



# **Town of Los Gatos**

## **Rental Dispute Resolution Regulations**

## TABLE OF CONTENTS

### INTRODUCTION

I.	RENT INCREASE LIMITS	4
	A. Frequency of Rent Increases	4
	B. Amount of Annual Increase	4
	1. Increased Costs of Debt Service	5
	2. Increased Costs of Operations and Maintenance	6
	3. Service Reductions	6
	4. Economic, Financial and Other Factors	9
	5. Guidelines Pertaining to All Rent Increases Other Than Base Rent Increases	9
	C. Notice of Rent Increase and Petitions	10
	1. Rent Increase Notices	10
	2. Filing a Petition	10
3.	Electing a Representative	12
4.	Consolidation of Petitions	12
II.	THE CONCILIATION PHASE	12
III.	FILING DEADLINES AND HEARING REQUESTS	13
	A. Mediation	13
	B. Arbitration	13
IV.	HEARING PROCESS AND DECISION MAKING GUIDELINES	13
	A. Confidentiality	13
	B. Hearing Procedures	13
	C. Burden of Proof	14
	D. Conduct of Mediations and Arbitrations	15
	E. Decisions and Agreements	16
	F. Failure to Appear and Rescheduling	16
V.	THE MEDIATION PHASE	17
	A. Introduction	17
	B. Presentation by the Parties	17

C.	Private Sessions	17
D.	Voluntary Agreement	18
E.	Closing Session	18
F.	Additional Documentation	18
G.	Hearing Summary	18
H.	Timing and Contents of Impasse Statement	18
VI.	THE ARBITRATION PHASE	19
A.	Purpose of an Arbitration Hearing	19
B.	Conduct of Arbitration Hearing on Referral from Mediation or Conciliation	19
C.	Conduct of Arbitration Hearings on Claims of Violation of a Voluntary Agreement	20
D.	Timing and Contents of Award	21
VII.	HEARING OFFICERS	22
A.	Selection Criteria	22
B.	The Agent	22
C.	Assignments to Cases	23
D.	Disqualification from Cases	23
E.	Review of Performance of Mediators and Arbitrators	23
VIII.	MISDEMEANORS AND ENFORCEMENT	23
A.	Violations of the Ordinance	23
B.	Investigation	24
C.	Additional Civil Rights	24
D.	Appeal of Administrative Action	4
IX.	DEFINITIONS	24

## LOS GATOS RENTAL DISPUTE RESOLUTION REGULATIONS

### INTRODUCTION

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

### I. RENT INCREASE LIMITS

#### A. FREQUENCY OF RENT INCREASES

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

#### B. AMOUNT OF ANNUAL INCREASE

The annual Rent Increases shall not exceed the seventy percent (70%) of the Consumer Price Index (CPI) ceiling or five percent (5%), whichever is greater, unless the Tenants agree in writing or the Arbitrator determines that other factors render a larger increase to be reasonable. The Town or its Agent shall compute the average annual percent of change as set forth in Section 14,80,310 (c) of the Ordinance. Increases in excess of seventy percent (70%) CPI ceiling or five percent (5%), whichever is greater, are subject to review if the affected Tenant/s file a Petition with the Agent. (EXEMPTION: If the last Rent Increase was initiated no less than two (2) years before the current increase and the current increase is ten

percent (10%) or less.) An increase may be subject to review because the dollar amount has been raised, or services reduced, or both. The following cost categories may be considered in the review process.

1. INCREASED COST OF DEBT SERVICE for new or existing owners shall be deemed reasonable and allowed by the Arbitrator when:
  - a. If the loan to value ratio does not exceed seventy percent (70%) of the appraised value of the property, eighty percent (80%) of the increase in debt services is allowable and may be passed through to Tenants.
  - b. If the loan to value ratio exceeds seventy percent (70%), the annual amount of the increased costs of debt service which shall be found allowable and may be passed through to Tenants is eighty percent (80%) of the sum calculated by multiplying the new debt service by seventy percent (70%) divided by the loan to value ratio less the prior debt service.
  - c. The amount of any allowable increase is subject to the additional factors set forth in paragraphs 4 and 5 below.
  - d. Computation examples of the basic formulas follow:

#### 1. INCREASED COST OF DEBT SERVICE EXAMPLE

##### Facts

New Cost of Debt Service per annum	110,000
Prior Cost of Debt Service per annum	80,000
Increased Cost of Debt Service	30,000
Aggregate debt from which Cost of Debt Service arises	750,000
Appraised value of the property	1,000,000
Loan to value ratio (LTVR)	.75

##### Calculation

$$\text{Pass through} = .8 [((\text{New Cost of Debt Service} \times [.7 \div \text{LTVR}]) - \text{Prior Cost of Debt Service})]$$

$$\text{Pass through} = .8 [(110,000 \times [.7 \div .75]) - 80,000]$$

$$\text{Pass through} = .8 [(110,000 \times .9333) - 80,000]$$

$$\text{Pass through} = .8 (102,663 - 80,000)$$

$$\text{Pass through} = .8 (22,663)$$

$$\text{Pass through} = 18,130.34 \text{ (per annum)}$$

$$\text{Individual pass through} = (18,130.40 \div 12) \div \# \text{ of units or square feet}$$

