

City of San José **Rental Rights and Referrals Program** **Instructions for Completing the Fair Return Petition**

Overview

Under the Apartment Rent Ordinance, San José Municipal Code Chapter 17.23, as amended by Ordinance Number 29730 (the "Interim Ordinance"), owners are assured a fair return in that the Net Operating Income ("NOI") of their rental property will increase at 100% of the percentage increase in the Consumer Price Index ("CPI") from the base year (2014).

The forms and worksheets in this fair return petition package are designed to provide the Hearing Officer with the information to enable a decision on the petition. Property owners will be able to enter the NOI for the Base Year and for the Current Year in BOX 9 by following the instructions for each box of the petition very carefully. Once the NOI's for the Base Year and Current Year have been calculated, the process requires comparing these two figures to see whether your rental property's Base Year NOI has increased by the rate of inflation. Please see the Fair Return Petition FAQ for a description of how the rate of inflation is calculated for a petition.

It is expected that the 5% annual increase allowed under the Apartment Rent Ordinance will assure the vast majority of rental property owners a fair and reasonable return. A petition should be filed only if there are grounds that support additional rent increases under Section 17.23.820 of the Interim Ordinance. The grounds that may be considered are: (a) that the NOI for the Current Year is less than the Base Year NOI with the Inflation Adjustment (Section 17.23.820(b)) or (b) that the owner was not receiving a fair return in the Base Year because the Base Year NOI for the property was unusually low (Section 17.23.820(c)). Additional evidence described in Box 13 must be attached in the event that an owner files on the grounds that the owner was not receiving a fair return in the Base Year because the Base Year NOI for the property was unusually low.

No petition will be accepted for filing if the required notice of the petition has not been provided to all tenants. Program staff shall determine whether or not a petition is accepted for filing. Once a petition is accepted for filing, Program staff will review for completeness and notify the petitioning owner in writing whether any additional information is required to complete the petition. A complete petition must include legible and proper documentation of the income & operating expenses of the rental property. Copies of receipts, checks, and invoices are the best documentation to attach. The Program requires that all submittals be legible, one-sided copies on plain white 8.5x11" paper. The Program does not accept responsibility for original documents submitted with the petition. **Owners should provide copies of original documents when submitting the petition and bring original documents to the Hearing(s).** If the filed petition is found "complete," a Hearing Officer will be assigned and a Hearing Date will be set, and the owner and tenants will be notified.

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

The Petition Process

Note: Before attempting to complete any portion of this process, review the actual Fair Return petition while simultaneously going through the following instructions.

Box 1 Owner

Complete Box 1 with the name, mailing address, email and telephone number(s) of the owner. Check the applicable line if the Applicant is the sole owner of the property. If not, list all other owners appearing on the Grant Deed for the property in the "Other" section located in Box 14, along with their complete mailing addresses and telephone numbers.

Box 2 Designated Agent

Complete Box 2 by writing NONE if the owner will represent him or herself or if someone other than the owner is attending the hearing on the owner's behalf and will be authorized to act on the owner's behalf by listing the name and contact information for that designated agent. The owner's designated agent could be an attorney, accountant, a person affiliated with an owner association, a translator, or any other person of the owner's choosing.

Box 3 Site Information

Provide the address of the property. If the property has more than one address, include all of the addresses. Enter the month and year that the current owner assumed ownership (this date appears on the Grant Deed for the property).

Box 4 Unit Information

Enter the total number of residential units on the property, including any that may be owner, employee or relative-occupied.

Box 5 Declaration

In order for a petition to be accepted for filing, this declaration must be signed without alteration. Any forms that are unsigned, signed with alteration in the declaration, or signed with the wrong name, will not be accepted. If anyone other than an owner signs the declaration (e.g., an attorney or other representative), a statement must be attached to the petition. This statement must be signed by the owner authorizing the individual listed to be their representative, and to execute binding agreements on their behalf.

