



City of Takoma Park, Maryland  
**Request for Proposals**  
**RFP #HCD 2022-02**  
**Contract for Services: Rent Analyst**

**Publication Date:**

Request for Proposals documents will be available beginning July 29, 2022. Bid packages may be obtained from the City of Takoma Park's website at <https://takomaparkmd.gov/services/bids-contracts/>.

**Deadline:**

Proposals are due no later than 2:00 p.m. on **August 19, 2022**.

**Purpose:**

The City of Takoma Park invites qualified individuals and consulting firms to submit responses ("proposals") to this Request for Proposals in order to serve as Rent Analyst. The selected firm or individual will provide detailed financial analysis of fair return rent increase petitions filed by landlords in accordance with *Takoma Park Code, Chapter 6.20.080 – Rent Stabilization – Rent increases pursuant to a fair return petition* and relevant Administrative Regulations. This firm or individual will determine the amount of allowable fair return rent increases that a landlord may impose on their tenants.

**Contact:**

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Department of Housing and Community Development  
City of Takoma Park  
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## STATEMENT OF PURPOSE

The City of Takoma Park is seeking a qualified and experienced firm or individual to submit responses to this Request for Proposals (“RFP”) in order to serve as Rent Analyst. The selected firm or individual will provide detailed financial analysis of fair return rent increase petitions filed by landlords in accordance with *Takoma Park Code, Chapter 6.20.080 – Rent Stabilization – Rent increases pursuant to a fair return petition* and relevant Administrative Regulations. This firm or individual will determine the amount of allowable fair return rent increases that a landlord may impose on their tenants.

## BACKGROUND

The City of Takoma Park is located in the southern part of Montgomery County, Maryland and borders Washington, D.C. and Prince George’s County. Takoma Park is the only city in the Washington Metropolitan Area that has a rent stabilization program. The City provides a rent stabilization allowance which is a yearly percentage increase that a landlord can charge to their tenants in any given year. This allowance is equal to the percentage increase in the Consumer Price Index (“CPI”) from March in the preceding year to March in the current year. Landlords subject to this program have the opportunity to file a fair return rent increase petition with the City to get a higher rent increase above the rent stabilization allowance.

The City receives an average of three to four fair return petitions per year. We anticipate that the number of petitions will increase over time as new and old landlords become familiar with the process and are better able to provide the historical documents required to submit a petition.

The time required to process a petition is ninety calendar days from the date of filing. However, depending on the size of the rental property, the extent of any capital improvements that were made during the reporting period and the complexity of the operations, the process of the petition might take longer than the required time. The analysis includes the review of all bills, invoices, receipts and proof of payment submitted by the petitioner in support of the requested rent increase as required by law and detailed in the Administrative Regulations. Once submitted, the petition is reviewed for completeness by City staff.

The *City Code Chapter 6.20.080 – Rent Stabilization – Rent increases pursuant to a fair return petition* is included as Exhibit A and is available [online](#). Additionally, the Administrative Regulations developed for fair return rent increases is included as Exhibit B. An example of a decision issued in response to a fair return rent increase is included as Exhibit C. The Fair Return Rent Increase Application is included as Exhibit D.

## **SCOPE OF WORK AND DELIVERABLES**

The selected firm or individual shall perform the following financial analysis under the proposed Contract for Services. The analysis would include, but is not limited to, the following services:

- Thorough review of all fair return petition applications along with supporting documentation submitted by the petitioner;
- Interaction with City staff to ensure that the petition is complete and all required documentation is submitted;
- Reconciliation of financial information included in the petition;
- Detailed financial analysis of the petition in accordance with the City's Rent Stabilization law and associated Administrative Regulations;
- Issuance of a written determination – the Administrative Decision – that sets out the results of the financial analysis in accordance with the Rent Stabilization law and regulations within the Code recommended (3) three-month period;
- Consultation with City staff and the Commission on Landlord Tenant Affairs (“COLTA”) as needed;
- Provide testimony through audio, virtual or in person before COLTA in the event a challenge is filed by petitioner; and
- Provide inputs pertaining to changes to the Rent Stabilization Fair Return Rent Increases law and write or contribute reports and legislation.

The City anticipates entering into a 12-month contract with the selected firm or individual with an option to renew for up to three additional one-year terms. The City reserves the right to add similar services specified in the resultant contract as requirements change. The City and selected firm or individual will mutually agree to prices for services to be added to the contract.

A sample of the terms applicable to any contract resulting from this RFP are attached hereto as Exhibit E.

Contract amendments will be issued for all additions or deletions. In the event of a failure to comply with the terms and conditions of the resultant contract, the City reserves the right to cancel such contract.

## **SUBMISSION REQUIREMENTS**

All submissions must include the following information, organized as separate sections of the proposal. The submission should be concise and to the point. A cover letter should be attached to the RFP, including the RFP number, the name, address of the firm or individual and contact information for the officer by telephone and email address. The City reserves the right to disregard any incomplete bid responses.

- Contractor Identification
- Written Proposal – Narrative
- Cost Estimate
- Staff Qualifications
- References
- Insurance
- Required Certificates

### 1. Contractor Identification

Provide the name of the firm or individual, the firm's or individual's principal place of business, the name, telephone number and email address of the contact person and the tax identification number, if applicable.

### 2. Written Proposal

Provide a complete narrative statement demonstrating an understanding of the overall intent of the RFP with similar scope of services which the organization has either ongoing or completed within the past three (3) years.

### 3. Cost of Services

Include a breakdown of all pricing and payment terms to complete the identified scope of services and deliverables with details of how the contract price was determined, (i.e., hourly rates of staff to be assigned to the contract work, fixed sums or estimated number of hours for services performed, etc.).

### 4. Staff Qualifications

Describe the experience of key staff to be assigned to the contract work with information on their professional qualifications and experience.

### 5. References

Provide the name, address, telephone number and email address for at least three (3) professional references that would be capable of explaining and confirming work similar to the scope of services and deliverables of this project. References should be from the last three (3) years.

6. Insurance

All proposals must include proof of professional liability insurance or include a statement indicating the firm's or individual's willingness and ability to obtain professional liability insurance.

7. Required Certification

The following certifications, included as attachments must be submitted with the proposal.

Form A:       Qualification and Certification Statement  
Form B:       Certification of Non-Involvement in the Nuclear Weapons Industry  
Form C:       Living Wage Requirements Certification

## **SUBMISSION INFORMATION AND DEADLINE**

All proposals must be received by no later than 2:00 p.m. EST, on August 19, 2022. Submittals received after the closing date will not be considered.

Proposals must be submitted electronically to [davide@takomaparkmd.gov](mailto:davide@takomaparkmd.gov) and [makenak@takomaparkmd.gov](mailto:makenak@takomaparkmd.gov). The email subject line shall read "RFP #HCD 2022-02" with the proposal(s) attached as a PDF.

A confirmation email will be sent within 24 hours of the receipt of a proposal email. If no confirmation is received within that timeframe or before the deadline date and time, please contact Makena Kirkham at 301-891-7230 or by email at [makenak@takomaparkmd.gov](mailto:makenak@takomaparkmd.gov) to confirm that the proposal was received.

Failure to clearly respond to the requirements of the RFP may result in the rejection of the proposal as not being responsive to this RFP.

The City reserve the rights to independently investigate or request clarification of the contents of any proposal, including requesting that any respondent provide additional information or make one or more presentations.

## **CHANGES IN SPECIFICATIONS**

The City of Takoma Park has the right in its sole and absolute discretion to reject any and all submissions, to accept any submission, and to elect not to proceed with the process set forth in the Request for Proposals.

## **SELECTION PROCESS AND EVALUATION CRITERIA**

### **Selection Process**

A contract award will be made on the basis of a recommendation made by an Evaluation Panel comprised of City of Takoma Park's Housing and Community Development staff.

A panel consisting of the City of Takoma Park's Housing and Community Development Department staff will evaluate proposals in accordance with the requirements provided in this RFP. The panel will evaluate proposals on the following criteria. Criteria are listed in order of their importance.

- Experience and qualifications of the firm;
- Responsiveness and understanding of the scope of services;
- Prior experience working with local governments in a similar capacity;
- Qualifications and experience of personnel to be assigned to the project;
- Client references;
- Cost

While cost is a factor in evaluating the proposals, it is not the sole deciding factor as the City is seeking to enter into a contract with the most capable organization or individual at the best value. The Evaluation Panel may request an interview with one or more respondents before making a recommendation.

### **Rejection of Submissions**

The City of Takoma Park has the right, in its sole and absolute discretion, to reject any and all proposals in the best interests of the City, to accept or reject any part of any proposal, to select the proposal deemed most advantageous to the City, to waive any technical or formal defect therein, and to elect not to proceed with the process set forth in this RFP.

Only submissions that comply with all the objectives, provisions, and requirements of this solicitation will be considered for review. The City will determine, in its sole discretion, whether an individual submission is responsive. The decision of the City of Takoma Park is final. Submissions deemed "Non-Responsive" will not be considered for selection.

Firms shall make no contacts with any City employee, staff member, or Council member unless authorized by the Director of Housing and Community Development. Any attempt by a firm to contact or influence a member of staff regarding this RFP may result in the immediate disqualification of the firm and the rejection of their proposal.

### **Duration of Prices**

The price proposal submitted is irrevocable for a period of ninety (90) days from the proposal due date.

### **Acceptance of Terms and Conditions**

By submitting a proposal, firms accept the terms and conditions set forth in this RFP. A sample of the terms applicable to any contract resulting from this RFP are attached hereto as Exhibit E.

### **Procurement Law**

This RFP and any contract entered into as a result of this RFP are governed by the Takoma Park



## **FORMS AND EXHIBITS**

Form A: Qualification and Certification Statement  
Form B: Certification of Non-Involvement in the Nuclear Weapons Industry  
Form C: Living Wage Requirements Certification

Exhibit A: Chapter 6.20 Rent Stabilization  
Exhibit B: Fair Rent Petition Administrative Regulations  
Exhibit C: Sample Preliminary Administrative Decision  
Exhibit D: Fair Return Petition Application  
Exhibit E: Rent Analyst Draft Contract

**Form A: Qualification & Certification Statement**

**QUALIFICATIONS AND CERTIFICATION STATEMENT**

**NAME OF ENTITY** \_\_\_\_\_

Business Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax: \_\_\_\_\_

Web Site: \_\_\_\_\_

**AUTHORIZED REPRESENTATIVE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone Number (office and cell): \_\_\_\_\_

E-Mail: \_\_\_\_\_

**ORGANIZATIONAL STRUCTURE**

Identify the legal structure of the entity responding to the Request for Proposals and include requested information with this submission.

\_\_\_\_\_ A.1. A corporation incorporated under the laws of the State of Maryland, and in good standing to do business in the State of Maryland.

\_\_\_\_\_ A.2. List the name of the corporation and the names and titles of the corporation's directors and officers:

\_\_\_\_\_ B.1. A corporation incorporated under the laws (insert jurisdiction) \_\_\_\_\_

\_\_\_\_\_ B.2. The foreign corporation is registered or qualified and in good standing to do business in the State of Maryland.

\_\_\_\_\_ B.3. List the name of the corporation and the names and titles of the corporation's directors and officers:

\_\_\_\_\_ C. A sole proprietor doing business under his/her individual name. Individual name: \_\_\_\_\_

\_\_\_\_\_ D. A sole proprietor doing business under a trade or business name (for example, John Doe t/a Doe Masonry). List individual name and the trade or business name: \_\_\_\_\_

\_\_\_\_\_ E. A partnership. List the type of partnership and the names of all general partners: \_\_\_\_\_

\_\_\_\_\_ F.1. A limited liability company organized under the laws of the State of Maryland and authorized and in good standing to do business in the State of Maryland.

\_\_\_\_\_ F.2 List the limited liability company name and the names of all members:

\_\_\_\_\_ G.1 A limited liability company organized under the laws of \_\_\_\_\_  
(insert jurisdiction name).

\_\_\_\_\_ G.2. The foreign limited liability company is authorized and in good standing to do business in the State of Maryland.

\_\_\_\_\_ G.3. List the foreign limited liability company name and the names of all members:

\_\_\_\_\_ H. Other (explain):  
\_\_\_\_\_

**CERTIFICATION**

The undersigned proposes to furnish and deliver all labor, supplies, material, equipment, or services in accordance with specifications and stipulations contained in the Invitation for Bids or the Request for Proposals for the prices listed on the enclosed Price Proposal Sheet, if any, and/or upon the terms and conditions set forth in the proposal.

The undersigned certifies that this bid/proposal is made without any previous understanding, agreement or connection with any person, firm, or corporation submitting a bid or proposal for the same labor, supplies, material, equipment, or services and is, in all respects fair and without collusion or fraud. The undersigned further certifies that he/she is authorized to sign for the Respondent.

Respondent Name (print): \_\_\_\_\_

By: \_\_\_\_\_  
Signature Date

Print Name \_\_\_\_\_

Title: \_\_\_\_\_

**Form B: Certification of Non-Involvement in the Nuclear Weapons Industry**

**CITY OF TAKOMA PARK, MARYLAND  
CERTIFICATION OF NON-INVOLVEMENT IN THE  
NUCLEAR WEAPONS INDUSTRY**

KNOW ALL PERSONS BY THESE PRESENTS:

Pursuant to the requirements of Chapter 14.04 of the Takoma Park Code, the Takoma Park Nuclear Free Zone Act, the undersigned person, firm, corporation, limited liability company or entity hereby certifies that he/she/it is not knowingly or intentionally a nuclear weapons producer.

Note: The following definitions apply to this certification per Section 14.04.090:

“Nuclear weapons producer” is any person, firm, corporation, facility, parent or subsidiary thereof or agency of the federal government engaged in the production of nuclear weapons or its components.

“Production of nuclear weapons” includes the knowing or intentional research, design, development, testing, manufacture, evaluation, maintenance, storage, transportation or disposal of nuclear weapons or their components.

“Nuclear weapon” is any device the sole purpose of which is the destruction of human life and property by an explosion resulting from the energy released by a fission or fusion reaction involving atomic nuclei.

“Component of a nuclear weapon” is any device, radioactive substance or nonradioactive substance designed knowingly and intentionally to contribute to the operation, launch, guidance, delivery or detonation of a nuclear weapon.

IN WITNESS WHEREOF, the undersigned has signed this Certification this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature \_\_\_\_\_ Contractor Name: \_\_\_\_\_ By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Print Name & Title

State of \_\_\_\_\_, County of \_\_\_\_\_:

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**Form C: Living Wage Requirements Certification**

**LIVING WAGE REQUIREMENTS CERTIFICATION**

**(Takoma Park Code, section 7.08.170.B)**

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Please specify the contact name and information of the individual designated by your business to monitor your compliance with the City’s living wage requirements, unless exempt under Section 7.08.190 (see item B below):

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**CHECK ALL APPROPRIATE LINES BELOW THAT APPLY IN THE EVENT THAT YOU ARE AWARDED THE CONTRACT AND BECOME A CONTRACTOR.**

**A. Living Wage Requirements Compliance**

\_\_\_\_\_ This Contractor as a “covered employer” will comply with the requirements of the City of Takoma Park Living Wage Law (*Takoma Park Code, Section 7.08.150 et. seq.*, amended by Ordinance No. 2013-26). Contractor and its subcontractors will pay all employees who are not exempt from the wage requirements and who perform measurable work for the City related to any contract for services with the City, the living wage requirements in effect at the time of the City contract. The bid price submitted under this procurement solicitation includes sufficient funds to meet the living wage requirements.

**B. Exemption Status (if applicable)**

This Contractor is exempt from the living wage requirements because it is:

\_\_\_\_\_ The total value of the contract for services (based on the bid or proposal being submitted under this procurement solicitation) is less than \$20,000.00.

\_\_\_\_\_ A public entity.

\_\_\_\_\_ A nonprofit organization that has qualified for an exemption from federal income taxes under Section 501c (3) of the Internal Revenue Code.

\_\_\_\_\_ A contract procured through an emergency procurement, sole source procurement, or cooperative procurement.

\_\_\_\_\_ A contract for electricity, telephone, cable television, water, sewer or similar service delivered by a regulated public utility.

\_\_\_\_\_ A contract for the purchase or lease of goods, equipment or vehicles.

\_\_\_\_\_ A contractor who is prohibited from complying with the City's living wage requirements by the terms of an applicable federal or state program, contract, or grant requirement. **(Must specify the law and/or furnish a copy of the contract or grant.)**

C. Living Wage Requirements Reduction.

\_\_\_\_\_ This Contractor provides health insurance to the employees who will provide services to the City under the City contract and it desires to reduce its hourly rate paid under the living wage requirements by an amount equal to, or less than, the per employee hourly cost of the employer's share of the health insurance premium. This Contractor certifies that the per employee hourly cost of the employer's share of the premium for that health insurance is \$\_\_\_\_\_.

**(Must submit supporting documentation showing the employee labor category of all employee(s) who will perform measurable work under the City contract, the hourly wage the Contractor pays for that employee labor category, the name of the health insurance provider and plan name, and the employer's share of the monthly health insurance premium.)**

**Contractor Certification and Signature**

Contractor submits this certification in accordance with *Takoma Park Code* section 7.08.170.B. Contractor certifies, under penalties of perjury, that all of the statements and representations made in this Living Wage Requirements Certification are true and correct. Contractor and any of its subcontractors that perform services under the resultant contract with the City of Takoma Park will comply with all applicable requirements of the City's living wage law.

Authorized corporate, partner,  
member or proprietor signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title of authorized person: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A: Chapter 6.20 Rent Statbilization

## Chapter 6.20 RENT STABILIZATION\*



### Sections:

- 6.20.010 Application of rent stabilization—Scope, rent increases, notification requirements, annual reporting.**
- 6.20.020 Buildings exempt from rent stabilization.**
- 6.20.030 Rental facilities and rental units eligible for exemption from rent stabilization pursuant to an application for exemption.**
- 6.20.040 Establishment of base rent for certain units.**
- 6.20.050 Annual rent increases, frequency of rent increases and notification.**
- 6.20.060 Banking of authorized annual rent stabilization increases.**
- 6.20.070 Annual reporting requirements.**
- 6.20.080 Rent increases pursuant to a fair return petition.**

\* Prior history: Prior code §§ 6-500—6-505 as amended by Ords. 2700, 2716, 2732, 1985-49, 1986-43, 1986-44, 1987-27A, 1987-33, 1987-45, 1988-9, 1989-51, 1990-40, 1992-2, 1992-9, 1992-26, 1995-43, 1997-9, 1999-38, 1999-40, 2003-7, 2006-31 and 2007-28.

### **6.20.010 Application of rent stabilization—Scope, rent increases, notification requirements, annual reporting.**

A. Application of Rent Stabilization. The provisions of this chapter shall apply to all residential rental units except as provided in Sections [6.20.020](#) and [6.20.030](#).

B. Rents—Rent Increases, Frequency and Notification Requirements.

1. Rent Increases. Rent increases shall be limited to the rent increase amounts authorized by this chapter for regulated rental units.
2. Frequency of Rent Increases. Rents for any individual rental unit may not be increased more often than permitted by this chapter.
3. Notice of Rent Increases. Notification of any rent increase authorized by this chapter shall be provided in writing to the tenant at least two months prior to the date the rent increase is to take effect.

C. Reporting of Rents. Landlords must file an annual rent report with the Department on a form prescribed by the Department in accordance with Section [6.20.070](#). (Ord. 2013-25 § 1, 2013/Ord. 2007-40 § 1 (part), 2007)

### **6.20.020 Buildings exempt from rent stabilization.**

A. Scope of Exemptions. The provisions of this chapter shall not be applicable to the following:

1. Any unit in a licensed facility, the primary purpose of which is the diagnosis, cure, mitigation and treatment of illnesses;
2. Any unit in a facility owned or leased by an organization exempt from Federal income taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, the primary purpose of which is to provide temporary sanctuary or shelter for qualified clients; provided, that the organization has notified the clients residing in the facility of the temporary nature of their housing at the inception of their residence;
3. Any owner-occupied group house;
4. Religious facilities such as churches, synagogues, parsonages, rectories, convents and parish homes;
5. Transient facilities such as motels, tourist homes, and bed and breakfast facilities;
6. School dormitories;
7. Licensed assisted living facilities and nursing homes;



8. Single-family residences;
9. Any building originally designed and constructed to contain only two dwelling units one of which the owner currently occupies as his or her principal residence; and
10. Any accessory apartment. (Ord. 2013-25 § 1, 2013/Ord. 2007-40 § 1 (part), 2007)

**6.20.030 Rental facilities and rental units eligible for exemption from rent stabilization pursuant to an application for exemption.**

A. Grant of Exemption. The Department shall, upon application of the owner, grant an exemption from the provisions of this chapter to the following rental units and rental facilities:

1. Individual rental units leased to tenants assisted under Federal tenant based assistance programs or similar federally funded rent subsidy program.
2. Rental facilities subject to a regulatory agreement with a governmental agency that controls the rent levels of not less than one-half of the rental units in the rental facility and restricts the occupancy of those rental units to low and moderate income tenants.
3. Newly Constructed Rental Facilities. For a period of five years after the issuance of a rental license, any newly constructed rental facility with two or more dwelling units. Renovated or reconfigured rental facilities or combined rental units are not eligible for an exemption from rent stabilization.

B. Termination of Exemption.

1. Exemptions granted pursuant to subsection (A)(1) of this section shall expire after one year or when the conditions entitling the rental unit to an exemption cease to exist, whichever shall first occur. The exemptions are renewable annually upon reapplication.
2. Exemptions granted pursuant to subsection (A)(2) of this section shall expire upon the termination of the agreement with the governmental agency entitling the rental facility to the exemption or when the conditions entitling the rental facility to an exemption cease to exist, whichever shall first occur.
3. Exemptions granted pursuant to subsection (A)(3) of this section shall expire on the fifth anniversary date of the issuance of the rental facilities initial rental housing license, regardless of when the application for an exemption was made by the owner.