2. INCREASED COSTS OF OPERATIONS AND MAINTENANCE. This cost method compares documented costs for the most recent twelve (12) months and the prior twelve (12) months. The Landlord has the option to present increased Cost of Operation and Maintenance (O&M), Capital Improvements, and Costs of Rehabilitation; plus seventy percent (70%) of CPI or five percent (5%) whichever is greater of the monthly Rent.
  - a. Capital Improvements - The cost of Capital Improvements must be averaged on a per unit or square foot basis and amortized over a period of at least sixty (60) months.
  - b. Costs of Rehabilitation - The Costs of Rehabilitation must be averaged on a per unit or square foot basis and amortized over a period of at least thirty-six (36) months.

$$[\text{New O\&M Costs (last 12 months)} - \text{Old O\&M Costs (prior 12 months)}] \div 12 \text{ months} \\ = \text{operating and maintenance increase (O\&M)}$$

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

$$\text{Costs of Rehabilitation} \div .36 \text{ months} = \text{Rehabilitation increase (RI)}$$

$$\text{O \& M} + \text{CI} + \text{RI} = \text{monthly increase}$$

$$\text{monthly increase} \div (\# \text{ units or proportion of square feet}) = \text{monthly unit increase (MUI)}$$

$$\text{MUI} + 5\% \text{ or } 70\% \text{ CPI of units prior Rent} = \text{total allowable Rent increase}$$

\*\*\*\*\*

3. SERVICE REDUCTIONS - A service reduction occurs when the Landlord has breached her/his obligation to furnish to the Tenant a basic service level and the Tenant's usability of the premises is thereby measurably reduced.
  - a. Basic service level - The Landlord is required to furnish to the Tenant a basic level of Housing Services, herein called the "basic service level" and established by:
    - i. California Civil Code Section 1941.1 and 1941.2 and other applicable codes and statutes;
    - ii. The Landlord's implied Warranty of Habitability;
    - iii. Express or implied agreement between Landlord and Tenant;
    - iv. The nature and quality of original construction of improvements,

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

following factors:

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

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

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

4. ECONOMIC, FINANCIAL AND OTHER FACTORS APPLICABLE TO ALL INCREASES OTHER THAN BASE INCREASES- The Arbitrator will consider additional relevant factors presented by either Party. Based on the receipt of appropriate evidence from the parties and based on specific findings by the arbitrator, the arbitrator may approve or reject all or part of a proposed increase based on one or more of the following factors::
- a. The arms length Nature of the relevant transaction or transactions. Evidence that a transaction relevant to the proposed pass-through increase was or was not carried out by unrelated or unaffiliated parties, each acting in his or her self-interest, with pricing of said transaction or transactions based on objective fair market valuations.
  - b. The landlord's rate of return on the investment made in the rental property: Evidence that the landlord's rate of return does or does not exceed the mean average rates of return for similar investment properties in equivalent properties in Santa Clara Valley during the two (2) years preceding the date of the proposed pass-through increase based on financing costs.
  - c. The frequency of past resale or refinances
  - d. The extent to which prior rental increases have made provisions for appreciation of asset value.
  - e. Rental Increase History: The amount and frequency of past increases, and the occupancy rate in comparison to comparable properties in the same general area. Such evidence may include consideration of prior increases in the last two years in excess of five percent (5%) and the extent to which those prior pass-throughs were based on the same or on different factors than the justification for the current request, or conversely, evidence that a landlord refrained from imposing rent increases notwithstanding incurring additional costs that might have formed the basis for justifying a pass-through.
  - f. The occupancy rate of the complex in comparison to comparable units in the same area or in similar areas in the Santa Clara Valley.
  - g. Vacancy and Bad Debt Losses: The degree to which Vacancy and bad debt losses are not offset by retention of deposits, court judgments or

increases to new Tenants.

- h. Physical Condition: Evidence that the landlord has or has not provided appropriate maintenance and repairs for the relevant units or the overall complex as well as any prior rent increase pass through based on similar maintenance or repair activities.
- i. Services: Any increase or reduction in housing services since the last Rent Increase.
- j. Market Value: The current market value of Rental Units similarly situated and appropriately deemed to be comparable, which are not owned or controlled by the Landlord.
- k. Other Financial Information: Other financial information that the Landlord is willing to provide.

