

RESOLUTION NO. 2009-7274

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, ADOPTING REVISED PROCEDURES FOR THE SAN MARCOS MOBILE HOME RENT REVIEW COMMISSION

WHEREAS, the San Marcos Mobile Home Rent Review Commission was created in 1978; and

WHEREAS, pursuant to the initiative measure formalized by Resolution MHP 88-7, the Mobile Home Rent Review Commission has operated pursuant to procedures authorized by Chapter 16.16 of the San Marcos Municipal Code; and

WHEREAS, the regulations and procedures governing Mobile Home Rent Review Commission proceedings were modified by Resolution 96-4673 and further modified by by Resolution 2002-5900, and the Mobile Home Rent Review Commission has since performed its functions in accordance with the further revised regulations and procedures; and

WHEREAS, City staff representatives have carefully reviewed the efficiency and fairness of the revised regulations and procedures and have determined that additional revisions are necessary to enable the Mobile Home Rent Review Commission to conduct its rent review proceedings in an efficient manner and to protect the rights of both the Mobile Home Tenants and the Mobile Home Park Owner.

NOW, THEREFORE, BE IT RESOLVED:

1. The above-described recitals are true and correct.
2. The procedures have been revised to acknowledge the retention of consultants by Commission staff, to confirm the current practice of providing written analyses by such consultants to both the Park Owner and Tenant Representative as soon as feasible but in no event later than the posting date of the agenda for the hearing, and to

confirm the current practice relating to participation by such consultants in the hearing process.

3. In the current procedures, the consequence of any failure to submit required documentation or failure to abide by Mobilehome Rent Review procedural requirements by the Park Owner is that the application will be deemed incomplete, the rent increase will not be processed by the Rent Review Commission, and any proposed rent increase will be forfeited. To ensure due process is accorded, this has been revised to reflect that the Commission may either make its determination on the information received or, if such information is not sufficiently complete to enable the Commission to effectively conduct the hearing, the Commission may continue the hearing and order the submission of the required documentation.

4. In the past, Park Owner representatives have unsuccessfully claimed that the Commission is limited to the Maintenance of Net Operating Income formula, as that was a method cited as appropriate in a 1993 Court of Appeal case entitled Palomar Mobilehome Park v. Mobile Home Rent Review Commission and City of San Marcos. As the factors set forth in Chapter 16.16.070(g)(1)-(7) to be considered by the Commission in rent review proceedings are non-exclusive and may be supplemented by such other factors as the Commission deems relevant, the Commission's procedures have also been supplemented to acknowledge that the Commission determination is not limited to the application of any particular method or formula, so long as substantial evidence has been adduced to support its determination that the rent level approved will provide the Park Owner with a "fair return."

5. The above revisions to the Mobile Home Rent Review Commission requirements for written submissions and pre-hearing procedures are hereby approved for immediate implementation and use by the San Marcos Mobile Home Rent Review Commission.

6. The revised rules and regulations are applicable to hearings on space rent increase applications and other requests for relief occurring subsequent to the effective date of this Resolution.

7. This Resolution is not intended to, and shall not operate as, an amendment to the provisions of Chapter 16.16 of the San Marcos Municipal Code, but rather as an addition to the procedural regulations followed in conjunction with processing applications for space rent increases. In the event any conflict may arise between the regulations adopted by this Resolution and the provisions of Chapter 16.16 of the San Marcos Municipal Code, then the provisions of Chapter 16.16 shall prevail.

8. If any term, provision or condition of this Resolution is, to any extent determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining terms, provisions or conditions of this Resolution shall be valid and enforceable to the fullest extent permitted by law.

9. The procedures marked Exhibit "A," attached hereto, and made a part of this resolution, are hereby adopted.

10. All previously adopted procedures and schedules are superseded by adoption of the procedures attached to this Resolution.

11. The City Clerk is directed to implement these revised procedures for any Mobilehome Rent Review Commission proceeding occurring after the effective date of this Resolution.

