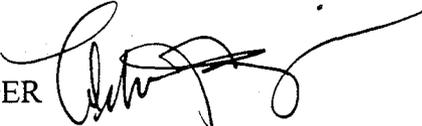




MEETING DATE: 3/1/04
ITEM NO. 14

COUNCIL AGENDA REPORT

DATE: February 13, 2004
TO: MAYOR AND TOWN COUNCIL
FROM: DEBRA J. FIGONE, TOWN MANAGER 
SUBJECT: INTRODUCE AN ORDINANCE AMENDING THE LOS GATOS TOWN CODE CHAPTER 14, ARTICLE VIII, RENTAL AND OTHER LANDLORD/TENANT DISPUTES; AND ADOPT A RESOLUTION ADOPTING REVISED RENTAL DISPUTE RESOLUTION REGULATIONS

RECOMMENDATION:

1. Introduce an Ordinance amending the Los Gatos Town Code Chapter 14, Article VIII, Rental and Other Landlord/Tenant Disputes:
 - a. Direct the Town Clerk to read the title;
 - b. Waive the reading;
 - c. Introduce the Ordinance amending the Los Gatos Town Code Chapter 14, Article VIII, Rental and Other Landlord/Tenant Disputes; and, instruct the Town Clerk to publish a summary no more than five (5) days prior to adoption.

2. Adopt a Resolution rescinding Resolution 1999-14, Resolution of the Town of Los Gatos Adopting Revised Rental Dispute Resolution Regulations, and adopting revised rental dispute resolution regulations.

BACKGROUND:

Town Code Section 14.80, "Rental and other Tenant/Landlord Disputes," governs the monthly rent that may be charged by the owner of rental units located in complexes of three units or more; and provides a resolution process for rent- or service-related disputes between landlords and tenants. This section of the Town Code is referred to as the Town's "Rental Dispute Mediation and Arbitration Ordinance," hereinafter "Mediation Ordinance." As allowed for by the Mediation Ordinance, the Council has adopted corresponding regulations, "Rental Dispute Resolution

PREPARED BY: REGINA A. FALKNER
Community Services Director

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Reviewed by: PSS Assistant Town Manager AK Town Attorney Clerk LC Finance
 Community Development Revised: 2/13/04 10:36 am

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MAYOR AND TOWN COUNCIL

SUBJECT: INTRODUCE AN ORDINANCE AMENDING THE LOS GATOS TOWN CODE CHAPTER 14, ARTICLE VIII, RENTAL AND OTHER LANDLORD/ TENANT DISPUTES; AND ADOPT A RESOLUTION ADOPTING REVISED RENTAL DISPUTE RESOLUTION REGULATIONS

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Regulations,”(hereinafter “Rental Regulations”) which provide a detailed explanation of how rent increases may be calculated, how they must be communicated to residents, and how disputes between landlords and tenants may be resolved. The Town contracts with Project Sentinel, a local nonprofit organization, to administer the Mediation Ordinance and Rental Regulations. The Town’s Rent Advisory Committee is charged with making recommendations to Council regarding modifications to either document, and to related processes. The Committee membership includes property owners, renters, and other residents of Los Gatos.

The Rent Advisory Committee has recently completed an extensive, two-year review of both the Mediation Ordinance and the Rental Regulations. At its July 7, 2003 meeting, the Committee adopted a recommendation that Council introduce and adopt the proposed ordinance (Attachment 1), which contains revisions to the Mediation Ordinance; and adopt a resolution (Attachment 2) adopting revised Rental Regulations. The goals of these revisions are to:

- codify the procedures for noticing a rent increase, for disputing a rent increase, for petitioning a reduction in service, and for holding a mediation or arbitration hearing
- improve communication between parties to a rental dispute
- resolve rental disputes first through informal discussion, then through formal mediation, and finally through arbitration
- make the Mediation Ordinance and Rental Regulations consistent with field-tested best practices

The proposed changes primarily address the administration of the program and the functioning of the dispute resolution process. They represent efforts to eliminate potential contradictions between current language in the Mediation Ordinance and Rental Regulations, and to clarify and formally incorporate practices and definitions already in place based on sources such as opinions from the Town Attorney and current standards in mediation and arbitration. Other changes are intended to address experiences arising from complex cases handled under the current language.

DISCUSSION:

Revisions to Mediation Ordinance.

The goal of all the proposed changes is to clarify the process of rental dispute resolution, so that any tenant or landlord may understand the process up front. A brief discussion of the proposed changes follows:

1. Definitions. The proposed Ordinance would include updated definitions for terms such as “mediator,” “arbitrator,” “landlord,” “tenant,” and “voluntary vacancy,” following current industry standards.

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MAYOR AND TOWN COUNCIL

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2. Notice of Dispute Resolution Rights. The process for advising tenants of their rights under the Mediation Ordinance would be made more specific, including the content of the landlord's written notice to tenants, and the timeline in which such notice must be given.
3. Disputes Involving Multiple Units. The process for resolving a dispute involving multiple units in the same rental complex would also be made more specific, including the timeline in which the required number of tenants must agree to join the dispute.
4. Subpoenas. The standard for issuing subpoenas in the course of mediation and/or arbitration would be strengthened, to require that any party requesting a subpoena requiring the production of documents (subpoena duces tecum) must show the Mediator or Arbitrator good cause for such a request.
5. Mediation Hearings. The integrity of the mediation process would be strengthened, stating the basic principles of confidentiality, neutrality, and the freedom of parties to settle a dispute as they choose. Third parties, such as media representatives, would not be allowed to attend mediation hearings.
6. Costs of Debt Service. The proposed Ordinance would require that, when a landlord requests a rent increase based on increased costs of debt service, an appraisal of the property must be performed by an uninterested party, within twelve months of the request.

Revisions to Rental Regulations.

As noted above, the goal of all the proposed changes is to clarify the process of rental dispute resolution, so that any tenant or landlord may understand the process up front. A brief discussion of the proposed changes follows:

1. Initiating the Dispute Resolution Process. The proposed Resolution would more specifically outline the procedure for any tenant or landlord to begin the dispute resolution process, including timelines to submit required documents, the topic of disputes, and disputes involving multiple units.
2. The Role of the Town's Agent. The role of the organization chosen by the Town to administer the Rental Regulations, currently Project Sentinel, would be more clearly stated. The role of Project Sentinel is to remain a neutral party during a dispute resolution process, to explain the process to all parties involved, and to facilitate the administration of the process but not the substance of any dispute.
3. Evidence. The process for sharing of evidence or other written materials between parties in

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a dispute would be made more clear, including timelines for sharing of materials.

4. Attendance at Hearings. The parties allowed to attend a mediation and/or arbitration hearing would be clearly stated. At mediation hearings, only parties to the dispute would attend. At arbitration hearings, final decision power regarding a third party's attendance would be given to the arbitrator.
5. Conduct of Hearings. The procedures for conducting mediation and arbitration hearings would be clarified, including the role of the mediator or arbitrator, how evidence may be presented, and when and how a resolution may be made.
6. Eligibility of Mediators/Arbitrators. The eligibility requirements for a mediator or arbitrator to hear a dispute under the Town's process would be strengthened. All must have been trained in the Town's process, in addition to formal training in mediation or arbitration.
7. Definitions. The proposed Resolution would include updated definitions for terms such as "mediator," "arbitrator," "tenant," and "landlord/tenant dispute," following current industry standards.

Opportunities for Public Comment.

As noted above, the Rent Advisory Committee's review process took place over a two-year period. During that time, an ad hoc subcommittee of the Committee held a series of working meetings, open to the public, which representatives of the Tri-County Apartment Association, and a local tenant advocate, attended regularly. The Tri-County Apartment Association provided written comment, as well as verbal comments, both of which were discussed and incorporated into the review.

The full Rent Advisory Committee discussed these issues at several of their regular public meetings, which are advertised to the public in accordance with Brown Act regulations. The Committee itself is composed of two tenant representatives, two property owner representatives, and one other Town resident.

CONCLUSION:

The proposed revisions to the Mediation Ordinance and Rental Regulations have been drafted through extensive work by Rent Advisory Committee members, Project Sentinel staff, and Town staff. The Rent Advisory Committee believes that they represent the best means to improve the process for resolving rental disputes. The Committee recommends that Council introduce the proposed Ordinance (Attachment 1), and adopt the proposed Resolution (Attachment 2).

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MAYOR AND TOWN COUNCIL

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If the Council introduces the proposed Ordinance at its March 1 meeting, the Ordinance will be brought back to Council for adoption at its March 15 meeting. It would go into effect 30 days after adoption, April 14. The Resolution, if adopted, would also go into effect on April 14.

ENVIRONMENTAL ASSESSMENT:

The recommended actions are not projects defined under CEQA, and no further action is required.

FISCAL IMPACT:

Revision of the Mediation Ordinance and Rental Regulations would not result in any additional fiscal impact to the Town. Administration of the Rental Dispute Resolution Program is included in the Town's Operating Budget, in Program 8030, "Housing."

Attachments:

1. Draft Ordinance Amending the Los Gatos Town Code Chapter 14, Article VIII, Rental and Other Landlord/Tenant Disputes (Section 14.80)
2. Draft Resolution of the Town Council of the Town of Los Gatos Rescinding Resolution 1999-14, "Resolution of the Town of Los Gatos Adopting Revised Rental Dispute Resolution Regulations," and Adopting Revised Rental Dispute Resolution Regulations (with Exhibit A)

Distribution:

Rent Advisory Committee members

Martin Eichner, Project Sentinel, 1055 Sunnyvale/Saratoga Road, #3, Sunnyvale, CA 94087

Jeffrey Dennison, Tri-County Apartment Association, 792 Meridian Way, Suite A, San Jose, CA, 95126

ORDINANCE NO. ____

ORDINANCE AMENDING THE LOS GATOS TOWN CODE CHAPTER 14, ARTICLE VIII, RENTAL AND OTHER LANDLORD/TENANT DISPUTES (SECTION 14.80)

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES HEREBY ORDAIN:

Chapter 14, Article VIII Rental and Other Landlord/Tenant Disputes, of the Town Code is hereby amended to read as follows:

SECTION I

Sec. 14.80.010. Title.

This article shall be cited as the Town's Rental Dispute Mediation and Arbitration Ordinance.

Sec. 14.80.015. Declaration of policy and purposes.

- (a) ~~The Council finds and declares that there is a growing shortage of and increasing demand for housing in the Town. This circumstance, coupled with increasing inflation, the rising costs of developing new housing, and other factors, has put substantial upward pressure on residential rents.~~ *The Council finds that there is a serious and continuous shortage of and increasing demand for housing in the Town. This circumstance, coupled with periodic inflationary pressure, uncertain and changing strength in the surrounding economy, and the rising costs of developing new housing, results in volatile rental rates for residential housing which are often subject to substantial upward pressure.*
- (b) This article is necessary in order to protect the health, safety and welfare of the citizens of the Town by meeting the needs created by the housing shortage, including, but not limited to, prevention of excessive and unreasonable ~~r~~Rent ~~i~~Increases, and the assurance to ~~t~~Landlords of a fair and reasonable return on the value of their property.