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

- a. Each of the costs must bear a reasonable relationship to the purpose for which they were incurred and the value of the real property.
- b. Costs are "out of pocket" which have been incurred or obligated. All costs claimed must be supported by reasonable documentation.
- c. If a Rent Increase is cost justified and neither service reduction nor Housing Code violations are present, that Rent Increase may be deemed reasonable.
- d. The cost categories presented at Arbitration must be the same as at Mediation. The Arbitrator has the discretion to require either party to provide cost information from categories not initially presented by the Landlord, or other financial information, if that information is necessary to resolve issues relevant to the arbitration.
- e. Operations and maintenance costs are for the most recently available consecutive two (2) twelve (12) month periods ending no more than sixty (60) Days prior to the Rent Increase date.
- f. Undocumented projections or estimates of future costs may not be accepted for use in cost analyses.
- g. Debt service, Capital Improvements, and Costs of Rehabilitation must be incurred in the past twelve (12) months as evidenced by payment or

contract establishing a legal obligation and evidence that the terms of the contract are or have been met. The twelve (12) month period for each of these costs may be different from the period used for operation and maintenance, and must begin earlier than the effective date of the increase.

- h. If, however, increases in debt service or repayment of Capital Improvements or Costs of Rehabilitation are, or have been deferred so as to become effective at a future date in excess of a twelve (12) month period, then those costs may be applied as they become effective.

C. NOTICE OF RENT INCREASE AND PETITIONS

- 1. RENT INCREASE NOTICES - When a Landlord issues a notice of Rent Increase he/she must provide the Tenants notice of their full right to use the rental dispute resolution process authorized by the Ordinance. The notice must include the name, address and telephone number of the Agent. This must be included conspicuously in the Rent Increase notice or done separately at the same time and manner as the Rent Increase notice. The recommended wording is:

*You have the right to use the Rental Dispute Resolution Process. To be eligible a petition must be received by the Town or its Agent within 60 Days.*

*For further information contact:*

*(Agency)*

*(Address)*

*(City, State, Zip)*

*(Phone and Fax)*

- 2. FILING A PETITION - To initiate the dispute resolution process, Tenants or Landlords must complete and file a written Petition for conciliation with the Agent. Petition forms may be obtained from the Agent and must be filled in completely. A Petition may be filed to resolve any Landlord/Tenant Dispute. As defined in the Ordinance a dispute may concern Rent or any other aspect of rental Housing Services including but not limited to, repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, and any other benefits, privileges, or facilities. A Petition can only be filed and can only be processed if the affected Tenant continues to occupy the premises involved in the

dispute.

- a. Rent Increase Petitions - Twenty-five percent (25%) of the units affected by the Rent Increase must join in the Petition.
- b. No initial Petition may be filed later than sixty (60) Days after the Rent Increase notice. If an initial Petition is received within the applicable sixty (60) Days for a property in which multiple numbers of increases were noticed, additional Petitions containing the requisite number of signatures necessary to reach the twenty-five percent (25%) level must be received within thirty (30) Days after any affected Tenant has received a list of the names and unit numbers of the affected Tenants as required by Section 14.80.040 of the Ordinance or has otherwise been notified by the Agent that additional Petition signatures are necessary. A Petition raising an issue other than a Rent Increase must be filed within thirty (30) Days of the event giving rise to the dispute.

A notice which fails to meet the basic requirements of Section 14.80.040 of the Ordinance, which requires the name and current telephone number of the Agent, is invalid. A notice which fails to meet the remaining requirements of these regulations waives the sixty (60) Day limit herein and permits a Petition to be filed within six (6) months of the applicable Rent Increase or other event giving rise to the dispute.

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

### 3. ELECTING A REPRESENTATIVE

- a. If three (3) or more Tenants seek review, the Tenants shall designate in writing to the Town, or its Agent, an individual to serve as the Tenant representative for the purposes of receipt of all notices, correspondence, decisions and findings of fact required in this article. The Tenant representatives in consultation with the Agent shall take reasonable steps to permit the petitioning Tenants to take part in making substantive decisions, such as whether to accept a settlement proposal made during conciliation or mediation.
  - b. The representative shall be selected by majority vote or by signatures on a designation form from a majority of the affected Tenants.
  - c. The Tenants shall designate their representative within fifteen (15) Days of notice from the Agent of their duty to make a proper designation. When appropriate the Tenants may designate more than one representative to serve as co-representatives and/or backup representatives. Failure to designate a Tenant representative within the above time period will render the Petition incomplete and the Petition will not be processed further.
  - d. Service of notice upon the designated Tenant representative will constitute adequate and sufficient notice to all petitioning Tenants.
4. CONSOLIDATION OF PETITIONS - Whenever possible, Petitions from Rental Units owned, operated, and managed as a single housing complex shall be consolidated into one case by the Agent.