Box 6 Proposed Individual Rent Increase Schedule

List each residential unit (using mailing designation) on the property in Column A of this box. In Column B, enter the move-in month & year for the current tenancy of each unit and the date of the last rent increase. In Column C, enter the current Rent for each unit. In Column D, enter the amount of the rent increase proposed for each unit. In Column E, enter the sum of Columns C and D for each unit. Please be advised that any increase granted through this process for a specific unit cannot exceed the amount indicated for that unit in Column D. In addition, the amount of any increase granted per unit may be different than that shown in Column D.

Owners are encouraged to submit the BOX 6 information in the form of an editable Microsoft Word table or electronic spreadsheet. If there are more than 20 residential units on the property, the owner must provide an electronic spreadsheet or an editable Microsoft Word table containing the information in BOX 6.

Box 7 Income Summary

Important: Copies of receipts or other documentation must be attached to support income data.

- Line 1 Rents for All Residential Units:
Determine the amount of rent that would have been received if all of the residential units on the property were occupied by tenants for all of 2014. Enter the comparable figure for the Current Year on Line 1 in Column B. Current year rents should be annualized based on the rent charged in the final month of the Current Year. Rent includes all charges for housing services to the tenant (e.g. utilities, parking, etc.).
- Line 2 Annual Interest from Security And Cleaning Deposits:
Determine the annual interest (or other return on investment) from tenant security and/or cleaning deposits for 2014. Enter this amount on Line 2 in Column A. Enter the comparable figure for the Current Year on Line 2 in Column B.
- Line 3 Other Income:
Determine the annual total of other income (e.g., laundry machines, etc.). Enter the comparable figure for the Current Year on Line 3 in Column B.
- Line 4 Total Projected Gross Income:
Total the amounts listed on Lines 1-3 in Column A, and then enter that amount on Line 4 in Column A. Enter the comparable figure for the Current Year on Line 4 in Column B.
- Line 5(a) Rent Loss/Vacancies:
Determine the amount of rent lost due to vacancies during 2014. Only include those vacancies that were beyond the owner's control. Enter this amount on Line 5(a) in Column A. Enter the comparable figure for the Current Year on Line 5(a) in Column B.

- Line 5(b) Rent Loss/Uncollected Rents:**
Determine the amount of rent lost due to uncollected rents (i.e., bad debts) for 2014. Only include those bad debts that were beyond the owner's control. Enter the result on Line 5(b) in Column A. Enter the comparable figure for the Current Year on Line 5(b) in Column B. Explain why these bad debts were beyond the owner's control in the Box 14 Other worksheet.
- Line 5(c) Other:**
Determine the total amount of rent lost for any other reason during 2014. Enter the result on Line 5(c) in Column A. Enter the comparable figure for the Current Year on Line 5(c) in Column B. Explain the claim(s) in the Box 14 Other worksheet.
- Line 6 Total Rent Loss:**
For 2014, add the Column A totals from Lines 5(a), 5(b), and 5(c), then enter the result on Line 6 of Column A. Enter the comparable figure for the Current Year on Line 6 in Column B.
- Line 7 Total Collected Gross Income:**
For 2014, subtract the amount in Line 6 of Column A from the amount in Line 4 of Column A. Then enter the result on Line 7 of Column A. For the Current Year, subtract the amount in Line 6 of Column B from the amount in Line 4 of Column B. Then enter the result on Line 7 of Column B. These represent the Total Collected Gross Incomes for 2014 and the Current Year. Enter each figure in the applicable column on Line 1 of Box 9.

Box 8 Operating Expense Summary

Important: Copies of invoices, cancelled checks or other documentation must be attached to support expense data.

