

Memorandum

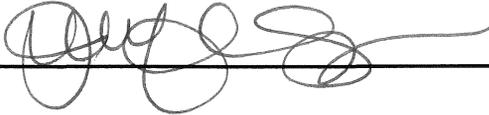
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 4, 2019

Approved



Date

4-8-19

INFORMATION

SUBJECT: COLONIAL MOBILE MANOR MOBILEHOME PARK - HEARING OFFICER'S ORDER REGARDING RENT ADJUSTMENT AFTER WRIT

The Housing Department Director would like to inform the Mayor and City Council about the decision of the City's Hearing Officer implementing the Superior Court of Santa Clara County's order regarding rent adjustment after writ impacting the Colonial Mobile Manor Mobilehome ("Colonial Manor") community.

BACKGROUND

The Mobilehome Rent Ordinance allows annual mobilehome space rent increases of 75% of the Consumer Price Index with a minimum increase of 3% and a maximum of 7%. However, for the past 10 years the Rent Stabilization Program has calculated a 3% rent increase consistent with the Maximum Annual Percentage formula. Under the Mobilehome Rent Ordinance, park owners may file a petition for an additional rent adjustment if the owner believes that the income of the park is not sufficient to provide a fair and reasonable return ("fair return petition") and pursue the administrative hearing process.

Colonial Manor is a senior mobilehome park located in Council District 9 containing 207 spaces. It is subject to the City's Mobilehome Rent Ordinance. The residents of a mobilehome park typically own their mobilehomes and pay space rents to the park owner.

In February 2012, the park owner filed a fair return petition with the Rent Stabilization Program ("Program"), formerly named Rental Rights and Referrals Program, requesting to increase space rents by \$114.22 (10% - 27%) per month (the base rents at that time were between \$418.98 - \$1,200 per month). The City's contracted Administrative Hearing Officer Suzanne Nusbaum determined that to obtain a fair rate of return, Colonial Manor required a net operating income of \$1,098,182.69 and awarded the park owner a \$46.30 (4% - 11%) per month increase in space rent.

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In February 2013, the park owner filed a new petition requesting to increase space rents by \$85.01 (7% - 18%) per month. As of 2013, space rents in the park were between \$477.85 and \$1,236 per month. In their petition, the park owner claimed that the costs associated with the general operations of the park including legal costs justified the proposed rent increase to obtain a fair and reasonable return.

The City's contracted Administrative Hearing Officer Mr. Michael Lowy ("Hearing Officer") conducted a Pre-Hearing conference on May 17, 2013, a walk-through at the park, and then held a series of administrative hearings in June and July 2013. On February 10, 2014, the Hearing Officer issued a final decision concluding that the park owner's base operating net income of \$983,180.43 was sufficient to cover the operating cost of the park—as opposed to Hearing Officer Nusbaum's previous operating net income calculation of \$1,098,182.69. Therefore, Hearing Officer Lowy concluded that the park owner was not entitled to an additional rent increase.

On March 4, 2014, the park owner filed with the Superior Court of California, County of Santa Clara a petition for writ of administrative mandamus and a first amended petition on February 16, 2016. The park owner claimed that they had been deprived of a fair trial and a fair return on investment and requesting the Court to vacate the Hearing Officer's decision and remand the matter with instructions to use \$1,098,182.69 as the base year net operating income, rather than \$983,180.43, and to allow operating expenses that were rejected in the Hearing Officer Lowy's decision.

The City responded to the amended petition and a hearing was held on the writ in Superior Court on March 15, 2017. Following the hearing, the park owner and the City submitted post-hearing briefs and adjusted the amount of Colonial Manor's base year net operating income to \$1,098,182.69 (as opposed to the \$983,180.43 used in the original decision).

The Court then issued an Order on January 16, 2018 granting and denying in part the park owner's petition, vacated the Hearing Officer's decision, and remanded the matter for his reconsideration. The Court ordered that the Hearing Officer include within the park's operating expenses the following items: the full 4.5% property management fee (as opposed to the 3.5% originally allowed) and the rent credits for on-site employee housing provided that the Hearing Officer determined there was evidence of the rent credits consistent with the standards in the Order. Additionally, the Court upheld the Hearing Officer's exclusion of Colonial Manor's attorney fees from allowable operating expenses. The Court issued a writ and judgment to this effect on April 3, 2018.

In accordance with the Court's Order, the Hearing Officer reconsidered his prior decision and consistent with the Court's directives, issued a new decision dated December 5, 2018. In his decision, after adjusting the base year net operating income to \$1,098,182.69 and recalculating the current operating expenses as directed, the Hearing Officer concluded that an adjusted rent increase of \$45.06 per space per month would provide the park owner with a fair and reasonable return and awarded that amount.

The following chart provides the detailed information regarding the Owner’s request and the Hearing Officer’s decision for the 2012 and 2013 petition.

2012 Petition				
	Rent (Per Month)	Base Rents	Percentage Increase	Rent Increase
Owner’s Request	\$114.22	\$418.98-\$1,200*	10%-27%	\$460.88- \$1,524
Hearing Officer’s Decision	\$46.30	\$418.98-\$1,200	4%-11%	\$435.74- \$1,332

2013 Petition				
	Rent (Per Month)	Base Rents	Percentage Increase	Rent Increase
Owner’s Request	\$85.01	\$477.85-\$1,236*	7%-18%	\$511.30- \$1,458.48
Hearing Officer’s Initial Decision	Denied	\$477.85-\$1,236	Denied	No Increase
Hearing Officer’s Re-Issued Decision	\$45.06	\$477.85-\$1,236	4%-9%	\$496.96- \$1,347.24

*Property owners self-report base rents on their petition. Rents may increase over time as a result of vacancy decontrol and annual permitted increases, which are set by the Rent Stabilization Program.

The Hearing Officer’s reconsidered decision was not made appealable to the City of San José’s Rent Stabilization Program. Furthermore, the writ and judgment did not include direction that the rent adjustment would apply retroactively, and thus, the reconsidered decision was made consistent with the “writ and judgment.” The park owner should also provide appropriate notice to the residents of a rent increase consistent with the California Mobilehome Residency Law (90-day notice).

All the real parties in interest (the residents) were mailed a copy of the Hearing Officer’s reconsidered decision on Friday, December 14, 2018 with a cover letter with the Program’s contact information for any inquiries.

On December 17, 2018, the City filed a Return to Peremptory Writ of Administrative Mandamus updating the Court on the City’s compliance with the Court’s Order (including the issuance of the reconsidered decision) along with a proposed Order to Discharge the Writ. On December 24, 2018, the park owner filed an Objection because there was no additional opportunity to be heard and that the Hearing Officer did not calculate the owner’s losses retroactive to 2013. On January 14, 2019, the City responded to the park owner’s Objection. On January 16, 2019, the Court issued an Order overruling the Objection. Finding that the Hearing Officer demonstrated

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satisfactory compliance with the Court's Peremptory Writ of Administrative Mandamus, the Court ordered the Writ discharged.

/s/

JACKY MORALES-FERRAND

Director of Housing

For questions, please contact Rachel VanderVeen, Deputy Director of the Housing Department, at (408) 535-8231.