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Sec. 14.85.010. - Title. 

This article shall be cited as the Mobile Home Ordinance.

(Ord. No. 1917, § 1, 10-19-92; Ord. No. 2103, § 1, 9-15-02)

Sec. 14.85.015. - Purpose and findings. 

(a)

Mobile home tenants, unlike apartment tenants or residents of other rental stock, are in the unique position of having made a substantial investment in a residence for which space is rented or leased. Removal and/or relocation of a mobile home from a park space is not a practical alternative to accepting an excessive rent increase in that it can only be accomplished at substantial cost, and in many instances may cause extensive damage to the mobile home and loss of appurtenances such as integrated landscaping and supporting structures inconsistent with the new location. Because mobile homes are often owned by senior citizens, persons on fixed incomes, and persons of low and moderate income, exorbitant rent increases fall upon these individuals with particular harshness.

(b)

The Town Council declares that it is now necessary in the public interest to establish a means by which to resolve the occasionally divisive and harmful impasse between park owners and mobile home tenants. After consideration of numerous factors,

including the mandates of state law, regulations which best fit the needs of the Town have been selected.

(c)

Rent control regulations are consistent with the Town's policy to encourage a variety of housing types, prices and densities within the community, respond to the need to preserve existing housing stock and assist in providing housing for moderate, low, and very low income households.

(d)

Rent control regulations can assist in protecting affordable housing in combination with Town programs and actions designed to reduce costs to the consumer which help to provide a variety of housing types within a range of costs to meet the needs of all income groups.

(e)

The regulations which are set forth in this article are designed to produce stability in rent increases for mobile home park tenants while recognizing the rights of mobile home park owners to receive a just and reasonable return.

(f)

The Council finds that the adoption of the ordinance codified in this article will not have a significant, substantial or adverse effect on the physical environment of the community because enactment of this article involves no deviation from the general plan and no change in the present use of any property within the Town.

(Ord. No. 1917, § 1, 10-19-92; Ord. No. 2103, § 1, 9-15-02)

Sec. 14.85.020. - Definitions.

For the purposes of this article, unless otherwise apparent from the context, certain words and phrases used in this article are defined as follows:

(a)

Arbitrator. An individual designated by the Town's agent to conduct the arbitration hearing and arbitration pre-hearing procedures of this article.

(b)

Affected tenants. All mobile home tenants in a mobile home park who have been notified by the park owner that a rent increase is to become effective during the following calendar year, or who experience a service reduction.

(c)

Capital improvements. The installation of new improvements and facilities or the replacement or reconstruction of existing improvements and facilities which consist of more than ordinary maintenance or repairs.

(d)

Consumer price index (CPI). The consumer price index for all urban consumers for the San Francisco/Oakland/San Jose Area (all items) index (1967 equals 100) as reported by the U.S. Bureau of Labor Statistics.

(e)

CPI rent increase. An annual rent increase equal to the amount of increase in the CPI in the previous twelve (12) months up to five (5) percent, and not less than three (3) percent.

(f)

Housing services. Those services provided and associated with the use or occupancy of a mobile home space, including but not limited to repairs, insurance, maintenance, replacement, painting, light, heat, water, laundry facilities and privileges, refuse removal, parking, recreation facilities, security service and any other benefits, privileges or facilities.

(g)

Mediator. An individual designated by the Town's agent to conduct the mediation procedures set forth in this article.

(h)

Mobile home. A structure designed for human habitation which is transportable in one (1) or more sections along a street or highway, commonly referred to as a mobile home. This definition includes manufactured homes when located on a mobile home space.

(i)

Mobile home owner or tenant. Any person owning a mobile home who has a tenancy or right of use or occupancy of a mobile home space in a mobile home park.

(j)

Mobile home park. An area of land where two (2) or more mobile home spaces are rented, or held out for rent, or made available for use, to accommodate mobile homes used for human habitation.

(k)

Mobile home space or space. The site within a mobile home park intended, designed, or used for the location or accommodation of a mobile home and any accessory structures or appurtenances attached thereto or used in conjunction therewith where public utilities are provided.

(l)

Owner or mobile home park owner. The owner, lessor, operator or manager of a mobile home park in the Town.

(m)

Owner's petition. A petition filed by an owner seeking a supplemental rent increase.

- (n) *Rental agreement or lease.* An agreement entered into between the park management or owner and a mobile home tenant establishing the terms and conditions of a mobile home park tenancy.
- (o) *Service reduction.* Any reduction in housing services which results in a cost savings to owner without a corresponding reduction in the monies demanded or paid for space rent.
- (p) *Space rent.* The total consideration, including any bonus, fees, surcharges, benefits or gratuity demanded or received in connection with the use or occupancy of a mobile home space in a mobile home park, or for housing services provided, and security deposits, but exclusive of any amount paid for the use of the mobile home as a dwelling unit.
- (q) *Space rent increases.* Any additional rent above the base space rent which is demanded of or paid by a tenant for a mobile home space including service reductions.
- (r) *Supplemental rent increase.* An increase in space rent in excess of the annual CPI Rent Increase, determined by the arbitrator to result in a fair and reasonable return to the owner.
- (s) *Tenant's petition.* A petition filed by one (1) or a group of affected tenants.
- (t) *Town's agent.* The individual or agency designated by the Town Council to perform the services defined herein.
- (u) *Validated tenant's petition.* A tenant's petition filed by one (1) or a group of affected tenants that meets the statutory requirements of this article.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § I, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.025. - Exceptions to article provisions; partial vacancy decontrol. 

The provisions of this article shall not apply to the following:

- (a) Space rent or space rent increases during a thirty-day period commencing upon the completion of a new mobile home space or mobile home space first rented after December 1, 1992.

