to which the Landlord proposes to pass through costs of the Specified Capital Improvement, and if so, a description of the existing Housing Service that was improved or increased by the Specified Capital Improvement;

- c. The total cost of the Specified Capital Improvement to the Landlord together with the actual invoices and proof of payment;
- d. The number of Rent Stabilized Units, the occupancy status of each Rent Stabilized Unit, and the Rent charged for each Rent Stabilized Unit that benefits from the Specified Capital Improvement;
- e. The proposed pro rata, amortized cost of the Specified Capital Improvement to be passed through to each occupied Rent Stabilized Unit.
- f. The date that the Specified Capital Improvement(s) was completed.
- g. A copy of the building permit(s) and final inspection(s).

9.03. Standards for Specified Capital Improvements Costs Pass Through.

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

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

a. Sustainability, Safety, and Seismic Improvements. Up to one hundred percent (100%) of the costs of Specified Capital Improvements that materially improve sustainability (energy or water conservation), accessibility, safety, or seismic readiness. Specified Capital Improvements that materially improve sustainability, safety, or seismic readiness, are presumed to improve Housing Services and Housing Services functionality. With respect to energy conservation, material improvement for replacements of existing improvement may be shown by evidence that the replacement items exceed specifications of a basic replacement item and the specifications of the existing improvements. Where the City requires an engineered design for seismic work, the cost of the design work by the engineer or architect may be included in the cost to construct the improvements.

b. Major Systems Upgrades. Up to one hundred percent (100%) of the costs of Specified Capital Improvements for major systems upgrades that provide new or enhanced housing services to Tenants, as identified in Appendix B, and add Housing Services or enhance Housing Service functionality for Tenants. A Petition Examiner will not authorize any costs in a petition for Specified Capital Improvements to be passed through to a Tenant Household if the Specified Capital Improvement maintains a Housing Service for which a

Tenant Household has previously bargained for and provided compensation, or that replaces the same functionality and features of existing Housing Services. A Landlord may petition for, and a Petition Examiner may grant in whole or in part, those costs of a Specified Capital Improvement that can be attributed to measurably improving upon or increasing the functionality or features of an existing Housing Service.

9.03.3 City Permit and Plans Review Cost. The pass-through permitted for costs may include up to one hundred percent (100%) of the cost charged by the City for review of the plans and issuance of the Building Permit.

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

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

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

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

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

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

c. What costs were incurred by the Landlord for the construction of the Specified Capital Improvement;

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

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

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

9.06. Petition Examiner Administrative Decision; Notice.

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

9.06.2 Copy to Tenant Household. Upon receipt of an Administrative Decision that authorizes a pass through of Specified Capital Improvement costs to one (1) or more Tenants, a Landlord must provide a copy of the Administrative Decision with any initial written request for payment for the Specified Capital Improvement.

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

9.06.4 Pass Through Charges Separate from Rent. Because any authorized Specified Capital Improvement cost pass through is separate from Rent, such requests for payment are not subject to the limitation of one (1) Rent increase in a twelve-month period included in Ordinance Section 17.23.310.D. Any pass through charge shall be invoiced with and collected at the same time as the Rent.

9.07. Appeals.

9.07.1 After the Administrative Decision has been issued, Tenants may appeal a by requesting a Hearing on a form approved by the Director. If no Tenant files an appeal within thirty (30) days of the date the City Mails the Administrative Decision, the Administrative Decision shall be final. The appeal must be based on one (1) or more of the following grounds: (a) the improvements were not correctly completed (b) the improvements were not as described in the petition or (c) the pass through cannot be charged to the Tenant because the implied warranty of habitability has been breached with respect to the Tenant's unit.

9.08. Hearing Procedures.

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

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

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

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

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

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

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

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

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

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

a. Submissions after Time Deadlines. If a submission is proffered after the deadline in Section 9.08.2, the Hearing Officer may decline to accept the submission into the record unless all parties agree that the late submission is not prejudicial.