Sec. 14.80.020. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Agent.* An individual or organization, or government, designated by the Town Council to administer ~~the ordinance~~ *this article*.

- (b) ***Affected Tenant.*** A Tenant whose terms and conditions of rental relationship with his or her Landlord are changed by a proposed Rent Increase or other change in terms and conditions governed by this article.
- (c) ***Arbitrator.*** ~~A person designated by the manager or the manager's designated representative who is trained to hear disputes under this article and the regulations adopted pursuant thereto and render a decision.~~ ***A person designated to act as the hearing officer for the arbitration phase of the dispute resolution process under this article.***
- (d) ***Duplex.*** A building or group of buildings on the same premises, containing not more nor less than two (2) dwellings.
- (e) ***Housing sServices.*** Those services provided and associated with the use of occupancy of a rRental uUnit, including but not limited to, repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, and any other benefits, privileges or facilities.
- (f) ***Land.*** Real property in the technical sense. The meaning of the word includes, but is not limited to, buildings and parking spaces.
- (g) ***Landlord.*** The person or entity with the legal right to exercise ownership control over rental housing property governed by this article. An owner, lessor, or sublessor, who receives or is entitled to receive Rent for the use and occupancy of any Rental Unit or portion thereof, and the agent, representative, or successor of any of the foregoing.
- (h) ***Landlord/Tenant Dispute.*** Any dispute between a Landlord or any agent or employee thereof, and a Tenant, regarding Rent or any other aspect of Housing Services, provided that the Tenant is occupying the premises from which the dispute arises.
- (i) ***Lease/rRental aAgreement.*** An agreement, written, oral, implied in fact, or implied in law, in which a landowner, for compensation, conveys the right to possess tLand to someone else for a period of time or from period to period.
- (j) ***Mediator.*** ~~A person designated by the manager or the manager's designated representative who is trained to conciliate rental disputes under this article.~~ ***A person designated to conduct the mediation phase of the dispute resolution process under this article.***
- (k) ***Rent.*** The consideration, including any bonus, benefit or gratuity, demanded or received by a lLandlord for or in connection with the use or occupancy of a rRental uUnit, or the assignment of a lease for such a unit, including hHousing sServices or subletting.

- (l) **Rental α Unit.** Any building or part of a building which is used for residence, or any mobile home owned by a mobile home park owner, and which is rented to a α Tenant as a dwelling place, except:
- (1) A α Rental α Unit located in a building or group of buildings on the same premises containing only one (1) dwelling unit;
 - (2) A room in an owner-occupied dwelling where under the lease provisions the α Tenant does not have the substantially exclusive use of the kitchen;
 - (3) A single house, condominium unit, or planned development (Business & Professions Code § 11003) unit;
 - (4) A hotel room or similar accommodation ordinarily let for occupancy by the same α Tenant for periods of less than thirty (30) days;
 - (5) A hospital room, skilled nursing facility, or similar accommodation where the main factor in the rental relationship is the personal care given to the α Tenant;
 - (6) A dwelling owned, operated, or managed by a government agency or which is exempted by α State or α Federal law from α Rent regulation;
 - (7) Mobile homes located in mobile home parks and not owned by the mobile home park owner.
- (m) **Rent α Increase.** Any additional α Rent due or paid by a α Tenant for a α Rental α Unit, including any reduction in α Housing α Services without a corresponding reduction in the moneys demanded or paid by α Rent.
- (n) **Tenant.** ~~A lessee who occupies land under a lease or sublease.~~ *A person who is legally entitled to occupy all or part of a rental property subject to this article at the time any issue or right under this article arises.*
- (o) **Voluntary α Vacancy.** ~~A voluntary vacancy occurs when a rental unit is vacated by a tenant for reasons other than eviction.~~ *For the purpose of this article, a vacancy is voluntary under any of the following circumstances:*
- (1) *A voluntary choice by a Tenant to vacate the Rental Unit.*
 - (2) *The Tenant is evicted by a court for non-payment, chronically late payment, or other material violation of a written rental agreement.*
 - (3) *A Tenant moves out pursuant to a three (3) day notice from the Landlord or Landlord's agent to pay Rent or vacate the Rental Unit.*

- (4) *A Tenant moves out pursuant to a three (3) day notice from the Landlord or Landlord's agent to comply with a covenant of the rental agreement or move out. If a Tenant moves after receiving a thirty (30) or sixty (60) day notice from the Landlord, it is not a Voluntary Vacancy.*
- (5) *A Voluntary Vacancy occurs when one (1) of the roommates gives a notice to vacate and there is a written agreement to the effect between the Tenant and Landlord that a notice to vacate submitted by one (1) Tenant is binding on all of the Tenants, and is a Voluntary Vacancy within the meaning of this article.*
- (6) *A Voluntary Vacancy occurs when any one (1) Tenant vacates the Rental Unit without notice and the written agreement between the Tenant and Landlord provides to the effect that a failure to give notice to vacate is a breach of the agreement, is binding on all of the Tenants, and is a Voluntary Vacancy within the meaning of this article.*

Sec. 14.80.025. Regulations.

The Town Council may adopt regulations to assist in implementing this article.

Sec. 14.80.030. Reasonable rRent iIncreases.

No lLandlord shall increase the rRent of any tTenant in an amount which is unreasonable. The factors to be considered in determining whether a rRent iIncrease is reasonable are set forth in division 4 of this article, *and may be described in greater detail in regulations adopted pursuant to this article.*

Sec. 14.80.035. Retaliatory evictions.

- (a) Possession of a rRental uUnit shall not be recovered by a lLandlord from a tTenant who is not otherwise in default as to the terms of occupancy of such unit if either:
 - (1) The lLandlord's predominant reason for seeking to recover possession of such rRental uUnit is retaliation against the tTenant for exercising the tTenant's rights pursuant to this article; or
 - (2) The predominant motive of the lLandlord in seeking to recover possession of such rRental uUnit is to evade the purposes of this article.
- (b) When an eviction occurs within one hundred eighty (180) days of the tTenant's exercise or reasonable attempt to exercise rights provided by this article, *and* if the tTenant shows that the lLandlord knew at the time of eviction of the tTenant's conduct in relation to this article, the eviction is presumed to be retaliatory. This presumption applies in judicial proceedings and is one which affects the burden of producing evidence.

Sec. 14.80.040. Notice of conciliation dispute resolution rights.

- (a) ~~No notice of rent increase shall be valid unless the landlord does the following:~~ ***In order for a notice of Rent Increase to be valid, the Landlord must:***
- (1) ~~Serves, with the notice of proposed increase, written notice advising~~ ***advice to the affected tenants of their right to petition for conciliation dispute resolution under section 14.80.205, and giving the current telephone number of the agency administering the ordinance for the Town; Said written advice must include the name and current telephone number of the designated Agent administering this article for the Town; and***
 - (2) ~~Provides in writing, to any tenant requesting in writing, the apartment numbers of all tenants receiving increase notices for the same month as the tenant making the request:~~ ***Respond in writing within thirty (30) days to a written request made by any Affected Tenant for the names and apartment numbers of all Tenants receiving increase notices for the same month as the Tenant making the request by disclosing said information, provided that such request is made by an Affected Tenant within thirty (30) days after the Rent Increase takes effect.***
- (b) ***Failure to provide the notice in the form specified above or in a form which provides substantially the same information, or failure to provide a timely response to a request for Affected Tenants, shall render the notice of proposed increase invalid. A notice which fails to meet any remaining requirements which may be established by corresponding regulations that may be adopted waives the thirty (30) day limit herein and permits a petition to be filed within six (6) months of the applicable Rent Increase or other event giving rise to the dispute.***
- (b) (c) A reissued notice to correct the notification requirement shall not exceed the amount of the previous ~~rRent i~~**Rent i**ncrease notice.

Sec. 14.80.045. Applicability to ~~d~~Duplexes.

- (a) The provisions of this article shall apply to ~~d~~**D**uplexes only as follows:
- (1) Tenants and ~~t~~**L**andlords of ~~d~~**D**uplexes are entitled to the resolution services provided in division 3 (sections 14.80.205 and 14.80.210) below; and
 - (2) A regulatory fee shall be imposed on each ~~r~~**R**ental ~~u~~**U**nit pursuant to that division.
- (b) Duplexes shall not be eligible for mediation or arbitration services.
- (c) Section 14.80.310 shall not apply to ~~d~~**D**uplexes.

SECTION II

Sec. 14.80.105. Retroactive application.

- (a) This article shall apply to all ~~t~~**Rent** ~~i~~**ncreases** effective on or after July 1, 1980, and to all ~~t~~**Landlord**/~~t~~**Tenant** ~~d~~**isputes** arising after July 1, 1980.
- (b) No ~~t~~**Landlord** shall be required to refund any ~~r~~**Rent** under this article; however, the mediation agreement or arbitration award may establish a reasonable ~~r~~**Rent** at a decreased level, which may be effective for up to twelve (12) months from the date of the agreement or award.

Sec. 14.80.110. Stay.

~~Invocation by a tenant or landlord of conciliation under this article shall stay the rent increase complained of, pending resolution of the dispute; provided, that if staff and a mediator determine, based on written findings, that a petition is not covered by the intent and purpose of this article, the stay shall terminate as of the date of the findings. In the case of stay, the tenant shall pay whatever rent increase is determined to be reasonable hereunder, retroactive to the date the original increase proposed by the landlord would have been effective. Filing a petition for dispute resolution of a Rent Increase stays the Tenant's obligation to pay any amount of the increase greater than the limits set forth for annual increases below in section 14.80.310 (c), pending the final outcome of the resulting case under this dispute resolution process. If the final outcome results in approval of an increase greater than the limit set forth in 14.80.310 (c), the Tenant shall pay the resulting retroactive increase due, calculated from the effective date of the proper increase notice to the date of the final outcome. Said payment must be made by the Tenant within thirty (30) days of receiving notice of the final outcome of this dispute resolution process, unless otherwise ordered as part of any arbitration award or voluntary settlement in the case.~~

Sec. 14.80.115. Defense; unlawful detainer action.

A finding by an ~~mediator~~ **Arbitrator** of a violation of this article by a ~~t~~**Landlord** shall be a complete defense to unlawful detained proceedings by a ~~t~~**Landlord** against a ~~t~~**Tenant** not otherwise in default under the lease, and to any action to recover ~~r~~**Rents** in excess of those found reasonable.

Sec. 14.80.120. Nonwaiver.

Any waiver or purported waiver by a ~~t~~**Tenant** of rights granted under this article prior to the time when such rights may be exercised shall be void as contrary to public policy.