(b)

Nothing in this article shall operate to restrict the rights of tenants and owners who have entered into agreements providing for a fixed term and/or a fixed rent for mobile home tenancies, beyond a twelve-month duration.

(c)

Nothing in this article shall operate to restrict the rents charged by mobile home park owner in the case of voluntary termination, abandonment of a mobile home in place, removal as a result of dealer or real estate broker/agent pull out, eviction, or sale of a mobile home owned by the mobile home park owner.

(d)

In the case of an in-place sale of a mobile home, except those that qualify as a family transfer under the California State Mobile Home Residency Code, the initial space rent to be charged the new mobile home tenant may be increased as follows:

| Year | Rents Raised to the Greater of the Two Alternatives. |
|------|---|
| 2000 | \$488.00 or seller's rent + \$25.00 |
| 2001 | \$488.00 + CPI rent increase or seller's rent + \$25.00 |
| 2002 | \$488.00 + 2001 CPI rent increase + 2002 CPI rent increase or seller's rent + \$25.00 |

CPI rent increase is calculated by applying the annual CPI rent increase to the \$488.00. The CPI rate is per the data most recently available when calculated. The CPI increase applied in this table will be for each year from 2001 to the current year.

Increases for subsequent years are calculated in the same manner.

Increases are calculated in October of each year.

(e)

In all cases when a mobile home is replaced, except as stated in (c), above, the rent upon the first resale following replacement will increase one hundred dollars (\$100.00) over the rent calculated in (d) in the year the sale occurs.

(f)

In all cases when a mobile home is replaced, except as stated in (c), above, the rent upon the first resale following replacement will increase one hundred dollars (\$100.00) over the rent calculated in (d) in the year the sale occurs.

(Ord. No. 1917, § 1, 10-19-92; Ord. No. 2075, § 1, 11-20-00; Ord. No. 2103, § 1, 9-15-02)

Sec. 14.85.030. - Regulatory fee.

For the sole purpose of reimbursing the Town for the costs of administering this article, there is hereby imposed on each mobile home space, subject to the provisions of this article, a regulatory fee in such amount as established by the Council by resolution from time to time which shall be paid annually when the mobile home park owner's business license

fee is due. A mobile home park owner who fails to pay the fee within thirty (30) days after the Town mails its bill shall pay a twenty-five (25) percent penalty, plus an additional twenty-five (25) percent for every additional thirty (30) days the fee and penalties are not paid, and shall not be entitled to any rent increase until the full fee and penalties are paid. The Town Manager shall report to the Council in time for budget hearings each year the recommendation as to the amount of the regulatory fee necessary to recover such costs.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.035. - Violation; penalty.

(a)

Criminal penalty. No person shall demand, accept, receive or retain any rent in excess of the amounts allowed under this article. Any person may file a complaint regarding an alleged violation of this article with the Town's agent. The Town Attorney is authorized, in his/her discretion, to investigate and prosecute any such complaints. Any person found to have demanded, accepted, received or retained any rent in excess of the amounts allowed under this article is guilty of a misdemeanor. It shall also be a violation of this article for any person to evict or otherwise take retaliatory action against any tenant for exercising any rights afforded under this article. Any person violating this anti-retaliatory provision shall be guilty of a misdemeanor.

(b)

Civil action. Any person who demands, accepts, or retains any payment of rent, in violation of the provisions of this article shall be liable in a civil action to the person from whom payment is demanded, accepted or retained, for damages in the sum of three (3) times the amount by which payment exceeds the maximum rent which could lawfully be demanded, accepted or retained. Any person who evicts or otherwise takes retaliatory action against any tenant for exercising any rights afforded under this article shall be liable to that tenant for the resulting civil damages.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.040. - Waiver of rights.

(a)

Any tenant's waiver or purported waiver of rights under this article, prior to the time when said rights may be exercised, shall be void as contrary to public policy, except as provided in this section.

(b)

It shall be unlawful for an owner to require or attempt to require, as a condition of tenancy in a mobile home park, a tenant, or prospective tenant to waive in a lease or rental agreement, the rights granted to a mobile home tenant by this article.

(c)

It shall be unlawful for an owner to deny or threaten to deny a tenancy in a mobile home park to any person on account of such person's refusal to enter into a lease or rental agreement or any other agreement under which such person would waive the rights granted to a tenant by this article.

(d)

Nothing in this section shall preclude an owner or tenant, or prospective tenant, from entering into a lease or rental agreement described in [section 14.85.025](#) provided that such lease or rental agreement is not procured by a requirement that it be entered into as a condition of tenancy in the mobile home park, and is not procured under a threat of denial of tenancy in the mobile home park.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.045. - Permissible reasons for eviction.

A tenant may refuse to pay any rent in excess of the maximum rent established pursuant to this article. The fact that the unpaid rent is in excess of the maximum rent shall be a defense in any action brought to recover possession of a mobile home space for nonpayment of rent or to collect the illegal rent.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.050. - Extension of time; mutual agreement.

By written agreement of the parties or upon application to the arbitrator and for good cause shown, the time frames provided for under this article may be extended.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § II, 5-24-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.055. - Duty of owner to provide copy of article and rental data.

(a)

It shall be the duty of every owner to provide a copy of this article to each tenant who rents or leases a space from the owner. A single copy will be provided each owner by the Town for reproduction by the owner.

(b)

All mobile home park owners shall cause documentation of the rent charged for each space in December 1985 and December 1992 to be filed with the Town's agent by February 1, 1993. By February 1 of each year thereafter, the mobile home park owner will document and file with the Town's agent the rent charged in December of the previous year, for each space occupied by a tenant-owned home.