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

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

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

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

9.09.8 Hearing Record. During the proceedings under this Chapter, the Hearing Officer with the assistance of Program Staff shall maintain an official Hearing record, which shall constitute the exclusive record for decision. The Hearing record and decision shall include:

- a. A copy of the Petition, Response, and any other documents submitted to support the petition;
- b. Any written submissions by the parties,
- c. All exhibits, papers, and documents offered either before or during the Hearing;
- d. A list of participants present at the Hearing;

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

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

9.10. Decision.

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

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

- a. The amount of change to the Rent, if any, for each unit.
- b. Any conditions which are placed on the award including conditions and limitations imposed for violation of SJMC Chapter 17.23.
- c. The date on which any adjustment to the rent is effective for each unit.
- d. An explanation of the basis for the Decision with citations to the Ordinance, including:

- i. an itemization of each Specified Capital Improvement from which the Tenant Household benefits and on which the adjustment is based;
 - ii. the amount of the adjustment attributable to each Specified Capital Improvement; and
 - iii. the duration of the adjustment based on the amortization schedule identified in Appendix B.
- e. Issuance. The cover page of the decision will provide that the date the decision is issued is the date of Mailing.

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

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

Chapter 10

JOINT REQUESTS FOR ADDITIONAL HOUSING SERVICES

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

10.01.1 New or Additional Housing Services. A new or additional service may include a pet, where pets were prohibited or limited under the rental agreement. Additionally, other privileges or services that were expressly excluded or prohibited by the Tenant's written rental agreement may constitute a new or additional housing service, except for those services that include additional occupants, additional parking, or other services that are a component of the Basic Service Level.

10.02 Joint Petitions for a Rent Increase Due to Additional Occupants. A Landlord and Tenant may file a petition for an increase in the Rent of up to five percent (5%) for an additional Tenant (other than the Tenant's spouse, parent, dependent or foster child or minor in the Tenant's care). Such increase shall terminate in the event the additional Tenant vacates the unit.

10.03 Joint Petitions for a Rent Increase Due to Additional Parking Space. A Landlord and Tenant may file a petition for an increase in the Rent of up to fifty dollars (\$50) for a second

parking space. Where the Covered Property contains or is required to contain enough parking for each rent stabilized unit to have one space, one parking space shall be part of the Basic Service Level. The second space in the petition may not be the first space needed for another unit's Basic Service Level or a space required for guest parking by the Covered Property's permit.

Chapter 11

HEARING OFFICERS

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

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

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

11.01.3 Disqualification from Cases. A Hearing Officer or Mediator shall disqualify himself or herself from hearing a case and can be disqualified by Program Staff at the request of one (1) of the Parties if:

- a. The Hearing Officer knows or has reason to know he or she has a financial interest affected by the determination or award;
- b. The Hearing Officer is related to one of the Parties or their representatives to the third degree;
- c. The Hearing Officer has been retained or employed by one of the Parties within the past two (2) years, or has given advice to one of the Parties relative to the issues involved in the hearing;

d. It appears probable that the Hearing Officer by reason of bias or prejudice cannot provide a fair and impartial hearing;

e. The Hearing Officer is a party to the hearing.

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

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

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

Chapter 12

ENFORCEMENT AND IMPLEMENTATION

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

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

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

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

Chapter 13

LANDLORD PETITIONS FOR ONE TIME OFFSET INCREASE TO RENT

<u>Landlord Petition</u>
<i>Chapter 13</i> <i>Offset Increase</i>
Petition & Response
Petition Examiner May Refer to Hearing if Response is Filed
Petition Examiner Provides Administrative Decision
Decision is Circulated for Review. Final Decision Issued

13.01.1: Effective Date; Offset Petition Period. These Regulations are effective on the effective date of the Ordinance amending Chapter 17.23 approved on May 22, 2018. The effective date of that Ordinance is anticipated to be July 5, 2018. Petitions filed under this Chapter (“Offset Petitions”) must be filed between July 5, 2018 and October 31, 2018. An Offset Petition must be filed by October 31, 2018 and determined to be complete by November 5, 2018 in order to be eligible for this process.