C. Rents upon Termination of Exemption.

1. For rental facilities and rental units receiving an exemption pursuant to subsections (A)(1) and (A)(2) of this section, upon the termination of the exemption, the base rent for the units and the reference point from which the rent shall be increased in accordance with this chapter shall be the allowable rent as reported in the annual rent report for each unit at the time the exemption commenced plus the annual rent stabilization allowance for each year that the unit was exempt.
2. For rental facilities receiving an exemption pursuant to subsection (A)(3) of this section, upon the termination of the exemption, the base rent for the units and the reference point from which the rent shall be increased in accordance with this chapter shall be the rent charged for each unit at the time of the expiration of the exemption. For any units not rented when the exemption period terminates, the base rent shall be the rent charged when the unit is first rented to a tenant. If the actual rent paid by a tenant differs from the rent stated in the report or the lease, then the actual rent shall be the base rent. (Ord. 2013-25 § 1, 2013/Ord. 2007-40 § 1 (part), 2007. Formerly 6.20.040)

**6.20.040 Establishment of base rent for certain units.**

A. Definitions.

“Discontinued rental unit” means a rental unit in a rental facility or previously licensed rental facility that is not occupied by tenants and for which the Department has approved an application for discontinuation.

"Existing rental unit" means a rental unit or a discontinued rental unit.

B. Rents for Discontinued Rental Units.

1. Except as provided in subsection (B)(2) of this section, the base rent for discontinued rental units, and the reference point from which the rent shall be increased in accordance with this chapter, shall be the banked rent reported in the annual rent report at the time the rental unit was discontinued plus the annual rent stabilization allowance for each year that the rental unit was discontinued.
2. If a rental unit remains discontinued for an uninterrupted period of five years, the owner may charge market rent for the unit when it is first newly rented to a tenant. The rent the owner charges the tenant shall establish the base rent for the unit and the reference point from which the rent shall be increased in accordance with this chapter.

C. Rents Following Renovation, Reconfiguration or Consolidation of Existing Rental Units.

1. This subsection applies to renovation, reconfiguration, and consolidation projects performed in vacant existing rental units.
2. If the renovation or reconfiguration of an existing rental unit does not result in a 10% or greater change in the floor area of the unit, then the banked rent reported for the unit in the annual rent report at the time the rental unit became vacant plus the annual rent stabilization allowance for each year that the rental unit remained vacant shall be the maximum rent that the owner may charge for the unit when it is first rented to a tenant.
3. If the floor area of a renovated or reconfigured unit is more than 10% smaller or larger than the unit it replaces, then the banked rent reported for the unit in the annual rent report at the time the rental unit became vacant plus the annual rent stabilization allowance for each year that the rental unit remained vacant, reduced or increased by a percentage equal to the reduction or increase in the floor area of the unit prior to its renovation or reconfiguration, shall be the maximum rent that the owner may charge for the unit when it is first rented to a tenant.
4. When two or more rental units are consolidated to create a single rental unit, the base rent for the new unit, and the maximum rent that the owner may charge when the unit is first rented to a tenant, shall be the base rent of the largest unit increased by the percentage increase in the floor area from the largest unit to the resulting unit.
5. Application for Rent Adjustments. Before an owner may increase the rent for a unit in accordance with subsection (C)(3) or (4) of this section, the owner must first obtain approval from the Department. The owner must submit a completed application form and documentation demonstrating the appropriate adjustment to the base rents (which may include, but shall not be limited to, construction plans, photographs and video recordings of the original and reconfigured units), and may be required to undergo an inspection of the property.

D. Rents Following Purchase of an Owner-Occupied Condominium Unit. The new owner of a previously owner-occupied condominium unit, purchased in a bona fide arm's length transaction, may charge market rent for the unit. The rent the owner charges his or her initial tenant shall establish the base rent for the unit and the reference point from which the rent shall be increased in accordance with this chapter.

E. Reset of Base Rent for Owner-Occupied Condominium Units. When the owner of a previously rented condominium unit occupies the unit for at least 12 consecutive months as his or her principal residence, the owner may charge market rent for the unit when the owner next rents the unit to a tenant. The rent the owner charges the tenant shall establish the base rent for the unit until the owner again occupies the unit for at least 12 consecutive months. (Ord. 2013-25 § 1, 2013/Ord. 2007-40 § 1 (part), 2007. Formerly 6.20.050)

**6.20.050 Annual rent increases, frequency of rent increases and notification.**

A. Annual Rent Stabilization Allowance.

1. The Department shall calculate an annual rent stabilization allowance equal to the percentage increase in the Consumer Price Index (CPI) from March in the preceding year to March in the current year. Notice of the allowance shall be published in the May edition of the Takoma Park Newsletter and on the City website.
  2. The annual rent stabilization allowance shall remain in effect for a 12-month period beginning July 1st of each year and ending on June 30th of the following year.
  3. Rent increases for rent-stabilized rental units may be increased by an amount not to exceed the annual rent stabilization allowance in effect at the time of the rent increase.
  4. Rent increases less than permitted in subsection (A)(3) of this section may be banked in accordance with Section [6.20.060](#).
- B. Frequency of Rent Increases.
1. Occupied Rental Units. Only one rent stabilization increase pursuant to subsection (A)(3) of this section shall be permitted within a 12-month period.
  2. Fair Return Rent Increases. An additional rent increase pursuant to a fair return rent increase petition subsequently approved by the Commission in accordance with Section [6.20.080](#) may be taken pursuant to the terms and the conditions of the Commission's administrative decision and final order.
  3. Vacant Rental Units. The rent for vacant rental units may be increased up to the banked rent and the annual rent stabilization allowance may be applied prior to the leasing of the rental unit in accordance with Section [6.20.060](#).
- C. Notice of Annual Rent Increases.
1. A landlord shall not increase or attempt to increase the rent for any occupied rental unit without having first given the tenant living therein at least two months' written notice of the increase.
  2. Notice of a rent increase shall be in the form and manner prescribed by Department regulations. (Ord. 2013-25 § 1, 2013/Ord. 2007-40 § 1 (part), 2007. Formerly 6.20.060)

**6.20.060 Banking of authorized annual rent stabilization increases.**

A landlord may increase the rent for a vacant rental unit by the actual dollar amount of any annual rent stabilization allowances that were not charged to the tenant vacating the rental unit. Such increase may be taken if the rental unit became vacant as a result of a voluntary termination of the tenancy by the tenant or a termination of the tenancy by the landlord for cause. This rent increase may be in addition to any rent stabilization allowance increase that the landlord may impose on or after 12 months from the date of the last rent stabilization allowance increase for that rental unit. (Ord. 2013-25 § 1, 2013/Ord. 2007-40 § 1 (part), 2007. Formerly 6.20.070)

**6.20.070 Annual reporting requirements.**

- A. Reporting Requirements. On or before September 30th of each year, each landlord shall complete and submit to the Department a rent report for the 12-month period beginning July 1st and ending on the preceding June 30th on a form provided by and in the manner prescribed by Department regulations.
- B. Penalty for Failure to Comply with Reporting Requirements. Failure to file a complete or accurate rent report by September 30th of each year shall constitute a Class A violation of this chapter unless an extension of time for good cause is granted by the Department prior to the due date. (Ord. 2013-25 § 1, 2013/Ord. 2007-40 § 1 (part), 2007. Formerly 6.20.080)

**6.20.080 Rent increases pursuant to a fair return petition.**

- A. Fair Return Rent Increase. Landlords have a right to petition for a rent increase in order to obtain a fair return. A fair return rent increase is intended to protect tenants from unwarranted rent increases, while allowing rent levels that provide landlords with a fair return.
- B. Standards for Rent Increases Pursuant to a Fair Return Petition.

1. Fair Return. Fair return is defined as base year net operating income adjusted by 70% of the percentage increase in the Consumer Price Index (CPI) from the base year until 2007, and 100% of the percentage increase in the CPI since 2007.
2. Base Year. The landlord may select any of the following as the base year when petitioning for a fair return rent increase:
  - a. 1979, unless the property contains four or fewer dwelling units;
  - b. 1987, if the property contains four or fewer rental units;
  - c. 1990;
  - d. 2000.
3. Current Year. The current year shall be either the calendar year or the fiscal year (July 1st to June 30th) immediately preceding the date that the application is filed.
4. Current Year CPI. If the current year is a calendar year, the current year CPI shall be the annual CPI for that year. If the current year is a fiscal year, the current year CPI shall be the CPI for December during the current year.
5. Net Operating Income. Net operating income equals gross income minus operating expenses.
6. Imputed Base Year Net Operating Income. If the base year is 1990, at the landlord's option, the 1990 net operating income shall be imputed based on estimated base year operating expenses. In estimating the base year operating expenses, it shall be presumed that each operating expense increased by the same percentage as the CPI since the base year. However, if data, rate information, or other sources of cost information indicate that particular operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense shall be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases in particular types of expenses between the base year and the current year may be introduced by the landlord, affected tenants, the Department, and the Rents Analyst.
7. Gross Income. Gross income is the annual scheduled rental income for the property based on the rents and fees (other than fees that are reimbursed to the tenants) the landlord was permitted to charge at the time of the application.
8. Operating Expenses. Operating expenses means all reasonable operating and maintenance expenses.
  - a. Operating expenses shall include, but not be limited to, the following:
    - i. Utilities paid by the landlord, unless these costs are passed through to the tenants;
    - ii. Administrative expenses, such as advertising, legal fees, accounting fees, etc;
    - iii. Management fees, whether performed by the landlord or a property management firm; it shall be presumed that management fees increased by the percentage increase in the CPI between the base year and the current year, unless the level of management services either increased or decreased during this period. Management fees shall not exceed 6% of gross income unless the landlord demonstrates by a preponderance of the evidence that a higher percentage is reasonable;
    - iv. Payroll;
    - v. Amortized cost of capital improvements. An interest allowance shall be allowed on the cost of amortized capital expenses; the allowance shall be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the Federal Reserve Board bank prime loan rate as of the date of the initial submission of the petition plus 2% per annum;

- vi. Maintenance related material and labor costs, including self-labor costs computed in accordance with the regulations adopted pursuant to this section;
  - vii. Property taxes;
  - viii. Licenses, government fees and other assessments; and
  - ix. Insurance costs.
- b. Reasonable operating and maintenance expenses do not include the following:
- i. Expenses for which the landlord has been or will be reimbursed by any security deposit, insurance settlement, judgment for damages, agreed-upon payments or any other method;
  - ii. Payments made for mortgage expenses, either principal or interest;
  - iii. Judicial and administrative fines and penalties;
  - iv. Damages paid to tenants as ordered by COLTA or the courts;
  - v. Depreciation;
  - vi. Late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental facility;
  - vii. Membership fees in organizations established to influence legislation and regulations;
  - viii. Contributions to lobbying efforts;
  - ix. Contributions for legal fees in the prosecution of class-action cases;
  - x. Political contributions for candidates for office;
  - xi. Any expense for which the tenant has lawfully paid directly or indirectly;
  - xii. Attorney's fees charged for services connected with counseling or litigation related to actions brought by the City under City regulations or this title, as amended. This provision shall apply unless the landlord has prevailed in such an action brought by the City;
  - xiii. Additional expenses incurred as a result of unreasonably deferred maintenance; and
  - xiv. Any expense incurred in conjunction with the purchase, sale, or financing of the rental facility, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.
- c. When an expense amount for an item during a particular year is determined not to be a reasonable projection of ongoing or future expenditures for that item, said expense shall be averaged with other expense levels for other years or amortized or adjusted by the CPI or may otherwise be adjusted, in order to establish an expense amount for that item that most reasonably serves the objectives of obtaining a reasonable comparison of base year and current year expenses.
- C. Rent Increase Petition Based on Fair Return Standard.
1. Form of Petition. Whenever a landlord proposes a rent increase of more than the amount permitted by Section [6.20.050](#), the landlord shall file a petition with the Commission on a form provided by the Department.
  2. Required Submission of Income and Expense Information. The landlord shall be required to submit income and expense information for the two years prior to the current year with the petition.
  3. Petition Restrictions. Petitions filed pursuant to this section must address an entire rental facility. The landlord filing a petition must own the rental facility for the entire current year.

4. Adjustments to Petition—Base Year Net Operating Income.
  - a. Adjustment of Base Year Net Operating Income by Commission. It may be determined that the base year net operating income yielded other than a fair return, in which case the base year net operating income may be adjusted. In order to adjust the base year net operating income, the Commission must make at least one of the following findings:
    - i. Base year net operating income was abnormally low due to one of the following factors:
      - (A) The landlord made substantial capital improvements that were not reflected in the base year rents and the landlord did not obtain a rent adjustment for these capital improvements;
      - (B) Substantial repairs were made due to exceptional circumstances; or
      - (C) Other expenses were unreasonably high, notwithstanding prudent business practice.
    - ii. Base year rents did not reflect market transaction(s), due to one or more of the following types of circumstances:
      - (A) There was a special relationship between the landlord and tenant resulting in abnormally low rent charges (such as a family relationship);
      - (B) The rents had not been increased for the five years preceding the base year;
      - (C) The tenant lawfully assumed maintenance responsibilities in exchange for low rent increases or no rent increases; or
      - (D) Other special circumstances that establish that the rent was not set as the result of an arms-length transaction.
  - b. Establishment of a New Base Year Net Operating Income—Prior Year Petitions. The net operating income, income, and expenses, determined to be fair and reasonable pursuant to a prior petition for a fair return rent increase, shall constitute the base year income, expenses, and net operating income in the new petition.
5. Consideration of Fair Return Petition by Commission.
  - a. Issuance of a Decision by the Commission. The Commission shall, in good faith, endeavor to issue its preliminary administrative decision ruling on the request within 90 days of the review or hearing on the petition. Upon its determination of the rent increase to be granted to the landlord, the Commission shall issue a decision in accordance with [Section 6.24.110](#) and furnish a copy of the decision to the landlord.
  - b. Rejection of Petition.
    - i. The Commission shall not consider the landlord's fair return petition:
      - (A) Until the properly completed petition form, including required supporting documentation, has been submitted to the Commission;
      - (B) When the landlord has not properly registered the rental property with the City and/or when the landlord has outstanding fees or fines with the Department;
      - (C) When the landlord has not filed required rent reports for each of the three years prior to the filing date of the petition; provided, that the Commission may, at its discretion, waive the above requirement for good cause shown; or
      - (D) When the landlord has failed to comply with a final order of the Commission concerning any rental unit owned by the landlord in the City. However, the failure to comply with an order of the Commission shall not constitute a basis to decline to consider the landlord's request if the order has been appealed to the Circuit Court and no decision has been rendered on appeal.
    - ii. If the Commission declines to consider the landlord's request, it shall provide a written explanation for its action.

6. Ceiling on Fair Return Adjustments.

- a. Fair Return Rent Increases on Occupied Rental Units. Fair return rent increases shall not exceed 15% in any 12-month period. If the Commission awards a fair return rent increase greater than 15%, then the landlord may impose the remainder of the increase in subsequent years in increments not to exceed 15%.
- b. Fair Return Rent Increases on Vacant Rental Units. If the Commission determines that a rental unit requiring an increase of more than 15% is vacant or if the unit becomes vacant before the required rent increase has been taken in full, the Commission shall allow the required increase for that unit to be taken in one year or upon the vacancy of that unit, provided the unit became vacant as a result of a voluntary termination by the tenant or a termination of the tenancy by the landlord for cause.

7. Notification Requirements.

- a. Notice of Petition for a Rent Increase. The Department shall provide written notification to each tenant affected by a proposed rent increase within one week after the filing date of the petition. Such notification shall include a copy of the petition form and a listing of all requested rent increases.
- b. Notice of a Rent Increase Granted Pursuant to a Rent Increase Petition. The landlord shall provide written notice to each affected tenant of the rent increase that has been authorized by the Commission, no less than two months prior to the date the proposed increase is to take effect. Said increase shall be contingent on the decision of the Commission becoming final in accordance with Sections [6.24.110](#) and [6.24.130](#).

8. Rollbacks—Bad Faith Fair Return Petitions.

- a. Authority to Require Rollback. If, upon consideration of a fair return petition, the Commission finds that the adjusted base year net operating income included in the petition is less than the landlord's actual petition year net operating income and the fair return petition was filed in bad faith, the Commission may require the landlord to roll back the rents charged on the rental units covered by the petition to result in a net operating income equal to the adjusted base year net operating income.
- b. Purpose of Rollbacks. The purpose of the rollback provision in this subsection is to ensure that fair return petitions are filed in good faith, that the landlord reviews the records of the rental property for which rent increases are sought to ensure that a rent increase is justified under this section and to balance both the tenant and the landlord interests in each petition to increase rents above the rent stabilization allowance.
- c. Definition of Bad Faith.
- i. Bad faith can be found, but is not limited to, instances in which the landlord:
- (A) Listed expenses for repairs or services never performed;
  - (B) Materially misrepresented expenses claimed;
  - (C) Knowingly filed a false rent report, in whole or in part; or
  - (D) Acted in some manner which is a clear abuse of the petition process.
- ii. The following shall not constitute bad faith under this provision:
- (A) Miscalculations and simple mathematical errors; or
  - (B) Claims for expenses or other items that are not specifically addressed in this section and that the Commission disallowed, but that could plausibly have fallen within this section.
- d. Determination of Bad Faith by Commission. The Commission shall verify the information upon which it makes its findings of bad faith and shall issue a decision clearly stating the basis for its finding. The landlord shall be required to notify all tenants affected by the rent rollback, and, if the landlord was permitted to increase rents by the rent stabilization allowance pending a decision on the fair return petition, all rent increases so collected shall be refunded

to the affected tenants within 30 days. If the landlord fails to roll back the rents or fails to refund the rent increases collected, the affected tenants may begin paying the rolled-back rent or may deduct any rent refunds or rollbacks owed the tenants in accordance with subsection (C)(8)(a) of this section.

9. Scope of Commission Authority in Setting Rents. Notwithstanding any other provision of this chapter or regulations instituted pursuant to this chapter, the Commission shall be authorized to take into account any factors that it is required to consider by law and grant whatever rent increase is constitutionally required to yield a fair return.

10. Burden of Proof. The landlord shall have the burden of proof in demonstrating that a rent increase should be authorized pursuant to this section. (Ord. 2013-25 § 1, 2013/Ord. 2007-40 § 1 (part), 2007. Formerly 6.20.090)

**Mobile Version**



## Exhibit B: Fair Return Petition Regulations

# ADMINISTRATIVE REGULATIONS

Fair Return Rent Increases  
Takoma Park Code Section 6.20.080

UPDATED June 2014

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## **FAIR RETURN RENT INCREASES**

Pursuant to Chapter 6.20 of the Takoma Park Code, the following Administrative Regulations (the “Regulations”), have been proposed and are to be used in coordination with Chapter 6.20.080 Rent increase pursuant to a fair return petition.

### **1. Right to a Fair Return**

A landlord has a right to a Fair Return as defined by Takoma Park Code Section 6.20.080 and may petition the Commission on Landlord and Tenant Affairs (the “Commission”) for a rent increase above the annual rent increase allowance to ensure the maintenance of a fair net operating income.

### **2. Fair Return Rent Increases**

- A. A fair return means the maintenance of a landlord's Base Year net operating income, adjusted for inflation, into the Current Year.
  - i. Net operating income shall be the gross income, defined herein Section 4.C., minus operating expenses permitted herein Section 4.D.
  - ii. The Commission shall, when adjusting for inflation, increase the Base Year net operating income by 70% of the percentage increase in the Consumer Price Index (the "CPI") from the Base Year through 2007 and by 100% of the percentage increase in the CPI from 2007 through the Current Year.
- B. The annual CPI shall be the Consumer Price Index - All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, except that if the landlord's Current Year is a fiscal year, then the annual CPI for the Current Year shall be the CPI published in December of the Current Year.
- C. The Base Year shall be established in accordance with Section 4.A of these Administrative Regulations (the “Regulations”) and shall serve as the basis for determining whether a fair net operating income has been maintained by the landlord during the Current Year.
- D. The Current Year shall be either the calendar year (January 1 - December 31) or the fiscal year (July 1 - June 30) immediately preceding the date of the filing of the Fair Return Rent Increase Petition (the “Petition”).
- E. Fair Return rent increases (“rent increases”) approved by the Commission shall be determined as a percentage of the Current Year rents, and each unit in the rental facility

shall be subject to the same percentage increase.

- i. Except as provided in Subsection ii, any rent increase(s) approved by the Commission must be implemented within 12 months of the date of the issuance of the Decision or at the end of the current tenant's lease term, whichever is later, in accordance with Section 6.B of these Regulations.
- ii. If the rent increase for an occupied unit is greater than 15%, the rent increase assessed to the tenant shall be phased-in over a period of more than one year until such time as the full rent increase awarded by the Commission has been taken. Rent increases of more than 15% must be implemented in consecutive years. For example, if a 35% rent increase is awarded, the rent increase must be assessed as follows: 1<sup>st</sup> year - 15%; 2<sup>nd</sup> year - 15%; 3<sup>rd</sup> year - 5%. Rent increases may be taken in addition to those permitted using the Annual Rent Stabilization Allowance as determined by Takoma Park Code Section 6.20.050.
- iii. The implementation of any rent increase awarded by the Commission is governed by the terms of any existing lease. For example, if the tenant has a one year lease, the rent increase must be implemented at the end of the lease term. If the tenant has a month-to-month lease, the rent increase can be implemented with a minimum of two months notice in accordance with Section 6.B herein.
- iv. The landlord shall, upon the award of a rent increase, forfeit any prior rent increases which were permitted but not charged for the unit(s). Prior year rent increases include all capital improvement, hardship and fair return rent increases in addition to all annual rent increases banked as permitted by Takoma Park Code Section 6.20.060.

### **3. Fair Return Rent Increase Petitions**

#### **A. Prerequisites for Fair Return Rent Increase Petition**

- i. The Commission shall not consider the landlord's Petition:
  - a. If the landlord has not owned the rental facility for the entire Current Year;
  - b. If the Commission awarded a rent increase for the rental facility within the 12 months preceding the date of the Petition unless the Petition is justified by exceptional circumstances;
  - c. Until the properly completed Petition Form, two sets of copies of required supporting documentation, and two sets of mailing labels for each rental unit have been filed with the Commission;

- d. When the landlord has not properly registered the rental property with the City of Takoma Park (the “City”) and/or when the landlord has outstanding fees or fines assessed by the Department of Housing and Community Development (the “Department”);
  - e. When the landlord has not filed required rent reports for the three years prior to the filing date of the Petition. The Commission may, at its discretion, waive the above requirement for good cause shown; or
  - f. When the landlord has failed to comply with an order of the Commission concerning any rental unit owned by the landlord in the City. The failure to comply with an order of the Commission shall not constitute a basis to decline to consider the landlord’s Petition if the order has been appealed to the Circuit Court and no decision has been rendered on appeal.
- ii. If the Commission declines to consider the landlord’s Petition, it shall provide a written explanation for its action within ten business days of the decision.