(c)

Any owner that fails to provide the information required by this section shall not be entitled to any rent increase until the information is provided. The failure of one (1) or more owners to provide the information shall not adversely affect the rights of any

other owner or tenant of the other owner to the procedures and processes provided by this article. Any information so missing shall either be ignored or estimated by the Town or arbitrator, as applicable, so as to achieve the purposes of this article.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § III, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.060. - Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such decision shall not effect the validity of the remaining portion thereof.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

DIVISION 2. - MOBILE HOME HEARING PROCESS

Sec. 14.85.100. - Hearing process—Established.

Sec. 14.85.105. - Space rent increase—Notice.

Sec. 14.85.110. - Same—Limit on annual increases.

Sec. 14.85.115. - Same—Hearing required for supplemental rent increase.

Sec. 14.85.120. - Hearing process—Submission of owner's petition.

Sec. 14.85.125. - Same—Submission of tenant's petition.

Sec. 14.85.130. - Petitions—Form.

Sec. 14.85.135. - Same—Time for filing.

Sec. 14.85.140. - Space rent increase; effective when.

Sec. 14.85.145. - Hearing—Procedures.

Sec. 14.85.150. - Same—Arbitrator's fee.

Sec. 14.85.155. - Same—Conduct.

Sec. 14.85.160. - Same—Determination.

Sec. 14.85.165. - Hearing; determination; notification.

Sec. 14.85.170. - Increase determined not reasonable; remedies.

Sec. 14.85.175. - Determination; applicability.

Sec. 14.85.180. - Determination and appeal.

Sec. 14.85.100. - Hearing process—Established.

There is established the mobile home rental dispute hearing process.

(Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.105. - Space rent increase—Notice.

(a)

The mobile home park owner shall notify all affected tenants of any rent increase scheduled to take place during the following calendar year. All notices shall be given at least ninety (90) days prior to the effective date of the rent raise on or about the same calendar day each year. The purpose of this requirement is to avoid the possibility of multiple disputes over rent increases for the same park within a given year. (This requirement does not apply to increases pursuant to leases identified in [section 14.85.175.](#))

(b)

Any notice of space rent increase shall include notice of the tenant's right to participate in the rent review process and shall provide the business address and telephone number of the Town's agent.

(c)

The park owner shall, upon written request, provide each affected tenant with a list of all tenants with their respective space numbers who received a notice of rent increase.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § IV, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.110. - Same—Limit on annual increases.

The space rent of any mobile home space may not be increased more than once in any twelve-month period, except as provided in [section 14.85.025.](#)

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.115. - Same—Hearing required for supplemental rent increase.

Except as provided in this article, any space rent increase after December 6, 1992, that exceeds the CPI rent increase as defined in [section 14.85.020](#) (e) of this article shall be deemed a supplemental rent increase and shall be subject to review under the hearing process.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.120. - Hearing process—Submission of owner's petition.

Any owner who seeks a supplemental rent increase shall notify all affected tenants in writing of the amount of the supplemental increase over the allowable rent increase, reasons

for the requested supplemental increase, results of the Net Operating Income calculations, and/or explanation of capital improvement costs related to the supplemental rent increase request. It shall also set forth the time requirements for filing the tenant petition, the number of required signatures, and the mailing address and contact telephone number for the Town's agent. This notice shall be submitted to the Town's agent and serve as the owner's petition. Blank petitions for tenants opposing the supplemental rent increase shall also be provided with this petition and included in the notice sent to all tenants.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.125. - Same—Submission of tenant's petition. 

(a)

Submission of tenant's petition disputing supplemental rent increase. Any tenant who wishes to limit any rent increase may file a tenant's petition with the Town's agent within thirty (30) days of receiving a notice of supplemental rent increase. To be a validated petition it must be supported by at least twenty (20) percent of the affected tenants as determined by the petitions delivered to the Town's agent. The sole basis for such a petition shall be to request a reduction in a supplemental rent increase petition filed by owner.

(b)

Submission of tenant's petition for a reduction in service. A tenant who wishes to reduce any current rents on the basis of a reduction in service may file a petition with the Town's agent. Upon receipt, the Town's agent shall send a ballot to each affected tenant to determine his/her support for the petition. To be a validated petition it must be supported by at least twenty (20) percent of the affected tenants as determined by the ballots returned to the Town's agent within twenty (20) days of receipt of the ballot by tenant. The sole basis for such a petition shall be to compensate for a reduction in service as provided in division 4 of this article. Before filing a tenant's petition, written notice of the alleged service reduction and a reasonable opportunity to restore service must be given to the mobile home park owner.

(c)

If a group of tenants seeks review, the affected tenants shall designate in writing to the Town's agent an individual to serve as the tenant representative for the purposes of receipt of all notice, correspondence, decisions and findings of fact required in this article, within ten (10) days of notice to affected tenants by the Town's agent of a validated tenant petition. The tenants, if they desire, may also designate more than one representative to serve as co-representatives or backup representatives. Service of notice upon the designated tenant representative will constitute adequate and sufficient notice to tenants who submitted petitions or ballots supporting a petition. Failure to designate a tenant representative within ten (10) days of notice by Town's agent that sufficient petitions have been received to proceed with this process will

render the petition incomplete and the petitions will be dismissed. The tenant representative or representatives shall be responsible for making reasonable efforts to communicate with the affected tenants to inform them regarding the status of the case and substantive proposals from the park ownership. Any ratification of a settlement proposal or any other decision determining the outcome of this process shall remain the prerogative of the affected tenants. The designated tenant representative or representatives shall, in consultation with Town's agent, conduct ratification votes or other similar processes to permit the affected tenants to make these decisions.