PASSED, APPROVED AND ADOPTED by the City Council of the City of San Marcos, State of California, at a regular meeting thereof, this 10th day of November, 2009, by the following roll call vote:

AYES: COUNCILMEMBERS: JONES, MARTIN, ORLANDO, PRESTON, DESMOND

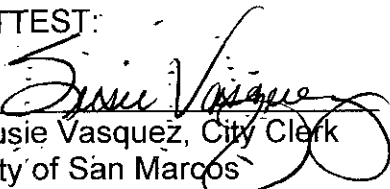
NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE



James M. Desmond, Mayor
City of San Marcos

ATTEST:



Susie Vasquez, City Clerk
City of San Marcos

EXHIBIT 'A' TO RESOLUTION NO. 2009 -7274

MOBILEHOME RENT REVIEW PROCEDURES

The following is a summary of the Mobilehome Park Rent Review Procedures prepared and provided by the City Clerk Department. Persons using these procedures should also refer to the adopted ordinances and resolutions for further clarification. This summary is not intended to supersede, replace or interpret provisions of the official City ordinances and resolutions adopted by the City Council and Mobilehome Rent Review Commission.

SECTION 1. PARK OWNER RENT INCREASE PROPOSAL

- a) Park Owner submits rent increase notice to tenants at least 90 days prior to effective date of increase. (CC Sec. 798.30).
- b) Park Owner files a written notice of the proposed rent increase ("Notice") with the City Clerk. The Notice shall be given to the City Clerk at the same time that the Notice of rent increase is given to the tenants. The Notice shall contain: 1) amount of current space rents; 2) amount of separately billed fees or charges, if any; 3) amount of proposed increase; 4) space numbers of tenants who have received a rent increase notice (excluding spaces on a long term lease); 5) names of tenants of spaces in Item 4; and 6) date of last rent increase for the park. (M.C. 16.16.055). The Park Owner shall also provide verification of the spaces subject to the space rent increase.

A hearing to review the space rent increase will not be scheduled until the City Clerk receives both the Notice and the verification. The proposed rents shall be held in abeyance until such time as a hearing is scheduled and a decision rendered.

If the Rent Commission approves the Park Owner's proposed rent increase or approves a rent increase less than the noticed rent increase the rent increase shall become effective as soon as Resolution approving the Rent Decision is signed, as long as 90 days have elapsed since the rent increase was noticed, if 90 days have not yet elapsed since the rent notice the rent increase shall become effective as soon as the 90 days have elapsed. If the Rent Commission's rent increase decision is an amount greater than the amount noticed by the Park Owner the amount by which the Commission's rent decision exceeds the amount noticed will not become effective until after the tenant/homeowner has received 90 days notice of the additional rent increase amount.

- c) Tenants and Park Owner shall appoint a representative to act as a liaison with the City Staff. A letter must be timely filed with the City Clerk appointing the representative(s). Park Owner shall designate its representative no later than 35 days before the scheduled hearing, and the Tenants shall designate their representative no later than 21 days before the scheduled hearing. The designation of Tenant Representative (TR) shall include a certification by the TR that he or she was chosen by a majority of the Tenants who signed the petition described in Section 2.

SECTION 2. PETITION

- a) **If tenants object to a rent increase, rent review procedures may be initiated by circulating a petition and obtaining signatures of more than 50% of those tenants who are both subject to the rent increase and who are not on a long term lease.**
- b) The TR obtains procedural information, Ordinances, list of tenants who have received rent increases, etc. from the City Clerk Department.
- c) TR obtains a blank petition from City Clerk Department.
- d) Tenants should pre-number spaces numerically on each petition sheet.
- e) Only one person may circulate one sheet of the petition. The circulator must sign the petition. Several sheets may be circulated, but all sheets must be filed at the same time.
- f) Only those person(s) living in a space may sign the petition. Park-owned spaces are not to be included.
- g) No more than one petition may be filed for any annual rental increase.
- h) Once a petition has been filed with the City Clerk, names (signatures) cannot be withdrawn.
- i) The petition must be filed with the City Clerk no later than 30 days following the receipt of the notice of rent increase to the tenants from the Park Owner. (MC 16.16.060 (a) (4)).