13.01.2. Deferred Acceptance for Other Petitions Regarding Pass Through. During the period from July 5 to October 31, 2018 Program Staff will defer acceptance of petitions filed under Chapter 6 or 7 regarding pass through of utilities. Where petition acceptance has been delayed hereunder Hearing Officers may, in their discretion, extend any service reduction award periods accordingly.

13.01.3: Pre-filing Notice to Tenants. Program Staff shall provide a form of pre-filing notice for petitioner. Landlord shall Mail or personally serve the pre-filing notice on any Tenant covered by an Offset Petition prior to filing the Offset Petition with Program Staff.

13.01.4: Offset Petition; Completeness. A Landlord may file an Offset Petition regarding one-time offset increase pursuant to SJMC Section 17.22.315.A. The Offset Petition may be filed in person with Program Staff during business hours or by mail. The Offset Petition must be accompanied by the supporting documentation required by the Offset Petition form or this Section and by copies of the pre-filing notices. Each supporting document must be marked with the unit number and the petition section requiring the documents. Program Staff will make a determination regarding completeness for each Offset Petition within ten (10) business days of filing, unless the supporting documents are not properly marked. An Offset

Petition is incomplete if any required fields are omitted or if the supporting documentation is incomplete or missing or is not properly marked. The following standards apply to these required supporting documents:

a. The written rental agreement and the agreement, amendment or addenda regarding pass through of utilities (“Passthrough Agreement”) must be submitted. The rental agreement and Passthrough Agreement must each be dated and executed by the Tenants. The Tenants executing the Passthrough Agreement must include the Tenants who executed the rental agreement.

b. A full description of how the amount passed through to the Tenant was calculated from the Landlord’s bill (e.g., basis is square footage, Tenants unit is 700 s.f., other units total 1400 s.f.). The description must list any units or structures excluded from the allocation and disclose of any added fees, service charges, or items charged other than water, sewer and trash (or gas and electric, if that is the basis for the petition).

c. The Tenant’s payment of the charges for water, sewer and trash (or gas and electric, if applicable) for the applicable billing period (i.e., 2017 or Jan1, 2018-April 30, 2018) or the portion of that period where the Tenant occupied the unit, if less than the entire period shall be documented by copies of the invoices sent to the Tenant by the Landlord or Landlord’s billing agency.

d. The Landlord must complete the City’s electronic spreadsheet.

e. If the Landlord is making a claim under SJMC Section 17.22.315.A.1.iv (standing business practice) the Landlord must also provide for all units in the building, copies of Passthrough Agreements executed by the Tenants and Landlord prior to July 1, 2017, and the terms of those Passthrough Agreements must be substantially the same as terms of the Tenant’s Passthrough Agreement.

f. If the Landlord is making a claim related to pass through of unmetered gas or electricity, the Landlord must provide evidence that the Landlord has complied with the requirements of Civil Code Section 1940.9 at the commencement of the Tenant’s tenancy. This must include a written mutual agreement regarding payment for the gas and/or electric service for the areas outside of the Tenant’s unit, dated and executed by the Tenant and Landlord.

13.01.5. Incomplete Offset Petitions. If the Offset Petition is incomplete, the Program Staff shall provide notice by Mail to the petitioner that the Offset Petition is incomplete and provide a list of deficiencies in the Offset Petition and/or the supporting documentation. The petitioner may add to, amend, or revise and re-submit the Offset Petition to the Program Staff prior to the October 31, 2018 deadline, however, the Offset Petition must be determined to be complete by Program Staff by November 5, 2018 to be eligible for this process.