(d)

A tenant's petition may include a request for audit and Net Operating Income (NOI) analysis for the preceding three (3) years; however, no such tenant-requested audit and analysis may be required more frequently than once in every three (3) year period. The auditor shall be selected by Town or its agent. The cost of such audit and analysis shall be paid by the Town from the regulatory fees collected. The full audit shall be confidential and presented to the arbitrator only. A summary, including at least income and expenses by account and NOI analyses, shall be prepared by the auditor or designate and presented to the mobile home park owner and tenant representative. Disclosure of any information not included in the summary shall be disclosed only as deemed necessary in the exclusive discretion of the arbitrator.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § V, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.130. - Petitions—Form.

(a)

The form of the owner's and tenant's petition shall be prescribed by the Town's agent and must be accompanied by supporting material as prescribed by the Town's agent. An owner's petition shall contain the printed name and address (i.e. space number) of each tenant whose rent is being increased. Appended to the petition shall be a copy of the notice given by the park owner which indicated the date it was served. Appended to the tenant's petition alleging service reduction shall be a copy of the tenant's notice to the mobile home park owner of that service reduction. The petition shall be made under penalty of perjury and supporting documents shall be certified or verified as requested by the Town's agent.

(b)

All petitions received by Town's agent concerning similar issues at the same mobile home park will be merged at the Town agent's discretion.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § VI, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.135. - Same—Time for filing.

An owner's petition must be filed at least ninety (90) days before the first effective date of the increase stated in the notice/petition to tenant. A tenant's petition disputing a proposed supplemental rent increase must be filed within thirty (30) days after receiving a notice of supplemental rent increase. A tenant's petition alleging a service reduction must be filed within ninety (90) calendar days after expiration of the reasonable time given to the mobile home park owner to restore services.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § VII, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.140. - Space rent increase; effective when.

If an owner's petition is filed, the supplemental increase shall not take effect until the date specified on the petition or until a negotiated/arbitrated supplemental increase is agreed to during the hearing process, whichever is later.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.145. - Hearing—Procedures.

(a)

Parties. Parties to an owner's petition and a tenant's petition disputing a supplemental increase include the owner and all tenants affected by the proposed rental increase. Parties to a tenant's petition for service reduction include the owner and signatories of the petition or ballots.

(b)

Timing of meetings.

(1)

Tenant's petition disputing supplemental increase. Upon receipt of sufficient valid petitions by tenants disputing a supplemental rent increase, the time of the hearing process shall be as follows:

a.

Within ten (10) days of selection of a tenant representative(s) as provided for in [section 14.85.125](#) (c) of this article, the owner and tenant representative(s) shall hold a joint meeting to determine whether the parties can resolve the rent increase issue prior to mediation or arbitration. The parties may request supportive conciliation input from the Town's agent. The mobile home park owner shall set a time and place for a meeting to be held on the mobile home park premises, giving the tenant spokesperson(s) at least seven (7) days' written notice of the time and place.

b.

If the parties have not resolved the dispute within ten (10) days after the joint meeting specified above in subparagraph a., the Town's agent shall set the case for a mediation session. The mediation session shall be held within twenty (20) days of the notice from the Town's agent, unless all parties agree in writing to extend the deadline. The specific procedures for the mediation process shall be those set forth in [section 14.85.415](#) of this article.

c.

If the mediation session fails to resolve this dispute, the mediator shall issue a declaration of impasse. Any party seeking arbitration of the dispute, must file a written request for arbitration with the Town's agent within ten (10) days of the notice of impasse. The actual arbitration hearing, will be held within thirty (30) days of the written request for arbitration, or as soon thereafter as is administratively possible to do so.

(2)

Tenant's petition alleging service reduction. Within thirty (30) days from the date a validated tenant's petition is received by the Town's agent per [section 14.85.125\(b\)](#), the same procedures set forth above in subparagraph (1) shall apply.

a.

Notice for arbitration hearing. The Town's agent shall mail written notice to all parties at least fourteen (14) calendar days before the hearing.

b.

Extensions. Extensions of time for the hearing process may be mutually agreed upon by both parties with the concurrence of the arbitrator.

c.

All evidence, briefs, or other submittals prepared by the parties for presentation at the arbitration hearing shall be served on the arbitrator and the opposing party or parties at least five (5) days prior to the date set for the arbitration hearing. The arbitrator shall decide any pre-hearing motions to exclude evidence or to continue a scheduled hearing, to issue a subpoena, or to address any other pre-hearing issues. Any such motions or other requests shall be served on the opposing party or parties at the same time they are submitted to the arbitrator. Upon a request from a party or parties, the arbitrator shall have the power to issue a subpoena for testimony at the hearing. Upon a request from a party or parties with a showing of

good cause, the arbitrator shall have the power to issue a subpoena for the production of documents either at the hearing or prior to the hearing.

d.

The arbitrator shall have the power to continue a hearing date upon a showing of good cause.

e.

At the arbitration hearing, the tenant representative or representatives will present the case on behalf of the affected tenants either directly or through a designated representative or legal counsel. The owner will present the case on behalf of the owner either directly or through a designated representative or legal counsel. The arbitrator shall have the authority to determine who else may attend the hearing, based on the principles that the affected tenants should be permitted to attend, and that members of the public should have the opportunity to attend, but that the arbitrator retains the authority to maintain sufficient order and decorum to hear the case in a conducive environment.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § VIII, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.150. - Same—Arbitrator's fee.

The Town shall pay the arbitrator's fee from the regulatory fees.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.155. - Same—Conduct.