## II. THE CONCILIATION PHASE

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

### III. FILING DEADLINES AND HEARING REQUESTS

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

### IV. HEARING PROCESS AND DECISION MAKING GUIDELINES

- A. **CONFIDENTIALITY.** The identity of the Parties and the factual data of the case are confidential. Any one of the Parties to an arbitration Hearing has the right to request to see and to copy information supplied by the other Parties. This information may also be reviewed and used by the Town for program operations, administration, audit and evaluation. While the Parties and the Town have access to this information, it is not public information.
- B. **HEARING PROCEDURES**
  - 1. **Time.** Within thirty (30) Days from the date a request for mediation or arbitration is received, the Town or its Agent shall schedule a Hearing unless the Parties agree in writing to waive this requirement.
  - 2. **Notice.** The Agent shall mail written notice to all Parties (unless there are three or more Tenants, in which case, to the Tenants' representative) at least twenty (20) calendar Days before the Hearing unless the Parties agree in writing to waive this requirement.
  - 3. **Submittal of evidence.**
    - a. During the conciliation and mediation phases of this process, evidence or materials supplied by the Parties will be shared with the other Party or Parties only with the consent of the Party supplying said documents.
    - b. All materials submitted for arbitration, including evidence and briefs, must be served by mail on all other Parties to the arbitration, and on the designated Arbitrator, no later than seven (7) Days prior to the noticed arbitration Hearing date. Failure to do so will subject the material to an objection which the offended Party may raise and which will be decided

by the Arbitrator in his/her discretion who may impose a suitable remedy including granting a continuance and/or excluding all or part of the material from consideration.

4. Extension. Extensions of time for the Hearing process may be mutually agreed upon by both Parties (or, if three (3) or more Tenants, by one Party and the Tenants' representative) with the concurrence of the Arbitrator. Extensions may also be granted by the Arbitrator upon an application by any Party who makes a showing of good cause for granting the application.

#### C. BURDEN OF PROOF

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

#### D. CONDUCT OF MEDIATIONS AND ARBITRATIONS

1. All Parties to the Petition and his/her Counsel may attend the Hearing and participate as deemed appropriate by the Mediator or Arbitrator conducting the Hearing.
  - a. At mediation sessions, no person other than the Mediator, the Parties and their designated representatives may attend the session.
  - b. At arbitration Hearings, the Parties and their designated representatives may attend the Hearing, as well as other persons such as agents and witnesses, subject to the Arbitrator's final discretion to limit the presence or participation of anyone other than a Party or designated representative.

Third parties including observers such as Tenants not affected by the pending Petition or members of the media shall not be permitted to attend absent written agreement between all Parties or their designated representatives executed at least seven (7) Days prior to the date set for the Hearing.

2. Review and Response to Evidence and Testimony - Each Party must have the opportunity to review all evidence and testimony introduced at the Hearing or provided to the Hearing Officer, and to make a response. The Hearing Officer has the discretion to allow written responses to be submitted. Hearing Officers have the discretion and must consider allowing reasonable recesses to review any new information or documentation.
3. Record of Hearings - Hearing Officers will cause to have a written record of all Parties attending either mediation or arbitration Hearings and a listing of evidence presented. Mediation sessions shall not be taped. The Arbitrator will tape record all sessions and turn the tape and all evidence over to the Agent with the arbitration Award. The record of proceedings shall be available to the Parties for their review. All tape recorders will be placed as designated by the Arbitrator. Tapes will be available for review for a period of twelve (12) months at the appropriate Town office. Any and all duplication costs will be borne by the requesting Party.
4. Participation of the Hearing Officer - The Hearing Officer shall, at all times in the conduct of the Hearings and in otherwise performing his/her duties, act neutrally and impartially. The Hearing Officer shall not solicit, invite, or encourage new complaints from the Landlord or Tenants.
5. Relief from Default - The Hearing Officer may relieve any Party from their failure to adequately state their claim prior to or during the first meeting upon a reasonable showing of fraud, error, or inadvertence. The Hearing Officer may grant to the opposing Party additional time to respond to any claim, addition to, or revision of, a claim filed pursuant to the relief granted.

#### E. DECISIONS AND AGREEMENTS

1. Eligible Petitions - The Voluntary Agreement or arbitration Award shall apply to a Tenant/s who have filed an eligible Petition or have been included in a Landlord Petition.

2. Effective Date - Unless otherwise set by the terms of a Voluntary Agreement or by an arbitration Award, all agreements or Awards regarding Rent Increases shall be effective as of the effective date of the increase originally proposed by the Landlord and shall extend for twelve (12) calendar months.

F. FAILURE TO APPEAR AND RESCHEDULING

1. No appearance by the Landlord or his/her Representative - When the Landlord or his/her representative does not appear at an arbitration Hearing regarding a Rent Increase or service reduction , the Rent Increase or rate will be determined to be unreasonable. Failure to appear at any other Hearing will not preclude the Arbitrator from issuing a binding Award based on the evidence presented by those Parties who do attend. If a Landlord chooses to appear at a mediation or arbitration through a designated representative, said representative shall have written authorization from the Landlord to effectively resolve the dispute.
2. No Appearance by Tenants - When the Tenant/s or their representative does not appear at an arbitration Hearing concerning a Rent Increase or service reduction, the Rent Increase or rate will be determined to be reasonable. Failure to appear at any other Hearing will not preclude the Arbitrator from issuing a binding Award based on the evidence presented by those Parties who do attend.
3. Voluntary Agreements - When a Tenant fails to appear or be represented at a mediation Hearing where a Voluntary Agreement is concluded with the remaining Tenants, the Petition of the Tenant who failed to appear will be considered to have been withdrawn.
4. Arbitrator's Determination - When a Tenant fails to appear or be represented at a Hearing that results in a written Determination, that Petition of the Tenant who failed to appear will be considered to have been withdrawn.
5. Rescheduling - Rescheduling of Hearings causes a delay in the resolution of the dispute and inconveniences the Parties. However, a rescheduling is sometimes appropriate.
  - a. Request by Landlord or Tenant - A Hearing may be rescheduled by the Town or its Agent, one time at the request of a Landlord or a Tenant for good cause, when the request is made at least five (5) Days before the scheduled Hearing date.
  - b. Request by one of the Parties - A Hearing may be rescheduled by the