Sec. 14.80.125. Standing to enforce.

The Town may enforce this article by bringing a civil action.

~~Secs. 14.80.130--14.80.200. Reserved.~~

SECTION III

Sec. 14.80.205. Town service.

When either party to a ~~t~~Landlord/~~t~~Tenant transaction has a dispute with the other, the party may seek the services of the Town by filing a written petition for conciliation with the Town or its ~~a~~Agent; provided, that in the case of ~~r~~Rent disputes, twenty-five (~~25~~) percent (**25%**) of the units affected must join in the petition, *or file timely concurrent petitions*. In all other cases an individual may submit a petition. Petitions *challenging a Rent Increase in a single unit* must be filed within ~~thirty (30)~~ **sixty (60)** days after the rental increase takes effect *the Landlord sends a valid notice of Rent Increase. In the case of Rent Increases for multiple units, an initial petition by at least one Affected Tenant must be filed no later than sixty (60) days after the Landlord sends a valid notice of Rent Increase. If an initial petition is received within the applicable sixty (60) days for a property in which multiple numbers of increases were noticed, additional petitions containing the requisite number of signatures necessary to reach the twenty-five percent (25%) level must be received within thirty (30) days after any Affected Tenant has received a list of the names and unit numbers of the Affected Tenants as required by section 14.80.040 or has otherwise been notified by the Agent that additional petition signatures are necessary. A petition raising an issue other than a Rent Increase must be filed within thirty (30) days of the event giving rise to the dispute.*

Sec. 14.80.210. Conciliation.

The Town or its ~~a~~Agent will provide conciliation service to parties engaged in ~~t~~Landlord/~~t~~Tenant ~~d~~Disputes *arising from the occupancy of Rental Units as defined herein*. Conciliation in this sense is limited intervention in the dispute, using letters and telephone and personal conversation to attempt to explain to each party the position of the other and to urge rational agreement.

Sec. 14.80.215. Mediation.

When a dispute *Landlord/Tenant Dispute arising from the occupancy of a Rental Unit on a property containing three (3) or more Rental Units* has not been resolved through conciliation, either party may request mediation by applying therefor on a form provided by the Town's ~~a~~Agent.

Sec. 14.80.216. Time limit.

A request for mediation is effective only if it is received by the Town or its ~~a~~Agent as prescribed by the regulations adopted pursuant to section 14.80.025.

Sec. 14.80.220. Subpoenas.

~~The mediator may, on the mediator's own initiative or at the request of a party~~ *An Arbitrator or Mediator may on his/her own initiative or at the request of a party* issue subpoenas, including for subpoenas ~~duces tecum a subpoena requiring the production of documents, provided however, that a Mediator or Arbitrator shall require a party requesting a subpoena requesting documents to make a showing of good cause supporting such a request.~~ For the purposes of this article, the Town Council's authority to issue subpoenas is delegated to the ~~m~~*Mediator or Arbitrator*, reserving to the Council full authority to issue subpoenas for the same or other purposes.

Sec. 14.80.225. Conduct of mediation.

~~The parties shall cooperate with the mediator, stating their position on all issues, conferring with the mediator and each other, and providing at the mediator's request information and corroboration of their assertions of fact. If the parties agree, the mediator shall reduce their agreement to writing and the parties shall sign it.~~ *When a party properly requests mediation, the dispute shall be heard under a process consistent with the basic principles of confidentiality, neutrality, and preservation of the freedom of the parties to decide whether to settle and if so, on terms of their own choosing. No third parties, such as representatives from the media, shall be allowed to attend mediation.*

Sec. 14.80.230. Request for arbitration.

When conciliation or mediation does not result in an agreement ~~either~~, *any party to the case* may request arbitration by applying therefor on a form provided by the ~~Town's~~ Agent. ~~The mediator may also initiate arbitration if the mediator concludes that mediation is not feasible.~~

If the arbitration request follows a mediation that did not result in an agreement, the arbitration request will be granted. If the arbitration request follows conciliation that did not result in an agreement, the Town, or its ~~a~~Agent, may assign either arbitration or mediation. The Town, or its ~~a~~Agent, will base this decision upon which procedure appears most likely to result in a timely decision that is both fair and acceptable to the parties.

Sec. 14.80.235. Time limits.

A request for arbitration is effective only if it is received by the Town or its ~~a~~Agent as prescribed by the regulations *which may be* adopted pursuant to section 14.80.025.

Sec. 14.80.240. Arbitration.

When a party properly requests arbitration, the dispute shall be ~~heard or received under the regulations adopted pursuant to section 14.80.025.~~ *administered and conducted according to generally accepted rules for arbitrating disputes in Santa Clara County, California, unless otherwise specified in regulations adopted pursuant to this article.*

Sec. 14.80.245. Regulatory fees.

- (a) For the sole purpose of reimbursing the Town for the costs of administering this article, there is hereby imposed on each ~~r~~Rental ~~u~~Unit, subject to the provisions of this article, a regulatory fee in such amount as the Council may establish by resolution from time to time. The regulatory fee for a ~~r~~Rental ~~u~~Unit in a ~~d~~Duplex shall not exceed fifty~~(50)~~ percent **(50%)** of the fee charged to other ~~r~~Rental ~~u~~Units subject to this article. No later than June 1 of each year, the manager will report to the Council on the amount of regulatory fees necessary to recover the costs of the Town in administering the article.
- (b) The regulatory fee shall be due at the same time that the ~~t~~Landlord's business license fee is due. Except, in the case of ~~d~~Duplexes, the regulatory fee is due July 1. A ~~t~~Landlord who fails to pay the fee within thirty (30) days after the Town mails its bill to the ~~t~~Landlord shall pay a twenty-five ~~(25)~~ percent **(25%)** penalty, plus an additional twenty-five ~~(25)~~ percent **(25%)** penalty for each thirty (30) days thereafter that the bill remains unpaid. Until such time as the bill including penalties is paid, the ~~t~~Landlord of a ~~r~~Rental ~~u~~Unit shall not be entitled to any ~~r~~Rent ~~i~~Increase.

~~Secs. 14.80.250--14.80.300. Reserved.~~

SECTION IV

Sec. 14.80.305. General standards.

The purpose of this article is to permit ~~t~~Landlords a fair and reasonable return on the value of their property, while at the same time protecting ~~t~~Tenants from arbitrary, capricious or unreasonable ~~r~~Rent ~~i~~Increases. The determination of reasonableness shall be made with reference to the following standards, unless ~~a~~Arbitrator determines that the overall standard of reasonableness requires other standards to be applied in a given case.

Sec. 14.80.310. Specific standards.

- (a) *Exemptions.* The first ~~r~~**Rent** ~~i~~**ncrease** after the following events shall be exempt from this article:
- (1) Construction of a new unit.
 - (2) A ~~v~~**Voluntary** ~~v~~**Vacancy**.
 - (3) Eviction of a ~~t~~**Tenant** by a court for nonpayment or other violation of a written rental agreement.
 - (4) If the last increase was initiated no less than two (2) years before the current increase and the current increase is ten (~~10~~) percent (**10%**) or less.
- (b) *Frequency of ~~r~~**Rent** ~~i~~**ncreases**.* Rent shall not be increased more frequently than annually, except that it may be increased:
- (1) When the fee imposed under section 14.80.245 is ~~paid~~ **increased**, it may be passed through at the rate of no more than one-twelfth (**1/12**) of the fee per month.
 - (2) At any time, with the written consent of all ~~a~~**affected** ~~t~~**Tenants**, which shall be sought through conciliation or mediation.
- (c) *Amount of annual increase.* Annual ~~r~~**Rent** ~~i~~**ncreases** shall not exceed the seventy (~~70~~) percent (**70%**) CPI ceiling or five (~~5~~) percent (**5%**), whichever is greater, unless the ~~hearing officer~~ **Arbitrator** determines that other factors render a larger increase reasonable. CPI is the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland Area. The most recent CPI is the bimonthly figure most recently available from the Bureau of Labor Statistics. The seventy (~~70~~) percent (**70%**) CPI ceiling is an amount arrived at by adjusting the current ~~r~~**Rent** to reflect seventy (~~70~~) percent (**70%**) of the most recent annual average change in the CPI.

Sec. 14.80.315. Other factors of reasonableness.

- (a) *Increases deemed reasonable.* **Subject to the terms of section 14.80.305, a ~~A~~ ~~r~~**Rent** ~~i~~**ncrease** is reasonable if the ~~hearing officer~~ **Arbitrator** determines the following:**
- (1) The ~~r~~**Rent** ~~i~~**ncrease** consists of no more than five percent (5%) of existing monthly ~~r~~**Rent** plus the pass-through of all or some of the amounts of one (1) or more of the following:
 - a. The fee imposed under section 14.80.245;

- b. **Documented** costs of capital improvements, averaged on a per-unit basis and amortized over a period of not less than sixty (60) months;
 - c. Increased costs of maintenance and operation; or
 - d. **Documented** costs of rehabilitation; averaged on a per-unit basis and amortized over a period of not less than thirty-six (36) months;
- (2) The cost figures are established to the reasonable satisfaction of the ~~hearing officer~~ **Arbitrator**.
 - (3) Each of the costs proposed for passthrough to ~~t~~**Tenants** bears a reasonable relationship to the purpose for which such cost was incurred and the value of the real property to which it is applied.
- (b) *When costs of debt service deemed to be reasonable. Subject to the terms of section 14.80.305, the ~~The hearing officer shall~~ **Arbitrator shall** deem as reasonable and allowable to be passed through to ~~t~~**Tenants** the costs of debt service where the ~~hearing officer~~ **Arbitrator** finds the debt is a secured, arms-length transaction in the following instances:*
- (1) In the case of increased costs of debt service by new or existing owners, *the increase shall be limited to eighty (80) percent (80%) of the increased costs of debt service arising from that proportion of the aggregate amount of debt not exceeding seventy (70) percent (70%) of the value of the property as established by a lender's appraisal or appraisal by some other person or entity in an arm's-length relationship to the Landlord at the time the appraisal is performed. No notice of an increase based on this subsection shall be effective until such an appraisal has been obtained. Appraisals utilized for debt service pass-through calculations shall have been performed within twelve (12) months of the Rent Increase request. Where no lender's appraisal is available, the hearing officer may secure such appraisal to be paid for by the landlord as a cost of maintenance and operation.*
 - (2) Reserved.
- (c) *Standards applicable to ~~r~~**Rent i**ncreases which exceed the foregoing.* When the amount of any ~~r~~**Rent i**ncrease or portion thereof exceeds any of the foregoing standards under subsection (a) or (b) of this section, the ~~hearing officer~~ **Arbitrator** shall determine what is reasonable under the circumstances taking into account any of the following factors on which the ~~hearing officer~~ **Arbitrator** has received information:
- (1) In the case of increased costs of debt service due to a sale or refinancing of the

~~r~~**Rental** ~~u~~**Units** or the building or property of which the units are a part within twelve (12) months of the increase;

- a. The arms-length nature of the transaction,
 - b. The ~~t~~**L**andlord's rate of return on the investment,
 - c. The frequency of past resale or refinances, and
 - d. The extent to which prior ~~rental~~ **Rent** ~~i~~**Increases** have made provisions for appreciation of asset value.
- (2) The rental history of the unit or the complex of which it is a part, including:
- a. The presence or absence of past increases,
 - b. The frequency of past ~~r~~**Rent** ~~i~~**Increases**,
 - c. The ~~t~~**L**andlord's response to Proposition 13 savings, and
 - d. The occupancy rate of the complex in comparison to comparable units in the same general area.
- (3) The physical condition of the ~~r~~**Rental** ~~u~~**Unit** or complex of which it is a part, including the quantity and quality of maintenance and repairs performed during the last twelve (12) months.
- (4) Any increases or reductions of ~~h~~**Housing** ~~s~~**Services** since the last ~~rental~~ **Rent** ~~i~~**Increase** before the effective date of this article.
- (5) Other financial information which the ~~t~~**L**andlord is willing to provide.
- (6) Existing market value of ~~r~~**Rents** for units similarly situated.