**B. Fair Return Rent Increase Petition Form**

All Petitions shall be filed on the Fair Return Rent Increase Petition Form (the “Petition Form”) provided by the Commission (Form A). All supporting documents required in the Petition Form shall accompany the Petition at the time the Petition is filed.

**4. Standards Used in Determining a Fair Return Rent Increase**

**A. Selection of Base Year and Determination of Base Year Net Operating Income**

**i. If No Prior Hardship or Fair Return Ruling.**

If the Commission has not previously made a ruling on a petition for a “hardship” or “fair return” adjustment for the property pursuant to the Takoma Park Code, the landlord shall choose a Base Year from one of the following options. The landlord must have reliable documentation of the rents for the Base Year selected. The Department typically has rent records for properties for 1990 through the present.

**a. 1979**

For those rental facilities containing more than four units, the landlord can elect to establish 1979 as the Base Year. When using 1979 as the Base Year, the Base Year net operating income shall be calculated using actual income and expenses documented by the landlord.

b. 1987

For those rental facilities containing four or fewer rental units, the landlord can elect to establish 1987 as the Base Year. When using 1987 as the Base Year, the Base Year net operating income shall be calculated using actual income and expenses documented by the landlord.

c. 1990

The Base Year can be established as 1990, regardless of the size of the rental facility.

1. The Base Year net operating income for 1990 may be calculated using actual income and expenses documented by the landlord, or
2. The base year net operating income may be imputed based on estimated base year operating expenses. In estimating the base year operating expenses, it shall be presumed that each operating expenses increased by the same percentage as the CPI since the base year. However if data, rate information or other sources of cost information indicate that particular operating expenses increases at a different rate, the estimate of the percentage increase in that expense shall be based on the best available data on increases in that type of expense.

d. 2000

The Base Year can be established as 2000, regardless of the size of the rental facility. When using 2000 as the Base Year, the Base Year net operating income shall be calculated using actual income and expenses documented by the landlord.

e. Alternative Base Year

1. When the rental facility has previously been granted an exemption from rent stabilization in accordance with Takoma Park Code Section 6.20.030(A)2 or Section 6.20.030(A)3, or has otherwise not been subject to the City's rent stabilization requirements, the Base Year shall be the first year that the rental facility becomes subject to the requirements of Takoma Park Code, Chapter 6.20.
2. In the event the required information is not available for any of the permitted Base Year options, a landlord may, at the discretion of the Commission, use an alternative year. Such approval must be secured in writing from the Commission prior to the filing of the Petition.

ii. Base Year Net Operating Income if Prior Hardship or Fair Return Ruling

When a prior “hardship” or Fair Return Rent Increase Petition has been filed and a ruling on the requested rent increase has been made by the Commission, the fair net operating income determined by the Commission shall become the Base Year net operating income for the purposes of reviewing subsequent Petitions.

#### B. Adjustment of Base Year Net Operating Income

The Commission, in its review of a Petition, may determine that the Base Year net operating income documented by the landlord yielded other than a fair return, in which case the Base Year net operating income may be adjusted. In order to adjust the Base Year net operating income, the Commission must make at least one of the following findings:

- i. The base year net operating income was abnormally low due to one of the following factors:
  - a. The landlord made substantial capital improvements which were not reflected in the Base Year rents and the landlord did not obtain a rent adjustment for these capital improvements;
  - b. Substantial repairs were made to the rental facility due to exceptional circumstances; or
  - c. Other expenses were unreasonably high, notwithstanding prudent business practice.
- ii. Base Year rents did not reflect market transaction(s), due to one or more of the following types of circumstances:
  - a. There was a special relationship between the landlord and tenant (such as a family relationship) resulting in abnormally low rent charges;
  - b. The rents had not been increased for five years preceding the Base Year;
  - c. The tenant lawfully assumed maintenance responsibilities in exchange for low rent increases or no rent increases; or
  - d. Other special circumstances which establish that the rent was not set as the result of an arms-length transaction.

#### C. Determination of Gross Income

- i. Gross income for both the Base Year and the Current Year includes the total amount

of rental income the landlord could have received if all vacant rental units had been rented for the highest lawful rent for the entire year and if the actual rent assessed to all occupied rental units had been paid. Gross income includes any fees paid by the tenants for services provided by the landlord.

- ii. Gross income does not include income from laundry and vending machines, interest received on security deposits in excess of the amounts required to be refunded to tenants, and other miscellaneous income.

#### D. Determination of Operating Expenses

- i. Allowable operating and maintenance expenses include reasonable expenditures for the following categories of expenses and other reasonable operating costs:
  - a. Utilities paid by the landlord which are not reimbursed by the tenant;
  - b. Administrative expenses such as advertising, legal fees, accounting fees, etc;
  - c. Management fees;
    - 1. Management fees, whether the service is performed by the landlord or the fee is assessed by a professional property management firm, may not exceed 6% of the gross income generated by the rental facility.
    - 2. It shall be presumed that these expenses increased by the percentage increase in the CPI between the Base Year and the Current Year unless there has been a change in the level of management services provided at the rental facility in the interim.
  - d. Payroll;
  - e. Property taxes;
  - f. Licenses, government fees and other assessments;
  - g. Insurance costs;
  - h. Maintenance related materials and labor costs, including self-labor costs: Eligible maintenance related expenses include routinely occurring general maintenance and repair costs related to both inside and outside the building, elevator maintenance, plumbing and electrical service, fire protection and smoke detector servicing, grounds maintenance, plastering and masonry repair, carpentry, painting, heating and/or air conditioning repair, roof repairs and tuck pointing;



- i. Amortized cost of capital improvements;
  - 1. Capital improvements are additions to or the partial replacement of property that add to the value of the rental facility, appreciably lengthen its life or adapt it to a different use, and are required to be depreciated by the Internal Revenue Code.
  - 2. The total cost of all capital improvements, including the interest allowance permitted pursuant to Takoma Park Code Section 6.20.080.B.8(a)v., shall be amortized over the useful life of the improvement.
  - 3. The length of the amortization period shall be determined at the discretion of the Commission. In determining the length of the amortization period, the Commission may consider generally accepted accounting practices, the Internal Revenue Code, and regulations, guidance, and opinions of the Internal Revenue Service.
- j. Self labor expenses;
  - 1. If the landlord or the landlord's family member(s) performs work which does not require a permit under the Montgomery County Code nor the services of a state-licensed contractor, there is a presumption that labor performed by the landlord is unskilled. Such self labor expenses are allowed if documented in accordance with Section 5.B.iii of these Regulations.
    - A. Self labor shall be charged at rates established by the Commission and included with these Regulations as Exhibit A. Said schedule shall be updated by the Commission on an annual basis and adjusted upward by 100% of the CPI.
    - B. Notwithstanding the self labor rates, a landlord may receive a greater or lesser allowance for self labor if it is shown that the hourly rates established are substantially unfair or unreasonable in a particular case.
  - 2. For a landlord to receive compensation for skilled labor, the landlord must provide evidence of experience and skills comparable to specialized workers in the trade for which landlord is claiming reimbursement. If the landlord is licensed in a particular craft, the landlord shall be presumed to be skilled in that craft.
- ii. Ineligible operating and maintenance expenses which may not be included as expenses in either the Base Year or the Current Year:

- a. Any expense for which the landlord has been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed upon payments, or any other method;
- b. Payments made for mortgage or deed of trust expenses, either principal or interest;
- c. Fines resulting from failure to comply with the applicable property maintenance standards set forth in Takoma Park Code Chapter 6.12;
- d. Fines resulting from failure to comply with orders issued by the Commission;
- e. Damages paid to tenants as ordered by the Commission or a court;
- f. Depreciation or other expense items recognized by the federal government but not recognized by the Takoma Park Code;
- g. Late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental facility.
- h. Membership fees in organizations established to influence legislation and regulations, or organizations that attempt to influence legislation in Takoma Park, Montgomery County, or the State of Maryland, regardless of the purpose of the organization;
- i. Contributions to lobbying efforts;
- j. Contributions for legal fees in the prosecution of class-action cases;
- k. Political contributions for candidates for office;
- l. Any expense which the tenant has lawfully paid directly or indirectly;
- m. Attorney's fees charged for services connected with the counseling or litigation related to actions brought by the City due to the landlord's failure to comply with applicable housing regulations of the Takoma Park Code Chapter 6 Housing, as amended. This provision shall apply unless the landlord has prevailed in such an action brought by the City.
- n. Any expense incurred in conjunction with the purchase, sale, or financing of the rental facility, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.

- o. Any other expense that does not benefit the rental facility, such as, but not limited to, the cost of or forming a corporation, partnership or other entity or buying out a stockholder or partner of the landlord.
  - p. Expenses that are attributable to both the rental facility and any other property shall be allocated between the rental facility and the other property. The documentation of such expenses shall include a statement explaining the allocation and clearly indicating which expenses are being allocated.
- iii. Adjustment of operating and maintenance expenses.

The Commission, in its review of a Petition, may adjust the operating and maintenance expenses for a particular year if it finds that the expense(s) is:

- a. is not representative; or
- b. in the case of Base Year expenses, is not a reasonable representation of average expenditures for that item in the years preceding and following the Base Year; or
- c. in the case of Current Year expenses, is not a reasonable projection of future expenditures for that item, said expense shall be averaged with expense levels for other years or amortized or adjusted by the CPI or some other reasonable methodology in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison between the recurring level of the expense(s) in the Base Year and the Current Year.

## **5. Required Supporting Documentation**

- A. The Petition shall include all of the information required by these Regulations, and shall contain adequate documentation for both the Base Year and the Current Year.
- B. The landlord shall supply the following documentation of operating and maintenance expense items for both the Base Year and the Current Year. Documentation of operating and maintenance expenses is not required if 1990 has been selected as the Base Year and the Base Year net operating income is calculated in accordance with Takoma Park Code Section 6.20.080 (B)6.
  - i. Copies of bills, invoices, receipts, or other documents that support all reported expense deductions are required. The Commission reserves the right to inspect the rental facility to verify that identified maintenance has been completed and associated costs are reasonable.

- ii. Copies of time sheets maintained by the landlord in support all self labor charges. The time sheet must include an explanation of the services rendered and the landlord's calculation of the expense. If the landlord is claiming an expense for his/her skilled labor, a statement substantiating the landlord's skill or a copy of the applicable license is required.
- iii. For amortized capital improvement expenses; copies of bills, invoices, receipts, or other documents that support all reported costs are required. The Commission reserves the right to inspect the rental facility to verify that identified capital improvements have been completed and associated costs are reasonable.
- iv. All expense documentation shall be organized in sections by line item on the Petition. An adding machine or other printout or tape of each expense shall be attached to the front of the documentation for each line item. The documents shall be submitted to the Commission in the same order as the corresponding amounts on the printout or tape. The total of the documented expenses for each line item on the printout or tape shall be equal to the amount on the corresponding line on the petition.

C. The landlord may elect to provide as supplemental information, the following:

- i. Federal income tax forms and schedules which relate to the rental facility and which were filed with the landlord's tax return for the tax return year that is closest to the Base Year;
- ii. Federal income tax forms and schedules which relate to the rental facility and which were filed with the landlord's tax return for the tax return year that is closest to the Current Year or any other year which may explain variations in operating expenses;
- iii. Federal income tax forms and schedules which support prior year capital improvements;
- iv. Upon a finding by the Commission that the net operating income calculated using the financial information included on the landlord's tax return for the Base Year is more accurate than the financial information provided on the petition, the Base Year net operating income shall be re-computed using the financial information on the tax return. This decision shall be made at the Commission's discretion.

## **6. Petition Procedures**

A. Filing of a Fair Return Rent Increase Petition

The Petition Form, and one copy of supporting documents, must be filed with the Department, 7500 Maple Avenue, Takoma Park, MD 20912. Electronic and faxed copies of the Petition Form and supporting documents will not be accepted.

## B. Notice of Filing

The Department shall notify each affected tenant of the filing of the Petition within 5 business days of the filing of the Petition, providing each tenant with a copy of the Notice of Filing (Form B), and the Petition (excluding supporting documentation) submitted by the landlord.

## C. Decisions on a Petition

- i. The Rents Analyst, acting on behalf of the Commission, shall review the Petition and supporting documentation and shall issue a decision (the “Decision”) stating the recommended rent increase, if any, to be awarded to the landlord pursuant to the provisions of Takoma Park Code Section 6.20.080.
- ii. A draft of the Decision shall be provided to the landlord. The landlord shall have ten business days from the date of the draft to comment on the draft of the Decision. Comments submitted within the comment period shall be reviewed prior to the issuance of the Decision.
- iii. The Commission shall, in good faith, endeavor to issue the Decision within 90 calendar days of the filing of the Petition. The landlord’s failure to file all necessary documentation or to respond in a timely manner to requests for additional information or supporting documentation may delay the issuance of a Decision.
- iv. The Decision shall be mailed to the landlord by regular first-class mail within three business days of its issuance.
- v. The Decision shall become the final decision of the Commission if no written objections are filed with the Commission within 30 calendar days of the date of service of the Decision on the tenants by the landlord in accordance with Section D of these Regulations.

## D. Required Notice to Tenants

- i. If there is a tenants association representing the tenants residing in the rental facility and registered in accordance with Section 14 of the Administrative Regulations established for Takoma Park Code Section 6.16 Landlord Tenant Relations, the landlord shall distribute by regular first-class mail, a copy of the Decision to the president of the tenants association within five business days of the date of the

landlord's receipt of the Decision.

- ii. The landlord shall distribute to all affected tenants by regular first-class mail, a copy of the Decision and notice of any rent increase awarded by the Commission within five business days of the date of the landlord's receipt of the Decision.
- iii. Notice of any rent increase shall be provided in a form supplied by the Commission and included in these Regulations (Form C).
  - a. Notice of any rent increase shall include a notice of the right to challenge the Decision within 30 calendar days of the date of service of the Decision.
  - b. Notice of any rent increase shall be provided a minimum of two months prior to the date the increase is to take effect. The date the rent increase is to take effect shall be determined in accordance with Section 2.E.iii herein. Such notice period shall run concurrently with the tenant's right to challenge the Decision.
- iv. The landlord shall certify to the Department as to the date of service of the Decision to the tenants association and affected tenants on a form provided by the Commission and included in these Regulations (Form D). The required certification shall be submitted to the Department within ten business days of the date of service.

#### C. Challenges to the Decision

- i. All challenges to the Decision shall be in writing and shall be filed with the Commission within 30 calendar days of the date of service of the Decision on the party challenging the Decision. The party filing the challenge must identify and attach as exhibits, any documents that the party wishes the Commission to consider in ruling on the challenge..
- ii. The Department shall distribute a copy of all challenges filed with the Commission to the landlord and the affected tenants or the president of any registered tenants association within five business days of the end of the 30-day challenge period.

#### D. Ruling on a Challenge

- i. The Commission, represented by a panel of three Commissioners, shall rule on the challenge(s).
- ii. The Commission, at its discretion, may hold a hearing on the challenge(s) to a Decision.
  - a. If the Commission holds a hearing on a challenge(s) to a Decision, the hearing

shall be conducted by a Hearing Panel consisting of three (3) Commissioners. One Commissioner will be appointed the Presiding Commissioner and shall have the authority to conduct the hearing in an equitable and expeditious manner, to regulate the course of the hearing, and to maintain order in accordance with the Administrative Regulations established for Takoma Park Code Section 6.24, Commission on Landlord and Tenant Affairs. Said regulations shall be provided upon request and made available on-line at <http://www.takomaparkmd.gov>.

- b. Evidence and testimony presented at the hearing must be relevant to the challenge(s) filed in writing with the Commission. Parties may not present any documents that were not attached as exhibits to their written challenge or submitted to the Commission prior to the issuance of the Decision.
- iii. The Commission shall state its findings of fact and conclusions of law in a written Opinion and Order, which shall constitute the final decision of the Commission.
- a. The Commission may, at its discretion, retroactively increase or decrease the rent for each unit. The landlord may be required to refund any overpayment made by the tenants prior to the issuance of the Opinion and Order or require the tenants to pay additional rent to compensate the landlord for any subsequent underpayment.
  - b. The Commission's Opinion and Order shall be prepared in accordance with the Administrative Regulations established for Takoma Park Code Section 6.24, Commission on Landlord and Tenant Affairs.
  - c. The Commission shall provide the landlord with a copy of the Opinion and Order.
  - d. The Landlord shall, by regular first-class mail, provide affected tenants and the president of any registered tenants association with a copy of the Commission's Opinion and Order within five business days of the date of the landlord's receipt of the issuance of the Opinion and Order.
  - e. The landlord shall certify to the Department as to the date of service of the Opinion and Order on a form provided by the Commission and included in these Regulations (Form D). The required certification shall be submitted to the Department within ten business days of the date of service.

**SELF LABOR RATES (HOURLY)**

<b>Year</b>	<b>Unskilled</b>	<b>Skilled</b>	<b>Year</b>	<b>Unskilled</b>	<b>Skilled</b>
1979	\$6.00	\$10.00	1997	\$14.81	\$26.21
1980	\$7.00	\$11.00	1998	\$14.97	\$26.50
1981	\$7.00	\$12.00	1999	\$15.27	\$27.00
1982	\$8.00	\$13.00	2000	\$15.96	\$28.22
1983	\$9.00	\$14.00	2001	\$16.68	\$29.48
1984	\$9.00	\$15.00	2002	\$17.43	\$30.81
1985	\$9.00	\$15.00	2003	\$18.21	\$32.20
1986	\$10.00	\$16.00	2004	\$19.03	\$33.65
1987	\$10.00	\$16.00	2005	\$19.89	\$35.16
1988	\$10.00	\$16.00	2006	\$20.78	\$36.74
1989	\$12.00	\$20.00	2007	\$21.72	\$38.40
1990	\$12.00	\$20.00	2008	\$22.75	\$40.22
1991	\$13.00	\$23.00	2009	\$23.82	\$42.11
1992	\$13.33	\$23.57	2010	\$24.37	\$43.08
1993	\$13.75	\$24.33	2011	\$24.37	\$44.07
1994	\$14.03	\$24.82	2012	\$25.68	\$45.39
1995	\$14.31	\$25.32	2013	\$26.27	\$46.66
1996	\$14.69	\$25.99	2014	\$26.64	\$47.31

Labor rates for future years shall be increased by a corresponding increase in the Consumer Price Index.



**WORKSHEET**  
**Calculation of Allowable Rent Adjustment**  
 For Illustrative Purposes Only

<b>Step 1</b>	<b>Calculation of Base Year Net Operating Income (NOI)</b>	
a.	Total Gross Income in Base Year (F7)	
b.	Total Operating Expenses in Base Year (G26)	
c.	Net Operating Income in Base Year (F7-G26)	
<b>Step 2</b>	<b>Calculation of Current Year Net Operating Income (NOI)</b>	
d.	Total Gross Income in Current Year (F7)	
e.	Total Operating Expenses in Current Year (G26)	
f.	Net Operating Income in Current Year (F7-G26)	
<b>Step 3</b>	<b>Calculation of Fair Net Operating Income (FNOI)</b>	
	<b>If 1990 is used as the base year</b>	
g.	FNOI = Base Year NOI x 1.42 x (current CPI/133.5)	
	(for example if current CPI=140, then FNOI = \$100,000 x 1.42 x (140/133.5) = \$148,914)	
	<b>If 2000 is used as the base year</b>	
h.	FNOI = Base Year NOI x 1.17 x (current CPI/133.5)	
	<b>If 1979 is used as the base year</b>	
i.	FNOI = Base Year NOI x 2.35 x (current CPI/133.5)	
	<b>If 1987 is used as the base year</b>	
j.	FNOI = Base Year NOI x 1.61 x (current CPI/133.5)	
	<b>If a different year is proposed as base year contact staff for calculation of NOI adjustment over base year</b>	
<b>Step 4</b>	<b>Calculation of Allowable Rent Increase</b>	
k.	Allowable Increase = Fair Net Operating Income – Current NOI	
l.	Allowable Increase/Unit/Month = Allowable Increase For Whole Property/No. of Units/12	

CPI – Consumer Price Index-All Urban Consumers-All Items-Washington-Baltimore (Nov. 1996=100) (Series ID: CUURA311SAO) available on the website of the Bureau of Labor Statistics or by telephone automated faxback of CPI charts (see attached). If in Part D of the Fair Return application, you chose calendar year, use the “annual” CPI. If you chose fiscal year, use the “November” CPI.

Revised 6/2014

Exhibit C: Sample Preliminary Administrative Decision



**PRELIMINARY ADMINISTRATIVE DECISION**  
**FAIR RETURN RENT INCREASE PETITION**  
**7016 Maple**

**(Case # 2021-1L)**

**(Takoma Park, Maryland)**

**TIME PERIOD FOR RESPONSE TO PRELIMINARY DECISION**

*The tenants and the landlord shall have 30 calendar days from the date of service of the Official Preliminary Decision on the tenants by the landlord to file written objections to the decision.*

*If no objections are filed within this period this Decision shall become the final decision of the Commission.*

Objections should be mailed or submitted in person to: Commission on Landlord-Tenant Affairs, c/o Jean Kerr, 7500 Maple Ave., Takoma Park, MD 20912 or submitted by email to [Jeank@takomaparkmd.gov](mailto:Jeank@takomaparkmd.gov)

**Kenneth K. Baar, Ph.D.**  
**Rent Analyst on behalf of the Commission**  
**Nov. 4, 2021**



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## Summary

Under the Takoma Park Rent Stabilization ordinance apartment owners have a right to annual rent increases equal to the percentage increase in the Consumer Price Index (CPI). In addition, owners may obtain a rent adjustment pursuant to a petition process if the allowable increases under the annual rent adjustment allowance are not adequate to provide a fair return. Fair return is defined as base period “net operating income”<sup>1</sup> adjusted by 70% of the percentage increase in the Consumer Price Index (CPI) from the base year to 2007 and 100% of the percentage increase in the CPI since 2007. Apart from the ordinance, the right to a fair return is a constitutional.

This fair return petition involves a building with three apartment units. The original petition was submitted on Jan. 21, 2021, based on income and expenses in 2020. Revisions to the application were submitted on March 9, 2021. Subsequently, on Sept. 22, 2021, the Petitioner modified the information in the petition, informing the City that the dollar amounts in its petition for a substantial portion of the operating cost categories reflected the costs for all four units on the property, rather than only the three rental units covered by the petition. In this analysis, those operating expense amounts are adjusted to include three-quarters of the totals reported in the petition for those categories.