- Line 1 Property Taxes:**
These figures may be obtained from county tax bill(s). Enter the amount claimed regarding real property taxes relating to the property in question for 2014. Enter the comparable figure for the Current Year on Line 1 in Column B.
- Line 2 Electricity Utility:**
Enter the amount you paid for electricity in 2014. Enter the comparable figure for the Current Year on Line 2 in Column B. If you have charged tenants a separate fee for these costs, deduct the amounts charged to the tenants from your claimed amount. (**Note for Lines 2- 5:** the Apartment Rent Ordinance does not allow owners to bill tenants for master metered utilities or other housing services on top of rent.)
- Line 3 Gas Utility:**
Enter the amount claimed for natural gas in 2014 on Line 3 of Column A. Enter the comparable figure for the Current Year on Line 3 in Column B. If you have charged tenants a separate fee for these costs, deduct the amounts charged to the tenants from your claimed amount.
- Line 4 Water Utility:**
Enter the amount claimed for water service in 2014 on Line 4 of Column A. Enter the comparable figure for the Current Year on Line 4 in Column B. If you have charged tenants a separate fee for these costs, deduct the amounts charged to the tenants from your claimed amount.
- Line 5 Solid Waste Collection:**
Enter the amount claimed for solid waste collection service (includes recycling) in 2014. Enter the comparable figure for the Current Year on Line 5 in Column B. If you have charged tenants a separate fee for these costs, deduct the amounts charged to the tenants from your claimed amount. Note: If this expense was included as a separate assessment in tax bill(s), place a "0" in the appropriate column(s).
- Line 6 Management Expenses:**
Management expenses are presumed to be 6% of gross income unless established otherwise. Management expenses (contracted or owner-performed) include, but are not limited to, necessary and reasonable advertising and accounting costs. To establish that management expenses exceed 6% of gross income, the owner is required to provide copies of all expenses claimed in this category.

Enter the amount claimed for management expenses in 2014 on Line 6 in Column A. Enter the comparable figure for the Current Year on Line 6 in Column B.

- Line 7 Legal Expenses:**
Include only those legal expenses for successful good-faith attempts to recover rents owing and successful good-faith unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from tenants; and legal expenses of a nature are necessarily incurred in dealings with respect to the normal operation of the rental units, building or complex to the extent such expenses are not recovered from adverse or other parties. Enter the amount claimed for such legal expenses for 2014 on Line 7 of Column A. Enter the comparable figure for the Current Year on Line 7 in Column B.
- Line 8 Insurance:**
Enter the amount claimed for property-related insurance for 2014 on Line 8 of Column A. Enter the comparable figure for the Current Year on Line 8 in Column B.
- Line 9 Normal Repair & Maintenance:**
Referencing Box 10a & 10b Worksheets, enter the *Annual Total* amount claimed for normal repair and maintenance for 2014 on Line 9 of Column A. If you have charged tenants for these costs, deduct the amounts charged to the tenants from your claimed amount. (Note: the Apartment Rent Ordinance does not allow owners to charge tenants a separate fee for these costs for normal maintenance (e.g., pest control) on top of rent). Enter the comparable figure for the Current Year on Line 9 in Column B.
- Line 10 Registration & Other Fees:**
Enter the amount claimed for registration & other fees for 2014 on Line 11 of Column A. Enter the comparable figure for the Current Year on Line 11 in Column B.
- Line 11 Completed Capital Expenses:**
Referencing Box 11a & Box 11b Worksheets, enter the *Annual Total* amount claimed for completed capital expenses for 2014 on Line 12 of Column A. Enter the comparable figure for the Current Year on Line 11 in Column B. Capital expenses can be included as an expense only for the year in which they were incurred. In other words, expenses incurred in the years between the Base Year and the Current Year may not be included. Base Year capital expenses are not included in the Current Year even if the Current Year is within the amortization period of that Base Year expense (e.g., if an expense in the Base Year is amortized over ten years, only the amount spent in the Base Year will be factored into the NOI formula). An owner must show that a capital expense is reasonable or necessary and benefits the tenants. Costs to significantly upgrade or convert the building into a luxury apartment will not be allowed unless it is clearly shown that the increase benefits the tenants.
- Line 12 Intentionally Omitted.**
- Line 13 Other:**
Referencing the BOX 13 Worksheet, enter the *Annual Total* amount claimed for *Other* for 2014 on Line 13 in Column A. Enter the comparable figure for the Current Year on Line 14 in Column B. Use the Box 13 worksheet area to explain claims listed as *Other* in the petition.
- Line 14 Total:**
Total the claims listed in Lines 1-13 of Column A (Base Year), then enter the result on Line 14 of Column A. Total the claims listed in Lines 1-13 of Column B (Current Year), then enter the result on Line 14 of Column B. These are the Total Operating Expenses for 2014, and the Current Year respectively. Enter these figures in the appropriate boxes on Line 2 of Box 9.