The hearing shall be conducted by an arbitrator, appointed as a result of the following procedure. The parties will be provided with a list of potential arbitrators with a minimum of three (3) choices. Each party will be given an opportunity to strike at least one (1) name from the list within seven (7) days after receiving the list. The Town's agent shall appoint the arbitrator from the remaining name or names. Subject to the requirements of [section 14.85.145](#), the arbitrator shall determine the admissibility of all evidence based on whether the evidence is relevant to any issue necessary to determine the petition or petitions at issue.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.160. - Same—Determination.

(a)

Owner's petition. Based upon the evidence presented at the hearing, the arbitrator shall determine the extent to which the proposed supplemental rent increase is

reasonable, in accordance with the factors set forth in [section 14.85.200](#). The burden of proof regarding such reasonableness shall be on the owner unless otherwise indicated.

(b)

Tenant's petition. Based upon the evidence presented at the hearing, the arbitrator shall determine if a service reduction has occurred and the monetary value thereof. The burden of proof to establish a service reduction and its monetary value shall be on the person or persons alleging reduction.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § IX, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.165. - Hearing; determination; notification.

Within twenty (20) days following the conclusion of the hearing, the arbitrator shall deliver to the Town's agent a written statement of determination and findings of fact upon which such determination is based. Such determination shall include validation, refutation, or correction of any NOI or other calculations which represent a fundamental element of the supplemental rent increase request or service reduction allegation. The Town's agent shall cause copies of the determination and the findings to be mailed by regular first class mail to all parties.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § X, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.170. - Increase determined not reasonable; remedies.

Any rent increases collected by a mobile home park owner pursuant to a CPI or supplemental increase, or which are subject to a service reduction, which are determined to be unjustified by a final settlement agreement or arbitrator's award, shall, within ninety (90) days of said settlement or determination be refunded to the affected tenants or if not refunded during said period, credited against all rent otherwise immediately due thereafter until fully offset, unless specified otherwise in the settlement or arbitration award. Any rental increase which has not been collected during the pendency of a rental increase or service reduction case and which is determined by a final settlement or arbitrator's award to be justified shall be due and payable from all affected tenants within ninety (90) days after said settlement or award, unless specified otherwise in the settlement or arbitration award.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § XI, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.175. - Determination; applicability.

The determination made under the provisions of this article shall be effective with respect to all affected mobile home park spaces, unless the tenant of such space has a written lease which meets the criteria of Civil Code Section 798.17, with the owner which otherwise sets forth the rights and obligations of the parties with respect to rent.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § XII, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.180. - Determination and appeal. 

The determination of the arbitrator shall be final. Any party disputing the determination and findings may seek review pursuant to Sections 1094.5 and 1094.6 of the California Code of Civil Procedure. Section 1094.6 expressly applies to proceedings under this article.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § XIII, 5-2-94; Ord. No. 2103, § I, 9-15-02)

DIVISION 3. - CRITERIA FOR EVALUATING REASONABLENESS OF SUPPLEMENTAL RENT INCREASES 

Sec. 14.85.200. - Determination of reasonableness.

Sec. 14.85.205. - Fair return rent increases.

Sec. 14.85.210. - Presumption of fair base year net operating income.

Sec. 14.85.215. - Base year.

Sec. 14.85.220. - Determination of base year Net Operating Income.

Sec. 14.85.225. - Rebuttal of fair Net Operating Income presumption.

Sec. 14.85.230. - Determination of Net Operating Income.

Sec. 14.85.235. - Calculation of gross income.

Sec. 14.85.240. - Calculation of operating expenses.

Sec. 14.85.245. - Fair and reasonable return.

Sec. 14.85.250. - Determination of allowable supplemental rent increase.

Sec. 14.85.200. - Determination of reasonableness. 

In determining the reasonableness of a supplemental rent increase, the arbitrator shall consider this article's purpose to permit mobile home park owners a just and reasonable return while protecting tenants from arbitrary, capricious or unreasonable rent increases. The arbitrator shall consider the following factors:

- (a) Fair rent return (Net Operating Income Approach set out below).
- (b) Changes in the consumer price index.
- (c)

The rent lawfully charged for comparable mobile home spaces in the Town of Los Gatos.

(d)

The history of rent increases in the previous five (5) years.

(e)

The completion of any capital improvements, maintenance, or rehabilitation, the cost thereof, including cost of materials, labor, construction interest, permit fees, and other items as the arbitrator deems appropriate. These costs will be limited to an amount equal to the annual depreciation expense as allowed in [section 14.85.240](#). Once the capital improvement has been fully depreciated, such expenses shall be excluded from the calculation of net operating income.

(f)

Changes in property taxes or other taxes related to the mobile home park.

(g)

Changes in the utility charges for the mobile home park paid by the mobile home park owner and the extent, if any, of reimbursement from the tenants.

(h)

Changes in reasonable operating and maintenance expense.

(i)

The need for repairs caused by circumstances other than ordinary wear and tear.

(j)

The amount and quality of services provided by the mobile home park owner to the affected tenant including the value of service reductions, as determined by division 4 of this article.

(Ord. No. 1917, § 1, 10-19-92; Ord. No. 2103, § 1, 9-15-02)

Sec. 14.85.205. - Fair return rent increases.

It is expected that the CPI rent increase will provide the owner with a fair and reasonable return. However, in the event that the CPI rent increase does not provide the owner with a fair and reasonable return, the owner may request a supplemental rent increase.

(Ord. No. 1917, § 1, 10-19-92; Ord. No. 2103, § 1, 9-15-02)

Sec. 14.85.210. - Presumption of fair base year net operating income.

For the purposes of determining the rent increase necessary to provide the owner with a fair and reasonable return, it shall be presumed that the Net Operating Income, as described below, provided the owner with a fair and reasonable return in the base year.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.215. - Base year.