Town or its Agent, when one of the Parties was unable to attend due to reasons beyond her/his control and the request is made within twenty-four (24) hours after the scheduled Hearing date.

- V. THE MEDIATION PHASE - The purpose of the mediation Hearing is to give the Parties an opportunity to resolve the dispute voluntarily.
- A. INTRODUCTION - The Mediator will introduce him/herself, identify all attendees, circulate a sign-in sheet, and briefly explain the Hearing process. The Mediator will explain that the Mediator's role is to neutrally facilitate discussion of resolution options and that it is not to decide which Party is right or wrong or to otherwise determine disputed issues or to advise Parties of their rights.
  - B. PRESENTATION BY THE PARTIES - The Parties will be given full opportunity to make effective presentations of their positions and claims. If the case involves a pass-through formula, the Landlord shall produce, no later than the mediation Hearing, the basic formula and calculations used to justify the increase. The Landlord is encouraged to present further evidence such as the supporting documentation for the calculations. A Party's voluntary disclosure of documentation will not preclude that Party from supplementing or correcting that documentation at arbitration.
  - C. PRIVATE SESSIONS - Following the initial presentations, the Mediator may at his/her discretion meet privately (caucus) with each side to attempt to work out a Voluntary Agreement. The agreement is confidential and shall only be shared with the specific consent of the all participants. The Mediator will notify all Parties that statements made in the caucus are confidential and will not be disclosed to the other Parties unless the Mediator is given permission to do so by the Party making the statement.
  - D. VOLUNTARY AGREEMENT - If the Parties arrive at an agreement, the Mediator will summarize the resolution on an agreement form and witness all signatures. Voluntary Agreements must specify the agreed upon Rent and may include any other items the Parties agreed upon.
  - E. CLOSING SESSION - The Mediator will meet with both Parties to sign a Voluntary Agreement or to provide an opportunity to make further presentations.
  - F. ADDITIONAL DOCUMENTATION - If time to obtain additional information or other input is requested, the Mediator may recess the Hearing at his/her discretion, for no longer than ten (10) Days, for the purpose of doing so.
  - G. HEARING SUMMARY - If a Voluntary Agreement is not possible the Mediator will

prepare a written impasse statement.

#### H. TIMING AND CONTENTS OF IMPASSE STATEMENT

1. The Mediator shall submit an impasse statement to the Agent within five (5) Days of the Hearing. If the Mediator has requested additional documentation, the statement is due five (5) Days after the continued Hearing. Once the Mediator serves the impasse statement, the mediation phase of this process shall be deemed concluded.
2. Contents - The statement will include only the following:
  - a. Identification of all attendees.
  - b. A statement that the Parties reached impasse.
  - c. Any agreement reached by the Parties defining the issues to be presented at arbitration.
  - d. If a case that is not resolved in mediation is subsequently submitted to arbitration, no statement made by any Party during the mediation shall be admissible at the arbitration and no notes or other documents, such as mediation briefs prepared solely for the mediation or solely during the mediation shall be admissible at arbitration. Documents or evidence existing prior to the mediation Hearing, such as lease agreements or photographs are not subject to this rule. The Mediator is not subject to be called as a witness at any subsequent arbitration.

#### VI. THE ARBITRATION PHASE

- A. PURPOSE OF AN ARBITRATION HEARING - An arbitration Hearing is held to make a final Determination concerning Landlord/Tenant Disputes as defined in the Ordinance when a conciliated or mediated agreement has not been achieved or has been broken.
- B. CONDUCT OF ARBITRATION HEARING ON REFERRAL FROM MEDIATION OR CONCILIATION - When a Voluntary Agreement is not reached during conciliation and the Agent grants arbitration, or when a Voluntary Agreement is not reached at a mediation Hearing and one of the Parties or the Mediator requests arbitration the following procedures will be followed:
  1. Introduction - The Arbitrator will introduce him/herself, identify the Parties, circulate a sign-in sheet, request that any representatives identify themselves, and will briefly explain the Hearing process.
  2. The Parties will be responsible for bringing all pertinent written documents and