In this case, 2007 is considered as the base year because the Petitioner obtained a rent increase pursuant to a fair return petition in 2008, based on income and expense data for 2007.<sup>2</sup> Since the base year the rent has increased at approximately the same rate as the CPI. In 2007 the “adjusted” average monthly rent was \$1,397.12.<sup>3</sup> In 2020, the “adjusted” average monthly rent was \$1,736.33,<sup>4</sup> an increase of 24.3% over the average in 2007, compared to a 23% increase in the CPI. Therefore, the Petitioner is entitled to a net operating income 23% above the fair net operating income of 2007.

In the prior case, the fair net operating income was established at \$24,788.10.<sup>5</sup> Consequently, a fair net operating income in 2020 would be \$31,418.<sup>6</sup>

In order to project the net operating for the current year (2020) for the purposes of this analysis modifications were made of the amounts claimed in the Petition.

- 1) Operating expenses that covered all four units were adjusted to reflect the cost for three units.

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<sup>1</sup> “Net Operating Income” = Gross Rental Income minus Operating Expenses. Debt service is not considered as an operating expense.

<sup>2</sup> Case 08-23L. Preliminary Administrative Decision (March 20, 2009), included in this report as Appendix B.

<sup>3</sup> See *Id.*, p. 9. The approved new rents were: \$1,332.07, \$1,339.18, & \$1,460.11.

<sup>4</sup> See Case 2021-IL, Fair Return Petition, p. II-1. Monthly Rent Levels in 2020: \$1,681, \$1,729, & \$1,799.

<sup>5</sup> Case 08-23L. Preliminary Administrative Decision, p. 9 (March 20, 2009), included in this report as Appendix B.

<sup>6</sup> \$24,788.10 \* 1.23.

- 2) In accordance with the requirements in the ordinance and administrative regulations regarding capital improvements, a cost of \$10,631<sup>7</sup> for a new heat pump system was amortized.
- 3) In accordance with the requirements in the ordinance and administrative regulations regarding non-recurring operating expenses, and expense of \$1,350<sup>8</sup> for removing a tree was amortized.

On the basis of the projections in this analysis, the net operating income in 2020 was \$31,418 – 26.7% above the base year level. Therefore, the current rents are adequate to permit a fair return.

(Table 1)

Projections of Net Operating Income in Fair Return Analysis				
		Base Year	Current Year	Pct. Inc.
		2007	2020	%
	Consumer Price Index (CPI) (in May)	216.097	265.733	23%
	Income	50,296	62,508	24.3%
	Operating Expenses		31,089	
	Net Operating Income		31,418	
	Fair Net Operating Income in 2007	24,788		
	Fair Net Operating Income in 2020 (23% above base year fair net operating income)		30,489	

<sup>7</sup> 75% of the total cost of new heat pump for the four unit building of \$14,175.

<sup>8</sup> 75% of the total cost of \$1,800 for the four unit building of \$14,175.

## **The Analyst**

The analyst has a Ph.D in urban planning and is an attorney.

Baar's articles on fair return issues have been cited in decisions of the California and New Jersey Supreme Courts and numerous California Court of Appeal decisions. Over the past 30 years, he has served as a consultant to about thirty California jurisdictions on issues related to rent stabilization and has prepared fair return reports for approximately twenty cities in rent control fair return cases.

The analyst has published extensively on housing and real estate issues. Also, he has served as a consultant to the World Bank and U.S. AID on policy issues in East European nations undergoing economic transition and on two occasions has been a visiting Fulbright professor in East Europe.

### **Appellate Court Opinions Relying on the Testimony of Kenneth K. Baar**

*Rainbow Disposal Co., Inc. v. Mobilehome Park Rental Review Board*, 64 Cal. App.4th 1159 (1998)  
California Court of Appeal

*MHC Operating Limited Partnership v. City of San Jose*, 106 Cal. App.4th. 204 (2003) California Court of Appeal

*Hillsboro Properties v. Public Utilities Commission*, 208 Cal. App. 4<sup>th</sup> 246 (2003) California Court of Appeal

*Berger Foundation v. Escondido*, 127 Cal. App.4th 1 (2005) California Court of Appeal

*Los Altos El Granada Investors v. City of Capitola*, 139 Cal.App.4th 629 as modified by 140 Cal.App.4th 135c (2006) California Court of Appeal

*Besaro Mobile Home Park v. City of Fremont*, 204 Cal. App. 4<sup>th</sup> 345 (2012) California Court of Appeal

*Colony Cove Properties v. City of Carson*, 220 Cal. App. 4th 840 (2013,) California Court of Appeal



## **Appellate Court Opinions Citing Law Review Articles of Kenneth Baar About Rent Regulations**

*Westchester West No.2 Limited Partnership v. Montgomery County*, 246 Md. 448, 348 A.2d. 856 (1975)  
Maryland Court of Appeals

*Helmsley v. Borough of Fort Lee*, 78 N.J. 200; 394 A.2d. 65 (1978) New Jersey Supreme Court, appeal dismissed, 440 U.S. 978, 99 S.Ct. 1782, 60 L.Ed. 2d. 237 (1979)

*Fisher v. City of Berkeley*, 37 Cal.3d. 644 (1984) California Supreme Court; affirmed, 475 U.S. 260, 106 S.Ct. 1045, 89 L.Ed.2d. 206 (1986)

*Oceanside Mobile Home Park Owners Association v. City of Oceanside*, 157 Cal.App.3d. 887 (1984)  
California Court of Appeal

*Mayes v. Jackson Township*, 103 N.J. 362; 511 A.2d. 589 (1986) New Jersey Supreme Court; *cert. denied*, 479 U.S. 1090, 107 S.Ct. 1300, 94 L.Ed. 2d. 155 (1987).

*Parks v. Tenants Ass'n of Holly Hill Mobilehome Terrace*, 213 N.J. Super. 511 (1986) Superior Court of New Jersey Appellate Division

*Yee v. Mobilehome Park Rental Review Board [City of Escondido]*, 17 Cal. App. 4th 1097 (1993)  
California Court of Appeal

*Palomar Mobilehome Park v. City of San Marcos*, 16 Cal.App.4th 481 (1993) California Court of Appeal

*Silverman v. Rent Leveling Board*, 277 N.J. Super. 524, 649 A.2d 1342 (1994) New Jersey Superior Court Appellate Division

*Kavanau v. Santa Monica Rent Control Board*, 16 Cal.4th. 761 (1997) California Supreme Court); *cert. denied*, 522 U.S. 1077, 118 S.Ct. 856, 139 L.Ed. 2d. 755 (1998)

*Rainbow Disposal Co., Inc. v. Mobilehome Park Rental Review Board [City of Escondido]*, 64 Cal.App.4th 1159 (1998) California Court of Appeal

*Quinn v. Rent Control Board of Peabody*, 45 Mass. App.Ct. 357, 698 N.E.2d.911 (1998, Massachusetts Court of Appeal)

*Galland v. City of Clovis*, 24 Cal.4th 1003 (2001) California Supreme Court; *cert. denied*, 534 U.S. 826, 122 S.Ct. 65 (2001)

*MHC Operating Limited Partnership v. City of San Jose*, 106 Cal. App.4th 204 (2003) California Court of Appeal

*Berger Foundation v. Escondido*, 127 Cal.App.4th 1 (2005) California Court of Appeal

*T.G. Oceanside L.P. v. City of Oceanside*, 156 Cal. App.4th. 1355 (2007) California Court of Appeal

## **I. The Ordinance and the Right to a Fair Return**

Under the Takoma Park rent stabilization ordinance, from 1990 to 2007 apartment owners were permitted annual rent increases equal to 70% of the percentage increases in the Consumer Price Index (CPI). Since 2007, the ordinance has authorized annual percentage rent increases equal to 100% of the percentage increase in the CPI.

In addition to the allowable annual increases, apartment owners may petition for additional rent increases pursuant to a fair return standard. Under the ordinance, fair return is defined as the base period net operating income adjusted by 70% of the percentage increase in the CPI from the base year to 2007 and 100% of the percentage increase in the CPI since 2007. (Sec. 6.20.080.B.1)<sup>9</sup> (This type of standard is known as a “maintenance of net operating income” [MNOI] standard.)

The right to a fair return apart from being a right provided by the ordinance, is a constitutional right. Since fair return is a legal concept based on judicial doctrine independent of any right set forth in a local or state law, a brief discussion of judicial standards regarding fair return under rent stabilization is included as Appendix E of this report.<sup>10</sup>

## **II. Analysis of Rent Increase Application**

The property, which was built in 1905, contains three rental units. It was purchased by the Petitioner in 1986.

In 2008, the rent was adjusted pursuant to the petition process, taking into account income and operating expenses in 2007. (Case #08-23L, Decision, p. 9.<sup>11</sup>)

The current petition for a rent increase was filed on Jan. 21, 2021. The Petitioner used 2007 as the base year and 2020 as the “current” year. A revision to the application was submitted on March 9, 2021. Subsequently, on Sept. 22, 2021, the Petitioner informed the City that the dollar amounts in its petition for a substantial portion of the operating cost categories reflected the costs for all four units on the property, rather than only the three rental units covered by the petition. In this analysis, the operating expense amounts for those categories are adjusted to include three-quarters of the totals reported in the petition.

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<sup>9</sup> The regulations provide that the: “The annual CPI shall be the Consumer Price Index - All Urban Consumers all items, Washington-Baltimore (Series ID: CUURA311SAO) published as of March of each year, ...”. (Administrative Regulations, Section 2.B.)

<sup>10</sup> For background discussion of fair return issues under regulations of apartment rents and mobilehome park space rents see Baar, “Guidelines for Drafting Rent Control Laws: Lessons of a Decade,” 35 *Rutgers Law Review*, 723, 781-817 (1983) and Baar, “Fair Return under Mobilehome Park Space Rent Controls: Conceptual and Practical Approaches,” 29 *Real Property Law Reporter* 333 (Sept. 2006, California Continuing Education of the Bar [CEB]) (The courts have applied the same fair return doctrines in apartment and mobilehome park space rent regulation cases.)

<sup>11</sup> Included in this Report as Appendix B.

## **A. Determination of Base Year and Current Year**

Under the ordinance, if a rent determination was made pursuant to a prior increase petition, the income and operating expenses determined to be fair in the prior petition shall become the base year income and operating expenses in a subsequent petition.

Establishment of a New Base Year Net Operating Income—Prior Year Petitions. The net operating income, income, and expenses, determined to be fair and reasonable pursuant to a prior petition for a fair return rent increase, shall constitute the base year income, expenses, and net operating income in the new petition. 6.20.080. C.4.b.

In 2012 the Owner submitted a petition. In that case, after a draft decision was issued the residents and the Petitioner submitted comments and the Rent Analyst requested additional information from the Petitioner. The Petitioner did not respond to this request and the City did not continue to process the petition.

In the current petition, the Owner uses 2007 as the base year. Also, in this analysis 2007 is used as the base year.

The “current” year for the purposes of this fair return analysis is 2020.

## **B. Base Year and Current Year Rental Income**

In 2007 the “adjusted” average monthly rent was \$1,397.12.<sup>12</sup> In 2020, the “adjusted” average monthly rent was \$1,736.33,<sup>13</sup> an increase of 24.3% over the average in 2007. Gas and electricity are paid for by the tenants.

In the prior case, the fair net operating income was established at \$24,788.10.<sup>14</sup>

## **C. Current Year Operating Expenses**

### **1. Overview**

The Calculations of Current Year operating costs in this analysis are based on the standards in the Ordinance. Petitions for fair return adjustments must include operating expense information for the “current” year, the two prior years, and the “base” year. The Petitioner provided operating expense summaries by category and accompanying documentation for 2018, 2019, and 2020.

The documentation was reviewed by City staff for the purpose of assuring that the claimed expenses were documented.

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<sup>12</sup> See *Id.*, p. 9. The approved new rents were: \$1,332.07, \$1,339.18, & \$1,460.11

<sup>13</sup> See Case 2021-IL, Fair Return Petition, p. II-1. Monthly Rent Levels in 2020: \$1,681, \$1,729, & \$1,799.

<sup>14</sup> See Appendix B, p. 9.

If none of the current year's expenses are amortized, the total of operating and maintenance expenses of \$43,942 in the current year (2020) is 78% above the total of \$24,703 in the base year (2007). This increase compares with the 23% increase in the CPI during this period. Also, the current year total is over 40% above the totals for the two prior years.

**Operating Expenses – Amounts in Hearing Decision of 2007 and Amounts Reported in Current Petition**

<b>Operating &amp; Maintenance Expenses</b>	<b>2007 Hearing Decision Amounts</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Petition Amount Adjusted to reflect allocation of 25% of cost to unit not covered by petition</b>
Professional Mgmt. Firm	\$ -				
Self-Management	2,841.00				
Self-Labor		3,660.00	3,720.00	3,816.00	
<b>Utilities</b>					
Gas	N/A				
Elec	N/A	76.78			
Water & Sewer	764.00	1,063.04	1,885.87	1,665.33	*
<b>Maint.</b>					
Grounds	4,263.00	162.74	2,032.76	3,074.87	*
Bldg Maintenance & Repairs	1,911.00	5,132.99	3,479.69	17,054.35	*
Painting		3,762.14	1,608.86	1,718.44	*
Self-Labor	768.90				
Misc. Supplies.	109.26				
<b>Taxes</b>					
Real Est. Taxes	9,723.00	12,429.03	12,656.03	12,634.11	
Prop. Insurance	1,868.00	2,277.00	2,359.07	2,787.00	*
<b>Admin.</b>					
Legal Svcs.	-	-	-	-	
Acctg. Svcs.	285.00	-	-	-	
Misc. Admin. Services	-	-	-	-	
Rental License Fees	574.00	327.00	330.00	330.00	
Stormwater Fees	356.00	-	-	197.70	*
Misc. Fees and Assessments	-	-	-	-	
Trash Collection & Recycling	-	214.50	-	214.50	*
Misc. Contract Services	-	1,485.00	135.00	450.00	*
Amortized Cost Install Heating System	1,240.47				
<b>Total</b>	<b>24,703.63</b>	<b>30,590.22</b>	<b>28,207.27</b>	<b>43,942.30</b>	
<b>pct increase over base year</b>				78%	

## **Building and Maintenance Expenses**

In this case, a substantial portion of the increase in expenses over the two prior years and the base year is attributable to the installation of a new heat pump, with a cost of \$10,631 for the three rent controlled units (75% of the total cost of new heat pump of \$14,175). This cost accounts for most of the increase in reported operating expenses over the amounts reported for 2018 and 2019.

This type of expense is clearly a capital improvement, rather than an annually recurring expense. The ordinance provides that capital improvement costs are allowed as an expense on an amortized basis, rather than being expensed in one year.

### **6.20.080 Rent increases pursuant to a fair return petition. ...**

#### **B. Standards for Rent Increases Pursuant to a Fair Return Petition.**

#### **8. Operating Expenses. Operating expenses means all reasonable operating and maintenance expenses.**

V. Operating expenses shall include, but not be limited to, the following:

i. Amortized cost of capital improvements;

1. Capital improvements are additions to or the partial replacement of property that add to the value of the rental facility, appreciably lengthen its life or adapt it to a different use, and are required to be depreciated by the Internal Revenue Code.

2. The total cost of all capital improvements, including the interest allowance permitted pursuant to Takoma Park Code Section 6.20.090.B.8(a)v., shall be amortized over the useful life of the improvement.

3. The length of the amortization period shall be determined at the discretion of the Commission. In determining the length of the amortization period, the Commission may consider generally accepted accounting practices, the Internal Revenue Code, and regulations, guidance, and opinions of the Internal Revenue Service.

The Ordinance provides for an interest allowance for amortized costs, with a rate equal to the Federal Reserve Board Bank prime loan rate plus 2%.

8. Operating Expenses. Operating expenses means all reasonable operating and maintenance expenses.

a. Operating expenses shall include, but not be limited to, the following:

Amortized cost of capital improvements. An interest allowance shall be allowed on the cost of amortized capital expenses. The allowance shall be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments, at an interest rate equal to the Federal Reserve Board bank prime loan rate as of the date of the initial submission of the petition plus 2% per annum.

The prime rate as of the date of the petition and currently is 3.25%. Under the fair return standard the Applicant is entitled to an interest allowance for this amortized cost which is two percent higher, in this case – 5.25%.

The ordinance provides the Commission with discretion in determining the amortization period. If the cost of the heat pump is amortized over a period of twenty years, the annual allowable cost is \$859.64, the equivalent of \$17.91/unit/month. This amount is used in the calculation of current year operating expenses.

To place the selection of a twenty-year amortization period in perspective, that the monthly amounts per unit would not vary substantially if a fifteen or twenty-five year period was used. If a fifteen year period was used, the monthly amount per unit would be \$1,025.52 (\$21.37/unit/month) and if a 27.5 year period was used (the standard that might be applicable under IRS regulations for expense claims for rental properties), the amount would be \$731.29 (\$15.24/unit/month).

#### **Other Building and Maintenance Expenses and Grounds Maintenance Expenses**

In addition to the requirement in the ordinance to amortize capital improvements, the administrative regulations provide that expenses that do not reflect ongoing expenses levels shall be “amortized or adjusted by the CPI or some other reasonable methodology.”

#### **4. Standards Used in Determining a Fair Return Rent Increase**

##### **D. Determination of Operating Expenses**

##### **iii. Adjustment of operating and maintenance expenses.**

The Commission, in its review of a Petition, may adjust the operating and maintenance expenses for a particular year if it finds that the expense(s) is:

a. is not representative; or

b. in the case of Base Year expenses, is not a reasonable representation of average expenditures for that item in the years preceding and following the Base Year; or

c. in the case of Current Year expenses, is not a reasonable projection of future expenditures for that item, said expense shall be averaged with expense levels for other years or amortized or adjusted by the CPI or some other reasonable methodology in order to establish an expense amount for that item which most reasonably serves the objectives of obtaining a reasonable comparison between the recurring level of the expense(s) in the Base Year and the Current Year.

In reviewing the current year expense claims it is essential to determine whether they reflect a

recurring cost level or include one time or intermittent expenditures that should be amortized. If substantial expenses that are not recurring are expensed within a year in a fair return analysis, the owner would be provided with an annual increase that would provide for multiple recoveries of the same expense.

An explanation of this issue in a recent opinion of the Delaware Supreme Court in a rent regulation case, while not governing precedent in a Maryland case, is instructive:

Construing the Act to allow a community owner to recover the cost of a one time capital improvement year-after-year, even after fully recovering that cost in year one, conflicts with the Act's stated purpose .... Once the cost of a non-recurring capital improvement is recovered by the community owner in full through a rent increase, the continued assessment of that increase indefinitely becomes unrelated to the benefits and costs of living in the community. ...where the cost of a one-time capital improvement is the justification for a rent increase, the justification for that increase ends when the cost has been fully recovered. A community owner may propose a rent increase that recovers that cost in a one-year lease period, as was done here, or it may propose a rent increase that spreads the recovery of that cost over more than one year or more than one lease period. But the Act's requirement that an increase be justified limits the rent increase for a capital improvement to recovery of the full cost of the improvement justifying the increase. (*Rehoboth Bay Homeowners' Association, V. Hometown Rehoboth Bay, Llc*, 234 A.3d 434, 444 (2021, Delaware Supreme Court))

In this case, the expense levels in two categories include substantial expenditures that would not be annually recurring and would not re-occur frequently.

If the cost of the new heat pump is excluded, the building and maintenance expenditures for 2020 are \$6,423. This amount is still well above the expenditures in this category of \$1,911 on 2007 (inflation adjusted amount \$2,350); \$5,132 in 2018; and \$3,479 in 2019. \$1,978 of the current year expenses building and maintenance expenses are attributable to gutter and drain work.<sup>15</sup>

In this fair analysis, the average of the building and maintenance expenses in the past three years of \$5,012 is used to project a recurring level of this expense. In absolute dollar terms, this amount does not differ substantially from the Petitioner's total of \$6,423. However, in a case involving only three units the difference is equal to \$39/month/unit.<sup>16</sup>

The grounds expenditure for 2020 of \$3,074 is substantially above the level of \$2,032 in 2019 and \$162.74 in 2018.

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<sup>15</sup> The total cost is \$2,638. See Appendix C, p. C-5. In this analysis, 75% of this cost is allocated to the Petitioner's three rental units

<sup>16</sup> \$6,423 / (3 units \*12 months)



Expenses in 2020 include \$1,350 for tree removal.<sup>17</sup> Since only one other tree remains on the property, this expense is not considered as an annually recurring operating expense; instead, it is amortized with an interest allowance. In this analysis the interest allowance that the ordinance provides for capital improvements is included in the cost projection.

There is no standard guideline for depreciating landscaping expenses as they are not a depreciable expense under the Internal Revenue Code. However, to the extent this expenditure was necessary in order to maintain the property, in the context of a rent regulation it would not be reasonable to deny a cost allowance for this expense. For the purposes of this analysis, a 15-year period is used with an interest rate of 5.25%, resulting in an annual cost of \$130 and a monthly cost per unit of \$3.62.

If the cost of tree removal was not amortized, the combined totals of the grounds and maintenance expenses in 2020 would have been nearly double the totals for 2018 and 2019. (2018 - \$5,295; 2019 - \$5,503; 2020 – \$9,919).<sup>18</sup>

## **6. Calculation of Current Year Operating Expenses and Net Operating Income**

The table below sets forth income and operating expenses reported in the application and the amounts used for this fair return analysis.

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<sup>17</sup> Total cost \$1,800. See Appendix C, p. C-6. In this analysis, 75% of this cost is allocated to the Petitioner's three rental units.

<sup>18</sup> Calculations for 2020. Grounds – 75% of total in original petition = \$3,179, Building & Maintenance – 75% of total in original in original petition if heat pump cost is excluded - \$6,740.