13.01.6: Complete Offset Petition. If the Offset Petition is complete, then the Program Staff will Mail a notice that a complete Offset Petition was received to the Landlord and Tenants described below. The notice that a complete Offset Petition was received shall identify the due date for the submission of a Response to the Petition. Once the petition is complete,

Program Staff shall make one copy available during business hours for review by the parties, after redaction of Tenant names and personal contact information.

13.01.7: Response to Offset Petition. The responding party (a Tenant or Tenant Household) shall have fourteen (14) days from the date of the Mailing of the City’s notice to file a Response on a City form. If a Response to the Offset Petition is filed, the Program Staff shall Mail a notice to the petitioner that a Response was received. Grounds for responses are:

- a. the Tenant did not sign the Passthrough Agreement,
- b. the Tenant did not pay the bills under the Passthrough Agreement during the applicable billing period,
- c. the pass through was previously disallowed by a final decision or voluntary agreement under Chapter 17.23 in a proceeding completed before July 4, 2018,
- d. the documents or signatures submitted by the Landlord have been altered or are otherwise not authentic or valid, or
- e. that the Offset Petition or Passthrough Agreement does not meet the requirements for the one-time offset or Offset Petition incorrectly lists the number of bedrooms in the unit.

13.01.8: Review of Petition and Responses; Additional Documents. The Petition Examiner may request originals of submitted in the event documents submitted appear to be altered, incomplete, or non-contemporaneous. If a Response is filed challenging the Tenant’s payment of the bills, the petitioner will be required to submit copies of the Tenant’s canceled checks, money orders, cashier’s checks, receipts or e-transfer documentation of Tenant payment. Any cash or e-transfer payments must be documented to the satisfaction of the Petition Examiner. Any receipts for cash payment provided shall show the payor, date and purpose.

After reviewing the complete Offset Petition and any Responses, the Petition Examiner shall either:

- (a) provide a tentative Administrative Decision and then a final Administrative Decision or
- (b) request that Program Staff schedule a hearing consistent with the procedures for hearings in Chapter 7 (commencing with Section 7.11, but not including Section 7.14) for the Petition and any Responses. The Hearing Officer’s determination shall reflect the requirements and standards in this Chapter 13. This determination shall be final.

13.02.1 Guidance for Document Review. The Petition Examiner shall ascertain whether the evidence provided by the Landlord shows that there was a written rental agreement, amendment or addenda regarding pass through of utilities executed by the Landlord and the current Tenant during the applicable time period specified by SJMC Section 17.23.315.A., the Tenant paid the

bills in the applicable billing period, that all amounts in excess of the pass through of water sewer and trash (or gas and electric if applicable) are disclosed, and, whether either:

(a) the Landlord has shown that the Passthrough Agreement meets the criteria in Section 13.01.4 and SJMC Section 17.23.315.A.1.i:

(i) the Landlord has provided all of the pass through agreement related bills paid by the Landlord to the utility during 2017 (or the portion of 2017 where the Tenant occupied the unit, if less than the entire year) and

(ii) the Landlord has provided all of the pass through agreement related bills paid by the Tenant to the Landlord or Landlord's billing agency during 2017 (or the portion of 2017 where the Tenant occupied the unit, if less than the entire year).

(b) the Landlord has shown that the Passthrough Agreement meets the criteria in SJMC Section 17.23.315.A.1.iv, establishes a standing business practice and

(i) the Landlord has provided all of the pass through agreement related bills paid by the Landlord to the utility during the applicable billing period from January 1, 2018 to April 30, 2018 (or the portion of that period where the Tenant occupied the unit, if less than the entire year) and

(ii) the Landlord has provided all of the pass through agreement related bills paid by the Tenant to the Landlord or Landlord's billing agency during the applicable billing period from January 1, 2018 to April 30, 2018 (or the portion of that period where the Tenant occupied the unit, if less than the entire period).

13.02.2 Burden of Proof. The Landlord shall have the burden of proof. The burden of proof shall be satisfied by providing sufficient evidence to demonstrate to the Petition Examiner that the fact sought to be proven is more probable than some other fact (a preponderance of the evidence standard). The best evidence is original documents.