evidence to the initial Hearing. The Parties will be given full opportunity to present evidence and testimony which has been produced in compliance with the disclosure rules herein. When one Party has made its presentation, the remaining Party will be given an opportunity to make its presentation. Parties seeking to obtain evidence in the possession of opposing Parties which has not been voluntarily produced prior to the Hearing or at the Hearing, may apply to the Arbitrator in writing for a subpoena to be issued upon a showing of good cause with notice to all participating Parties. The determination of good cause by the Arbitrator shall be based on a general standard that the evidence being sought is likely to be admissible at the arbitration Hearing. The written request for such a subpoena shall include the showing of good cause and must be served on both the Arbitrator and all participating Parties at the same time. Any Party opposing the request shall have five (5) Days to serve a written opposition to the Arbitrator and all other Parties at the same time. The Arbitrator will rule on the request after the five (5) Days have passed.

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

3. **Response to Evidence and Testimony** - The Parties will be given reasonable opportunities to respond to the new documentation and issues. The Arbitrator has the discretion to recess the Hearing or to allow the submission of written statements.
4. **Request for Additional Information** - The Arbitrator may request the submission of additional documentation or other information within ten (10) Days. When this request is made, the Hearing is recessed until the submission for the administrative purpose of receiving the additional information. In the event that the requested information is not provided or is incomplete, the Arbitrator may proceed to the making of the Award.
5. **Evidence** - Evidence submitted will be retained by the Arbitrator for use in making the Award and will be provided to the Agent along with the tape/s and the arbitration Award. The Arbitrator will be the judge of the relevancy of the evidence. Conformity to legal rules of evidence is not necessary. A list of this evidence (exhibits) will be prepared and made a part of the record.
6. **Testimony** - The Arbitrator will judge whether or not testimony is material and

relevant. A list of the names and addresses of any witness will be kept and made a part of the record.

7. Relief from Default - The Arbitrator may relieve any Party from their failure to adequately state their claim prior to or during the first meeting upon a reasonable showing of fraud, error, or inadvertence. The Arbitrator may grant to the opposing Party additional time to respond to any claim, addition to, or revision of, a claim filed pursuant to
8. Voluntary Agreement - An Arbitrator may recess the Hearing for the purpose of allowing the Parties to negotiate a Voluntary Agreement to resolve the dispute. At the request of the Parties, an Arbitrator may also assist them in coming to and preparing a written Voluntary Agreement.
9. In applying these rules and in otherwise making procedural decisions, the Arbitrator shall make interpretations which emphasize basic principles of fairness rather than technical or narrow interpretations.

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

1. Before appealing for Arbitration, a letter must be sent asking that the agreement be followed. This letter should point out where it is not being followed; for example, "fix the stove" or "remove the wrecked car".
2. Appeals may be made to the Agent by either Party. Appeals must be in writing and must include a copy of the letter described above.
3. Clarification of Issues - After the introduction, the Arbitrator will ask the Party who filed the appeal to state the issue. For example, "John Doe signed an agreement that he would fix the stove/remove a wrecked car by June 15. He hasn't done that".
4. Verification - The Arbitrator will determine if the agreement has been violated.
5. Remedies - If the agreement has been violated, the Arbitrator will issue an Award

which compensates for the violation. The Arbitrator may require that the agreement be kept ("John Doe has to fix the stove/move the car"), that the Rent be increased or decreased, or other just and equitable remedies.

6. Processing - A copy of the appeal will be sent to both Parties with a notice of the arbitration Hearing.
7. Authority of Arbitrator - The decision of the Arbitrator is final and legally binding. An Arbitrator has the authority to allow or disallow any Rent Increase or portion thereof and may reasonably condition his/her Award in any manner necessary to meet the purposes of the Ordinance.

#### D. TIMING AND CONTENTS OF AWARD

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

#### VII. HEARING OFFICERS

- A. Mediators and Arbitrators shall, at all times in the conduct of the Hearings and in otherwise performing his/her duties, act neutrally and impartially. They shall not solicit, invite, or encourage new complaints from the Landlords or Tenants. This does not preclude clarification of each Party's rights under the Ordinance.
- B. SELECTION CRITERIA - Hearing Officers are those individuals who, having met the following established criteria, have executed a contract with the Town or its Agent and are designated as either Mediators or Arbitrators for specific purposes. They must meet

all of the following criteria.

1. Have completed recognized training courses in mediation or arbitration as applicable to them and seven (7) hours formal training on Landlord/Tenant law and economics of the rental industry.
2. Been oriented in this particular dispute resolution process.
3. Shall not own or rent property covered by the Ordinance.
4. May not be an employee or an officer of groups or organizations which have or are viewed by significant numbers of Tenants or Landlords as having taken advocacy positions in Landlord Tenant matters.