<b>Operating Expense Projections</b>						
Expense totals that are adjusted for the purpose of this analysis in cells with bold outline						
	Base Year 2007	2018	2019	2020	2020	
		Reported by Petitioner			Fair Return Analysis	
On-Site Mgr						
Professional Mgmt. Firm						
Self-Management	2841.00					
Self-Labor		3660.00	3720.00	3816.00	3816.00	
<b>Utilities</b>						
Gas						
Elec		76.78				
Water & Sewer	764.00	1063.04	1885.87	1665.33	1665.33	*
<b>Maint.</b>						
Grounds	4263.00	162.74	2032.76	3074.87	1274.87	*
Bldg Maintenance & Repairs	1911.00	5132.99	3479.69	17054.35	5011.50	*
Painting		3762.14	1608.86	1718.44	1718.44	*
Self-Labor	768.90					
Misc. Supplies.	109.26					
<b>Taxes</b>						
Real Est. Taxes	9723.00	12429.03	12656.03	12634.11	12634.11	
Prop. Insurance	1868.00	2277.00	2359.07	2787.00	2787.00	*
<b>Admin.</b>					0.00	
Legal Svcs.						
Acctg. Svcs.	285.00					
Misc. Administrative Services						
Rental License Fees	574.00	327.00	330.00	330.00	330.00	
Stormwater Fees	356.00			197.70	197.70	*
Trash Collection & Recycling		214.50		214.50	214.50	*
Misc. Contract Services		1485.00	135.00	450.00	450.00	*
Capitalized Improv. Cost - Install Heating System	1240.47				860.00	
Tree Removal Cost Amortized					130.23	
<b>Total</b>	<b>24,703.63</b>	<b>30,590.22</b>	<b>28,207.27</b>	<b>43,942.30</b>	<b>31,089.68</b>	

### **III. Calculation of Fair Return**

As previously indicated, from 2007 to 2020, scheduled rental income increased by 24.3%, compared to an increase of 23% in the CPI.

Using the operating expense projections in this analysis, the current net operating income is \$31,418 compared to a fair net operating income in the base year of \$24,788. The increase in net operating income over the base year is 24%. This increase compares with a 23% increase over the base year level that is required in order to provide a fair return. (See table in Summary, p. iii of this report)

*Kenneth Baar*  
Kenneth Baar, Rent Analyst



Change Output Options: From: 1990 To: 2021 GO

include graphs  include annual averages

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Data extracted on: June 10, 2021 (6:24:44 AM)

**CPI for All Urban Consumers (CPI-U)**

**Series Id:** CUURS35ASA0

Not Seasonally Adjusted

**Series Title:** All items in Washington-Arlington-Alexandria, DC-VA-MD-WV, all urban consumers, not seasonally adjusted

**Area:** Washington-Arlington-Alexandria, DC-VA-MD-WV

**Item:** All items

**Base Period:** 1982-84=100

Download: [.xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1990	132.0		133.8		134.0		135.7		138.0		138.4		135.6	133.6	137.6
1991	139.1		139.3		140.9		140.9		143.3		142.6		141.2	139.9	142.4
1992	142.9		143.0		143.2		144.8		146.0		146.9		144.7	143.2	146.1
1993	147.8		148.5		149.2		149.2		149.7		150.9		149.3	148.6	150.1
1994	150.9		151.5		151.4		151.8		153.7		153.0		152.2	151.3	153.0
1995	153.8		155.1		154.7		156.1		156.2		155.2		155.3	154.7	155.9
1996	156.8		158.4		159.0		160.1		160.8		161.2		159.6	158.3	160.8
1997	161.6		161.9		162.1		162.9		163.6		161.8		162.4	162.0	162.8
1998	162.5		163.5		163.6		164.9		165.2		164.5				
1999	165.4		165.9		167.0		168.3		169.8		169.1				
2000	169.8		173.2		172.5		174.8		175.0		175.3				
2001	175.9		177.2		178.0		179.2		180.9		179.5				
2002	180.0		181.9		183.6		184.2		185.8		185.4				
2003	186.3		188.8		188.7		190.2		190.8		190.4				
2004	190.7		192.8		194.1		195.4		196.5		197.2				
2005	198.2		200.4		201.8		202.8		205.6		204.3				
2006	205.6		206.4		209.1		211.4		211.2		210.1				
2007	211.101		214.455		216.097		217.198		218.457		218.331				
2008	220.587		222.554		224.525		228.918		228.871		223.569				
2009	221.830		222.630		223.583		226.084		227.181		226.533				
2010	227.440		228.480		228.628		228.432		230.612		230.531				
2011	232.770		235.182		237.348		238.191		238.725		238.175				
2012	238.994		242.235		242.446		241.744		244.720		243.199				
2013	243.473		245.477		245.499		246.178		247.838		247.264				
2014	247.679		249.591		250.443		250.326		250.634		249.972				
2015	247.127		249.985		251.825		250.992		252.376		251.327		250.664	249.828	251.500
2016	250.807		252.718		254.850		254.305		253.513		253.989		253.422	253.049	253.795
2017	254.495		255.435		255.502		255.518		257.816		257.872		256.221	255.332	257.110
2018	260.219		260.026		261.770		262.016		263.056		261.120		261.445	260.903	261.987
2019	262.304		264.257		265.967		265.170		265.500		265.026		264.777	264.252	265.301
2020	266.433		265.385		265.733		267.287		268.788		268.700		267.157	265.954	268.359
2021	270.535		272.347												

City of Takoma Park, Maryland

COMMISSION ON LANDLORD-TENANT AFFAIRS  
(COLTA)  
301-881-7119



7500 MAPLE AVENUE  
TAKOMA PARK, MD 20912

In the Matter of the Petition of )  
 )  
 Rental Property owned by Thomas Twomey )  
 ) Case # 08-23L  
 For Rent Increases Above the Rent Stabilization Guidelines )  
 for the Rental Facility Located at )  
 )  
 7106 and 7108 Maple Avenue )  
 Takoma Park, Maryland 20912 )

Preliminary Administrative Decision

I. Introduction

By a Fair Return Rent Increase Petition ("Petition") docketed on December 23, 2008, Thomas Twomey ("Petitioner") requested a rent increase above the stabilization level for the rental facilities located at 7106 and 7108 Maple Avenue, Takoma Park, MD 20912 Property".

Per Section 6.20.090.A of the Takoma Park Code, a landlord has a right to petition for a rent increase in order to obtain a fair return. A fair return rent increase is intended to protect tenants from unwarranted rent increases, while allowing rent levels which provide landlords with a fair return.

Pursuant to Section 6.20 of the Takoma Park Code ("Code") and the Fair Return Rent Increase Regulations of the City of Takoma Park Commission on Landlord-Tenant Affairs ("Regulations"), the Petition and accompanying documentation have been reviewed and the following represents the findings.

II. Discussion

Under a Fair Return petition, the rent levels for a rental facility can be adjusted to reflect a fair return on the landlord's investment when operating expenses have risen faster than rental income. The need for an adjustment is measured by whether the

landlord's net operating income (NOI) in the Base Year is larger, after adjusting for inflation, than the NOI in the Current Year.

Per Section 6.20.090.B.1, a fair return is defined as Base Year net operating income adjusted by 70% of the percentage increase in the Consumer Price Index (CPI) from the Base Year until 2007, and 100% of the percentage increase in the CPI since 2007.

The Petitioner has submitted the Petition, along with supporting documentation, requesting a rent increase for the 3 rental units that comprise 7106 and 7108 Maple Avenue.

It is noted that, Section 6.20.090.C.4 of the Code grants the Commission the right to make adjustments to the income, expense and/or other calculations reported in the Petition.

### **III. Finding of Fact**

Per Section 6.20.090.B.2 of the Code, the Petitioner had a choice of selecting between 1979 (unless the property contains four or fewer dwelling units), 1987 (if the property contains four or fewer rental units), 1990 or 2000 as the Base Year. Per the submitted documentation, the Petitioner chose 2000 as the Base Year.

Per Section 6.20.090.B.3 of the Code, the Petitioner had a choice of selecting the Current Year. The Current Year could be either the calendar year (January 1 – December 31) or the fiscal year (July 1 – June 30) immediately preceding the date that the application is filed. Per review of the submitted documents, the Petitioner has chosen calendar year 2007 as the Current Year.

Per review of the supporting documentation, there has been no prior Hardship or Fair Return ruling for this property

#### **Base Year Net Operating Income:**

It is noted that, Section 6.20.090.C of the Code grants the Commission the right to make adjustments to the income, expense and/or other calculations reported in the Petition.

The Petitioner chose 2000 as the base year and was therefore required to document actual income and expense. Per review of the submitted documentation the amounts on the Petition are determined to be correct. The submitted base year operating income is as follows:

	Submitted Base Year FY 2000
Rental Income	<u>36,416.01</u>
<u>Expenses:</u>	
Heating Fuel	2,927.00
Electricity	0.00
Water and Sewer	557.00
Grounds Maintenance	263.00
Building Maintenance and repairs	3,433.00
Miscellaneous supplies	68.00
Real Estate Taxes	3,491.00
Insurance	1,437.00
Accounting Services	0.00
Rental housing license fee	0.00
Stormwater	106.40
Trash collection and recycling	<u>259.00</u>
Total Expenses	<u>12,541.40</u>
Net operating income/(loss)	<u><u>23,874.61</u></u>

The Petitioner manages the property himself and has included 6.0% of total income as self management fees for the Current Year. In order to be consistent, 6% of Base Year Revenues have been included as self management expense in order to compute Base Year Net Operating Income. This amount is determined to be \$2,184.96 (6% of \$36,416.01).

Insurance Expense:

It is noted that the insurance bill for the base year was requested. The petitioner could not locate his insurance bill. The petitioner stated that he is still with the same insurance company and requested a copy of the bill from them but they have not responded. For the Base Year the allocated insurance expense is \$1,437 and for the Current Year it is \$1,868. Therefore, the amount is reasonable.

Real Estate Taxes:

It is noted that further clarification was requested from the petitioner on the real estate taxes for the Base Year. Partial documentation was submitted. Based on a comparison of the Current Year taxes, they appear to have tripled. Although this seems to be a



high increase, given the rise in the real estate market, it is possible. Once the additional documentation is acquired, the petitioner is hereby asked to submit them to the City.

Based on the above adjustments, the Base Year operating income is determined to be as follows:

	Submitted Base Year FY 2000	Adjustments	Adjusted Base Year FY 2000
Rental Income	36,416.01		36,416.01
<b>Expenses:</b>			
Self Management		2,184.96	2,184.96
Heating Fuel	2,927.00		2,927.00
Electricity	0.00		0.00
Water and Sewer	557.00		557.00
Grounds Maintenance	263.00		263.00
Building Maintenance and repairs	3,433.00		3,433.00
Miscellaneous supplies	68.00		68.00
Real Estate Taxes	3,491.00		3,491.00
Insurance	1,437.00		1,437.00
Accounting Services	0.00		0.00
Rental housing license fee	0.00		0.00
Storm water	106.40		106.40
Trash collection and recycling	259.00		259.00
Total Expenses	12,541.40	2,184.96	14,726.36
Net operating income/(loss)	23,874.61	2,184.96	21,689.65

Based on the above referenced calculations, the Base Year NOI is hereby established at \$21,689.65

**Current Year Net Operating Income:**

The Petitioner has chosen calendar year 2007 as the Current Year. Current Year Net Operating Income is computed from the submitted petition is as follows:

	<u>As submitted</u> <u>Current Year</u> <u>2007</u>
<b><u>Income:</u></b>	
Gross Rental Income	<u>47,352.09</u>
<b><u>Expenses:</u></b>	
Self Management	2,841.00
Self Labor	768.90
Water and Sewer	764.00
Grounds Maintenance	4,263.00
Building Maintenance and repairs	1,911.00
Miscellaneous supplies	86.00
Real Estate Taxes	9,723.00
Insurance	1,868.00
Accounting Services	285.00
Rental housing license fee	574.00
Storm water	356.00
Capital Improvements	0.00
Total Expense	<u>23,439.90</u>
Net Operating Income (Loss)	<u>23,912.19</u>
Operating expense as a % of gross revenue	50%

It is noted that, Section 6.20.090.C of the Code grants the Commission the right to make adjustments to the income, expense and/or other calculations reported in the Petition.

**Documentation Adjustments and Comparison:**

Per review of the submitted documents various discrepancies were noted between the petitioned amount and the associated documentation. For purposes of this petition, the amount of the documentation is used as the correct amount.

**Miscellaneous Supplies**

This category had to be adjusted based on the impacted units:

Sure Fit Lock & Safe	3/26/2007	\$ 6.36
Sure Fit Lock & Safe	3/26/2007	78.54
Sure Fit Lock & Safe	3/27/2007	9.95

CVS	3/26/2007	5.28
CVS	3/26/2007	2.32
Strosnidars	3/26/2007	15.70
Home Depot	7/13/2007	21.55
Home Depot	7/15/2007	<u>5.98</u>
		\$ 145.68
Total units		4
Cost per unit		36.42
Units on this petition		3
Total		109.26
Petitioned amount		<u>86.00</u>
Difference		<u>\$ 23.26</u>

The amount of \$109.26 is used as the Current Year Expense for this category.

Capital Improvements Amortization:

A capital improvement is defined in Section 4.D.i.1 of the Regulations as Capital improvements are additions to or the partial replacement of property that add to the value of the rental facility, appreciably lengthen its life or adapt it to a different use, and are required to be depreciated by the Internal Revenue Code. The total cost of all capital improvements, including the interest allowance permitted pursuant to Takoma Park Code Section 6.20.090.B.8(a)(v), shall be amortized over the useful life of the improvement.

Per section 6.20.090.B.8 (a) (v). an interest allowance shall be allowed on the cost of amortized capital expenses; the allowance shall be equal to the interest the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, making uniform monthly payments.

A capital improvement petition, No. 2003-49L, has previously been approved by the Commission. Based on the depreciation calculation utilized in that petition depreciation expense for the Current Year is computed as follows:

<u>Description</u>	<u>Unit</u>	<u>Cost of Improvement</u>	<u>Monthly Amortized Amount</u>	<u>Straight Line Depreciation of Improvement Including Finance Cost</u>
Install new heating system	All	\$16,544.00	\$137.83	\$1,653.96
Total units				4
Cost per unit				\$413.49
Units on this petition				<u>3</u>
Depreciation expense				<u>\$1,240.47</u>

Therefore, a depreciation expense of \$1,240.47 is applied to the Current Year Net Income.

Maintenance and Repairs

It is noted that the petitioner was asked to provide the maintenance and repairs receipt of \$150.00 for Sergio Gonzales. The receipt was never provided but the expense appears reasonable and is therefore deemed allowable.

Based on the calculations above, please see the revised Current Year net operating income below:

	<u>Adjusted Current Year 2007</u>
<u>Income:</u>	
Gross Rental Income	<u>47,352.09</u>
<u>Expenses:</u>	
Self Management	2,841.00
Self Labor	768.90
Water and Sewer	764.00
Grounds Maintenance	4,263.00
Building Maintenance and repairs	1,911.00

Miscellaneous supplies	109.26
Real Estate Taxes	9,723.00
Insurance	1,868.00
Accounting Services	285.00
Rental housing license fee	574.00
Storm water	356.00
Capital Improvements	1,240.47
	<hr/>
Total Expense	24,703.63
	<hr/>
Net Operating Income (Loss)	22,648.46
	<hr/>
Operating expense as a % of gross revenue	52%

Therefore, the revised net operating income is deemed to be \$22,648.46 for the Current Year.

**CPI Adjustment and Comparison:**

To calculate the net operating income that the landlord requires to earn a fair return, the landlord's Base Year NOI must be adjusted for inflation at a rate of 70% of the percentage increase in the Consumer Price Index (CPI) from the Base Year through 2007, and at a rate of 100% of the percentage increase in the CPI from 2007 through the Current Year. If the landlord's Current Year NOI is less than the adjusted Base Year NOI, the commission shall allow the rents to be increased upwards to result in a net operating income equal to the adjusted Base Year NOI.

The CPI for the Base Year was 172.2. The CPI for the Current Year, 2007, was 207.35. The difference between the Base Year CPI and the Current Year CPI, 35.14, represents an increase of 20.41%. Multiplying the increase by 70.00% results in an adjustment factor of 14.29% for that period.

<b><u>CPI Adjustment Factor</u></b>	
Base Year CPI	172.20
Petition Year CPI	207.34
Difference	35.14
% of Difference	20.41%
Multiply by 70%	70%
Equals Adjustment Factor	14.29%

As has been established earlier, Petitioner's Base Year NOI is \$21,689.65. Applying the adjustment factor of 14.29% to the Base Year NOI results in an adjusted Base Year NOI of \$24,788.10. As has been calculated previously, the Current Year NOI is \$22,648.46. Thus the difference between the adjusted Base Year NOI and the Current Year NOI is \$2,139.63. This difference represents the rent increase the Petitioner is eligible to receive. This increase is \$178.30 monthly or a 4.44% increase to the current rent paid by the tenants.

**Rent Increase Analysis:**

A. Total of Current Monthly Rent of All Units	\$ 4,013.06
B. Base year net operating income	\$ 21,689.65
C. Percentage increase in Consumer Price Index from base year to petition year	14.29%
D. Line B multiplied by (1+) Line C	\$ 24,788.10
E. Petition year net operating income:	\$ 22,648.46
F. Line D minus Line E	\$ 2,139.63
G. Line F divided by 12:	\$ 178.30
H. Line G divided by Line A:	4.44%

**IV. Conclusion**

Based on the petition and the documentation provided therewith, it is hereby recommended that Petitioner be granted permission to increase the monthly rents at 7106 and 7108 Maple Avenue as shown below and in Appendix A.

**Schedule of Rent Increase:**

<u>Apartment No.</u>	<u>Current Rent</u>	<u>Approved new Rent</u>	<u>\$ Increase</u>	<u>% Increase</u>
1	\$1,275.40	\$1,332.07	\$56.67	4.44%
2	\$1,339.66	\$1,399.18	\$59.52	4.44%
3	\$1,398.00	\$1,460.11	\$62.11	4.44%
	\$4,013.06	\$4,191.36	\$178.30	

The increases must be taken within one year or at the end of the current tenant's tenancy, whichever is later (Regulation 2(E)(i)), and that the increases must be phased in as quickly as possible (Regulation 2(E)(ii)).

Petitioner is hereby required to certify to the Commission on Landlord-Tenant Affairs ("COLTA"), the amount of the actual rent increase taken, and the effective date of the increase.

The Petitioner, any tenant of the property, and any registered tenants association may file objections to this Decision within 30 days of the date the Decision is served upon them. This Decision shall become final if no written objections are filed within 30 days of service upon the tenants.

The landlord, within five business days of its receipt of this Decision, shall distribute a copy to all affected tenants and the president of any registered tenants association by regular first-class mail.

The landlord shall provide written notice to each affected tenant of the rent increase authorized by the Commission utilizing Form C of the Fair Return Rent Increase Regulations, no less than two months prior to the date the proposed increase is to take effect. Said increase shall be contingent on the decision of the Commission becoming final in accordance with Section 6.24.120 and 6.24.130. For tenants that have a fixed lease term, as opposed to month-to-month tenants, the Petitioner may not increase the rent for the tenant prior to the expiration of the lease term.

FOR THE COMMISSION:

  
\_\_\_\_\_  
Rents Analyst

3/20/09  
Date

**APPENDIX A:**

**City of Takoma Park, Maryland  
Commissions on Landlord Tenant Affairs  
Fair Return Petition**

**Petitioner:** Thomas A. Twomey  
**Rent Facility Name:** 7106 & 7108 Maple Avenue  
**Address:** 7106 & 7108 Maple Avenue  
 Takoma Park, MD, 20912

**Total Number of Units in the Facility:** 3  
**Total Number of Units for which a rent increase above the stabilization level is requested:** 3

Apartment No.	Current Rent	Approved new Rent *	\$ Increase	% Increase
1	\$1,275.40	\$1,332.06	\$56.66	4.44%
2	\$1,339.66	\$1,399.18	\$59.52	4.44%
3	\$1,398.00	\$1,460.11	\$62.11	4.44%
	\$4,013.06	\$4,191.35	\$178.29	

**Rent Increase Analysis:**

- A. Total of Current Monthly Rent of All Units \$4,013.06
  - B. Base year net operating income \$21,689.65
  - C. Percentage increase in Consumer Price Index from base year to petition year (See Code and COLTA Regulations for more information) 14.28%
  - D. Line B multiplied by (1+) Line C \$24,787.92
  - E. Petition year net operating income: \$22,648.46
  - F. Line D minus Line E \$2,139.46
  - G. Line F divided by 12: \$178.29
  - H. Line G divided by Line A: 4.44%
- \* Line H should equal the monthly percentage increase requested per unit.



**APPENDIX B:**

**Capital Improvements Interest Expense Calculation**

Description	Unit	Initial Cost of Improvement	Date of Improvement	Days Not Benefiting Petition Yr.	Days Benefiting Petition Yr.	Amort. Period (2)	Interest % (1)	Monthly Amortized Amount	Straight Line Depreciation of Improvement Including Finance Cost
Install new heating system	All	\$16,544.00	2003	0	365	15	5.80%	\$137.83	\$1,653.96
		<u>\$16,544.00</u>							
Total units									4
Cost per unit									\$413.49
Units on this petition									3
									<u>\$1,240.47</u>

**Notes:**

- (1) The Interest rate amount includes a 2% adjustment per Section 6.20.090 B.8(a)(v)
- (2) The Annual Amortized Amount includes the cost of the improvement and its total interest expense viewed by the straight line depreciation method

**PART IV  
OPERATING AND MAINTENANCE EXPENSES  
Base Year and Current Year**

List all operating and maintenance expenses incurred at the rental facility for both the selected Base Year (unless using imputed base year net operating income) and the Current Year. Rules on permitted operating and maintenance expenses can be found in Section 4.D. of the Regulations. DO NOT include any capital improvement expenses as defined in Section 4.D.i.i. of the Regulations. DO NOT include any interest or debt service expenses.

Landlords electing to use 1990 as the Base Year elect to have the expenses from that year imputed as per Section C in Part I of the petition form. The gross income information from the 1990 and 1991 annual rent reports must be used and is available upon request from the Department.

All expenses (except imputed expenses) must be documented as described in Exhibit A.