EXAMPLE:

<u>Effective Date of Proposed Rent Increase</u>	<u>Date Tenants Received Rent Increase Notice</u>	<u>Date to File Petition With City Clerk</u>
July 1, Any Year	April 1, Any Year	May 1, Any Year

- j) The petition must specify the name of the park, the amount(s) or range of the proposed rent increase, and the proposed effective date of the rent increase.

SECTION 3. PROCEDURES BY CITY CLERK STAFF FOLLOWING RECEIPT OF PETITION AND PETITION ADEQUACY DETERMINATION

- a) Upon receipt of a petition, the City Clerk shall accept or reject the petition within five business days of its receipt. If **accepted**, the City Clerk shall mail a written notice to the Park Owner that a petition has been filed and that the proposed rent increase is to be held in abeyance until a hearing has been held and a decision rendered by the Commission. If the petition is **rejected**, the City Clerk shall notify the Tenant Representative of its rejection and the basis for the rejection. (M.C. 16.16.060 (b)(3)).
- b) Within five business days of receipt of the petition from the tenants, the City Clerk shall determine if the required number of tenants have signed the petition (more than 50% of affected tenants), and whether the form of the petition is in accordance with specified requirements. (MC 16.16.060(c))

- c) If the required number of tenants have signed the petition, the City Clerk then forwards the petition to the Commission for the purpose of setting a public hearing date. (M.C. 16.16.060(c)(2)).
- d) If the required number of tenants have not signed the petition, the Tenant Representative and Park Owner will be notified in writing that the petition is rejected and that the stay of the space rent increase has been terminated. (M.C. 16.16.060(c)(3)).

SECTION 4. COMMISSION HEARING - REVIEW

- a) Upon receipt of a petition, the Commission shall set a public hearing no sooner than 40 days and no later than 60 days from the date of the Commission's receipt of the petition. The date of receipt of the petition shall be the date of the regular City Council meeting at which the petition is presented to the Commission by the City Clerk.
 - 1) Continuances may be granted at the Commission's discretion.
 - 2) All parties to the hearing may have assistance of an attorney or any other person designated by the parties in presenting evidence or arguing their position.
 - 3) All witnesses called upon to give testimony at the hearing shall be sworn in, under penalty of perjury, at the beginning of the hearing by either the City Attorney or City Clerk.
- b) The City Clerk shall notify the Park Owner and Tenant Representative(s) of the scheduled Commission's public hearing date and time requirements for written submissions.

SECTION 5. NEGOTIATIONS

Prior to the date of the public hearing, the Park Owner and the Tenants shall attempt to negotiate in good faith a rent increase acceptable to both parties. Negotiations may occur during a noticed meeting between interested Tenants and the Park Owner and/or directly between the Tenant Representative and the Park Owner.

SECTION 6. COMMISSION PUBLIC HEARING PROCESS AND PROCEDURES FOR WRITTEN SUBMISSIONS BY THE PARK OWNER, THE TENANT REPRESENTATIVE AND COMMISSION STAFF

- a) This Exhibit to Resolution No. CC 2009-7274 outlines the current process and procedures for the conduct of rent review hearings and sets forth requirements for written submissions and the maximum time permitted for presentations of evidence and testimony by the park owner and tenant representative.

The Commission may in its discretion, and with the consent of the Park Owner and the Tenant, waive the procedures and utilize alternative procedures.