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

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

D. ASSIGNMENTS TO CASES

1. Mediation Cases - Mediators shall be assigned by Program Staff equitably and fairly, with due regard for the Mediator's availability and experience.
2. Arbitration Cases - A selection list shall be sent to both Parties that will contain at least three (3) names of Arbitrators who meet the following qualifications:
  - a. A sufficient training and prior relevant experience as an arbitrator, and
  - b. Completion of a Juris Doctor or equivalent degree from a School of Law.The Tenants, if three (3) or fewer, or their representative, and the owners may eliminate one (1) name each. The Agent will designate the Arbitrator to be assigned to the case from the remaining name or names on the selection list.

E. DISQUALIFICATION FROM CASES - A Mediator or Arbitrator shall disqualify themselves from hearing a case and can be disqualified by Program Staff at the request of one (1) of the Parties if:

1. The Hearing Officer knows or has reason to know he/she has a financial interest affected by the Determination or Award.

2. The Hearing Officer is related to one (1) of the Parties or their representatives to the third (3<sup>rd</sup>) degree.
3. The Hearing Officer has been retained or employed by one (1) of the Parties within the past two (2) years, has given advice to one (1) of the Parties relative to the issues involved in the Hearing.
4. It appears probable that the Hearing Officer by reason of bias or prejudice cannot provide a fair and impartial Hearing.
5. The Hearing Officer is a Party to the Hearing.

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

F. REVIEW OF PERFORMANCE OF MEDIATORS AND ARBITRATORS - The Program Staff will periodically review the performance of Mediators and Arbitrators and will inform the Town of the execution and termination of Hearing Officer's contracts.

#### VIII. MISDEMEANORS AND ENFORCEMENT

##### A. THE ORDINANCE PROVIDES THAT IT IS A MISDEMEANOR:

1. For a Landlord to evict Tenants in retaliation for Tenants organizing or exercising rights granted by the Ordinance.
2. For a Landlord to evict a Tenant when the Landlord's dominant motive is to evade the purposes of the Ordinance.
3. For a Landlord to demand, accept, receive, or retain any Rent in excess of the maximum Rent allowed by a mediation agreement or an arbitration Award.

B. INVESTIGATION - Program Staff will receive and investigate complaints of alleged misdemeanor violations. When complaints are received of an alleged violation which has not yet occurred or is in the process of occurring, it is the policy of this program to prevent it, when possible, by informational contacts with the Landlord. In the event that the investigation shows that a violation has or is in the process of occurring and that it is not possible to prevent, a request will be made to the Town Attorney for review and prosecution. Either Party can pursue civil action after the conclusion of Town rental dispute resolution procedures.

C. ADDITIONAL CIVIL RIGHTS - Tenants have additional civil rights not covered by this document. Either Party can pursue civil action after the conclusion of Town rental dispute resolution procedures.

- D. **APPEAL OF ADMINISTRATIVE ACTION** - Administrative actions by Program Staff may be appealed in writing to the Director of Community Services.

IX. **DEFINITIONS**

- A. **Agent:** An individual or organization, or government, designated by the Town Council to administer the Ordinance.
- B. **Anniversary Date:** Twelve (12) months from the last Rent Increase.
- C. **Arbitrator:** A person designated to act as the Hearing Officer for the arbitration phase of the dispute resolution process under the Ordinance.
- D. **Award:** The written decision of an Arbitrator.
- E. **Base Rent Increase:** Five percent (5%) or seventy percent (70%) of the CPI, whichever is greater.
- F. **Capital Improvements:** Improvements which materially add to the value of the property, appreciably prolong its useful life, or adapt it to new uses. Capital Improvements are improvements for which the useful life is likely to be five (5) years or more.
- G. **Committee:** The Los Gatos Rent Advisory Committee appointed by the Town Council.
- H. **CPI - Consumer Price Index:** CPI is the Consumer Price Index - All Urban Consumers for the San Francisco Oakland area. The figure is released monthly from the Bureau of Labor Statistics.
- I. **Cost of Debt Service:** The periodic payment or payments due under any security or financing device which is applicable to the Rental Unit, or the building, or complex, or other real property of which it is a part, including any fees, commissions, or other charges incurred in obtaining such financing which are required to be amortized for a period exceeding sixty (60) months pursuant to the Internal Revenue Code and the regulations issued pursuant thereto.
- J. **Cost of Operation and Maintenance:** Expenses, exclusive of original Cost of Debt Service, Costs of Rehabilitation, and costs of Capital Improvements, incurred in the operation and management of the Rental Unit and the building or complex of buildings of which it is a part together with common areas, including but not limited to: real estate taxes, business taxes and fees (including fees payable by Landlords under this document), insurance, sewer service charges, utilities, janitorial service, professional property management fees, increased interest costs of variable interest rate mortgages over the base interest incurred, pool maintenance, exterior building and grounds maintenance, supplies, equipment, refuse removal, elevator service, and security services or systems.