(a)

Except as provided in subsection (b) of this section, base year means the calendar year 1985.

(b)

For spaces which were exempt from the provisions of this article pursuant to a rental agreement as described in [section 14.85.025\(b\)](#) and which are subject to the provisions of this article because of the expiration or other termination of such rental agreement, base year means the last twelve (12) months of the term of the rental agreement.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.220. - Determination of base year Net Operating Income.

The base year Net Operating Income shall be determined by calculating the NOI per space in the base year for each Los Gatos mobile home park and averaging them.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.225. - Rebuttal of fair Net Operating Income presumption.

Evidence to rebut the presumption of fair and reasonable return based upon the Base Year NOI may be presented during hearing on a petition and the arbitrator may adjust the Base Year NOI upon making at least one (1) of the following findings:

(a)

The owner's operating expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating operating expenses so the base year operating expenses reflect average expenses for the property over a reasonable period of time. The arbitrator shall consider the following factors in making this finding:

(1)

Extraordinary amounts were expended for necessary maintenance and repairs.

(2)

Maintenance and repair were below accepted standards and caused significant deterioration in the quality of services provided.

(3)

Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.

(b)

The owner's operating expenses in the base year inadvertently omitted expenses actually paid, or include improper expenses.

(c)

The gross income during the base year was disproportionate. In such instances, adjustments may be made in calculating gross income consistent with the purposes of this article. The arbitrator shall consider the following factors in making this finding:

(1)

The gross income during the base year was lower than it might have been because some tenants were charged reduced rent.

(2)

The gross income during the base year was significantly lower than normal because of the destruction of the premises and/or temporary eviction for construction or repairs.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.230. - Determination of Net Operating Income.

(a)

The Net Operating Income for the base year shall be determined by:

(1)

Determining the annualized gross income by totalling the rents collected during the base year per [section 14.85.235](#)

(2)

Determining the operating expenses during the base year per [section 14.85.240](#)

(3)

Subtracting the operating expenses from the annualized gross income.

(b)

The NOI for years other than the base year shall be determined by:

(1)

Determining the annualized gross income by totalling the rents for the twelve-month period ending within ninety (90) days prior to the notice of a rent increase or service reduction ("the relevant year").

(2)

Determining the operating expenses during the relevant year.

(3)

Determine annualized park NOI by subtracting operating expenses from annualized gross income.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.235. - Calculation of gross income.

(a)

For the purposes of determining the Net Operating Income, Gross Income shall be the sum of the following:

(1)

Gross rents calculated as gross rental income at one hundred (100) percent occupancy of all spaces, adjusted for uncollected rents as provided in subsection (b) of this section;

(2)

Income from any laundry facilities and parking fees;

(3)

Costs of utilities paid directly to the owner by the mobile home tenants;

(4)

All other income or consideration received or receivable in connection with the use or occupancy of the mobile home space including the regulatory fee required by [section 14.85.030](#); and

(5)

Proceeds from a sale of a mobile home park asset which exceed the book value of the asset. If an asset is conveyed from the mobile home park to another entity via a non-sales transaction, then, for this subparagraph, the transaction would be considered a sale and the sales price would be set at the fair market value of the asset.

(b)

Gross rents shall be adjusted for uncollected rents due to vacancy of mobile home spaces and bad debts to the extent such are beyond the control of the owner. No such adjustment shall be greater than three (3) percent of gross rents unless justification for a higher rate is demonstrated by the owner.

(c)

Gross income shall not include rent from mobile homes owned by the park owner which exceeds the average space rent. It shall be deemed that the rent for spaces occupied by mobile homes owned by the park owner or vacant spaces is equal to the average space rent of all other occupied spaces in the park. This rent shall be included in the gross rents as calculated in subpart (a)(1) above.

(Ord. No. 1917, § 1, 10-19-92; Ord. No. 1973, § XIV, 5-2-94; Ord. No. 2103, § 1, 9-15-02)

Sec. 14.85.240. - Calculation of operating expenses.

(a)

For the purposes of determining Net Operating Income, operating expenses shall include the following:

- (1) Costs of operation and maintenance.
- (2) Utility costs to the extent they are not included in costs of operation and maintenance.
- (3) Owner performed labor compensated at reasonable hourly rates.
 - a. No owner performed labor shall be included as an operating expense unless the owner submits documentation showing the date, time, and nature of the work performed.
 - b. There shall be a maximum allowed under this provision of five (5) percent of gross income unless the owner shows greater services were performed for the benefit of the tenants.
- (4) License, registration fees, and the regulatory fee required by [section 14.85.030](#) as required by law to the extent not otherwise paid by the residents.
- (5) Expenses of capital improvements (either improvements to existing capital items or acquisition of additional fixed assets) where all of the following conditions are met:
 - a. The capital improvement is made at a direct cost of not less than five thousand dollars (\$5,000.00).
 - b. The costs, less any insurance proceeds or other applicable recovery, are averaged on a per space basis for each space actually benefited by the improvement. Infrastructure improvements shall be deemed a benefit to all park tenants unless a mobile home or group of mobile homes receive a higher level of service as a result of the improvement, in which case, costs will be apportioned on a pro rata basis.
 - c. The expense is limited to one-fifth (1/5) of the cost of the capital improvement or the annual depreciation as calculated by generally accepted accounting principles of the capital improvement whichever is less.

d.

The costs do not include any additional costs incurred for property damage or deterioration resulting from unreasonable delay in the undertaking or completion of any repair or improvement.

e.

If a capital improvement is removed from service, then the related depreciation shall discontinue accrual to operating expenses.