13.02.3. Calculations. The Petition Examiner shall determine the monthly average of the costs actually paid by the Tenant for the applicable billing period. Petition Examiner shall (i) deduct from the amounts actually paid by the Tenant for water, sewer and trash (or gas and electric, if applicable) any charges by the Landlord or Landlord's billing agency not directly related to those utilities passed through (e.g., charges or services related to the billing process), (ii) total the resulting payments, (3) divide the total by number of the days in the applicable billing period (adjusted for Tenant occupancy) and (4) multiply that daily total by 30 to obtain the monthly average. The Petition Examiner shall compare the monthly average to the applicable cap listed in SJMC Section 17.23.315.A.5 or SJMC Section 17.23.315.A.6 for the bedroom size of the unit and determine the lesser amount.

13.02.4 Administrative Decision. The Petition Examiner shall determine whether the Landlord met the burden to convince the Petition Examiner that the documents and signatures provided are valid and authentic, the amounts were actually agreed to and paid by the Tenant for the water trash and sewer (or gas and electric, if applicable) and the Landlord has satisfied the applicable

conditions for filing for the one-time increase under Section 17.23.315.A and this Chapter 13. The Petition Examiner shall also consider challenges brought by the Responding Party consistent with 13.01.7. If the Landlord has carried his burden, the Petition Examiner shall award a rent increase in accordance with SJMC Section 17.23.315.A.5, or A.6, as applicable.

13.02.5 Circulation of Tentative Decision. The initial Administrative Decision shall be a tentative ruling and shall acknowledge each Petition, Response, and any relevant supporting documentation, as applicable. The Administrative Decision shall be made on a form that is approved by the Director. The tentative Administrative Decision shall be provided by the Petition Examiner to the Program Staff within thirty (30) Business Days after the deadline for submission of a Response. The Parties shall have ten (10) days after Mailing of the tentative Administrative Decision by Program Staff to submit requests for corrections of omissions or mathematical, clerical or typographical errors to Program Staff. The other parties shall be provided copies concurrently by the requester.

13.02.6 Final Administrative Decision.

After circulation of the Tentative Decision, the Petition Examiner shall respond to timely requests under Section 13.02.5 for corrections of omissions or mathematical, clerical or typographical errors and produce a final Administrative Decision.

Any rent increases granted by a final Administrative Decision shall not be effective until the Landlord provides notice to the Tenant of the granted increase as required by State law, along with a copy of the Administrative Decision and the end of the notice period under State law and/or the Tenant's lease.

Chapter 14

TENANT BUYOUT OFFERS AND AGREEMENTS

14.01. City-Disclosure of Rights Form. Immediately prior to making a Buyout Offer, the Landlord shall provide the Tenants with a City Disclosure Form, which shall include the following information:

- a. A statement explaining that the unit is subject to the Apartment Rent Ordinance and Tenant Protection Ordinance and providing contact information for the Program.
- b. A statement explaining that Tenants may request the Landlord provide a copy of the Buyout Agreement in the Tenant's primary language and a box that the Tenant can complete to make such a request.

- c. A statement explaining that the Tenant has the right to not enter into a Buyout Agreement.
- d. A statement explaining that the Tenant has the right to seek an attorney prior to and during negotiations for a Buyout Agreement.
- e. A statement explaining that the Tenant has the right to provide counter offers and engage in counter negotiations with the Landlord.
- f. A statement explaining that the Tenant has the right to cancel any Buyout Agreement within forty-five (45) days of the date of the execution of the Buyout Agreement, without penalty.
- g. A statement explaining that exercising the right to rescind after vacating the unit, will not entitle a Tenant to move back into the unit.
- h. A statement that some types of termination of tenancy may entitle the Tenant to relocation benefits and that the Tenant may contact Program Staff for more information.
- i. Any other statements that are consistent with the implementation of Part 7 of the Apartment Rent Ordinance.
- j. A space for each Landlord and Tenant to sign and date.

