

Fact Sheet

FAIR RETURNS PETITION

San José Municipal Code Chapter 17.23.800, as amended by Ordinance Number 30032) hereinafter, “Apartment Rent Ordinance”) provides owners 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 annual general increase (5%) allowed under the Apartment Rent Ordinance is expected to assure the vast majority of rental property owners a fair and reasonable return. However, for owners who claim to have not received a fair-return in the prior year, the Apartment Rent Ordinance provides a petition process whereby an owner can seek an increase higher than the annual general increase. The grounds for such petitions are: (a) that the owner’s net operating income (NOI) for the current year is less than the 2014 NOI after adjustment for inflation using 100% of the CPI or (b) that the owner was not receiving a fair return in 2014 because the 2014 NOI for property was unusually low (based on certain criteria).

The petition process requires owners to fill out and submit City generated petition forms and worksheets. Once the City receives the petition and worksheet, staff will verify the information and prepare a report and a hearing officer will determine whether an adjustment in rents beyond the annual general increase is permitted. Submittal of the forms, worksheets, and evidence is necessary to provide the Hearing Officer with requisite information to make a determination on the petition. Prior to filing the petition, the owner should be aware of the following:

- The Apartment Rent Ordinance presumes that the owner’s net operating income in the base year provided the owner with a fair return.
- Owners should only file a petition if there are grounds that support additional rent increases under Part 8 of the Apartment Rent Ordinance.
- Program staff shall determine whether a petition has met all the requirements for filing. Once a petition is submitted, Program staff will review for completeness and notify the petitioner in writing whether any additional information is required to complete the petition.
- A complete petition must include legible and proper documentation of the rental property’s income & operating expenses and three copies of supporting documents. Copies of receipts, checks, and invoices are the preferred form of proof.

WHAT IS A “FAIR RETURN”?

A fair return is the amount required for the owner to maintain the base year net operating income adjusted for inflation. The Apartment Rent Ordinance operates under a presumption that the owner’s net operating income received in the base year provided the owner a fair return. Under the Ordinance, the base year is 2014. If a property owner believes that the annual general increase of five percent (5%) does not provide a “fair return,” they can petition the City to allow for a rent increase higher than the annual general increase. The City of San Jose, as well as other Cities, utilizes a fair return standard called the “maintenance of net operating income” (MNOI) determined by:

$$\text{Net Operating Income} = \text{Gross Income} - \text{Operating Expenses}$$

WHAT IF THE OWNER DISAGREES THAT HE OR SHE RECEIVED A FAIR RETURN IN THE BASE YEAR?

The Apartment Rent Ordinance presumes that the Landlord received a fair return in the Base Year (2014). However, if the owner believes that he or she did not receive a fair return in the Base Year, because the Base Year Net Operating Income was unusually low due to unusual circumstances, the owner can submit evidence showing that income was unusually low or expenses were unusually high for a particular Covered Property in the Base Year.



EXPENSES

- ✓ **Substantial Capital Improvement Costs**
The owner made substantial capital improvements that improved housing services during the base year, which were not reflected in the base year rent levels.
- ✓ **Substantial Repairs Exceeding 1% of Annual Rent in Base Year**
Substantial repairs exceeding one (1%) of the annual Rent were made due to damage caused by uninsured disaster or vandalism, provided the property was not uninsured or unreasonably underinsured as determined by the Hearing Officer, which were not reflected in the Base Year rents.
- ✓ **Unreasonably High or Low Expenses**
Other expenses were unreasonably high or low, notwithstanding prudent business practice.

INCOME

- ✓ **Unusually High or Low Gross Income – Comparison**
The gross income during the base year (2014) was unusually low because some residents had unusually low rents for the quality, location, age, amenities, and conditions of the housing. Property owner will be required to pay for an appraiser and submit the appraisal report when making a claim on basis. (SJMC 17.23.830(C)(2)(a)). Gross income may have also been low due to destruction of the premises, rents have not been increased in 5 years, the tenant lawfully assumed maintenance responsibilities, or there was a special relationship between the Landlord and Tenant.

This fact sheet is intended to provide a basic overview of the Fair Returns Petition Process. If you have questions about the Fair Returns Petition or its process, please contact our program. **Please note this document is not legal advice.** Please visit our website at www.sanjoseca.gov/rent for the most up-to-date fact sheet and complete details of the Apartment Rent Ordinance.