All parties shall file an original (single sided, 8-1/2 x 11 paper) of their written submissions with the City Clerk, and shall also serve all other parties with a copy of their submissions, in

accordance with time requirements established and outlined in these procedures. Together with any evidence to be presented, each party must submit the following at the time of their submission of written materials:

- 1) Any written declarations submitted from witnesses setting forth facts and evidence as to which said witness has personal knowledge, must include a signed verification.
- 2) One (1) copy of all exhibits, including charts, diagrams, photographs, appraisals, mathematic calculations, etc., which the parties wish the Commission to consider.
- 3) A written statement of all arguments which the proponent wishes the Commission to consider.

b) **DESIGNATION OF REPRESENTATIVE BY PARK OWNER.** The park owner shall designate the owner's representative at least 35 days before the scheduled public hearing. This designation shall be filed, in writing, with the City Clerk.

c) **DESIGNATION OF TENANT REPRESENTATIVE BY TENANTS.** The Tenant Representative must be designated by the tenants at least 21 days before the scheduled public hearing and filed, in writing, with the City Clerk. The designation of Tenant Representative shall include a certification by the Tenant Representative that he or she was chosen by a majority of the Tenants who signed the petition described in Section 2 above.

d) **WRITTEN SUBMISSIONS**

All issues that any party intends to raise must be contained in the written submissions. The schedule for making written submissions is structured so that the Park Owner makes an initial written submission as the party requesting the change. The Tenant Representative responds in writing, after having had an opportunity to review the Park Owner's submission. The Park Owner then has one opportunity to rebut, in writing, the issues and evidence submitted. The Tenant Representative then has one opportunity to rebut, in writing, the issues and evidence submitted. In the event the Commission staff has retained the services of consultant(s) to assist the Commission with the review, written evaluation and/or analysis by such consultant(s) will be included and provided to the Park Owner and the Tenant Representative as set forth in Section 9, below. Any additional evaluation or analysis by said consultant(s) shall be provided to all parties as soon as feasible, but in no event later than the posting date of the agenda for the hearing.

ALL WRITTEN SUBMISSIONS BY THE PARK OWNER AND TENANT REPRESENTATIVES MUST INCLUDE A SIGNED VERIFICATION (MADE UNDER PENALTY OF PERJURY TO THE EFFECT THAT THE CONTENTS ARE TRUE AND CORRECT) AND BE IN SUBSTANTIALLY THE FOLLOWING FORM:

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and if called upon to testify as a witness I can and will do so competently to the same effect."

Name of Declarant

Date

THE PARK OWNER'S REPRESENTATIVE , THE TENANT REPRESENTATIVE, AND THE STAFF AND/OR STAFF CONSULTANT(S) [IF APPLICABLE] SHALL SUBMIT WRITTEN MATERIALS TO THE CITY CLERK, AND CONCURRENTLY DELIVER A COPY TO EACH OTHER PARTY'S DESIGNATED REPRESENTATIVE BY CERTIFIED UNITED STATES MAIL, RETURN RECEIPT REQUESTED, OR BY PERSONAL SERVICE. EACH SUBMISSION MUST BE SERVED SO THAT THE DESIGNATED RECIPIENTS RECEIVE IT BY OR BEFORE THE DATES SET FORTH IN THIS SECTION 6.

- 1) **Park Owner initial written submission.** The Park Owner's representative shall file its original written submission with the City Clerk 35 days before the scheduled public hearing. The Park Owner's initial application shall include submission of:
 - a) A profit and loss statement for each year following the date of the last rent increase;
 - b) A maintenance and capital improvement budget for the current year;
 - c) A projected maintenance and capital improvement budget for the next (succeeding) year;
 - d) The Grant Deed or other written instrument transferring ownership of the property to the Park Owner as well as all other documentation necessary to establish the purchase price of the Park.
 - e) A cash flow analysis, excising any pass through amounts –Pass through amounts to be provided on a separate schedule;
 - f) A depreciation schedule for all capital items (i.e., equipment purchases, etc.) to be considered as a basis for the increase.

The consequence of any failure to submit required documentation or failure to abide by Mobilehome Rent Review procedural requirements by the park owner is that the application will be deemed incomplete, and the Commission may either make its determination on the basis of the information received or, if such information is not sufficiently complete to enable the Commission to conduct the hearing, it may continue the hearing and order the submission of the required documentation.

- 2) **Tenant Representative written response to Park Owner written submission.** The Tenant Representative shall file its original written response with the City Clerk 21 days before the scheduled public hearing.