G) Operating and Maintenance Expenses- Base Year and Current Year			
Type of Operating and Maintenance Expense	Column A Base Year <input type="text"/> (2007)	Column B Current Year <input type="text"/> (2020)	
	If 1990 expenses will be imputed, check <input type="checkbox"/> here and leave Column A (G1-G26) blank.		
Management Services- Not to exceed 6% of Gross Income			
G1	On-Site Manager	N/A	N/A
G2	Professional Management Firm	N/A	N/A
G3	Self-Labor Expenses	\$2,841	\$3,816
Utility Expenses- DO NOT include any costs reimbursed by the tenant(s)			
G4	Natural Gas	N/A	N/A
G5	Heating Fuel	N/A	N/A
G6	Electricity	N/A	N/A
G7	Water and Sewer	\$764	\$2,220.44
Maintenance and Repairs- Include all supplies, materials and related expenses			
G8	Grounds Maintenance	\$4,263	\$4,099.83
G9	Building Maintenance and Repairs	\$1,911	\$22,739.13
G10	Painting and Decorating Expenses	N/A	\$2,291.25
G11	Self-Labor Expenses	\$768.90	N/A
G12	Miscellaneous Supplies	\$86.00	N/A

IV - 1

G) Operating and Maintenance Expenses - Base Year and Current Year (Continued)			
Type of Operating and Maintenance Expense		Column A Base Year  (2007)	Column B Current Year  (2020)
Taxes and Insurance			
G1 3	Real Estate Taxes	\$9,723	\$12,634.11
G1 4	Insurance	\$1,868	\$3,716
G1 5	Miscellaneous Taxes and Insurance	N/A	N/A
Administrative Services			
G1 6	Legal Services	N/A	N/A
G1 7	Accounting Services	\$285	N/A
G1 8	Miscellaneous Administrative Services	N/A	N/A
Fees and Assessments			
G1 9	Rental Housing License Fees	\$574	\$330
G2 0	Stormwater Fees	\$356	\$263.60
G2 1	Miscellaneous Fees and Assessments		N/A
Other Contract Services			
G2 2	Cleaning Services	N/A	N/A
G2 3	Extermination Services	N/A	N/A
G2 4	Trash Collection and Recycling	N/A	\$286
G2 5	Miscellaneous Contract Services	N/A	\$600
G2 6	TOTAL Operating and Maintenance Expenses (Total of Lines G1-G25)	\$23,439.90	\$52,996.36

**Part IV**  
**OPERATING AND MAINTENANCE EXPENSES**  
**Prior Two Years**

List all operating and maintenance expenses incurred at the rental facility for each of the two years PRIOR to the Current Year of the Petition. For example, if the Current Year is 2014, the information recorded on the rent schedule for Prior Year A should be 2013 and 2012 for Prior Year B.

Rules on permitted operating and maintenance expenses can be found in Section 4.D. of the Regulations. DO NOT include any capital improvement expenses as defined in Section 4.D.i.i. of the Regulations. DO NOT include any interest or debt service expenses.

All expenses must be documented as described in Exhibit A.

G) Operating and Maintenance Expenses - Prior Two Years (DO NOT include amortized capital improvement expenses)			
Type of Operating and Maintenance Expense		Prior Year A (2019)	Prior Year B (2018)
Management Services - Not to exceed 6% of Gross Income			
G1	On-Site Manager	N/A	N/A
G2	Professional Management Firm	N/A	N/A
G3	Self-Labor Expenses	\$3,720	\$3,660
Utility Expenses - DO NOT include any costs reimbursed by the tenant(s)			
G4	Natural Gas	N/A	N/A
G5	Heating Fuel	N/A	N/A
G6	Electricity	N/A	\$76.78
G7	Water and Sewer	\$2,514.49	\$1,417.39
Maintenance and Repairs - Include all supplies, materials and related expenses			
G8	Grounds Maintenance	\$2,710.34	\$216.99
G9	Building Maintenance and Repairs	\$4,639.58	\$6,843.98
G10	Painting and Decorating Expenses	\$2,145.15	\$5,016.59
G11	Self-Labor Expenses	N/A	N/A
G12	Miscellaneous Supplies	N/A	N/A

<b>G) Operating and Maintenance Expenses - Prior Two Years (Continued)</b>			
<b>Type of Operating and Maintenance Expense</b>		<b>Prior Year A</b> <input type="text"/> <b>(2019)</b>	<b>Prior Year B</b> <input type="text"/> <b>(2018)</b>
<b>Taxes and Insurance</b>			
G1 3	Real Estate Taxes	\$12,656.03	\$12,429.03
G1 4	Insurance	\$3,145.43	\$3,036
G1 5	Miscellaneous Taxes and Insurance	N/A	N/A
<b>Administrative Services</b>			
G1 6	Legal Services	N/A	N/A
G1 7	Accounting Services	N/A	N/A
G1 8	Miscellaneous Administrative Services	N/A	N/A
<b>Fees and Assessments</b>			
G1 9	Rental Housing License Fees	\$330	\$327
G2 0	Stormwater Fees	N/A	N/A
G2 1	Miscellaneous Fees and Assessments	N/A	N/A
<b>Other Contract Services</b>			
G2 2	Cleaning Services	N/A	N/A
G2 3	Extermination Services	N/A	N/A
G2 4	Trash Collection and Recycling	N/A	\$286
G2 5	Miscellaneous Contract Services	\$180	\$1,980
<b>TOTAL</b>			
G2 6	<b>TOTAL Operating and Maintenance Expenses (Total of Lines G1 - G25)</b>	<b>\$32,015.06</b>	<b>\$35,289.76</b>

**For Budget Base Increase Purposes**

Use one special sheet for each Expense Category (e.g. G1, G2, G3, etc.) Indicate on each sheet the year that corresponds to the attached documents - Base Year, Current Year, Prior Year A or Prior Year B.

Expense Category: G1 Building Maintenance (Enter Item Code in column IV of application)

Year	Base Year	Current Year	Prior Year A	Prior Year B
<u>2020</u>	(Year)	<u>2020</u> (Year)	(Year)	(Year)
Date	Vendor	Project	Amount	
<u>1/3/20</u>	<u>Lewis Wilson</u>	<u>Showers heat</u>	<u>60.00</u>	
<u>1/10/20</u>	<u>Clark Bros</u>	<u>Roofing</u>	<u>608.00</u>	
<u>1/19/20</u>	<u>Benjamin Brown</u>	<u>Outdoor steps</u>	<u>712.28</u>	
<u>1/31/20</u>	<u>Adco Alga</u>	<u>Painting</u>	<u>16.19</u>	
<u>4/16/20</u>	<u>Lewis Wilson</u>	<u>Roofing</u>	<u>76.53</u>	
<u>4/16/20</u>	<u>Lewis Wilson</u>	<u>Roofing</u>	<u>74.19</u>	
<u>12/1/20</u>	<u>WVCA Heating &amp; Cooling</u>	<u>Heat Pump</u>	<u>25.00</u>	
<u>4/19/20</u>	<u>Red Bank Electric</u>	<u>Neighborhood</u>	<u>14.175</u>	
<u>4/23/20</u>	<u>Benjamin Brown</u>	<u>Roofing</u>	<u>1,920.76</u>	
<u>4/23/20</u>	<u>Benjamin Brown</u>	<u>Roofing</u>	<u>978.70</u>	
<u>6/13/20</u>	<u>Clark Bros</u>	<u>Roofing</u>	<u>200.00</u>	
<u>6/13/20</u>	<u>Clark Bros</u>	<u>Roofing</u>	<u>500.00</u>	
<u>6/13/20</u>	<u>Benjamin Brown</u>	<u>Roofing</u>	<u>200.00</u>	
<u>10/1/20</u>	<u>Benjamin Brown</u>	<u>Roofing</u>	<u>1,000.00</u>	
<u>11/2/20</u>	<u>Benjamin Brown</u>	<u>Roofing</u>	<u>200.00</u>	
<u>11/16/20</u>	<u>Benjamin Brown</u>	<u>Roofing</u>	<u>1,157.20</u>	
<b>TOTAL</b>				<b>23,739.13</b>



From: **Sallie Smithwick** <[sallie@salliesmithwick.com](mailto:sallie@salliesmithwick.com)>  
Date: Wed, Sep 22, 2021 at 10:36 AM  
Subject: Re: Fair Return Petition - 7106-7108 Maple Avenue  
To: Jean Kerr <[jeank@takomaparkmd.gov](mailto:jeank@takomaparkmd.gov)>  
Cc: [tomatwomey@gmail.com](mailto:tomatwomey@gmail.com) <[tomatwomey@gmail.com](mailto:tomatwomey@gmail.com)>

Hi Jean,

We have reviewed the sections you referenced. Apologies for this over site.

Below are the Operating and Maintenance Expenses that include 4 units. We were not able to find any payments that the owner of the 4th unit, Tom's daughter, made to Tom for her quarter of the expenses.

**Expenses for all 4 Units**

G7 Water and Sewer  
G8 Grounds Maintenance  
G9 Building Maintenance and Repairs  
G14 Insurance  
G20 Stormwater Fees  
G24 Trash Collection and Recycling  
G25 Miscellaneous Contract Services

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Below are the Operating and Maintenance Expenses that include only Tom's 3 units.

**Expenses for 3 Units**

G3 Self-Labor Expenses  
G10 Painting and Decorating Expenses

(The years in the petition included painting related only to Tom's 3 units. It is this current year, 2021, that we painted the entire outside of the building.)

G13 Real Estate Taxes  
G25 Miscellaneous Contract Services

Please let us know if there is anything else you need. Apologies for the over site and added work.

With appreciation,  
Sallie and Tom



Fair return is a complex concept. In 1993, a California Court of Appeal noted the complexity of the fair return issue:

What appears at first blush to be a simple question of substantial evidence turns out to be something considerably more complex when one realizes that the formula for determining a "fair return" is hotly debated in economic circles and has been the subject of sparse, scattered, and sometimes conflicting comment by appellate courts. In particular, only the broad outlines have been discussed in California decisions.<sup>1</sup>

Most of the judicial precedent regarding fair return under rent stabilization comes from New Jersey and California appellate court decisions.

The courts have repeatedly reiterated that: "a governmental entity may choose to regulate pursuant to any fairly constructed formula" and that: "[r]ent control agencies are not obliged by either the state or federal Constitution to fix rents by application of any particular method or formula. ... The method of regulating prices is immaterial so long as the result achieved is constitutionally acceptable."<sup>2</sup>

The Courts have also repeatedly reiterated the principle that there is a "range" of rents that may be considered reasonable.

Relying on precedent from the U.S. and New Jersey Supreme Courts, one California Court of Appeal, explained:

There is a range of rents which can be charged, all of which could be characterized as allowing a "just and reasonable" return. (See *Hutton Park Gardens v. Town Council* (1975) 68 N.J. 543 [350 A.2d 1, 15] [the terms "just and reasonable" and "confiscatory" are not precise formulations]; *Power Comm'n v. Pipeline Co.* (1942) 315 U.S. 575, 585 [86 L.Ed. 1037, 1049, 62 S.Ct. 736, 743] [there is a zone of reasonableness which is higher than a confiscatory rate].) Thus, many decisions by rent control boards will focus on the issue of where the requested increases fall within the range of possible rents — all of which rents would allow the owner a return sufficiently "just and reasonable" as to not be constitutionally confiscatory.<sup>3</sup>

While the courts have held that no specific formula is required and that a range of rents may be considered reasonable, they have set forth some criteria for fair return. However, some of those guidelines - such as "commensurate with returns ... in other enterprises having comparable

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<sup>1</sup> *Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.*, 16 Cal.App.4th 481, 484 (California Court of Appeal)

<sup>2</sup> *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd.* 64 Cal.App.4th 1159, 1172 (1998, California Court of Appeal)

<sup>3</sup> *San Marcos Mobilehome Park Owners' Assn. v. City Of San Marcos*, 192 Cal.App.3d 1492, 1502-1503 (1987, California Court of Appeal)

risks” or balancing the “interests of the investor” and the “interests of the consumer” - have been largely theoretical.

In 1975, the New Jersey Supreme Court set forth general criteria for a fair return which have been included in subsequent fair return opinions by California appellate courts.

...the return should be one which is generally commensurate with returns on investments in other enterprises having comparable risks. Determination of what level of return is 'just and reasonable' involves evaluation not only of the interests of the investor but also of the interests of the consumer and of the general public sought to be advanced by the regulatory legislation.<sup>4</sup>

In 1997, the California Supreme Court reiterated longstanding principles for fair return that have been set forth in utility cases and rent control fair return cases, stating that fair return: 1. “involves a balancing of the investor and consumer interests,” 2. should be a “return ... commensurate with returns on investments in other enterprises having corresponding risks.”, and 3. “should be sufficient ... to attract capital.”<sup>5</sup>

In 2001, the California Supreme Court held that the concept of “fair rate of return” is a legal term which refers to a “constitutional minimum”, although the terminology is borrowed from finance and economics. The return must “allow Park Owner to continue to operate successfully.”

Although the term “fair rate of return” borrows from the terminology of economics and finance, it is as used in this context a legal, constitutional term. It refers to a constitutional minimum within a broad zone of reasonableness. As explained above, within this broad zone, the rate regulator is balancing the interests of investors, i.e. landlords, with the interests of consumers, i.e. mobilehome owners, in order to achieve a rent level that will on the one hand maintain the affordability of the mobilehome park and on the other hand allow the landlord to continue to operate successfully. [cite omitted]. For those price-regulated investments that fall above the constitutional minimum, but are nonetheless disappointing to investor expectations, the solution is not constitutional litigation but, as with nonregulated investments, the liquidation of the investments and the transfer of capital to more lucrative enterprises.<sup>6</sup>

<sup>4</sup> *Hutton Park Gardens v. Town of West Orange*, 350 A2d. 1, 15 (1975, New Jersey Supreme Court).

<sup>5</sup> *Kavanau v. Santa Monica Rent Control Board*, 16 Cal.4th 761, 772 (1997, California Supreme Court)

<sup>6</sup> *Galland v. Clovis*, 24 Cal.4th 1004, 1026 (2001)

In *Fisher v. City of Berkeley*, the California Supreme Court identified five types of fair return standards under rent controls: (1) cash flow/return on gross rent; (2) return on equity (investment); (3) return on value; (4) percentage net operating income; and (5) maintenance of net operating income.<sup>7</sup>

The appellate court of New Jersey of , Massachusetts, and California have rejected the contention that an apartment owner is entitled to a fair return on the "value" of a property, on the basis that a return on value approach is circular in the context of rent regulation.<sup>8</sup> These courts have concluded that his type of standard is "circular" in the context of a rent regulation, since value depends on the rent that is permitted.

An exception to the more theoretical aspects of the judicial guidelines has been the concept of a "floor" for fair return - the preservation of prior levels of net operating income. In 1975, the New Jersey Supreme Court ruled that: "At some point, steady erosion of NOI becomes confiscatory."<sup>9</sup>

Subsequently, a California Court of Appeal ruled in 1983<sup>10</sup> and the State Supreme Court ruled in 1984,<sup>11</sup> that net operating income may not be frozen. While the California courts have held that net operating income may not be frozen, they have rejected the contention that net operating income must be allowed to increase at the full rate of increase in the CPI (the rate of inflation) and have upheld standards which provided for indexing net operating income by 40% or 50% of the percentage increase in the CPI.<sup>12</sup> They have not set forth a minimum rate at which net operating income must be allowed to increase.

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<sup>7</sup> *Fisher v. City of Berkeley*, 37 Cal.3d. 644, 680 (1984, California Supreme Court)

<sup>8</sup> *Helmley v. Borough of Fort Lee*, 394 A.2d. 65, 81 (1978); *Niles v. Boston Rent Control Adm'r*, 374 A.2d. 296 (1978); and *Fisher v. City of Berkeley*, 37 Cal.3d. 644, 680 (1984)

<sup>9</sup> *Helmley v. Borough of Fort Lee*, 394 A.2d. 65, 76 (1978, New Jersey Supreme Court)

<sup>10</sup> *Cotati Alliance for Better Housing v. City of Cotati*, 148 Cal.App.3d 280,293 (1983, California Court of Appeal)

<sup>11</sup> *Fisher v. City of Berkeley*, 37 Cal.3d. 644, 681 (1984, (California Supreme Court)

<sup>12</sup> *Berger v. Escondido*, 127 Cal.App.4th 1, 13-15 (2005, California Court of Appeal ); *Stardust Mobile Estates v. San Buenaventura*, 147 Cal.App.4th 1170, 1182 (2007)

## Rationale for the Use of an MNOI Standard In a Fair Return Case

There are strong rationale for the use of an MNOI standard. The MNOI type of standard may be contrasted with a "rate of return" standard, which designates a particular rate of return on overall investment or equity or value as fair. The problem with rate of return standards is the reality that ratios of income to cash investment, current equity, overall investment, and value vary among properties depending on such factors as length of ownership and market expectations about appreciation. Therefore, rather than designating a particular ratio as fair, MNOI standards pursue the best available alternative, which is to preserve prior NOI levels, taking into account inflation since the base period. Under most of the MNOI standards, a pre-rent control net operating income is seen as reasonable base because it is based on the market, rather than regulation.

Furthermore, the rate of return on investment approach is circular in the context of a rent regulation.

In the following decades, the MNOI standard has been approved by the courts. In *Rainbow Disposal v. Mobilehome Park Rental Review Board*) the Court concluded that the MNOI formula is a "fairly constructed formula" which provides a "just and reasonable" return on ... investment," even if another formula may provide a higher return.<sup>13</sup>

In *Oceanside Mobilehome Park Owners' Ass'n v. City Oceanside*<sup>14</sup> and *Baker v. City of Santa Monica*<sup>15</sup>, California appellate courts upheld maintenance of net operating income fair return standards. In *Oceanside* the Court found that the fair return standard was reasonable because it allowed an owner to maintain prior levels of profit.<sup>16</sup>

In 1993, the California Court of Appeal commented: "The maintenance-NOI approach has been praised by commentators for both its fairness and ease of administration. ... It was approved by this court in *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside* [cite omitted]."<sup>17</sup>

<sup>13</sup> *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd.*, 64 Cal.App.4th 1159, 1172 (1998, California Court of Appeal)

<sup>14</sup> 157 Cal.App.3d.887; 204 Cal.Rptr.239 (1984).

<sup>15</sup> *Baker v. City of Santa Monica*, 181 Cal.App.3d. 972 (1986, California Court of Appeal).

<sup>16</sup> 157 Cal.App.3d.887, 902-905; 204 Cal.Rptr.239, 249-251 (1984).

<sup>17</sup> *Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.*, 16 Cal.App.4th 481, 486 (1993, California Court of Appeal)

In *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd.* (1998) a California Court of Appeal held that the MNOI standard is a "fairly constructed formula," although other standards may provide for a greater return.

Baar's MNOI approach adopted by the Board is a "fairly constructed formula" which provided Rainbow a sufficiently "just and reasonable" return on its investment. "The [MNOI] approach has been praised by commentators for both its fairness and ease of administration. [Citations.]" ... The Board was not obliged to reject Baar's MNOI analysis just because an historical cost/book value formula using Rainbow's actual cost of acquisition and a 10 percent rate of return would have yielded a higher rent increase.<sup>18</sup>

In 2013, in *Colony Cove v. City of Carson*, a California Court of Appeal explained the rationale for an MNOI standard.

The MNOI approach does not focus on how much the owner chose to pay for a rent-controlled property or how the purchase was financed. That fact does not render it constitutionally invalid. In *Donohue v. Santa Paula West Mobile Home Park*, where the rent control ordinance permitted adjustments to " 'maintain net operating income' " and specifically excluded from consideration " '[m]ortgage principal [and] interest payments,' " the court rejected the owner's facial challenge to the ordinance: "Numerous courts ... have acknowledged that the [MNOI] approach is constitutionally valid ... ," even though it ignores "certain expenses incurred by landlords" in determining NOI, including "land acquisition costs ... ." (*Donohue v. Santa Paula West Mobile Home Park*, supra, 47 Cal.App.4th at p. 1178; see *Rainbow Disposal Co. v. Escondido Mobilehome Rent Review Bd.*, supra, 64 Cal.App.4th at p. 1172 [rent board need not reject MNOI merely because formula using owner's actual cost of acquisition yielded higher rent increase].) Indeed, the MNOI standard has been praised by courts and commentators for "its fairness and ease of administration" (*Palomar Mobilehome Park Assn. v. Mobile Home Rent Review Com.*, supra, 16 Cal.App.4th at p. 486), because it " 'recognizes that in the rental housing market, ratios of rental income to value, equity, and gross income vary substantially among buildings. Therefore, rather than designating a particular rate of return as fair, [MNOI] standards pursue the best available option, which is to preserve prior [net operating income] levels' " (*H.N. & Frances C. Berger Foundation v. City of Escondido* (2005) 127 Cal.App.4th 1, 9 [25 Cal. Rptr. 3d 19]). The advantage of the MNOI approach over other methods of determining fair rent was further explained in *Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside*, where the court stated: " 'Use

<sup>18</sup> 64 Cal.App.4th 1159, 1173 (1998).

of a return on value standard would thoroughly undermine 220 Cal. App. 4th 840, \*868; ...rent control, since the use of uncontrolled income potential to determine value would result in the same rents as ... would be charged in the absence of regulation. Value (and hence rents) would increase in a never-ending spiral.' " (Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside, supra, 157 Cal.App.3d at pp. 899-900, quoting Cotati Alliance for Better Housing v. City of Cotati, supra, 148 Cal.App.3d at p. 287.) ....