Note: Mortgage principal, interest payments and depreciation are not considered operating expenses under the Interim Ordinance.

Box 9 Summary of Income and Expenses: Net Operating Income

- Line 1 Total Collected Gross Income:**
Enter the Total Collected Gross Income for 2014 and the Current Year from Line 7 of Box 7 in the applicable areas.
- Line 2--Total Operating Expenses:** Enter the Total Operating Expenses for 2014, and the Current Year from Line 15 of BOX 8 in the applicable areas.

- Line 3--Net Operating Income: Regarding the amounts listed on Lines 1 & 2 in BOX 9 for 2014 and the Current Year. For each column, subtract Line 2 from Line 1, then enter the result on the applicable Line 3. These represent the NOIs for 2014, and the Current Year.

Box 10a Normal Repair and Maintenance Worksheet (Base Year)

Important: Copies of invoices, cancelled checks, regular maintenance logs or other documentation must be attached for normal repair and maintenance expenses.

The Box 10a Worksheet is used to individually itemize and describe expense claims for normal repair and maintenance during 2014.

- Column A Item Number:
Use this column to assign an item number for each Base Year normal repair and maintenance claim listed in Column B. The same number must be affixed to each supporting document submitted to substantiate the claim.
- Column B Description of Expense:
Provide brief description of each claim. Normal repair and maintenance expenses include, but are not limited to, cleaning, monthly pest control, gardener services, minor repairs or replacements, and pool service.
- Column C Units Benefitted:
Place an "X" in the *ALL* portion of this column if the item claimed benefitted all the residential units on the property. Otherwise, list the unit(s) benefitted by this claim.
- Column D Cost:
For each item, enter the cost in this column.
- Total:
First, total the amounts listed in Column D, and enter the total box at the bottom of Column D. Then enter this total on Line 9 of Column A (Base Year) in Box 8.

If you need additional space to list normal repair and maintenance claims, attach copies of the Box 10a worksheet, and designate each page (10a-1, 10a-2, 10a-3, etc.) in the upper right-hand corner.

Box 10b Normal Repair and Maintenance Worksheet (Current Year)

The Box 10b Worksheet is used to individually itemize and describe expense claims for normal repair and maintenance during the Current Year. If you need additional space to list normal repair and maintenance expenses, attach copies of the Box 10b Worksheet and designate each page (10b-1, 10b-2, 10b-3, etc.) in the upper right-hand corner.

- Column A Item Number:
Use this column to assign an item number for each Current Year normal repair and maintenance claim listed in Column B. The same number must be affixed to each supporting document submitted to substantiate the claim.
- Column B Description of Expense:
Provide brief description of each claim including date(s) of work. Normal repair and maintenance expenses include, but are not limited to: cleaning, monthly pest control, gardener services, minor repairs or replacements, and pool service.
- Column C Units Benefitted:
Place an "X" in the *All* portion of this column if the item claimed benefitted all the rental units on the property. Otherwise, list the unit(s) benefitted by this claim.
- Column D Cost:
For each item, enter the cost in this column.
- Total:
First, total the amounts listed in Column D, and enter the total at the bottom of Column D. Then enter this total on Line 9 of Column B (Current Year) in Box 8.