The consequence of any failure to submit required documentation or failure to abide by Mobilehome Rent Review procedural requirements by the Tenant Representative is that the petition will be deemed incomplete, and the Commission may either make its determination on the basis of the information received or, if such information is not sufficiently complete to enable the Commission to conduct the hearing, it may continue the hearing and order the submission of the required documentation.

- 3) **Park Owner Rebuttal.** The Park Owner shall file its original rebuttal with the City Clerk no less than ten (10) days before the scheduled public hearing.

- 4) **Tenant Representative Rebuttal.** The Tenant Representative shall file its original rebuttal with the City Clerk no less than five (5) days before the scheduled public hearing.
- 5) **Staff Consultants Reports.** In the event the Commission staff has retained the services of consultant(s) to assist the Commission with the review, evaluation and analysis of written submissions, any written analysis by such consultant(s) will be included and provided to the Park Owner and the Tenant Representative pursuant to Section 9, below. Any additional written evaluation and/or analysis shall be provided to each party as soon as feasible, but in no event later than the posting date of the agenda for the hearing.

e) **ADDITIONAL HEARING INFORMATION**

- 1) Written submissions and declarations previously submitted to the Commission in accordance with the provisions of this Section 6 shall be received into evidence by the Commission at the hearing. Evidence properly set forth in such written submissions shall be given the same weight by the Commission as evidence produced by oral testimony at the hearing.
- 2) Only testimony and evidence introduced by the designated Park Owner, Tenant Representative, and Staff, or witnesses called upon by any of the parties, shall be heard and considered by the Commission at the hearing. At the sole discretion of the Commission, however, any other individual who has a direct interest in the issue before the Commission may be permitted to address the Commission, provided such testimony is directly related and relevant to the issue at hand.
- 3) The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be considered if it has been referenced in the written materials submitted in accordance with this Section 6, and if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. Oral testimony by persons executing the declarations shall not repeat the evidence contained in the declaration. Repetitious or irrelevant evidence may be excluded by the Commission. Each speaker's presentation shall be to the point and shall be restricted to the time limits for such testimony set forth in Section 10 below. Visual aids and other materials may be used as appropriate.

SECTION 7. COMMISSION REVIEW AND DECISION

In evaluating a proposed space rent increase, the Commission shall consider the nonexclusive factors set forth in 16.16.070(g)(1)-(7), in addition to such other factors as the Commission deems relevant. The Park Owner bears the burden of proving by a preponderance of the evidence that a proposed space rent increase is reasonable and necessary for the owner to receive a reasonable return on its investment.

The Commission determination does not have to be made by the application of any particular method or formula, so long as the substantial evidence supports its determination that the rent level approved will provide the Park Owner with a "fair return." Accordingly, the Commission may base its decision on the basis of the Maintenance of Net Operating Income

(“MNOI”) formula, historical cost, return on investment, or other formula accepted by the California courts for determination of rent review matters. The Commission shall render its final decision by resolution not later than the date of the next regularly-scheduled City Council meeting occurring at least seven (7) days from and after the date of the close of the Commission’s hearing pertaining to the petition. Upon the final decision of the Commission, a Resolution stating its findings and decision shall be presented at the next available meeting for adoption by the Commission. In its decision the Commission shall:

- 1) Continue the rental charges as they existed under the former lease or rental arrangement (rent rate prior to the proposed increase in question), or
- 2) Increase the rent to a rate set by the Commission, or
- 3) Allow the rate requested by the park owner to stand. On the effective date, all spaces which received a proposed rent increase notice shall be affected by the Commission’s decision whether or not the tenants actually signed the petition.