SECTION V

If any of the provisions of this ordinance or the application thereof to any person or property is held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION VI

Any judicial review of this ordinance shall be by writ of mandate, under Code of Civil Procedure 1085. Any action or proceeding seeking to attack, review, set aside, void or annul this ordinance shall be commenced within 90 days after adoption of this ordinance.

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on March 1, 2004, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on March 15, 2004. This ordinance takes effect thirty (30) days after it is adopted.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

RESOLUTION NO.

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
RESCINDING RESOLUTION 1999-14, "RESOLUTION OF THE TOWN OF
LOS GATOS ADOPTING REVISED RENTAL DISPUTE RESOLUTION
REGULATIONS," AND ADOPTING REVISED RENTAL DISPUTE
RESOLUTION REGULATIONS

WHEREAS, Chapter 14.80 of the Municipal Code of the Town of Los Gatos, also cited as the Town's Rental Dispute Mediation and Arbitration Ordinance, has as its stated purpose the prevention of excessive and unreasonable rent increases, and the assurance to landlords of a fair and reasonable return on the value of their property; and

WHEREAS, Section 14.80.025 of the above-mentioned Rental Dispute Mediation and Arbitration Ordinance provides that the Town Council may adopt regulations to assist in implementing its stated purpose; and

WHEREAS, Resolution 1999-143, "Resolution of the Town of Los Gatos Adopting Revised Rental Dispute Resolution Regulations," adopted Rental Dispute Resolution Regulations pursuant to Section 14.80.025 of the Rental Dispute Mediation and Arbitration Ordinance; and

WHEREAS, the Town's Rent Advisory Committee has performed a lengthy review of the Rental Dispute Resolution Regulations, and has developed revised regulations which would improve those sections of the regulations which were unclear, conflicting, or did not apply to real-life dispute resolution situations; and

WHEREAS, at its July 7, 2003 meeting the Rent Advisory Committee unanimously voted to recommend that the Town Council adopt such revised regulations.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
DOES HEREBY RESOLVE AS FOLLOWS:**

- A. This Resolution shall be in effect as of April 14, 2004.
- B. Resolution 1999-143, "Resolution of the Town of Los Gatos Adopting Revised Rental Dispute Resolution Regulations," is hereby rescinded.
- C. The Town Council hereby adopts the revised Rental Dispute Resolution Regulations, attached as Exhibit A.

PASSED AND ADOPTED at a _____ meeting of the Town Council of the Town of Los Gatos, California, held on the 1st day of March, 2004 by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

**MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

ATTEST:

**CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

N:\CSD\TCRPTS\Resolutions\Apt Rental Regs.wpd



Town of Los Gatos

Rental Dispute Resolution Regulations

~~Adopted by Resolution #1999-143 effective October 20, 1999~~

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LOS GATOS RENTAL DISPUTE RESOLUTION REGULATIONS

INTRODUCTION

Rental Units in complexes of three (3) or more units on the same parcel of land shall be covered by the Ordinance Chapter 14.80 of the Los Gatos Town Code after July 1980. If one (1) or more of the units is owner-occupied, the remaining units shall be subject to the Ordinance Chapter 14.80. When Rental Units are annexed into the Town of Los Gatos, Rent Increases prior to the annexation are not subject to review, but do establish a twelve (12) -month or two (2) year period for future increases. For example, if Rent is increased in July and the property is annexed in August, the Rent may not be increased until the following July.

I. RENT INCREASE LIMITS

A. FREQUENCY OF RENT INCREASES

1. Rent may not ordinarily be increased more frequently than annually except:
 - a. To pass through the annual regulatory fee at no more than one-twelfth (1/12th) per month;
 - b. With the written consent of all affected Tenants;
 - c. At the time of a voluntary Vacancy of an apartment unit; or,
 - d. At the time of a court-ordered eviction for violation of a rental agreement.
2. Consequences: ~~Hearing Officers~~ Arbitrators shall consider evidence establishing that there has been more than one increase within a twelve (12) month period. When it is found that there has been more than one increase, the second and subsequent increases must be disallowed in their entirety, regardless of the amount or percentage. Rent is presumed to have been increased when a Tenant moves in unless the Landlord can document that it was not increased. Other increases within twelve (12) months after the Tenant moved in may be disallowed.

B. AMOUNT OF ANNUAL INCREASE

The annual Rent Increases shall not exceed the seventy percent (70%) ~~70 percent~~ of the Consumer Price Index (CPI) ceiling or five percent (5%), whichever is greater, unless the Tenants agree in writing or the Arbitrator determines that other factors render a larger increase to be reasonable. The Town or its Agent shall compute the average annual percent of change as set forth in Section 14.80.310 (c) of the ~~Rental Mediation~~ Ordinance. Increases in excess of ~~70~~ seventy percent (70%) CPI ceiling or five percent (5%), whichever is greater, are subject to review if the affected Tenant/s file a Petition with the ~~Town's~~ Agent.

(EXEMPTION: If the last Rrent Increase was initiated no less than two (2) years before the current increase and the current increase is ten percent (10%) or less.) An increase may be subject to review because the dollar amount has been raised, or services reduced, or both. The following cost categories may be considered in the review process.

1. INCREASED COSTS OF DEBT SERVICE for new or existing owners shall be deemed reasonable and allowed by the Arbitrator when:
 - a. If the loan to value ratio does not exceed ~~70~~ seventy percent (70%) of the appraised value of the property, ~~80~~ eighty percent (80%) of the increase in debt services is allowable and may be passed through to Ttenants.
 - b. If the loan to value ratio exceeds ~~70~~ seventy percent (70%), the annual amount of the increased costs of debt service which shall be found allowable and may be passed through to Ttenants is ~~80~~ eighty percent (80%) of the sum calculated by multiplying the new debt service by ~~70~~ seventy percent (70%) divided by the loan to value ratio less the prior debt service. A computation example follows:

INCREASED COST OF DEBT SERVICE EXAMPLE

Facts

New <u>C</u> ost of Debt Service per <u>A</u> nnum	110,000
Prior <u>C</u> ost of Debt Service per <u>A</u> nnum	80,000
Increased Costs of Debt Service	30,000
Aggregate <u>D</u> ebt from which <u>C</u> ost of Debt Service arises	750,000
Appraised <u>V</u> alue of the <u>P</u> roperty	1,000,000
Loan to <u>V</u> alue <u>R</u> atio (LTVR)	.75

Calculation

$$\begin{aligned}
 \text{Pass } \underline{\text{F}}\text{through} &= .8 [((\text{New } \underline{\text{C}}\text{ost of Debt Service} \times [.7 \div \text{LTVR}]) - \text{Prior } \underline{\text{C}}\text{ost of Debt Service})] \\
 \text{Pass } \underline{\text{F}}\text{through} &= .8 [(110,000 \times [.7 \div .75]) - 80,000] \\
 \text{Pass } \underline{\text{F}}\text{through} &= .8 [(110,000 \times .9333) - 80,000] \\
 \text{Pass } \underline{\text{F}}\text{through} &= .8 (102,663 - 80,000) \\
 \text{Pass } \underline{\text{F}}\text{through} &= .8 (22,663) \\
 \text{Pass } \underline{\text{F}}\text{through} &= 18,130.34 \text{ (Pper } \underline{\text{A}}\text{nnum)} \\
 \text{Individual } \underline{\text{P}}\text{ass } \underline{\text{F}}\text{through} &= (18,130.40 \div 12) \div \# \text{ of units or square feet}
 \end{aligned}$$

2. INCREASED COSTS OF OPERATIONS AND MAINTENANCE. This cost method compares documented costs for the most recent twelve (12) months and the prior twelve (12) months. The Landlord has the option to present increased ~~costs of operations and maintenance~~ Cost of Operation and Maintenance (O&M), Capital Improvements, and ~~rehabilitation costs~~ Costs of Rehabilitation; plus seventy percent (70%) of CPI or five percent (5%) whichever is greater of the monthly Rent.

- a. Capital Improvements - The cost of Capital Improvements must be averaged on a per unit or square foot basis and amortized over a period of at least sixty (60) months.
- b. Costs of Rehabilitation - The Costs of Rehabilitation must be averaged on a per unit or square foot basis and amortized over a period of at least thirty-six (36) months.

$$[\text{New O\&M Costs (last 12 months)} - \text{Old O\&M Costs (prior 12 months)}] \div 12 \text{ months} = \text{O}perating \text{ and } \text{M}aintenance \text{ I}ncrease \text{ (O\&M)}$$

$$\text{Capital Improvements} \div .60 \text{ months} = \text{Capital Improvement I}ncrease \text{ (CI)}$$

$$\text{Costs of Rehabilitation} \div .36 \text{ months} = \text{R}ehabilitation \text{ I}ncrease \text{ (RI)}$$

$$\text{O \& M} + \text{CI} + \text{RI} = \text{M}onthly \text{ I}ncrease$$

$$\text{M}onthly \text{ I}ncrease \div (\# \text{ U}nits \text{ or proportion of } \text{S}quare \text{ Ft. feet}) = \text{M}onthly \text{ U}nit \text{ I}ncrease \text{ (MUI)}$$

$$\text{MUI} + 5\% \text{ or } 70\% \text{ CPI of units prior } \text{R}ent = \text{F}total \text{ A}llowable \text{ Rent } \text{I}ncrease$$

3. SERVICE REDUCTIONS - A service reduction occurs when the Landlord has breached her/his obligation to furnish to the Tenant ~~the a~~ Basic Service Level and the Tenant's usability of the premises is thereby measurably reduced.