Use of the MNOI formula " ' "avoids the necessity of having to undertake the administratively difficult (if not impossible) task of calculating equity and/or fair market value.["] ' " (Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside, supra, 157 Cal.App.3d at p. 903.) Instead, it "permits park owners to obtain a just and reasonable return under general marketing conditions in any given year" and "reflect[s] the tenant's interest by giving the park owner an incentive to incur all reasonable expenses for maintenance and services." (Id. at pp. 902-903.)<sup>19</sup>

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<sup>19</sup> 220 Cal. App.4th. 849, 869-879 (2013)

## **Appendix A**

### **Consumer Price Index**





Exhibit D: Fair Return Petition Application

# FAIR RETURN PETITION

## Part I

### Selection of Base Year and Current Year

COLTA Case \_\_\_\_\_ (City staff will enter case #)

A) General Information					
Address of Rental Facility					
Name of Property Owner				Owner <input type="checkbox"/>	Agent <input type="checkbox"/>
Mailing Address					
Telephone (Days)		Email Address			
Property License Number		Total Number Rental Units		Date of Purchase of Property	
B) Most Recent Hardship or Fair Return Petition (The filing of a previous petition created a new base year even if no rent increase was awarded)					
Type of Petition (check one)		<input type="checkbox"/> Hardship Petition	<input type="checkbox"/> Fair Return Petition		
Date of Decision		COLTA Case Number			
C) Selection of Base Year (Please check one option)					
<input type="checkbox"/>	1979	May be selected as Base Year for rental facilities containing five or more rental units. When selecting this option, actual income and expenses must be documented by the landlord.			
<input type="checkbox"/>	1987	May be selected as Base Year for rental facilities containing four or fewer rental units. When selecting this option, actual income and expenses must be documented by the landlord.			
<input type="checkbox"/>	1990	<p>May be selected as Base Year regardless of the size of the rental facility. Base year income shall be calculated from the official rent reports filed with the Department. The Base Year net operating income may be calculated using documented income and expenses or, at the election of the landlord, base year operating expenses shall be imputed in order to determine base year net operating income using the standard in <b>section 6.20.080B</b> which states:</p> <p><b>In estimating the base year operating expenses, it shall be presumed that each operating expense increased by the same percentage as the CPI since the base year. However, if data, rate information or other sources of cost information indicate that particular operating expenses increased at a different rate than the percentage increase in the CPI, the estimate of the percentage increase in that expense shall be based on the best available data on increases in that type of expense. Information on the rate of increases and/or other relevant data on trends in increases, in particular types of expenses between the base year and the current year may be introduced by the landlord, affected tenants, the Department, and the Rents Analyst.</b></p>			

<input type="checkbox"/>	2000	May be selected as Base Year regardless of the size of the rental facility. When selecting this option, actual income and expenses must be documented by the landlord.
<input type="checkbox"/>	Year of Prior Petition	Must be selected if a prior year rent increase is listed in Section (B) above. The net operating income determined by the Commission shall become the Base Year net operating income.
<input type="checkbox"/>	Alternate Base Year	An alternate Base Year may be selected in accordance with Section 4.A.i.e. of the Regulations. Written approval of the alternate Base Year by the Commission must be obtained prior to the submission of the Petition.
<b>D) Selection of Current Year (Please check one option)</b>		
<input type="checkbox"/>	Calendar Year	January 1 - December 31 immediately preceding the date of the filing of the Fair Return Rent Increase Petition.
<input type="checkbox"/>	Fiscal Year	July 1 - June 30 immediately preceding the date of the filing of the Fair Return Rent Increase Petition.

**PART II  
RENT SCHEDULE**

**Base Year and Current Year**

List the rents charged for each rental unit as of the final month of the Base Year and the Current Year. If the petition is based on a fiscal year (July - June), record the rent charged for the month of June. If the petition is based on a calendar year (Jan - Dec), record the rent charged for the month of December. Information must be provided for each rental unit for both the Base Year and the Current Year.

Please use additional pages if necessary to report the income for ALL rental units and include the additional pages with the Petition.

<b>E) Rent Schedule - Base Year and Current Year</b>		
If the rental unit was vacant the final month of the Base Year or the Current Year, report the highest allowable rent that could have been charged if the unit was occupied. If the rental unit was occupied, report the actual monthly rent charged to the tenant.		
<b>Rental Unit</b> (List by Unit Number)	<b>Column A</b> Monthly Rent <b>Base Year</b> <input type="text"/> (Month, Year)	<b>Column B</b> Monthly Rent <b>Current Year</b> <input type="text"/> (Month, Year)
E1		
E2		
E3		
E4		
E5		
E6		
E7		
E8		
E9		
E10		
E11		
E12		
E13		
E14		
	Fill in below only if this is the last page of this schedule.	
	Total Scheduled Monthly Rent only if this is the final page of rent schedule.	
	Total Schedule Annual Rent (Monthly Rent x 12)	

Continuation of Part II: Rent Schedule Base Year and Current Year			
Rental Unit (List by Unit Number)		Column A Monthly Rent Base Year <input type="text"/> (Month, Year)	Column B Monthly Rent Current Year <input type="text"/> (Month, Year)
E15			
E16			
E17			
E18			
E19			
E20			
E21			
E22			
E23			
E24			
E25			
E26			
E27			
E28			
E29			
E30			
E31			
E32			
E33			
E34			
E35			
		Fill in below only if this is the last page of this schedule.	
	Total Scheduled Monthly Rent only if this is the final page of rent schedule.		
	Total Scheduled Annual Rent (Monthly Rent x 12)		

*(Include additional pages as needed)*

**RENT SCHEDULE  
Prior Two Years**

List the rents charged for each rental unit as of the final month for each of the two years PRIOR to the Current Year of the Petition. For example, if the Current Year is 2014, the information recorded on the rent schedule for Prior Year A should be 2013 and Prior Year 2012.

List the rents charged for each rental unit as of the *final month* of the Prior Year. If the petition is based on a fiscal year (July - June), record the rent charged for the month of June. If the petition is based on a calendar year (Jan - Dec), record the rent charged for the month of December. Information must be provided for each rental unit for both Prior Years.

Please use additional pages if necessary to report the income for ALL rental units and include the additional pages with the Petition.

<b>E) Rent Schedule – Prior Two Years</b>		
If the rental unit was vacant the final month of either Prior Year, report the highest allowable rent that could have been charged if the unit was occupied. If the rental unit was occupied, report the actual monthly rent charged to the tenant.		
Rental Unit (List by Unit Number)	Column A Monthly Rent Prior Year A <input style="width: 80%; height: 15px;" type="text"/> (Month, Year)	Column B Monthly Rent Prior Year B <input style="width: 80%; height: 15px;" type="text"/> (Month, Year)
E1		
E2		
E3		
E4		
E5		
E6		
E7		
E8		
E9		
	Fill in below only if this is the last page of this schedule.	
	Total Scheduled Monthly Rent only if this is the final page of the rent schedule.	
	Total Scheduled Annual Rent (Monthly Rent x 12)	

Continuation of Part II : Rent Schedule - Prior Two Years			
Rental Unit (List by Unit Number)		Column A Monthly Rent Prior Year A <input type="text"/> (Month, Year)	Column B Monthly Rent Prior Year B <input type="text"/> (Month, Year)
E10			
E11			
E12			
E13			
E14			
E15			
E16			
E17			
E18			
E19			
E20			
E21			
E22			
E23			
E24			
E25			
E26			
E27			
E28			
		Fill in below only if this is the last page of this schedule.	
	Total Scheduled Monthly Rent only if this is the final page of the rent schedule.		
	Total Scheduled Annual Rent (Monthly Rent x 12)		

*(Include additional pages as needed.)*

**PART III  
GROSS INCOME  
Base Year and Current Year**

List scheduled income (derived from official rent reports and must be calculated as if all the units were fully rented) of the rental facility for both the Base Year and the Current Year.

Gross income includes the total amount of rental income the landlord would have received if all units had been rented for the highest lawful rent for the entire year without any vacancies. Gross income includes any fees paid by the tenants for services provided by the landlord.

Gross income does not include income from laundry and vending machines, interest received on security deposits in excess of the amounts required to be refunded to tenants, and other miscellaneous income.

<b>F) Gross Income - Base Year and Current Year</b>			
	Type of Income	<b>Column A Base Year</b> <input style="width: 80%; height: 20px;" type="text"/> (Year)	<b>Column B Current Year</b> <input style="width: 80%; height: 20px;" type="text"/> (Year)
F1	Total Annual Scheduled Rental Income (From Part II: Rent Schedule)		
	Miscellaneous Income (List by type)*		
F2			
F3			
F4			
F5			
F6			
F7	TOTAL Gross Income (Total of Lines F1 - F6)		

(\* ) DO NOT include reimbursed utilities or other reimbursed expenses. For example, security deposits used to pay for damages billed to the tenant should not be reported as income.



**GROSS INCOME**  
**Prior Two Years**

List gross scheduled income of the rental facility for each of the two years, PRIOR to the Current Year of the Petition. For example, if the Current Year is 2014, information recorded for Prior Year A should be 2013 and Prior Year B should be 2012.

Gross income includes the total amount of rental income the landlord could have received if all units had been rented for the highest lawful rent for the entire year without any vacancies. Gross income includes any fees paid by the tenants for services provided by the landlord.

Gross income does not include income from laundry and vending machines, interest received on security deposits in excess of the amounts required to be refunded to tenants, and other miscellaneous income.

<b>F) Gross Income - Prior Two Years</b>			
Type of Income		<b>Prior Year A</b> <input style="width: 50px; height: 15px;" type="text"/> (Year)	<b>Prior Year B</b> <input style="width: 50px; height: 15px;" type="text"/> (Year)
F1	Total Annual Scheduled Rental Income (From Part II: Rent Schedule)		
	Miscellaneous Income (List by type) *		
F2			
F3			
F4			
F5			
F6			
F7	TOTAL Gross Income (Total of Lines F1 - F6)		

\*DO NOT include reimbursed utilities or other reimbursed expenses. For example, security deposits used to pay for damages billed to the tenant should not be reported as income.

**PART IV**  
**OPERATING AND MAINTENANCE EXPENSES**  
**Base Year and Current Year**

List all operating and maintenance expenses incurred at the rental facility for both the selected Base Year (unless using imputed base year net operating income) and the Current Year. Rules on permitted operating and maintenance expenses can be found in Section 4.D. of the Regulations. DO NOT include any capital improvement expenses as defined in Section 4.D.i.i. of the Regulations. DO NOT include any interest or debt service expenses.

Landlords electing to use 1990 as the Base Year elect to have the expenses from that year imputed as per Section C in Part I of the petition form. The gross income information from the 1990 and 1991 annual rent reports must be used and is available upon request from the Department.

All expenses (except imputed expenses) must be documented as described in Exhibit A.

<b>G) Operating and Maintenance Expenses - Base Year and Current Year</b>			
Type of Operating and Maintenance Expense		Column A Base Year <input type="text"/> (Year)	Column B Current Year <input type="text"/> (Year)
		If 1990 expenses will be imputed, check here <input type="checkbox"/> and leave Column A (G1-G26) blank.	
<b>Management Services - Not to exceed 6% of Gross Income</b>			
G1	On-Site Manager		
G2	Professional Management Firm		
G3	Self-Labor Expenses		
<b>Utility Expenses - DO NOT include any costs reimbursed by the tenant(s)</b>			
G4	Natural Gas		
G5	Heating Fuel		
G6	Electricity		
G7	Water and Sewer		
<b>Maintenance and Repairs - Include all supplies, materials and related expenses</b>			
G8	Grounds Maintenance		
G9	Building Maintenance and Repairs		
G10	Painting and Decorating Expenses		
G11	Self-Labor Expenses		
G12	Miscellaneous Supplies		

<b>G) Operating and Maintenance Expenses - Base Year and Current Year (Continued)</b>			
Type of Operating and Maintenance Expense		<b>Column A</b> Base Year <input type="text"/> (Year)	<b>Column B</b> Current Year <input type="text"/> (Year)
<b>Taxes and Insurance</b>			
G13	Real Estate Taxes		
G14	Insurance		
G15	Miscellaneous Taxes and Insurance		
<b>Administrative Services</b>			
G16	Legal Services		
G11	Accounting Services		
G18	Miscellaneous Administrative Services		
<b>Fees and Assessments</b>			
G19	Rental Housing License Fees		
G20	Stormwater Fees		
G21	Miscellaneous Fees and Assessments		
<b>Other Contract Services</b>			
G22	Cleaning Services		
G23	Extermination Services		
G24	Trash Collection and Recycling		
G25	Miscellaneous Contract Services		
<b>TOTAL Operating and Maintenance Expenses (Total of Lines G1 - G25)</b>			
G26	TOTAL Operating and Maintenance Expenses (Total of Lines G1 - G25)		

**Part IV**  
**OPERATING AND MAINTENANCE EXPENSES**  
**Prior Two Years**

List all operating and maintenance expenses incurred at the rental facility for each of the two years PRIOR to the Current Year of the Petition. For example, if the Current Year is 2014, the information recorded on the rent schedule for Prior Year A should be 2013 and 2012 for Prior Year B.

Rules on permitted operating and maintenance expenses can be found in Section 4.D. of the Regulations. DO NOT include any capital improvement expenses as defined in Section 4.D.i.i. of the Regulations. DO NOT include any interest or debt service expenses.

All expenses must be documented as described in Exhibit A.

<b>G) Operating and Maintenance Expenses - Prior Two Years</b> (DO NOT include amortized capital improvement expenses.)			
Type of Operating and Maintenance Expense		<b>Prior Year A</b> <input style="width: 80px; height: 20px;" type="text"/> (Year)	<b>Prior Year B</b> <input style="width: 80px; height: 20px;" type="text"/> (Year)
<b>Management Services - Not to exceed 6% of Gross Income</b>			
G1	On-Site Manager		
G2	Professional Management Firm		
G3	Self-Labor Expenses		
<b>Utility Expenses - DO NOT include any costs reimbursed by the tenant(s)</b>			
G4	Natural Gas		
G5	Heating Fuel		
G6	Electricity		
G7	Water and Sewer		
<b>Maintenance and Repairs - Include all supplies, materials and related expenses</b>			
G8	Grounds Maintenance		
G9	Building Maintenance and Repairs		
G10	Painting and Decorating Expenses		
G11	Self-Labor Expenses		
G12	Miscellaneous Supplies		

<b>G) Operating and Maintenance Expenses - Prior Two Years (Continued)</b>			
Type of Operating and Maintenance Expense		<b>Prior Year A</b> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 5px auto;"></div> (Year)	<b>Prior Year B</b> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 5px auto;"></div> (Year)
<b>Taxes and Insurance</b>			
G13	Real Estate Taxes		
G14	Insurance		
G15	Miscellaneous Taxes and Insurance		
<b>Administrative Services</b>			
G16	Legal Services		
G17	Accounting Services		
G18	Miscellaneous Administrative Services		
<b>Fees and Assessments</b>			
G19	Rental Housing License Fees		
G20	Stormwater Fees		
G21	Miscellaneous Fees and Assessments		
<b>Other Contract Services</b>			
G22	Cleaning Services		
G23	Extermination Services		
G24	Trash Collection and Recycling		
G25	Miscellaneous Contract Services		
<b>TOTAL</b>			
G26	TOTAL Operating and Maintenance Expenses (Total of Lines G1 - G25)		

## DOCUMENTATION REQUIREMENTS

Required documentation of expenditures - invoices, canceled checks, etc. - must be organized chronologically by subcategory, listed individually on a separate a spread sheet or worksheet as illustrated below. **All documentation must be stapled to the back of the spreadsheet for each subcategory in the order listed on the spreadsheet.** The expenditures noted in the petition must equal the expenses included in the listing for each subcategory. A blank worksheet is included with this application for your use.

**Failure to organize the required documentation as described above  
will result in the rejection of the Petition.**

Example A

<b>Category: G7 - Utility Expenses Water and Sewer</b>			
Date	Vendor	Purpose	Amount
01-01-2007	WSSC	Water / Sewer	\$205.36
02-15-2007	WSSC	Water / Sewer	\$306.75
03-10-2007	WSSC	Water / Sewer	\$500.00
04-12-2007	WSSC	Water / Sewer	\$125.98
05-06-2007	WSSC	Water / Sewer	\$625.00
<b>TOTAL</b>			<b>\$1,763.09</b>

Example B

<b>Category: G10 - Painting and Decorating</b>			
Date	Vendor	Purpose	Amount
08-05-2007	Home Depot	Painting Supplies	\$175.00
10-15-2007	Bed Bath and Beyond	Blinds	\$525.89
10-20-007	Walmart	Curtains	\$750.25
11-13-2007	True Value Hardware Store	Paint	\$900.00
12-25-2007	Duron Paint Supplies	Paint/supplies	\$1,000.00
<b>TOTAL</b>			<b>\$3,351.14</b>

## Fair Return Rent Increase Petition

Use one spread sheet for each Expense Category (e.g. G1, G2, G3, etc.). Indicate on each sheet the year that corresponds to the attached documents - **Base Year, Current Year, Prior Year A or Prior Year B.**

**Expense Category:**

(enter from tables in section IV of application)

Year <input style="width: 80%; height: 20px;" type="text"/>	Base Year <input style="width: 80%; height: 20px;" type="text"/> (Year)	Current Year <input style="width: 80%; height: 20px;" type="text"/> (Year)	Prior Year A <input style="width: 80%; height: 20px;" type="text"/> (Year)	Prior Year B <input style="width: 80%; height: 20px;" type="text"/> (Year)
Date	Vendor		Purpose	Amount
<b>TOTAL</b>				

**PART V**  
**CAPITAL IMPROVEMENT SCHEDULE**

List the cost of all unamortized capital improvements made at the rental facility.

Capital improvements are additions or the partial replacement of property that adds to the value of the rental facility, appreciably lengthen its life or adapts it to a different use, and are required to be depreciated by the Internal Revenue Code. The total cost of the capital improvement, including the interest allowance permitted pursuant to Takoma Park Code Section 6.20.080.B.8(a)v., will be amortized over the useful life of the improvement.

The Petition must include all of the information required in Section 5 of the Regulations and shall contain adequate documentation organized as described in Exhibit A. The landlord may elect to provide as supplemental information, federal income tax forms and schedules which support prior year capital improvements.

<b>H) Capital Improvement Schedule</b>		
<b>Date Completed</b>	<b>Description of Capital Improvement</b>	<b>Total Cost of Improvement</b>



**PART VI  
TENANT LISTING AND MAILING LABELS**

List the name and unit number of all affected tenants residing within the rental facility. Please use additional sheets as needed.

In addition, one set of mailing labels for the rental facility is required and must be included with the Petition. Labels must include the name of the primary tenant and mailing address.

<i>Unit Number</i>	<i>Name of Tenants</i>	<i>Move In Date</i>

*(Include additional pages as needed.)*



## PART VII CERTIFICATION OF LANDLORD

I hereby certify that I am the owner or authorized representative of the rental facility identified in this Petition. I further certify that the information included in the Petition and the supporting documentation that has been provided is true and correct.

Name (Please Print):

Signature:

Title:

Date:

Contact Numbers:    Days     Cell

### SUBMISSION REQUIREMENTS

The following materials must be submitted to the Commission on Landlord and Tenant Affairs at the address listed below:

- Original of the completed Petition (Form A)
- One copy of all supporting documentation
- One set of Mailing Labels

For more information, please contact the

Commission on Landlord and Tenant Affairs  
Attention: City of Takoma Park  
Housing and Community Development Department  
7500 Maple Avenue, Takoma Park MD 20912  
301.891.7216

## NOTICE OF FILING FAIR RETURN PETITION

The Takoma Park Code Section 6.20.080 gives landlords the right to petition for a rent increase above the Rent Increase Allowance to ensure the maintenance of a fair net operating income. Requests for rent increases are reviewed by the Commission on Landlord and Tenant Affairs. A decision regarding a rent increase is generally issued by the Commission within three months of filing.

You are hereby notified that your landlord has filed a Fair Return Petition with the Commission on Landlord-Tenant Affairs. This Notice DOES NOT constitute a Notice of a Fair Return Rent Increase. You will be notified by separate notice if any rent increase is awarded by the Commission as a result of the Petition filed by your landlord.

A copy of the Petition, excluding supporting expense documentation submitted by your landlord, is enclosed for your review. Copies of the supporting expense documentation may be viewed at the Department of Housing and Community Development.

Address of Rental Facility:

Date of Filing of Fair Return Petition:

Any rent increase awarded by the Commission, will be distributed equally among all of the units in your building.

If the Fair Return rent increase awarded by the Commission is greater than 15%, the increase will be phased-in over a period of more than one year until such time as the full rent increase has been taken. For example, if a 35% rent, increase is awarded by the Commission, your rent would be increased 15% the first year, 15% the second year and 5% the third year. If the increase is 15% or less, your landlord may elect to increase your rent by the approved amount in a single year.

**IF YOU HAVE A ONE YEAR LEASE:** If you have entered into a one year lease with your landlord, the increase must be taken at the end of the lease term.

**IF YOU HAVE A MONTH - TO- MONTH LEASE:** If you have a month-to month lease, the rent increase can be taken at any time. A minimum of two months' notice must be given to you regardless of when the rent increase is taken.

If you find any errors within the forms, please submit your comments to the Housing and Community Development Department.

The documentation filed by your landlord in support of the fair return rent increase petition is available for review during normal working hours at the City of Takoma Park, Housing & Community Development Department, 7500 Maple Avenue, Takoma Park, MD.

For additional information, please contact the Office on Landlord-Tenant Affairs at 301- 891-7216.

## NOTICE OF FAIR RETURN RENT INCREASE

The Takoma Park Code Section 6.20.080 gives landlords the right to petition for a rent increase above the Rent Increase Allowance to ensure the maintenance of a fair net operating income. A copy of the Fair Return Petition and notice of its filing was previously provided by the City of Takoma Park's Housing and Community Development Department.

You are hereby notified that your rent will be increased in accordance with the Decision issued by the Commission on Landlord and Tenant Affairs following. A copy of the Decision is attached.

Address of Rental Facility:

Rental Unit:

Date Decision Issued: \_\_\_\_\_

Approved Fair Return Rent Increase: \_\_\_\_\_%

Current Rent: \$

New Rent (Rent Increase): \$

Effective Date of Rent Increase:

You have 30 calendar days from the date of service of this Notice to challenge the Decision issued by the Commission. Your challenge must be submitted in writing to the Commission on Landlord and Tenant Affairs c/o City of Takoma Park, Housing & Community Development Department, 7500 Maple Avenue, Takoma Park, MD 20912.

The Commission will review your challenge or, at its discretion, schedule a date for the matter to be heard. You and the other tenants in the building will receive a minimum of 14 days advance notice of the date of the hearing. If no challenge is received, the Decision issued by the Commission and the rent increase detailed above becomes final.

For additional information, please contact the Office on Landlord-Tenant Affairs at 301- 891-7216.

**CERTIFICATE OF SERVICE**  
**Fair Return Rent Increase Petition**

Property Address:

COLTA Case Number:

I certify under penalty of perjury that on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ I sent by regular first-class mail, postage prepaid, a copy of the following identified document(s) to each of the affected tenants residing in the above referenced rental facility and to the president of any registered tenants association as required by Takoma Park Code Section 6.020.080.

A listing of the tenants receiving this information - and their respective rental unit units - is attached.

- Notice of Fair Return Rent Increase
- Fair Return Petition Form
- Opinion and Order of the Commission

\_\_\_\_\_  
Signature of Certifying Official

Title

Date

**Decision on a Fair Return Rent Increase by the Commission:**

The Notice of Fair Return Rent Increase and the Fair Return Petition Form must be served by regular first class mail to all affected tenants and the president of any registered tenants association within five business days of the date of receipt of the issuance of the Decision.