Depreciation for a capital improvement shall also discontinue accrual to operating expenses when the book value of the capital improvement is reduced to the salvage value or zero, whichever is greater.

(6)

Operating expenses as calculated by this section are to include repair and maintenance work on all spaces up to and including the utility pedestal. In the event gross rents are reduced by greater than the three (3) percent reduction cap allowed in subsection [14.85.235](#) (b), then a pro rata portion of the expenses will be reduced unless park owner can demonstrate that park has continually made a good faith effort to rent spaces at no more than market rental rates. All repair and maintenance on any spaces beyond the utility pedestal are not to be included in operating expenses.

(b)

Operating expenses shall not include the following:

(1)

Mortgage principal or interest payments or other debt service costs and park lease costs.

(2)

Any penalties, fees or interest payments or other debt service costs and park lease costs.

(2)

Any penalties, fees or interest assessed or awarded for violation of any provision of this article or of any other provision of law.

(3)

Legal fees except as specified in subsection (c) of this section.

(4)

Political contributions.

(5)

Any expenses for which the owner has been reimbursed by any utility rebate or discount, security deposit, insurance settlement, judgment for damages, settlement or any other method or device.

- (6) Costs arising from operation and maintenance, improvement, and acquisition of mobile homes owned by the park owner.
- (7) Expenses of a capital improvement after the improvement is fully depreciated.
- (8) Rehabilitation costs resulting from a work order issued by a public agency unless to correct conditions caused by a natural disaster.

(c) Legal expenses allowed in the calculation of operating expenses shall include: attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, and legal expenses necessarily incurred in the normal operation of the park to the extent such expenses are not recovered from adverse or other parties. Attorneys' fees incurred in relation to the administrative or judicial proceedings in connection with this article are not allowable as operating expenses.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § XV, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.245. - Fair and reasonable return.

An owner has a fair and reasonable return when the owner's relevant year NOI is equal to the amount required for the owner to maintain the base year NOI adjusted annually by the consumer price index, plus increases allowed by vacancy as set forth in [section 14.85.025\(d\)](#).

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.250. - Determination of allowable supplemental rent increase.

- (a) The arbitrator shall set the amount of any supplemental rent increase in an amount not to exceed that required to provide the owner with a fair and reasonable return.
- (b) In determining the supplemental rent increase required to provide the owner with a fair and reasonable return, the arbitrator shall determine:
 - (1) The fair and reasonable return in accordance with [section 14.85.245](#)
 - (2) The gross income required to produce the fair and reasonable return.
 - (3) The rent increase needed to produce the required gross income.

(c)

Rent increases based upon costs of capital improvements shall apply only to those spaces benefited by the capital improvements in accordance with section 14.85.240(a)(5)b.

(d)

Rent increases based upon increased operating expenses shall apply only to those spaces for which such increased operating expenses were incurred.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

DIVISION 4. - CRITERIA FOR DETERMINING SERVICE REDUCTION

Sec. 14.85.300. - Basic service level.

Sec. 14.85.305. - Service reductions.

Sec. 14.85.310. - Allegations of service reductions.

Sec. 14.85.315. - Determining value of unreasonable service reductions.

Sec. 14.85.320. - Conclusive evidence of service reduction.

Sec. 14.85.300. - Basic service level.

The mobile home park owner is required to furnish to the tenant a basic level of housing services, herein called the "basic service level". The basic service level is established by:

(a)

Civil Code Section 1941.1 and 1941.2 and other applicable codes and statutes;

(b)

The mobile home park owner's implied warranty of habitability;

(c)

Express or implied agreement between mobile home park owner and tenant;

(d)

The condition of improvements, fixtures and equipment considering;

(1)

- The nature and quality of original construction, fixtures, and equipment;
- (2) The age;
- (3) The condition at the beginning of the tenancy;
- (e) The mobile home park owner's policies of operation and maintenance, repair and replacement communicated to the tenant at the beginning of the applicable term of tenancy.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.305. - Service reductions.

A service reduction occurs when the mobile home park owner has breached the obligation to furnish the basic service level impairing the tenant's use of the premises.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.310. - Allegations of service reductions.

Each allegation of a service reduction in a tenant's petition shall be separately stated and include:

- (a) The prior level of service;
- (b) The specific changes in the prior level of service;
- (c) The date the service reduction was first noticed by the tenant;
- (d) The cause of reduction of service level, if known;
- (e) The mobile home park owner's response to the tenant's notice;
- (f) The mobile home park owner's effort to improve or correct the service reduction;
- (g) The status as of the date the petition is filed.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.315. - Determining value of unreasonable service reductions.

The arbitrator shall determine the monetary value to be assigned to a service reduction by applying the following standards:

(a)

The arbitrator shall determine the percentage reduction in usability of the mobile home space and common areas caused by the service reduction considering:

(1)

The area affected;

(2)

The amount of time the tenant is exposed to the condition;

(3)

The degree of discomfort the condition imposes;

(4)

The extent to which such a condition causes tenants to find the premises uninhabitable.

(b)

The date reduction in service began.

(c)

The arbitrator shall apply the percentage reduction to the monthly rent, divide by thirty (30), and multiply by the number of days commencing from the date service reduction began to the date of restoration of the service to the basic service level.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § XVI, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.320. - Conclusive evidence of service reduction.

The results of an audit, prepared pursuant to [section 14.85.125](#), which demonstrate that a mobile home park owner's three-year average NOI exceeds a fair and reasonable return, as defined by [section 14.85.245](#), by more than eight (8) percent, shall be conclusive evidence of a service reduction. In such an event, rents shall be reduced to result in a NOI not to exceed eight (8) percent more than a fair and reasonable return.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

DIVISION 5. - RESOLUTION OF NON-RENTAL DISPUTE

[Sec. 14.85.400. - Resolution of non-rental disputes.](#)

[Sec. 14.85.405. - Unsupervised efforts of the parties.](#)

[Sec. 14.85.410. - Conciliation.](#)

Sec. 14.85.415. - Mandatory mediation.