- a. Basic Service Level - The Landlord is required to furnish to the Tenant a basic level of Housing Services, herein called the "Basic Service Level" and established by:
 - i. California Civil Code Section 1941.1 and 1941.2 and other applicable codes and statutes;
 - ii. The Landlord's implied Warranty of Habitability;

- iii. Express or implied agreement between Landlord and Tenant;
 - iv. The nature and quality of original construction of improvements, fixtures, and equipment;
 - v. The age of the improvement, fixture, and equipment;
 - vi. The condition of the improvements, fixture, and equipment at the beginning of the term of tenancy;
 - vii. The Landlord's policies of operation and maintenance, repair and replacement communicated to the Tenant at the beginning of the applicable term of tenancy.
- b. Allegations of Service Reductions - Each allegation of a service reduction shall be made in a separate writing, signed by the Tenant claiming it, and filed with the Town, its Agent or the Hearing Officer during or prior to ~~the first hearing~~ the conciliation phase of the dispute resolution process. The burden of proof of each service reduction is on the person alleging the reduction. Each allegation of a service reduction shall state:
- i. The prior housing service level provided by the Landlord;
 - ii. The specific changes from the prior service level comprising the alleged reduction in service;
 - iii. The date the service reduction was first noticed by the Tenant;
 - iv. The date the Tenant gave notice to the Landlord requesting correction of the alleged service reduction, and whether the request was oral or in writing;
 - v. When and how the Landlord responded to the Tenant's notice;
 - vi. Whether the condition was improved or corrected and if so, when and how;
 - vii. The status of the condition as of the date the allegation is signed by the Tenant; and
 - viii. The extent to which the Landlord and/or the Tenant was responsible for the condition generating the service reduction.
- c. Determining Value of Unreasonable Service Reductions - When it is found that a service reduction has occurred which is unreasonable under the circumstances, the monetary value to be assigned to the service reduction

is to be determined by the Arbitrator. The percentage reduction in usability of the Rental Unit and common areas caused by the service reduction, commencing with the accrual date shall consider the following factors:

- i. The amount of time the occupant is exposed to the condition;
- ii. The degree of discomfort the condition imposes;
- iii. The extent to which such a condition causes Tenants to find the premises uninhabitable and leave.

The ~~Hearing Officer~~ Arbitrator shall apply the percentage reduction to the monthly Rrent, divide by thirty (30), and multiply the resulting sum by the number of Days commencing from the date to the date of restoration of the service level.

- d. Housing Code Violations - Violations of the Los Gatos Housing Code or of Section 1941.1 and 1941.2 of the State Civil Code shall be considered and may reasonably condition, disallow, or reduce a Rrent Increase based on severity. An inspection report of the Los Gatos Building Official shall be deemed presumptive, but not conclusive, proof of the matters recited therein.
- e. Findings - In making any Determination that an alleged service reduction exists or not, is reasonable or unreasonable under the circumstances, or has a particular monetary value, or that a Housing Code violation exists or not, or has a particular monetary value, in any summary report or arbitration Award, the ~~Hearing Officer~~ Arbitrator shall make and include a specific finding of the facts upon which the Determination is based.
- f. Consequences of a Service Reduction Unreasonable Under the Circumstances
 - i. If the value of the service reduction is determined to ~~effect~~ affect the reasonableness of a pending Rrent Increase, the value of the service reduction shall be applied as a credit against the Rrent Increase unless it is a permanent reduction in service in which case it will result in a Rrent reduction.
 - ii. When the proceeding does not involve determination of reasonableness of a pending Rrent Increase, the value of the

service reduction shall be applied as a credit against the Tenant's obligation to pay current Rent unless it is a permanent reduction in service in which case it will result in a Rent reduction.

4. ECONOMIC, FINANCIAL AND OTHER FACTORS - The ~~Hearing Officer~~ Arbitrator will consider additional relevant factors presented by either Party. These factors may include the following:

- a. Market Value: The current market value of Rental Unit s similarly situated, which are not owned or controlled by the Landlord.
- b. Rental History: The amount and frequency of past increases, and the occupancy rate in comparison to comparable properties in the same general area.
- c. Physical Condition: The physical condition of the unit, including maintenance and repair during the last twelve (12) months.
- d. Services: Any increase or reduction in services since the last Rent Increase.
- e. Vacancy and Bad Debt Losses: The degree to which Vacancy and bad debt losses are not offset by retention of deposits, court judgments or increases to new Tenants.
- f. Other Financial Information: Other financial information that the Landlord is willing to provide.

5. GUIDELINES PERTAINING TO ALL RENT INCREASES OTHER THAN BASE RENT INCREASES.

- a. Each of the costs must bear a reasonable relationship to the purpose for which they were incurred and the value of the real property.
- b. Costs are "out of pocket" which have been incurred or obligated. All costs claimed must be supported by reasonable documentation.
- c. If a Rent Increase is cost justified and neither service reduction nor Housing Code violations are present, that Rent Increase may be deemed reasonable.
- d. The cost categories presented at Arbitration must be the same as at Mediation. The Arbitrator has the discretion to require cost information from categories not initially presented by the Landlord, if that information

is necessary to resolve issues such as service reductions.

- e. Operations and maintenance costs are for the most recently available consecutive two (2) twelve (12) month periods ending no more than sixty (60) Ddays prior to the Rrent Increase date.
- f. Undocumented projections or estimates of future costs may not be accepted for use in cost analyses.
- g. Debt service, Capital Improvements, and ~~rehabilitation costs~~ Costs of Rehabilitation must be incurred in the past twelve (12) months as evidenced by payment or contract establishing a legal obligation and evidence that the terms of the contract are or have been met. The twelve (12) -month period for each of these costs may be different from the period used for operation and maintenance, and must begin earlier than the effective date of the increase ; e.g., contract on 7/80, performed work 7/80-6/81, increase 8/80, work must have begun by the time the Rrent Increase is due.
- h. If, however, increases in debt service or repayment of Capital Improvements or ~~rehabilitation costs~~ Costs of Rehabilitation are, or have been deferred so as to become effective at a future date in excess of a twelve (12) month period, then those costs may be applied as they become effective.
- i. If costs are equal to or greater than the petitioning Tenants' Rrent Increase, that increase is cost justified.

C. NOTICE OF RENT INCREASE AND PETITIONS

- 1. RENT INCREASE NOTICES - When a Landlord issues a notice of Rrent Increase he/she must provide the Tenant s notice of their full right to use the Rental Dispute Resolution Process authorized by the Ordinance. The notice must include the name, address and telephone number of the Agent Rental Dispute Resolution Program. This must be included conspicuously in the Rrent Increase notice or done separately at the same time and manner as the Rrent Increase notice. The recommended wording is:

You have the right to use the Rental Dispute Resolution Process. To be eligible a petition must be received by the Town or its Agent within ~~30~~ 60 Ddays after the increase goes into effect.

For further information contact:

(Agency)

(Address)

(City, State, Zip)

(Phone and Fax)

2. FILING A PETITION - To initiate the dispute resolution process, Tenants or Landlords must complete and file a written Petition for ~~Conciliation~~ with the ~~Town's~~ Agent. Petition forms may be obtained from the ~~Town's~~ Agent and must be filled in completely. A Petition may be filed to resolve any Landlord/Tenant Dispute. As defined in the Ordinance a dispute may concern Rent or any other aspect of rental Housing Services including but not limited to, repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, and any other benefits, privileges, or facilities. A Petition can only be filed and can only be processed if the affected Tenant continues to occupy the premises involved in the dispute.
- a. Rent Increase Petitions - Twenty-five percent (25%) of the units affected by the ~~R~~rent ~~I~~ncrease must join in the ~~P~~petition.
- b. No ~~initial~~ ~~P~~petition may be filed later than ~~sixty (60) (30) D~~days after the ~~R~~rent ~~I~~ncrease takes effect. However, a petition may be filed within six ~~(6) months of a rent increase if the notice is not in compliance with these Regulations. If an initial Petition is received within the applicable sixty (60) Days for a property in which multiple numbers of increases were noticed, additional Petitions containing the requisite number of signatures necessary to reach the twenty-five percent (25%) level must be received within thirty (30) Days after any affected Tenant has received a list of the names and unit numbers of the affected Tenants as required by Section 14.80.040 of the Ordinance or has otherwise been notified by the Agent that additional Petition signatures are necessary. A Petition raising an issue other than a Rent Increase must be filed within thirty (30) Days of the event giving rise to the dispute.~~
A notice which fails to meet the basic requirements of Section 14.80.040 of the Ordinance, which requires the name and current telephone number

of the Agent, is invalid. A notice which fails to meet the remaining requirements of these regulations waives the thirty (30) Day limit herein and permits a Petition to be filed within six (6) months of the applicable Rent Increase or other event giving rise to the dispute.

- c. Deferral of Amount of Increase Over ~~70~~ Seventy Percent (70%) CPI - When a Tenant files an eligible Petition, the amount of the increase over ~~70~~ seventy percent (70%) CPI or five percent (5%), whichever is greater, is stayed, pending a resolution of the dispute. The Tenant is obligated to pay only the old Rent plus ~~70~~ seventy percent (70%) of the Consumer Price Index or five percent (5%), whichever is greater, until the Petition is resolved and the Rent level established. If the Award determining the final outcome establishes a Rent level higher than this interim level of increase, the affected Tenant or Tenants are obligated to pay any retroactive difference included in the Award within thirty (30) Days of receiving notice of the Award, unless date the payment is due is otherwise determined by the Arbitrator as part of the Award.

3. ELECTING A REPRESENTATIVE

- a. If three (3) or more Tenants seek review, the Tenants shall designate in writing to the Town, or its Agent, an individual to serve as the Tenant representative for the purposes of receipt of all notices, correspondence, decisions and findings of fact required in this article. The Tenant representatives in consultation with the Agent shall take reasonable steps to permit the petitioning Tenants to take part in making substantive decisions, such as whether to accept a settlement proposal made during conciliation or mediation.
- b. The representative shall be selected by majority vote or by signatures on a designation form from a majority of the affected Tenants.
- c. The writing designating the representative shall be in the form of one document containing the signatures of all petitioning tenants.
- d. The Tenants shall designate their representative within ~~ten (10)~~ fifteen (15) Days of submitting the petition notice from the Agent of their duty to make a proper designation. When appropriate the Tenants may designate

more than one representative to serve as co-representatives and/or backup representatives. Failure to designate a Tenant representative within ~~ten~~ (10) days the above time period will render the Ppetition incomplete and the Ppetition will not be accepted for filing processed further.

e. Service of notice upon the designated Tenant representative will constitute adequate and sufficient notice to all petitioning Tenants.

4. CONSOLIDATION OF PETITIONS - Whenever possible, Ppetitions from Rental Units owned, operated, and managed as a single housing complex shall be consolidated into one case by the program staff Agent.