Important: Copies of receipts or other documentation must be attached for normal repair and maintenance expenses.

Box 11a Completed Capital Expense Worksheet (Base Year)

Important: Copies of invoice, cancelled checks or other documentation must be attached for all completed capital expenses.

The Box 11a Worksheet is used to individually itemize and describe those capital expenses completed in 2014 that were necessary to maintain the same level of services as previously provided to tenants and not reimbursed or otherwise compensated. Also include any substantial capital improvements that improved the housing services to tenants not reimbursed or otherwise compensated.

- Column A Item Number:
Use this column to assign an item number for each completed Base Year capital expense claim. The same number must be affixed to each supporting document submitted to substantiate a claim.
- Column B Description of Expense:
In this column, briefly describe each completed capital expense performed in 2014 for building improvements, major repairs and replacements, including date(s) of work.
- Column C Unit(s) Benefitted:
Select *All* in this column if the item claimed benefitted all rental units on the property. Otherwise, list the unit(s) benefitted by this claim.
- Column D Initial Cost:
Enter in this column the initial cost of each item.
- Column E: Interest Rate:
Enter in this column the cost of financing for each item, if applicable. Use the rate of 3.5% if cash was paid. Finance rates claimed in excess of 3.5% require copies of supporting documentation.
- Column F Amortization Period:
In this column, enter the appropriate amortization period for each item. Refer to the table on page 6. Owner may use 7 years for unlisted items.
- Column G Cost of Financing:
Multiply the initial cost of the expense (Column D) by the interest rate (Column E). Multiply this number with the number of years the expense will be amortized (Column F). Enter this amount into Column G.
- Column H Total Cost:
Add the initial cost of the expense (Column D) and the cost of financing (column G) to calculate the total cost of the expense. Enter this amount into Column H.

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

- Column I Annual Cost:**
For each item, divide the total cost (Column H) by the appropriate amortization period listed in Column F. The Hearing Officer may use 7 years for unlisted items, or such other period as is determined to be reasonable and consistent with the purposes of the Interim Ordinance. Enter the result into Column I.
- Annual Total:**
Total all entries located in Column H, and enter the amount in the *Annual Total* space provided at the bottom portion of this Worksheet. Also enter this amount on page 4, Box 8, Line 11a.

If you need additional space to list Completed Capital Expenses, attach additional copies of Box 11a, and designate each page (11a-1, 11a-2, 11a-3, etc.) in the upper right-hand corner.

Box 11b Completed Capital Expense Worksheet (Current Year)

The Box 11b Worksheet is used to individually itemize and describe only those completed Current Year capital expenses that were necessary to maintain the same level of services as previously provided to tenants and not reimbursed or otherwise compensated. Also include any substantial capital improvements that improved the housing services to tenants not reimbursed or otherwise compensated.

- Column A Item Number:**
Use this column to assign an item number for each completed Base Year capital expense claim. The same number must be affixed to each supporting document submitted to substantiate a claim.
- Column B Description of Expense:**
In this column, briefly describe each completed capital expense performed in 2014 for building improvements, major repairs and replacements, including date(s) of work.
- Column C Unit(s) Benefitted:**
Select *All* in this column if the item claimed benefitted all rental units on the property. Otherwise, list the unit(s) benefitted by this claim.
- Column D Initial Cost:**
Enter in this column the initial cost of each item.
- Column E: Interest Rate:**
Enter in this column the cost of financing for each item, if applicable. Use the rate of 3.5% if cash was paid. Finance rates claimed in excess of 3.5% require copies of supporting documentation.
- Column F Amortization Period:**
In this column, enter the appropriate amortization period for each item. Refer to the table on page 6. Owner may use 7 years for unlisted items.
- Column G Cost of Financing:**
Multiply the initial cost of the expense (Column D) by the interest rate (Column E). Multiply this number with the number of years the expense will be amortized (Column F). Enter this amount into Column G.
- Column H Total Cost:**
Add the initial cost of the expense (Column D) and the cost of financing (column G) to calculate the total cost of the expense. Enter this amount into Column H.
- Column I Annual Cost:**
For each item, divide the total cost (Column H) by the appropriate amortization period listed in Column F. The Hearing Officer may use 7 years for unlisted items, or such other period as is determined to be reasonable and consistent with the purposes of the Interim Ordinance. Enter the result into Column I.