A Park Owner has a duty to comply with the terms and conditions of any conditional use permit, special use permit, or other land use approval, or zoning or building ordinance, relating to the amenities, facilities, maintenance, improvements or services to be provided within the mobilehome park by the Park Owner. If the Commission finds that a Park Owner fails to provide or substantially reduces the level of the amenities, facilities, maintenance, improvements or services, as established by any conditional use permit, special use permit or other land use approval or zoning of building ordinance, or if the owner fails to comply with the duties established by Section 798.87 of the California Civil Code, then the Commission may: (i) deny a proposed rent increase; (ii) decrease the rent; or (iii) conditionally approve the rent increase upon such terms and conditions as the Commission deems reasonably necessary to insure compliance with the mobilehome park owners duties and obligations. (Ord. 89-812, Sec. 5, 03-14-89)

SECTION 8. NOTICE OF DECISION

The City Clerk will mail a Notice of Decision along with the Resolution adopted by the Commission to the designated Tenant’s Representative and the designated Park Owner’s Representative within ten days after the Resolution’s adoption.

SECTION 9. SUMMARY OF SCHEDULE FOR WRITTEN SUBMISSIONS

ACTIVITY	SUBMISSION SCHEDULE (Days before hearing)
Designation of representative by Owner	35
Designation of representative by Tenants	21
Initial written submission by Owner	35
Written response of Tenant Representative	21
Written evaluation of Commission Consultant(s)	17
Written rebuttal by Owner	10
Written rebuttal by Tenant Representative	5

Notes:

This proposed schedule is structured so that the Owner makes an initial submission as the party requesting the change. The Tenant Representative responds in writing, after having had an opportunity to review the Owner's submission. The Owner then has one opportunity to rebut, in writing, the issues and evidence submitted by the Tenant Representative. The Tenant Representative then has one opportunity to rebut, in writing, the issues and evidence addressed by the Owner in its written rebuttal.

All issues that each side intends to raise must be contained in the written submission(s).

All submissions must be verified (made under penalty of perjury) and must be true and correct as of the date of the rent increase notice was issued to residents.

Owner's initial submission must contain all of the items listed in Section 6(d)(1) above.

Any additional written evaluation or analysis by consultants retained by Commission staff will be provided to the parties as soon as feasible but in no event later than the posting date of the agenda for the hearing.

SECTION 10. HEARING FORMAT

HEARING SEGMENT ¹		FORMAT (In Minutes)
1.	Owner Representative's Presentation of Evidence	30
2.	Tenant Representative's Cross-Examination of Owner Representative	15
3.	Tenant Representative's Presentation of Evidence	30
4.	Owner Representative's Cross-Examination of Tenant Representative	15
5.	Commission Staff/Consultants' Presentation of Analysis	30
6.	Owner Representative's Cross-Examination of Commission Consultants	15
7.	Tenant Representative Cross-Examination of Commission Consultants	15
5.	Testimony At Large – Total Time (as necessary)	20
6.	Commission's Examination of Witnesses at Large, including Commission Consultants (as desired)	30
7.	Commission Staff/Consultant Closing Comments, if any	10
8.	Tenant Representative's Closing Argument	10
9.	Park Owner's Closing Argument	10
TOTAL MINUTES:		230
TOTAL HOURS:		3.8 HOURS

¹ All issues that each side intends to raise must be contained in the written submissions. In addition, any written evaluation by consultants retained by the Commission staff will be provided to the other parties as set forth in Section 9, above. Any additional written evaluation or analysis by such consultants shall be provided to each party as soon as feasible but in no event later than the posting date of the agenda for the hearing. All submissions must be true and correct as of the date the rent increase notice was issued to residents and are to be verified (made under penalty of perjury), as is the case with verbal testimony during the hearing. All witnesses will be sworn in at the beginning of the hearing. Owner's initial submission must contain all of the items listed in Section 6(d)(1) above. If these required elements are not submitted, the application will be deemed incomplete, and the Commission will either make its determination on the basis of the information received or, if such information is not sufficiently complete to enable the Commission to conduct the hearing it may continue the hearing and Order the submission of the required documentation. Time periods set forth above are strongly suggested; the Chairman can extend any given time period for good cause.

City of San Marcos
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San Marcos, California 92069
(760) 744-1050

[illegible]

Executed this _____ day of _____, 20____; by _____ at San Marcos, California.