- K. **Costs of Rehabilitation:** Any rehabilitation or repair work costs done on or in a Rental Unit or common area of the housing complex containing the Rental Unit and which work was done in order to comply with an order issued by the Los Gatos Building Department, or the Santa Clara County Fire Department, or to repair damage resulting from fire, earthquake, or other natural disaster.
- L. **Counsel:** An attorney or other advisor.
- M. **Day:** A calendar day unless otherwise specified herein.
- N. **Determination:** A voluntary settlement agreement reached in mediation or conciliation or a written decision by an Arbitrator.
- O. **Fact Finding:** The action of an Arbitrator in establishing that certain facts, such as costs or service reductions, exist.
- P. **Hearing:** A meeting of the Parties in a dispute with either a Mediator or an Arbitrator to resolve the issues.
- Q. **Hearing Officer:** A person designated by the Town Manager or the Agent who mediates or arbitrates rental disputes pursuant to the provisions of this document.
- R. **Hearing Counselor:** A person designated by the Town Manager or its Agent who counsels Parties with regard to housing disputes and conciliates, as necessary.
- S. **Housing Services:** Those services provided and associated with the use or occupancy of a Rental Unit, including but not limited to repairs, replacement, maintenance, painting, light, heat, water, elevator service, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, and any other benefits, privileges, or facilities.
- T. **Landlord:** An owner, lessor, or sublessor, who receives or is entitled to receive Rent for the use and occupancy of any Rental Unit or portion thereof, and the agent, representative, or successor of any of the foregoing.
- U. **Landlord/Tenant Dispute:** Any dispute between a Landlord or any agent or employee thereof, and a Tenant, regarding Rent or any other aspect of Housing Services, provided that the Tenant is occupying the premises from which the dispute arises.
- V. **Mediator:** A person designated to conduct the mediation phase of the dispute resolution process under the Ordinance, and who is trained and experienced in the principles of community mediation practice.
- W. **Ordinance:** Chapter 14.80 of the Los Gatos Town Code, also cited as the Town's Rental Dispute Mediation and Arbitration Ordinance.

- X. Party: A Landlord or Tenant(s) who is involved in the Hearing process.
- Y. Petition: A petition for conciliation.
- Z. Program Staff: The staff of the Agent assigned to implement the Ordinance.
- AA. Rent: The consideration, including any bonus, benefit or gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit, or the assignment of a lease for such a unit, including Housing Services or subletting.
- BB. Rent Increase: Any additional Rent due or paid by a Tenant for a Rental Unit, including any reduction in Housing Services without a corresponding reduction in the monies demanded or paid for Rent.
- CC. Rental Unit: Any building or part of a building which is used for residence and which is rented to a Tenant as a dwelling place, except:
1. Rental units, located in a building or group of buildings on the same premises, containing only one (1) dwelling unit.
  2. A room in an owner-occupied dwelling where under the lease provisions the Tenant does not have substantially exclusive use of a kitchen.
  3. A single house, condominium or planned development (Business and Professions Code Section 11003.0) unit.
  4. A hotel room or similar accommodation ordinarily let for occupancy by the same Tenant for periods of less than fifteen (15) Days.
  5. A hospital room, skilled nursing facility or similar accommodation where the main factor in the rental relationship is the personal care given to the Tenant.
  6. A dwelling owned, operated and managed by a government agency or which is exempted by state or federal law from Rent regulation.
- DD. Tenant: A person who is legally entitled to occupy all or part of a rental property subject to the Ordinance at the time any issue or right under the Ordinance arises.
- EE. Tenancy at Sufferance: When a Tenant comes into possession of a premises lawfully but holds over either after the expiration of a lease or after the expiration date of a notice to vacate.
- FF. Vacancy: Untenanted. A Rental unit is vacant when there are no Tenants living there. To be vacant, the unit must be untenanted; if a roommate moves, there is no Vacancy, unless the Landlord and the Tenants have a prior written agreement that this does create a Vacancy. Said prior agreement must inform the Tenants of their rights under this document. If a Tenant moves after receiving a thirty (30) Day Notice from the Landlord,

it is not voluntary. If the increase is after the eviction of a Tenant by a court for non-payment, chronically late payment, or other material violation of a written rental agreement it is considered a voluntary Vacancy.

GG. **Voluntary Agreement:** An agreement entered into by mediating Parties defining elements of resolution dispute.

HH. **Warranty of Habitability:** A Landlord's minimum obligations under California Code include that:

1. **There are no leaks when it rains, and no broken doors or windows;**
2. **The plumbing and/or gas facilities must be functional, including provisions of hot and cold water, and a working sewer or septic tank connection;**
3. **The heater must be functional and be safe;**
4. **The lights and wiring must be functional and be safe;**
5. **Floors, stairways and railings have to be in good repair;**
6. **When it is rented, the unit must be clean, with no piles of trash or garbage and no rats, mice, roaches, or other pests;**
7. **The Landlord must provide enough cans or bins with covers for the garbage;**
8. **There must be one (1) working phone jack; and,**
9. **A working smoke alarm at the time of rental.**

[Regs adopted by Resolution 1998-148 effective June 4, 1998. Revised and adopted by Resolution 1999-143 effective October 20, 1999. Revised and adopted by Resolution 2004-25 effective April 14, 2004]