Sec. 14.85.400. - Resolution of non-rental disputes. 

This division is provided to enable tenants and park owners to resolve disputes when there is no concurrent issue concerning increase in or the amount of rent. If at any time while the non-rental dispute remains unresolved there is a rent dispute, then the non-rental dispute issues shall be resolved separately in accordance with this section and shall not be consolidated with the rent dispute proceeding.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.405. - Unsupervised efforts of the parties. 

(a)

Notice of objection. One (1) or more tenants, or the mobile home park owner, may at any time file a written objection with the other, as to maintenance, capital improvement, housing services, or any other concern related to the physical condition or habitability of the mobile home park.

(b)

Informal meeting. Within ten (10) days after service of the written objection from a tenant, the mobile home park owner shall set a time and place for a meeting to be held on the mobile home park premises, giving the tenant at least seven (7) days' notice of the time and place. In the case of a written objection filed by the park owner, a time and place for discussion shall be set forth in the notice. The purpose of this meeting shall be to allow the parties the opportunity to resolve any differences they may have concerning non-rental disputes. The meeting may be continued to another time and place agreeable to the parties. The parties may agree to consolidate more than one (1) notice of objection in the same discussion.

(Ord. No. 1917, § I, 10-19-92; Ord. No. 1973, § XVII, 5-2-94; Ord. No. 2103, § I, 9-15-02)

Sec. 14.85.410. - Conciliation. 

If the informal meeting does not resolve the dispute to the satisfaction of both parties, the dissatisfied party or parties may, within ten (10) days of the date of the meeting, file with the Town's agent a petition for conciliation. 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. If the Town's agent determines after a reasonable time that conciliation is not likely to resolve the dispute, it shall notify the parties in writing.

Sec. 14.85.415. - Mandatory mediation.

(a)

Petition for formal mandatory mediation. Within ten (10) days of notice of failure of conciliation from the Town's agent, either party may file with the Town's agent a petition for mediation of non-rent dispute.

(b)

Assignment of mediator and hearing date. Upon receipt of a petition for mediation, the Town's agent shall assign a mediator. The Town's agent shall set a date for mediation hearing no sooner than ten (10) nor later than thirty (30) days after the mediator is assigned. The parties shall be notified in writing by the Town's agent of the date, time, and place of the mediation hearing which shall be set to maximize the convenience of the parties.

(c)

Mediation.

(1)

Introduction and opening statement. The mediator will introduce him/herself, identify all attendees, circulate a sign-in sheet, and briefly explain the mediation process. The explanation will include any ground rules to be observed. The rules of confidentiality will also be explained, as well as the exceptions to confidentiality noted below for any agreement reached or in the event of impasse. The parties will be asked to sign a confidentiality agreement.

(2)

Presentation by the parties. The parties will be given full opportunity to present any documents or verbal statements which they chose to submit on those issues which the parties desire to discuss. The parties will be encouraged to make comments which are clear, concise, and relevant. All parties in attendance will be given their turn to make presentations.

(3)

Private sessions. At any point in the process that the mediator believes it would advance the process, the mediator may meet separately in a caucus with the parties. The mediator will notify all participants that statements made in the caucus are confidential and will not be disclosed to the other parties, unless given permission to do so by the relevant party during the caucus meeting.

(4)

Voluntary agreement. If the parties arrive at a voluntary agreement, the mediator will summarize the resolution on a written agreement form, to be

signed by all relevant parties and the mediator. The resulting agreement will not be confidential, unless all parties agree in writing that the agreement will remain confidential.

(5)

The parties and the mediator are encouraged to conclude the mediation in one (1) session, but if the mediator in his/her discretion concludes that an additional session will be helpful to resolution, and the parties agree to attend an additional session, an additional session will be scheduled.

(6)

In the event of any impasse between the parties on the terms of a voluntary agreement, the mediator will seek to reach an agreement between the parties on the list of issues remaining to be decided by binding arbitration.

(7)

In the event of impasse, the mediator will notify the Town's agent within five (5) days of the hearing. The notification will be held by the Town or its agent as a confidential document and will contain only the following information, said information being deemed an exception to the rule of confidentiality:

a.

Identification of all attendees;

b.

A statement that impasse was reached;

c.

If applicable, any agreement by the parties which defines the issues to be subject to binding arbitration.

(8)

If a subsequent binding arbitration is held, that hearing shall be conducted on a *de nova* basis without any reference to, or utilization of any content of the mediation hearing by any party to the arbitration, except as limited elsewhere in the applicable ordinance or regulations. If the parties have reached agreement on the issues to be determined by the arbitration hearing, the arbitrator shall be bound by that agreement. In the absence of an agreement between the parties listing the issues, the arbitrator shall determine the issues to be decided.

(d)

Arbitration:

(1)

If the mediation process fails to resolve the dispute, any party to the case may request arbitration by filing a written request for arbitration with the Town's agent. Said request must be filed within thirty (30) days of the

declaration of impasse by the mediator, or if mediation is waived by the parties, within sixty (60) days after the initial filing of the petition.

(2)

Once a timely written request for arbitration has been received, the arbitration process shall be governed by the arbitration provisions of sections [14.85.145](#) through [14.85.165](#) of this article.

(Ord. No. 1917, § 1, 10-19-92; Ord. No. 2103, § 1, 9-15-02)