II. THE CONCILIATION PHASE

The filing of a Ppetition authorizes the Town's Agent to contact any of the Pparties to the dispute to conciliate the issues. The purpose of conciliation is to resolve ~~tenant/landlord disputes~~ Landlord/Tenant Disputes through limited intervention. Conciliation does not involve a face to face meeting but is a limited negotiation through telephone or mail contacts by a ~~Housing Counselor~~ member of the Agent's staff to explain to each Pparty the position of the other and to attempt resolution of the dispute. Information and clarification of Tenant Landlord law and the ~~Los Gatos Ordinance~~ may be involved. The ~~Town's Agent~~ is designated as the Hearing Counselor. If conciliation does not resolve the dispute, either Pparty may request mediation or arbitration. The Agent and its staff are neutral parties during this process. It is their duty to explain this process within the meaning of the Ordinance and this document to the Parties, but it is not their duty to advise the Parties on substantive issues in the dispute or to advise the Parties about the substantive content of settlement proposals or decisions to accept settlement proposals.

III. FILING DEADLINES AND HEARING REQUESTS

- A. MEDIATION. A request for mediation may be filed in writing with the Town or its Agent twenty-one (21) Ddays after the Ppetition for conciliation was received by the Town or its Agent and the dispute has not been resolved. Mediation must be requested in writing within sixty (60) Ddays of Town's/Agent's receipt of the Ppetition for conciliation.
- B. ARBITRATION. A request for arbitration must be filed in writing by a Party with the Town or its Agent within sixty (60) Ddays of the filing of the Ppetition for conciliation, or, within thirty (30) Ddays of (1) the conclusion of the mediation Hhearing; or, (2) the discovery that the mediation agreement has been broken.

IV. HEARING PROCESS AND DECISION MAKING GUIDELINES

- A. CONFIDENTIALITY. The identity of the Pparties and the factual data of the case are

confidential. Any one of the Pparties to an arbitration Hhearing has the right to request to see and to copy information supplied by the other Pparties. This information may also be reviewed and used by the Town for program operations, administration, audit and evaluation. While the Pparties and the Town have access to this information, it is not public information.

B. HEARING PROCEDURES

1. Time. Within thirty (30) Ddays from the date a request for mediation or arbitration is received, the town or its Agent shall schedule a Hhearing unless the Parties agree in writing to waive this requirement.
2. Notice. The ~~Town's~~ Agent shall mail written notice to all Pparties (unless there are three or more Ttenants, in which case, to the Ttenants' representative) at least twenty (20) calendar Ddays before the Hhearing unless the Parties agree in writing to waive this requirement.
3. Submittal of evidence. ~~Materials to be considered at the hearing must be logged with the Town of its agent at least twelve (12) days in advance of the hearing who shall make them available to all parties to the hearing (unless there are three or more tenants, in which case, to the tenants' representative) at least seven (7) days in advance of the hearing.~~
 - a. During the conciliation and mediation phases of this process, evidence or materials supplied by the Parties will be shared with the other Party or Parties only with the consent of the Party supplying said documents.
 - b. All materials submitted for arbitration, including evidence and briefs, must be served by mail on all other Parties to the arbitration, and on the designated Arbitrator, no later than seven (7) Days prior to the noticed arbitration Hearing date. Failure to do so will subject the material to an objection which the offended Party may raise and which will be decided by the Arbitrator in his/her discretion who may impose a suitable remedy including granting a continuance and/or excluding all or part of the material from consideration.
4. Extension. Extensions of time for the Hhearing process may be mutually agreed upon by both Pparties (or, if three (3) or more Ttenants, by one Pparty and the Ttenants' representative) with the concurrence of the Arbitrator. Extensions may

also be granted by the Arbitrator upon an application by any Party who makes a showing of good cause for granting the application.

C. BURDEN OF PROOF

1. The Landlord shall have the burden of proof for establishing the reasonableness of a Rent Increase.
2. The Tenants shall have the burden of proof for the existence of service reductions and Housing Code violations. The burden of proof in any other type of Housing Services dispute shall rest with the petitioning Party.
3. The burden of proof shall be satisfied by demonstrating that the fact to be proven is more probable than some other fact.
4. The burden of proof shall be met by using only evidence which has a tendency in reason to prove or disprove a disputed fact of consequence in determining the Basic Service Level.
5. Proof shall only be received for service reductions ~~alleged in a claim filed with the Town, its agent, or the Hearing Officer during or prior to the first hearing.~~ if the Party raising the issue has complied with the requirements of I-B 3, "Service Reductions," above.
6. Proof of a service reduction shall be received only for that period of time the premises have been owned by the Landlord against whom the claim is filed.

D. CONDUCT OF MEDIATIONS AND ARBITRATIONS

1. ~~The Hearing Officer may change the order, delete or add items to the following list in order to conduct the Hearing in a timely and orderly manner. The Hearing Officer may adopt rules to encourage a timely and business-like hearing.~~
2. All Parties to the Petition and his/her Counsel may attend the Hearing and ~~offer evidence and testimony~~ participate as deemed appropriate by the Mediator or Arbitrator conducting the Hearing.
 - a. ~~Examples of those who may attend Hearings include: owners, property managers, agents, attorneys, tenants, witnesses, paralegals, and designated representatives. The Hearing Officer may limit the participation of attendees other than parties to the dispute.~~ At mediation sessions, no person other than the Mediator, the Parties and their designated representatives may attend the session.

- b. ~~Examples of those who generally may not attend Hearings include tenants not covered by the petition, owners of other properties, members of the public. These persons may attend if all parties agree.~~ At arbitration Hearings, the Parties and their designated representatives may attend the Hearing, as well as other persons such as agents and witnesses, subject to the Arbitrator's final discretion to limit the presence or participation of anyone other than a Party or designated representative. Third parties including observers such as Tenants not affected by the pending Petition or members of the media shall not be permitted to attend absent written agreement between all Parties or their designated representatives executed at least seven (7) Days prior to the date set for the Hearing.
3. Review and Response to Evidence and Testimony - Each pParty must have the opportunity to review all evidence and testimony introduced at the Hearing or provided to the Hearing Officer, and to make a response. The Hearing Officer has the discretion to allow written responses to be submitted. Hearing Officers have the discretion and must consider allowing reasonable recesses to review any new information or documentation.
4. Record of Hearings - Hearing Officers will cause to have a written record of all pParties attending either Mediation or Arbitration Hearings and a listing of evidence presented. Mediation sessions shall not be taped. The Arbitrator will tape record all sessions and turn the tape and all evidence into over to the Town's Agent with the Arbitration Award. ~~Any~~ The record of proceedings shall be is available to ~~both~~ the Pparties for their review. All tape recorders will be placed as designated by the Arbitrator. Tapes will be available for review for a period of twelve (12) months at the appropriate Town office. Any and all duplication costs will be borne by the requesting Pparty.
5. Participation of the Hearing Officer - The Hearing Officer shall, at all times in the conduct of the hHearings and in otherwise performing his/her duties, act neutrally and impartially. The Hearing Officer shall not solicit, invite, or encourage new complaints from the hLandlord or tTenants. ~~This does not preclude clarification of each party's rights under the ordinance. Hearing Officers are encouraged to suggest compromises to disputes raised at the hearing.~~

6. Relief from Default - The Hearing Officer may relieve any pParty from their failure to adequately state their claim prior to or during the first meeting upon a reasonable showing of fraud, error, or inadvertence. The Hearing Officer may grant to the opposing pParty additional time to respond to any claim, addition to, or revision of, a claim filed pursuant to the relief granted.

E. DECISIONS AND AGREEMENTS

1. Eligible Petitions - The Voluntary Agreement or arbitration Award shall apply to a Tenant/s who have filed an eligible Petition or have been included in a Landlord Petition.
2. Effective Date - Unless otherwise set by the ~~Hearing Officer, determinations, awards, and voluntary agreement~~ terms of a Voluntary Agreement or by an arbitration Award, all agreements or Awards regarding Rent Increases shall be effective as of the effective date of the increase originally proposed by the Landlord and shall extend for twelve (12) calendar months.

F. FAILURE TO APPEAR AND RESCHEDULING

1. No appearance by the Landlord or his/her Representative - When the Landlord or his/her representative does not appear at ~~the~~ an arbitration Hearing regarding a Rent Increase or service reduction, the Rent Increase or rate will be determined to be unreasonable. Failure to appear at any other Hearing will not preclude the Arbitrator from issuing a binding Award based on the evidence presented by those Parties who do attend. If a Landlord chooses to appear at a mediation or arbitration through a designated representative, said representative shall have written authorization from the Landlord to effectively resolve the dispute.
2. No Appearance by Tenants - When the Tenant/s or their representative does not appear at ~~the~~ an arbitration Hearing concerning a Rent Increase or service reduction, the Rent Increase or rate will be determined to be reasonable. Failure to appear at any other Hearing will not preclude the Arbitrator from issuing a binding Award based on the evidence presented by those Parties who do attend.
3. Voluntary Agreements - When a Tenant fails to appear or be represented at a Mediation Hearing where a Voluntary Agreement is concluded with the remaining Tenants, the Petition of the Tenant who failed to appear will be considered to have been withdrawn.

4. Arbitrator's Determination - When a Tenant fails to appear or be represented at a Hearing that results in a written Ddetermination, that Ppetition of the Tenant who failed to appear will be considered to have been withdrawn.
5. Rescheduling - Rescheduling of Hearings causes a delay in the resolution of the dispute and inconveniences the Pparties. However, a rescheduling is sometimes appropriate.
 - a. Request by Landlord or Tenant - A Hearing may be rescheduled by the Town or its Agent, one time at the request of a Landlord or a Tenant for reasonable good cause, when the request is made at least five (5) Ddays before the scheduled Hearing date.
 - b. Request by one of the Parties - A Hearing may be rescheduled by the Town or its Agent, when one of the Pparties was unable to attend due to reasons beyond her/his control and the request is made within twenty-four (24) hours after the scheduled Hearing date.

V. THE MEDIATION PHASE - The purpose of the Mediation Hearing is to give the Pparties an opportunity to resolve the dispute voluntarily.

- A. INTRODUCTION - The Mediator will introduce him/herself, identify all attendees, circulate a sign-in sheet, and briefly explain the Hhearing process. The Mediator will explain that the Mediator's role is to neutrally facilitate discussion of resolution options and that it is not to decide which Party is right or wrong or to otherwise determine disputed issues or to advise Parties of their rights.
- B. PRESENTATION BY THE PARTIES - The Pparties will be given full opportunity to ~~present evidence and testimony. Comments must be clear, concise, and relevant. When one party has made its presentation the other party will be given an opportunity to make its presentation.~~ make effective presentations of their positions and claims. If the case involves a pass-through formula, the Landlord shall produce, no later than the mediation Hearing, the basic formula and calculations used to justify the increase. The Landlord is encouraged to present further evidence such as the supporting documentation for the calculations. A Party's voluntary disclosure of documentation will not preclude that Party from supplementing or correcting that documentation at arbitration.
- C. PRIVATE SESSIONS - Following the initial presentations, the Mediator may at his/her discretion meet privately (caucus) with each side to attempt to work out a Vvoluntary

Agreement. The agreement is confidential and shall only be shared with the specific consent of the all participants. The Mediator will notify all Parties that statements made in the caucus are confidential and will not be disclosed to the other Parties unless the Mediator is given permission to do so by the Party making the statement.