Annual Total:

Total all entries located in Column H, and enter the amount in the *Annual Total* space provided at the bottom portion of this Worksheet. Also enter this amount on page 4, Box 8, Line 11a.

If you need additional space to list Completed Capital Expenses, attach additional copies of Box 11b, and designate each page (11b-1, 11b-2, 11b-3, etc.) in the upper right-hand corner.

Important: Copies of invoices, cancelled checks or other documentation must be attached for all completed capital expenses.

Box 12 Fair Return Claims Regarding the Base Year NOI

The Interim Ordinance presumes that the owner received a fair return in the Base Year, However, Section 17.23.820(c) allows an owner to overcome that presumption if the owner can provide sufficient evidence showing that the Base Year NOI for that year was unusually low due to unusual circumstances.

An owner making this claim needs to provide sufficient evidence of an unusually low NOI in the Base Year produced by unusual circumstances. The Hearing Officer must make one of the following findings before he or she determine that the owner has provided sufficient evidence to overcome the presumption of a fair return in the Base Year.

One of the following circumstances are present that may be associated with increased (or decreased) expenses:

- a) Substantial capital improvements or substantial repairs due to uninsured disaster or vandalism that were not reflected in the Base Year rent;
- b) The owner incurred costs for significant capital improvements or substantial repairs due to uninsured disaster or vandalism (In this instance, the owner should indicate whether or not a petition to obtain increases in connection with these costs was filed in the Base Year.);
- c) Maintenance or repairs were below accepted standards or resulted in from intentional deferral, which caused significant deterioration in housing services, the building or the units; or
- d) Other expenses were unreasonably high or low, notwithstanding prudent business practice, OR

One of the following circumstances are present that may be associated with lower gross income:

- e) Gross income was unusually low because some tenants had unusually low rents for the quality, location, age, amenities and condition of the housing. (Evidence regarding rents could include evidence of actual rents for comparable buildings located nearby and in the same neighborhood); or
- f) Destruction of all or part of the premises.

Box 13 Other

The Box 13 worksheet is used to add or explain entries in the following boxes:

- Box 1 Owners
- Box 7: Income Summary (explain Line 5(d) –Other and any other Line 5 items)
- Box 8: Summary of Operating Expenses (explain Line 14--Other)
- Box 12: Explain the unusual circumstances causing the unusually low or high expenses or income and provide any additional information for any checked items on Lines 12(a)-(f)
- Miscellaneous:
This worksheet can also be used as a place to list miscellaneous items not covered anywhere else in the petition.

Box 14 Tenant Mailing Labels

Enter the typed name, and mailing address (including unit designation, if any) of each tenant of record--one per each box. Type the complete street address, city, and zip code for every tenant of record. If you need additional space, attach copies of Box 14, and designate each page (14-1, 14-2, 14-3, etc.) in the upper right hand corner.

Attachment Notification of Filing

The owner must notify all tenants (including tenants who occupy units for which no rent increase is being requested) in writing indicating the owner's intent to file a rent increase petition and the grounds for the petition. The City approved form for this purpose is provided in the Petition package. If the owner is alleging that the 2014 income was unusually low or 2014 expenses were unusually high, the owner must check the corresponding box on that form. The owner must also sign the declaration side of that notice. Failure to do so will cause a petition to be deemed unacceptable for filing. The owner is required to serve a completed copy of the form to each tenant before filing a petition with the Department.