14.02. Buyout Agreement. All Buyout Agreements shall be written and signed by both the Landlord and all involved Tenants. If requested, the Landlord shall provide the Tenant a translated Buyout Agreement or a translated copy of the Buyout Agreement in the Tenant's primary language. The Buyout Agreement shall include the following statements, which are to be written in at least 12pt Bold Font:

- a. You have the right not to enter into this Buyout Agreement.
- b. You may choose to speak with an attorney before signing this agreement.
- c. You may also contact the City Housing Department prior to signing this agreement.
- d. You have the right to cancel any Buyout Agreement within forty-five (45) days from the date of signing this Buyout Agreement without penalty. To cancel this agreement, you must send, via U.S. mail, the Landlord a signed and dated notice indicating that you are cancelling the agreement, or words to that effect. However, if you have already moved out, cancelling this Buyout Agreement will not entitle you to move back in.

Upon execution of the Buyout Agreement, the Landlord must provide all Tenant signatories an executed copy of the Buyout Agreement.

14.03. Rescission of Buyout Agreement. The Tenant has the right to rescind a signed Buyout Agreement without penalty, if one (1) of the following conditions are met:

- a. Forty-five (45) days have not passed from the date the Landlord and Tenant signed the Buyout Agreement; or
- b. The Landlord failed to comply with the Buyout Offer requirements as set forth in Section 14.01 of this section; or
- c. The Landlord failed to comply with the Buyout Agreement requirements set forth in Section 14.02 and/or Section 14.04 of this section; or
- d. Any other circumstances under State and/or Federal law that would permit the rescission of a contractual agreement.

All rescissions must be Mailed to the Landlord and must include a statement that the Tenant has rescinded the Buyout Agreement. Where a Tenant successfully rescinds a Buyout Agreement, a remedy shall not include displacing a subsequent tenant or existing tenants in the affected unit.

14.04. Filing Requirements. The Landlord must file the fully executed Buyout Agreement, as well as the fully executed Disclosure Form, with Program Staff within thirty (30) days from the date that the Tenant and Landlord signed the Buyout Agreement. Program staff shall comply with the following procedure with respect to the filed Buyout Agreements

- a. Buyout Agreements shall be held in a separate file.
- b. The City must maintain the Tenant's personal identifying information as confidential and in a manner consistent with the California Civil Code 1947.7(g).
- c. Subject to the limitations in subsection b, Program Staff may collect data from the Buyout Agreements—including, but not limited to, the amount of consideration paid.

14.05. Exemptions: Any and all agreements made to settle a pending Unlawful Detainer shall not be considered Buyout Offers or Buyout Agreements under this Chapter or the Ordinance.

APPENDIX A

CAPITAL IMPROVEMENT AMORTIZATION PERIOD IN YEARS

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

APPENDIX B

SPECIFIED CAPITAL IMPROVEMENTS AMORTIZATION PERIOD IN YEARS

Category or Type of Specified Capital Improvement	Amortization Period (Years)	Section Reference (§9.03.2)
ADA Improvements		a
Ramps	10	
Driveway Egress	10	
Elevators	20	
Air Conditioning	10	b
Conservation	10	a
Drought Tolerant Landscape	5	
Submetering	10	
Solar power panels	10	
Fire Prevention		a
Fire Alarm System	10	
Fire Escape	10	
Fire Sprinklers/Retardant System	10	
Insulation	10	a or b
Security System (including security gates and fencing)	10	a or b
Seismic Retrofits*		a
Foundation Repair	20	
Foundation Replacement	20	
Foundation Bolting	20	
Iron or Steel Work	20	
Masonry-Chimney Repair	20	
Shear Wall Installation	20	
Soft Story Retrofit	20	
<i>*Required architectural and engineering cost may be included.</i>		
Windows	10	a or b