- D. VOLUNTARY AGREEMENT - If the Pparties arrive at an agreement, the Mediator will summarize the resolution on an agreement form and witness all signatures. Voluntary Agreements must specify the agreed upon Rent and may include any other items the Pparties agreed upon.
- E. CLOSING SESSION - The Mediator will meet with both Pparties to sign a Voluntary Agreement or to provide an opportunity to ~~present additional evidence or testimony~~ make further presentations.
- F. ADDITIONAL DOCUMENTATION - If ~~additional documentation~~ time to obtain additional information or other input is requested, the Mediator may recess the Hearing at his/her discretion, for no longer than ten (10) Ddays, for the purpose of ~~receiving this documentation~~ doing so.
- G. HEARING SUMMARY - If a Voluntary Agreement is not possible the Mediator will ~~prepare an impasse report~~ a written statement of impasse.
- H. TIMING AND CONTENTS OF IMPASSE ~~REPORTS~~ STATEMENT
1. The Mediator shall submit an impasse ~~report~~ statement to the ~~Town's~~ Agent within five (5) Ddays of the Hearing. If the Mediator has requested additional documentation, the ~~report~~ statement is due five (5) Ddays after the continued Hearing. Once the Mediator serves the impasse statement, the mediation phase of this process shall be deemed concluded.
 2. Contents - The ~~report~~ statement will include only the following:
 - a. Identification of all attendees.
 - b. ~~Statement of all evidence presented such as the costs, service reductions and/or Housing Code violations presented, and any relevant economic, financial, or legal factors.~~ A statement that the Parties reached impasse.
 - c. Any agreement reached by the Parties defining the issues to be presented at arbitration.
 - d. If a case that is not resolved in mediation is subsequently submitted to arbitration, no statement made by any Party during the mediation shall be

admissible at the arbitration and no notes or other documents, such as mediation briefs prepared solely for the mediation or solely during the mediation shall be admissible at arbitration. Documents or evidence existing prior to the mediation Hearing, such as lease agreements or photographs are not subject to this rule. The Mediator is not subject to be called as a witness at any subsequent arbitration.

VI. THE ARBITRATION PHASE

- A. PURPOSE OF AN ARBITRATION HEARING - An arbitration Hearing is held to make a final Ddetermination concerning rental housing Landlord/Tenant Disputes as defined in the Ordinance when a conciliated or mediated agreement has not been achieved or has been broken.
- B. CONDUCT OF ARBITRATION HEARING ON REFERRAL FROM MEDIATION OR CONCILIATION - When a Voluntary Agreement is not reached during conciliation and the Agent grants arbitration, or when a Voluntary Agreement is not reached at a mediation Hearing and one of the Parties or the Mediator requests arbitration the following procedures will be followed:
1. Introduction - The Arbitrator will introduce him/herself, identify the Parties, circulate a sign-in sheet, request that any representatives identify themselves, and will briefly explain the Hearing process.
 2. The Parties will be responsible for bringing all pertinent written documents and evidence to the initial Hearing. The Parties will be given full opportunity to present evidence and testimony which has been produced in compliance with the disclosure rules herein . When one Party has made its presentation, the remaining Party will be given an opportunity to make its presentation. Parties seeking to obtain evidence in the possession of opposing Parties which has not been voluntarily produced prior to the Hearing or at the Hearing, may apply to the Arbitrator in writing for a subpoena to be issued upon a showing of good cause with notice to all participating Parties. The determination of good cause by the Arbitrator shall be based on a general standard that the evidence being sought is likely to be admissible at the arbitration Hearing. The written request for such a subpoena shall include the showing of good cause and must be served on both the Arbitrator and all participating Parties at the same time. Any Party opposing the

request shall have five (5) Days to serve a written opposition to the Arbitrator and all other Parties at the same time. The Arbitrator will rule on the request after the five (5) Days have passed.

Parties seeking to present a witness at a Hearing may apply for a subpoena with reasonable advance notice to all Parties prior to the Hearing date.

3. Response to Evidence and Testimony - The Pparties will be given reasonable opportunities to respond to the new documentation and issues. The Arbitrator has the discretion to recess the Hhearing or to allow the submission of written statements.
4. Request for Additional Information - The Arbitrator may request the submission of additional documentation or other information within ten (10) Ddays. When this request is made, the Hhearing is recessed until the submission for the administrative purpose of receiving the additional information. In the event that the requested information is not provided or is incomplete, the Arbitrator may proceed to the making of the Aaward.
5. Evidence - Evidence submitted will be retained by the Arbitrator for use in making the Aaward and will be provided to the ~~Town's~~ Agent along with the tape/s and the arbitration Aaward. The Arbitrator will be the judge of the relevancy of the evidence. Conformity to legal rules of evidence is not necessary. A list of this evidence (exhibits) will be prepared and made a part of the record.
6. Testimony - The Arbitrator will judge whether or not testimony is material and relevant. A list of the names and addresses of any witness will be kept and made a part of the record.
7. Relief from Default - The ~~Hearing Officer~~ Arbitrator may relieve any Pparty from their failure to adequately state their claim prior to or during the first meeting upon a reasonable showing of fraud, error, or inadvertence. The ~~Hearing Officer~~ Arbitrator may grant to the opposing Pparty additional time to respond to any claim, addition to, or revision of, a claim filed pursuant to
8. Voluntary Agreement - An Arbitrator may recess the Hhearing for the purpose of allowing the Pparties to negotiate a Voluntary Agreement to resolve the dispute. At the request of the Pparties, an Arbitrator may also assist them in coming to and preparing a written Voluntary Agreement.

9. In applying these rules and in otherwise making procedural decisions, the Arbitrator shall make interpretations which emphasize basic principles of fairness rather than technical or narrow interpretations.

C. CONDUCT OF ARBITRATION HEARINGS ON CLAIMS OF VIOLATION OF A VOLUNTARY AGREEMENT - Voluntary Agreement forms contain a section making violation of the agreement subject to arbitration under these regulations and Title 9 (commencing with Section 1280), Part 3 of the California Code of Civil Procedure. Hearings for this purpose are similar to those described in the previous section (V.A. 1-7). The State Code sets additional procedures. Those involved in these Hearing should read this section of the State Code. (Other differences are caused by the nature of these Hearing.) This section covers these differences.

1. Before appealing for Arbitration, a letter must be sent asking that the agreement be followed. This letter should point out where it is not being followed; for example, "fix the stove" or "remove the wrecked car".
2. Appeals may be made to the Town's Agent by either Pparty. Appeals must be in writing and must include a copy of the letter described above.
3. Clarification of Issues - After the introduction, the Arbitrator will ask the Pparty who filed the appeal to state the issue. For example, "John Doe signed an agreement that he would fix the stove/remove a wrecked car by June 15. He hasn't done that".
4. Verification - The Arbitrator will determine if the agreement has been violated.
5. Remedies - If the agreement has been violated, the Arbitrator will issue an Award which compensates for the violation. The Arbitrator may require that the agreement be kept ("John Doe has to fix the stove/move the car"), that the Rent be increased or decreased, or other just and equitable remedies.
6. Processing - A copy of the appeal will be sent to both Pparties with a notice of the arbitration Hearing.
7. Authority of Arbitrator - The decision of the Arbitrator is final and legally binding. An Arbitrator has the authority to allow or disallow any Rent Increase or portion thereof and may reasonably condition his/her Award in any manner necessary to meet the purposes of the Ordinance.

D. TIMING AND CONTENTS OF AWARD

1. The arbitration Award shall be issued within ~~to~~ fifteen (15) business Ddays of the close of the Hhearing. The allowance of time to submit additional information or written statements is a recess of the Hhearing and the Award is due ten (10) Ddays after this deadline. The time limit herein will be extended by any intervening legal holidays.
2. The arbitration Award must identify the Pparties and make a clear statement of:
 - a. The basis for the decision, and all standards that were applied.
 - b. In a case involving a Rent Increase or service reduction, the Award shall state ~~W~~ whether or not the proposed increase is reasonable;
 - c. If a portion is reasonable, the dollar amount;
 - d. Any conditions which are placed on the Award;
 - e. An attached summary of cost calculation;
 - f. A Rrent schedule for any Rrents to be paid by or refunded to each Ttenant based on the Award and Rrents paid by the Ttenants since the time of the Rrent Iincrease.

VII. HEARING OFFICERS

- A. Mediators and Arbitrators shall, at all times in the conduct of the Hhearings and in otherwise performing his/her duties, act neutrally and impartially. They shall not solicit, invite, or encourage new complaints from the Llandlords or Ttenants. This does not preclude clarification of each Pparty's rights under the Ordinance.
- B. SELECTION CRITERIA - Hearing Officers are those individuals who, having met the following established criteria, have executed a contract with the Town or its Agent and are ~~Officers are also those program staff designated as Hearing Officers either Mediators or Arbitrators~~ for specific purposes. ~~Hearing Officers~~ They must meet all of the following criteria.
 1. ~~Have received fourteen (14) hours formal training in mediation completed~~ recognized training courses in mediation or arbitration as applicable to them and seven (7) hours formal training on Llandlord/Ttenant law and economics of the rental industry.
 2. ~~Have observed two mediations or hearings similar to those of this program. Been~~ oriented in this particular dispute resolution process.

3. Shall not own or rent property covered by the Ordinance.
4. May not be an employee or an officer of groups or organizations which have or are viewed by significant numbers of Tenant s or Landlords as having taken advocacy positions in Landlord Tenant matters.

C. ~~THE PROGRAM ADMINISTRATOR is designated as a Hearing Officer for the purpose of AGENT is the decision-making authority for all procedural issues concerning this dispute resolution process prior to the time a specific Arbitrator is designated to hear in the case. Such authority includes decisions regarding :~~

1. ~~Conciliation of cases Whether a Petition or subsequent filings meet the procedural requirements of the Ordinance and any corresponding regulations;~~
2. Consolidation of cases;
3. Scheduling of Hearings, although mediation Hearing dates and times shall be set to meet the convenience of the Parties to the greatest extent possible;
4. ~~Acceptance of documentation and written statements;~~
5. Acceptance of requests for mediation or arbitration.

D. ASSIGNMENTS TO CASES

1. Mediation Cases - Mediators shall be assigned by Program Staff equitably and fairly, with due regard for the Mediator's availability and experience.
2. Arbitration Cases - A selection list shall be sent to both Parties that will contain at least three (3) names of Arbitrators who meet ~~one of the following qualifications:~~

- ~~a. Appointment to the American Arbitration Association's Panel of Arbitrators;~~
- ~~b. A sufficient training and prior relevant experience as an arbitrator, and~~
- ~~c. Completion of a Juris Doctor or equivalent degree from a School of Law with proof of a course in arbitration, or~~
- ~~d. Completion of six mediations, observation of one arbitration, and documentation of formal arbitration training.~~

The Tenants, if three (3) or fewer, or their representative, and the owners may eliminate one (1) name each. The Agent will designate the Arbitrator to be assigned to the case from the remaining name or names on the selection list.

E. DISQUALIFICATION FROM CASES - A ~~Hearing Officer~~ Mediator or Arbitrator shall disqualify themselves from hearing a case and can be disqualified by Program Staff at the

request of one (1) of the Pparties if:

1. The Hearing Officer knows or has reason to know he/she has a financial interest affected by the Ddetermination or Aaward.
2. The Hearing Officer is related to one (1) of the Pparties or their representatives to the third (3rd) degree.
3. The Hearing Officer has been retained or employed by one (1) of the Pparties within the past two (2) years, has given advice to one (1) of the Pparties relative to the issues involved in the Hhearing.
4. It appears probable that the Hearing Officer by reason of bias or prejudice cannot provide a fair and impartial Hhearing.
5. The Hearing Officer is a Pparty to the Hhearing.

A ~~Hearing Officer~~ Mediator or Arbitrator is not disqualified from hearing a case where one (1) or more of the Pparties have appeared before him/her in an earlier Hhearing. The Pparties may waive their right to the disqualification of a ~~Hearing Officer~~ Mediator or Arbitrator by a written statement accepting his/her service.

F. REVIEW OF ~~HEARING OFFICER'S~~ PERFORMANCE OF MEDIATORS AND ARBITRATORS - The Pprogram Sstaff will periodically review the performance of ~~Hearing Officers~~ Mediators and Arbitrators and will inform the Town of the execution and termination of Hearing Officer's contracts.

VIII. MISDEMEANORS AND ENFORCEMENT

A. THE ORDINANCE PROVIDES THAT IT IS A MISDEMEANOR:

1. For a Llandlord to evict Ttenants in retaliation for Ttenants organizing or exercising rights granted by the Ordinance.
2. For a Llandlord to evict a Ttenant when the Llandlord's dominant motive is to evade the purposes of the Ordinances.
3. For a Llandlord to demand, accept, receive, or retain any Rrent in excess of the maximum Rrent allowed by a mediation agreement or an arbitration Aaward.

B. INVESTIGATION - Program Sstaff will receive and investigate complaints of alleged misdemeanor violations. When complaints are received of an alleged violation which has not yet occurred or is in the process of occurring, it is the policy of this program to prevent it, when possible, by informational contacts with the Llandlord. In the event that the investigation shows that a violation has or is in the process of occurring and that it is not

possible to prevent, a request will be made to the Town Attorney for review and prosecution. Either Pparty can pursue civil action after the conclusion of Town Rrental Mediation dispute resolution procedures.

- C. ADDITIONAL CIVIL RIGHTS - Tenants have additional civil rights not covered by this chapter this document. Either Pparty can pursue civil action after the conclusion of Town Rrental Dispute Resolution Procedures.
- D. APPEAL OF ADMINISTRATIVE ACTION - Administrative actions by Program Staff may be appealed in writing to the Director of Community Services. ~~Individuals also have the right to present information and recommendations on the implementation of these regulations to the Rent Advisory Committee.~~

IX. DEFINITIONS

- A. Agent: An individual or organization, or government, designated by the Town Council to administer the Ordinance.
- B. Anniversary Date: Twelve (12) months from the last Rrent Incr ease.
- C. Arbitrator: A person designated to act as the Hearing Officer for the arbitration phase of the dispute resolution process under the Ordinance.
- D. Award: The written decision of an Arbitrator.
- E. Base Rent Increase: Five percent (5%) or seventy percent (70%) of the CPI, whichever is greater.
- F. Capital Improvements: Improvements which materially add to the value of the property, appreciably prolong its useful life, or adapt it to new uses. Capital Improvements are improvements for which the useful life is likely to be five (5) years or more.
- G. Committee: The Los Gatos Rent Advisory Committee appointed by the Town Council.
- H. CPI - Consumer Price Index: CPI is the Consumer Price Index - All Urban Consumers for the San Francisco Oakland area. The figure is released monthly from the Bureau of Labor Statistics.
- I. Cost of Debt Service: The periodic payment or payments due under any security or financing device which is applicable to the Rrental Unit, or the building, or complex, or other real property of which it is a part, including any fees, commissions, or other charges incurred in obtaining such financing which are required to be amortized for a period exceeding sixty (60) months pursuant to the Internal Revenue Code and the regulations issued pursuant thereto.

- J. Cost of Operation and Maintenance: Expenses, exclusive of original ~~costs of debt service~~ Cost of Debt Service, Costs of Rehabilitation, and costs of Capital Improvements, incurred in the operation and management of the Rental Unit and the building or complex of buildings of which it is a part together with common areas, including but not limited to: real estate taxes, business taxes and fees (including fees payable by Landlords under ~~this Chapter~~ this document), insurance, sewer service charges, utilities, janitorial service, professional property management fees, increased interest costs of variable interest rate mortgages over the base interest incurred, pool maintenance, exterior building and grounds maintenance, supplies, equipment, refuse removal, elevator service, and security services or systems.
- K. Costs of Rehabilitation: Any rehabilitation or repair work costs done on or in a Rental Unit or common area of the housing complex containing the Rental Unit and which work was done in order to comply with an order issued by the Los Gatos Building Department, or the Santa Clara County Fire Department, or to repair damage resulting from fire, earthquake, or other natural disaster.
- L. Counsel: An attorney or other advisor.
- M. Day: A calendar day unless otherwise specified herein.
- N. Determination: A ~~summary report by a mediator~~ voluntary settlement agreement reached in mediation or conciliation or a written decision by an Arbitrator.
- O. Fact Finding: The action of an Arbitrator in establishing that certain facts, such as costs or service reductions, exist.
- P. Hearing: A meeting of the Parties in a dispute with either a Mediator or an Arbitrator to resolve the issues.
- Q. Hearing Officer: A person designated by the Town Manager or the ~~Town's~~ Agent who mediates or arbitrates rental disputes pursuant to the provisions of this ~~Chapter~~ document.
- R. Hearing Counselor: A person designated by the Town Manager or its Agent who counsels Parties with regard to housing disputes and conciliates, as necessary.
- S. Housing Services: Those services provided and associated with the use or occupancy of a Rental Unit, including but not limited to repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, and any other benefits, privileges, or facilities.
- T. Landlord: An owner, lessor, or sublessor, who receives or is entitled to receive Rent for

the use and occupancy of any Rental Unit or portion thereof, and the agent, representative, or successor of any of the foregoing.

- U. Landlord/Tenant Dispute: Any dispute between a Landlord or any agent or employee thereof, and a Tenant, regarding Rent or any other aspect of Housing Services, provided that the Tenant is occupying the premises from which the dispute arises.
- V. Mediator: A person designated to conduct the mediation phase of the dispute resolution process under the Ordinance, and who is trained and experienced in the principles of community mediation practice.
- W. Ordinance: Chapter 14.80 of the Los Gatos Town Code, also cited as the Town's Rental Dispute Mediation and Arbitration Ordinance.
- X. Party: A Landlord or Tenant(s) who is involved in the Hearing process.
- Y. Petition: A petition for conciliation.
- Z. Program Staff: The staff of the Agent ~~Los Gatos Rent Mediation Program~~ assigned to implement the ~~Rental Dispute Mediation and Arbitration~~ Ordinance.
- AA. Rent: The consideration, including any bonus, benefit or gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit, or the assignment of a lease for such a unit, including Housing Services or subletting.
- BB. Rent Increase: Any additional Rent due or paid by a Tenant for a Rental Unit, including any reduction in Housing Services without a corresponding reduction in the monies demanded or paid for Rent.
- CC. Rental Unit: Any building or part of a building which is used for residence and which is rented to a Tenant as a dwelling place, except:
 - 1. Rental units, located in a building or group of buildings on the same premises, containing only one (1) dwelling units.
 - 2. A room in an owner-occupied dwelling where under the lease provisions the Tenant does not have substantially exclusive use of a kitchen.
 - 3. A single house, condominium or planned development (Business and Professions Code Section 11003.0) unit.
 - 4. A hotel room or similar accommodation ordinarily let for occupancy by the same Tenant for periods of less than fifteen (15) Days.
 - 5. A hospital room, skilled nursing facility or similar accommodation where the main factor in the rental relationship is the personal care given to the Tenant.

6. A dwelling owned, operated and managed by a government agency or which is exempted by Sstate or Ffederal law from Rrent regulation.
- DD. Tenant: ~~A person or persons entitled by written or oral agreement or by sufferance to occupy a rental unit to the exclusion of others.~~ A person who is legally entitled to occupy all or part of a rental property subject to the Ordinance at the time any issue or right under the Ordinance arises.
- EE. Tenancy at Sufferance: When a Ttenant comes into possession of a premises lawfully but holds over either after the expiration of a lease or after the expiration date of a notice to vacate.
- FF. Vacancy: Untenanted. A Rrental Unit is vacant when there are no Ttenants living there. To be vacant, the unit must be untenanted; if a roommate moves, there is no Vvacancy, unless the Llandlord and the Ttenants have a prior written agreement that this does create a Vvacancy. Said prior agreement must inform the Tenants of their rights under this document. If a Ttenant moves after receiving a thirty (30)-Day Notice from the Llandlord, it is not voluntary. If the increase is after the eviction of a Ttenant by a court for non-payment, chronically late payment, or other material violation of a written rental agreement- it is considered a voluntary Vvacancy.
- GG. Voluntary Agreement: An agreement entered into by mediating Pparties defining elements of resolution dispute.
- HH. Warranty of Habitability: A Llandlord's minimum obligations under California Code include that:
1. There are no leaks when it rains, and no broken doors or windows;
 2. The plumbing and/or gas facilities must be functional, including provisions of hot and cold water, and a working sewer or septic tank connection;
 3. The heater must be functional and be safe;
 4. The lights and wiring must be functional and be safe;
 5. Floors, stairways and railings have to be in good repair;
 6. When it is rented, the unit must be clean, with no piles of trash or garbage and no rats, mice, roaches, or other pests;
 7. The Llandlord must provide enough cans or bins with covers for the garbage;
 8. There must be one (1) working phone jack; and,
 9. A working smoke alarm at the time of rental.

[Regs adopted by Resolution #1998-148 effective June 4, 1998. Revised and adopted by Resolution #1999-143 effective October 20, 1999.]