**Opinion and Order of the Commission:**

The Opinion and Order of the Commission must be served by regular first class mail to all affected tenants and the president of any registered tenants association within five business days of the issuance of the Opinion and Order of the Commission.

Exhibit E: Rent Analyst Contract

**CONTRACT FOR RENTS ANALYST SERVICES FOR  
FAIR RETURN RENT INCREASE PETITIONS**

**XXXXXXXXXXXX**

**CITY OF TAKOMA PARK, MARYLAND**

**THIS AGREEMENT**, hereinafter referred to as “Agreement,” is made this \_\_\_\_ day of \_\_\_\_\_ 2022, by and between the **CITY OF TAKOMA PARK**, a municipal corporation of the State of Maryland, located at , 7500 Maple Avenue, Takoma Park, MD 20912, hereinafter referred to as “the City,” and **XXXXXXXXXXXX**, a rents analyst with a mailing address of \_\_\_\_\_, hereinafter referred to as “Contractor,” and both collectively referred to hereinafter as “the Parties.”

**RECITALS**

**WHEREAS**, Takoma Park Code Section 6.20.080 allows landlords, subject to the requirements of the City's rent stabilization laws, to petition for rent increases in excess of the annual rent increase allowance in order to provide landlords with a fair return from the rental property; and

**WHEREAS**, Contractor is well-qualified to provide a financial analysis and review of all fair return rent increase petitions submitted in accordance with Takoma Park Code Section 6.20.080; and

**WHEREAS**, the City desires to retain Contractor to assist it in the evaluation and assessment of fair return rent increase petitions, hereinafter referred to as the “Project.”

**TERMS**

**NOW, THEREFORE**, in consideration of the mutual promises of the Parties, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**SECTION 1. SCOPE OF SERVICES**

**1.1.** During the term of this Agreement, Contractor agrees to conduct detailed financial analysis of all fair return rent increase petitions filed in accordance with Takoma Park Code, Chapter 6.20, Rent Stabilization, Section 6.20.080, rent increases pursuant to a fair return petition, and relevant administrative regulations. This analysis would include, but is not limited to, the following activities:

- 1.1.1.** Thorough review of all supporting documentation submitted by the petitioner;
- 1.1.2.** Interaction with the petitioner to ensure that the petition is complete and required documentation has been submitted;

- 1.1.3. Reconciliation of financial information included in the petition;
- 1.1.4. Detailed financial analysis of the petition in accordance with the City’s rent stabilization ordinance and associated administrative regulations;
- 1.1.5. Issuance of a written determination—the Administrative Decision—that sets out the results of the financial analysis in accordance with the rent stabilization law and regulations;
- 1.1.6. Consultation with the Commission on Landlord Tenant Affairs (“COLTA”) Executive Director, City staff, and the COLTA, as needed;
- 1.1.7. Provide in person, virtual or audio testimony before the COLTA or other tribunal or body in the event a challenge or appeal is filed; and
- 1.1.8. From time to time, upon request from the City, conduct legal research pertaining to the rent stabilization law and/or write or contribute to reports and legislation.

1.2. The Project shall also include all other work as reasonably and additionally required by the City and agreed to by Contractor. Any such work shall be reduced to written form and will require the Parties to execute a modification to this Agreement as set forth in Section 4 of this Agreement.

## **SECTION 2. PERIOD OF PERFORMANCE**

2.1. The effective term for this Agreement is for one (1) year, commencing upon the execution of this Agreement.

2.2. By agreement of the Parties, this Agreement may be renewed or extended for up to three (3) additional 1-year terms following the expiration of the initial term of this Agreement. Continuation of Contractor’s performance under this Agreement beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this Agreement. If funds are not appropriated and encumbered to support continued Contractor’s performance in a subsequent fiscal period, Contractor’s performance must end, without further cost to the City, upon the receipt of notice from the City. Contractor acknowledges that the City Manager has no obligation to recommend, and the City Council has no obligation to appropriate, funds for this Agreement in subsequent fiscal years. Furthermore, the City has no obligation to encumber funds to this Agreement in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, Contractor must not undertake any performance under this Agreement until Contractor receives a purchase order or contract amendment from the City that authorizes Contractor to perform work for any subsequent term of this Agreement.



**2.3.** Contractor agrees to perform all services required by this Agreement, including any modifications agreed to by the Parties, as expeditiously as is consistent with good professional skill and best industry practice.

**2.4.** Time is of the essence and a critical factor in the successful execution of the terms of this Agreement.

**2.5.** Contractor must not commence work under this Agreement until all conditions for commencement are met, including execution of this Agreement by the Parties, compliance with insurance requirements, and the issuance of any required notice to proceed.

### **SECTION 3. FEE FOR SERVICES**

**3.1.** In exchange for these good and valuable services, Contractor will receive a fee of **XXXXXXXXXX** per hour. The Parties may agree to an equitable adjustment of this fee as set forth in Section 4 of this Agreement.

**3.2.** Contractor shall submit invoices to the City on a monthly basis. Invoices shall be based on time expended by Contractor to complete the tasks required under this Agreement. Invoices shall include the name of the assignment; a detailed description of the services provided; the results of the services; recommendations for future actions; the date; and the amount of time expended in providing the services. Payment will be made to Contractor within thirty (30) calendar days after the City's receipt of an invoice in a form deemed acceptable by the City. Payment will be contingent upon the City's verification that the work has been satisfactorily performed as determined by the City in its reasonable discretion. The City reserves the right to verify and approve the work represented by the invoice prior to payment of the invoice.

**3.3.** No payment by the City may be made, or is due, under this Agreement, unless funds for the payment have been appropriated and encumbered by the City.

### **SECTION 4. CHANGES**

**4.1.** Within the general scope of services, the City may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of this Agreement. In such cases, this Agreement will be modified to reflect any time or money adjustment Contractor is entitled to receive. Contractor shall not proceed with these changes (either additions or deletions) without a change order or amendment being signed by both the City and Contractor and an order or amendment stating, as applicable, the change in the work and an estimate of the time and/or cost involved in the change.

**4.2.** Any claim of Contractor for an adjustment in time or money due to change must be made in writing within thirty (30) days from the date the City notified Contractor of the change, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under Section 10 of this Agreement. Contractor must proceed with the prosecution of the work as

changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this Section.

4.3. The amount of any adjustment to this Agreement under this Section shall be a negotiated cost and fee.

4.4. This Agreement may only be amended or modified by a writing signed by the Parties.

## SECTION 5. NOTICES

5.1. Any required notices or other communications under this Agreement shall be in writing and personally delivered, mailed, delivered by a reputable overnight delivery service, or emailed. Notice via email may be considered official notice only if the receiving party acknowledges receipt via return email or email read receipt. Notices shall be addressed as follows:

If to Contractor: XXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

If to the City: David Eubanks, Director  
Department of Housing and Community Development  
City of Takoma Park  
7500 Maple Avenue, Takoma Park, MD 20912  
Telephone: 301-891-7621;  
Email: [davide@takomaparkmd.gov](mailto:davide@takomaparkmd.gov)

5.2. Either party may change the person or address for notices by written notice to the other party. Notices shall be deemed given when received or three business days after the notice is deposited, properly addressed and postage prepaid, in the United States mail or one business day after the notice is sent by a reputable overnight mail delivery service (such as, but not limited to, FedEx or UPS Next Day Delivery). For notices by email, the notice shall be deemed given on the day the recipient acknowledges receipt of the notice via return email or email read receipt. Rejection or other refusal to accept or inability to deliver because of changed address, of which no Notice has been given, shall constitute receipt of the Notice.

## SECTION 6. CONTRACT ADMINISTRATION

6.1. For Contractor. XXXXXXXXXXXX is Contractor's Authorized Representative for this Agreement. Contractor's Authorized Representative shall act on behalf of Contractor on all matters pertaining to this Agreement. All matters and correspondence to Contractor pertaining to this Agreement shall be directed to the attention of Contractor's Authorized Representative.

Contractor's Authorized Representative shall not be changed without prior written notice to and the agreement of the City.

**6.2.** For the City. David Eubanks, is the City Manager's designee for purposes of this Agreement and shall act as the Contract Administrator in connection with this Agreement. The City's Contract Administrator may be changed at any time or from time to time by written notice to Contractor. The City's Contract Administrator is not authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in the language of this Agreement, or waive any of the City's rights hereunder. The City's Contract Administrator is authorized to:

**6.2.1.** Serve as liaison between the City and Contractor;

**6.2.2.** Give direction to Contractor to ensure satisfactory and complete performance;

**6.2.3.** Monitor and inspect Contractor's performance to ensure acceptable timeliness and quality;

**6.2.4.** Serve as records custodian for this Agreement, including wage and prevailing wage requirements;

**6.2.5.** Accept or reject Contractor's performance;

**6.2.6.** Furnish timely written notice of Contractor's performance failures to the City Council, City Manager, and/or City Attorney, as appropriate;

**6.2.7.** Approve or reject invoices for payment;

**6.2.8.** Recommend modifications or terminations of this Agreement; and

**6.2.9.** Issue notices to proceed and task and purchase orders.

## **SECTION 7. TERMINATION**

**7.1** This Agreement may be terminated by the City, in whole or in part, upon written notice to Contractor, when the City determines that such termination is in its best interest. A termination for convenience is effective on the date specified in the City's written notice or, if the notice does not specify an effective date, then five (5) days after notice of termination is given by the City. Termination for convenience may entitle Contractor to payment for reasonable costs allocable to this Agreement for work or costs incurred by Contractor up to the date of termination. Contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under this Agreement.

**7.2** In the event of any of the circumstances set forth below, hereinafter referred to as "Default," the City may terminate the Agreement, in whole or in part, and from time to time:

**7.2.1.** Any fraudulent representation in an invoice or other verification required to obtain payment under this Agreement or other dishonesty on a material matter relating to the performance of services under this Agreement; and

**7.2.2.** Non-performance, incomplete service or performance, failure to make satisfactory progress in the prosecution of this Agreement, failure to satisfactorily perform any part of the work required under this Agreement or to comply with any provision of this Agreement, as determined by the City's Contract Administrator in his or her sole discretion, including:

**7.2.2.1.** Failing to commence work when notified.

**7.2.2.2.** Abandoning the work. Visual inspection by the City's Contract Administrator will serve as evidence of abandonment.

**7.2.2.3.** Subcontracting any part of work without the City's prior approval.

**7.2.2.4.** Receiving two written warnings of unsatisfactory or incomplete work or any other violation of the terms of this Agreement.

**7.2.2.5.** Failing to adhere to the required specifications for the work required under this Agreement.

**7.2.3.** Contractor, or any partner, member, principal or officer of Contractor, being criminally charged with an offense involving fraud, dishonesty or moral turpitude.

**7.2.4.** Contractor being adjudged bankrupt or making a general assignment for the benefit of creditor or if a receiver shall be appointed on account of Contractor's insolvency.

**7.2.5.** Failure to adhere to the terms of applicable city, county, state, and federal laws, ordinances, regulations, or stated public policy pertaining to the subject matter and performance of this Agreement, including but not limited to the following: the payment of all applicable taxes and withholding, compliance with equal opportunity employment and labor laws, and/or failure to obtain and/or comply with the terms and conditions of any required permits.

**7.3** In the event of a Default, the City shall provide Contractor with a written notice to cure the Default. The termination for Default is effective on the date specified in the City's written notice. However, if the City determines that Default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the City may terminate this Agreement immediately upon issuing oral or written notice to Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or this Agreement,

Contractor must compensate the City for additional costs that foreseeably would be incurred by the City, whether the costs are actually incurred or not, to obtain substitute performance.

**7.4** Notice of any termination must be in writing, state the reason or reasons for the termination, and specify the effective date of the termination.

**7.5** In the event of termination under Subsections 7.1 or 7.2, Contractor consents to the City's selection of another contractor of the City's choice to assist the City in any way in completing the Project. Contractor further agrees to cooperate and provide any information requested by the City in connection with the completion of the Project, including assignment of any contracting rights the City may require. Contractor consents to and authorizes the making of any reasonable changes to the design of the Project by the City and such other contractor as the City may desire.

**7.6** Any termination of this Agreement for cause by the City that is later deemed to be unjustified shall be deemed a termination for convenience under Subsection 7.1.

## **SECTION 8. CERTIFICATIONS OF CONTRACTOR**

**8.1.** Contractor, and the individual executing this Agreement on Contractor's behalf, warrants it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for it, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on making this Agreement.

**8.2.** Contractor and the City represent and warrant that: (a) they have the full right and authority to enter into, execute, and perform the obligations required under this Agreement and that no pending or threatened claim or litigation known by them would have a material adverse impact on their ability to perform as required under this Agreement; (b) they have accurately identified themselves and have not provided any inaccurate information about themselves or the Project; and (c) they are entities authorized under the laws of the State of Maryland to do business within the State.

**8.3.** Contractor certifies that it is not now, and shall not so long as this Agreement remains in effect, engage in the development, research, testing, evaluation, production, maintenance, storage, transportation, and/or disposal of nuclear weapons or their components, or the sale of merchandise produced by companies so involved. Contractor's Certification of Non-Involvement in the Nuclear Weapons Industry is attached hereto and incorporated herein as part of this Agreement.

**8.4.** This Agreement is subject to the living wage requirements under *The City of Takoma Park Code*, hereinafter referred to as the "Code," Sections 7.08.150–7.08.210. Contractor and any subcontractor retained or employed on Contractor's behalf agree to pay each employee assigned to perform services under this Agreement a living wage, subject to exemptions from coverage for particular contracts set forth in Code Section 7.08.160 and for particular employees as set forth in Code Section 7.08.180(F). The current living wage is Fifteen US Dollars and Forty

Cents (\$15.40) per hour through June 30, 2022. The living wage rate is adjusted on July 1st of each year to reflect the most current Montgomery County living wage rate and said adjustments shall be applicable to this Agreement unless otherwise exempt. Contractor's Living Wage Requirements Certification is attached hereto and incorporated herein as part of this Agreement.

**8.5.** Contractor warrants and represents: that it is the sole entity, directly or indirectly, interested in compensation for the delivery of the services and work product awarded, and to be performed under this Agreement; that any proposal upon which this Agreement was based was made without any connection with or common interest in the profits with any undisclosed persons or entity; that this Agreement is fair and made without collusion or fraud; that no employee or official of the City is directly or indirectly interested therein; that none of its officers, directors, or partners or employees directly involved in obtaining contracts or performing any part of the work required under this Agreement has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

**8.6.** Contractor agrees to comply with all applicable City, county, state, and federal laws and regulations regarding employment discrimination. Contractor assures the City that it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religion, ancestry, national origin, age, sex, marital status, disability, sexual orientation, and gender identity.

**8.7.** Contractor certifies that all information Contractor has provided or will provide to the City is true and correct and can be relied upon by the City in awarding, modifying, making payments, or taking any other action with respect to this Agreement including resolving claims and disputes. Any false or misleading information is a ground for the City to terminate this Agreement for cause and to pursue any other appropriate remedy. Contractor certifies that Contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with Contractor's budgetary and financial obligations and is sufficient to produce reliable financial information.

## **SECTION 9. INDEMNIFICATION**

**9.1.** Contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) arising out of, incident to, or caused by reason of Contractor's negligence, malfeasance or failure to perform any contractual obligations. Contractor must indemnify and hold the City harmless from any loss, cost, damage, and other expenses, including attorney's fees and litigation expenses, arising out of, incident to, or caused by Contractor's negligence, malfeasance or failure to perform any of its contractual obligations. If requested by the City, Contractor must defend the City in any action or suit brought against the City arising out of Contractor's negligence, errors, acts or omissions under this Agreement. The negligence or malfeasance of any agent, subcontractor or employee of Contractor is deemed to be the negligence or malfeasance of Contractor. For the purposes of this Subsection, City includes its commissions, departments, agencies, agents, officials, and employees.

**9.2.** If Contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then Contractor must: obtain all

necessary licenses, authorizations, and approvals related to its use; include the City in any approval, authorization, or license related to its use; and indemnify and hold harmless the City related to Contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, Contractor must protect, indemnify, and hold harmless the City from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the City, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this Agreement or the performance by Contractor of any of its activities or obligations under this Agreement.

**9.3.** Contractor further agrees to notify the City in writing within ten (10) days of receipt of any claim or notice of any claim made by third parties against Contractor or any subcontractor regarding the services and work provided to the City under this Agreement. Contractor shall provide the City copies of all claims, notices of claims, and all pleadings and motions filed therein as the matter progresses. This Section 9 shall survive termination of this Agreement for a period of three (3) years and six (6) months after the termination date.

## **SECTION 10. DISPUTES**

**10.1.** Any dispute arising under this Agreement which is not resolved by an agreement between the Parties shall be decided by the City Manager, after reasonable opportunity is provided for the Parties to provide written documentation supporting their position. Pending final resolution of a dispute, except for a termination of this Agreement by the City, Contractor must proceed diligently with performance under this Agreement. A claim must be in writing, for specific relief, or for a sum certain if the claim is for money, and any requested money or other relief must be fully supported by all relevant calculations, including cost and pricing information, records, and other information.

**10.2.** A decision by the City Manager or his or her designee under the dispute procedure set forth in this Section shall be a condition precedent to suit being filed by any party. For purposes of any litigation involving this Agreement, exclusive venue and jurisdiction shall be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland sitting in Montgomery County.

## **SECTION 11. INSURANCE**

**11.1.** Contractor shall obtain and maintain liability insurance coverage at Contractor's own expense. Contractor shall, within thirty (30) days of the execution of this Agreement, file with the City Manager, the Certificate from an insurance company authorized to do business in the State of Maryland and satisfactory to the City showing issuance of liability insurance coverage as set forth more fully herein below with a deductible no greater than \_\_\_\_\_ Dollars (\$\_\_\_\_\_), except as specified in Subsection 11.1.3. Contractor shall be fully and completely responsible to pay the deductible. Unless waived in writing by the City, the Certificate shall bear endorsement in words exactly as follows:

The insurance company certifies that the insurance covered by this Certificate has been endorsed as follows: “The insurance company agrees that the coverage shall not be canceled, changed, allowed to lapse, or allowed to expire until thirty (30) days after notice to: ‘City Manager, City of Takoma Park, 7500 Maple Avenue, Takoma Park, MD 20912.’”

Contractor shall, throughout the term of this Agreement, maintain professional liability insurance, and workers’ compensation insurance. Worker’s compensation insurance shall only be required if the Contractor is an employer of one or more employees. Contractor shall obtain insurance in the following amounts and shall submit an insurance certificate, as set forth above, as proof of coverage prior to the final approval of this Agreement:

**11.1.2.** Professional liability insurance with coverage for errors, omissions, and negligent acts, with a maximum deductible of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), of at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per claim in the aggregate within one year of such errors, omissions, or negligent acts being discovered.

**11.1.3.** Workers’ compensation insurance with coverage limits of at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per bodily injury by accident and coverage for disease of at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per employee and at least \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in the aggregate.

**11.2.** All policies of insurances shall be underwritten by companies licensed to do business in the State of Maryland.

**11.3.** The City is not responsible for any damage or loss of property or materials stored on or within facilities owned by the City. Contractor shall provide necessary insurance coverage for such losses or shall assume full risk for replacement cost for its own property or materials and that owned by its subcontractors.

**11.4.** Contractor shall assure that all subcontractors carry identical coverage as required by this Section 11, either individually or as an additional insured on Contractor’s policies. Exceptions may be made only with the written approval of the City.

## **SECTION 12. SET OFF**

**12.1.** In the event that Contractor shall owe an obligation of any type whatsoever to the City at any time during the term of this Agreement, or after the termination of the relationship created hereunder, the City shall have the right to offset any amount so owed to Contractor against any compensation due to Contractor for the provision of goods and services covered by the terms of this Agreement.



### **SECTION 13. APPLICABLE LAW**

**13.1.** The laws of the State of Maryland, excluding conflicts of law rules, shall govern this Agreement as if this Agreement were made and performed entirely within the State of Maryland. Any suit to enforce the terms hereof or for damages or other relief as a consequence of the breach or alleged breach hereof shall be brought exclusively in the courts of the State of Maryland in Montgomery County, and the Parties expressly consent to the jurisdiction thereof and waive any right that they have or may have to bring such elsewhere.

### **SECTION 14. RECORD AND AUDIT**

**14.1.** Contractor shall maintain books, records, documents, and other evidence directly pertinent to costs, estimates and performance under this Agreement or required under any federal, state, or local rule or regulation, in accordance with accepted professional practice, appropriate accounting procedures, and practices. The City, or any of its duly authorized representatives, shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. Contractor will provide proper facilities for such access and inspection.

**14.2.** Records referred to under Subsection 14.1 shall be maintained and made available during performance under this Agreement and until six (6) years from the date of final completion of the Project. In addition, those records that relate to any dispute or litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken shall be maintained and available until six (6) years after the date upon which any such dispute, litigation, claim, or exception is resolved.

**14.3.** Contractor shall include the provisions of this Section 14 in every subcontract Contractor enters into relating to this Project.

**14.4.** All proprietary information furnished by Contractor in connection with this Agreement, but not developed as a result of work under this Agreement or under prior agreements between the City and Contractor, shall be held confidential by the City, and returned to Contractor within thirty (30) days of the completion of the services or the conclusion of litigation wherein Contractor's services were provided. All inventions, techniques, and improvements held by Contractor to be proprietary or trade secrets of Contractor prior to any use on behalf of the City, as well as all inventions, techniques, and improvements developed by Contractor, independent of the services rendered to the City under this Agreement, remain the property of Contractor.

### **SECTION 15. MISCELLANEOUS**

**15.1.** The recitals above are hereby incorporated into this Agreement.

**15.2.** If any term or provision of this Agreement or applications thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining terms and provisions of this Agreement, or the application of such term or provision to persons or circumstances other

than those as to which it is held or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**15.3.** This Agreement and any rights or obligations under this Agreement may not be assigned or subcontracted by Contractor without the prior written consent of the City and any attempted assignment or subcontracting without such prior written consent shall be void.

**15.4.** All representations, warranties, covenants, conditions, and agreements contained herein which either are expressed as surviving the expiration and termination of this Agreement or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**15.5.** This Agreement represents the entire and integrated Agreement between the City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Notwithstanding any provisions to the contrary in any contract terms or conditions unilaterally supplied by Contractor, the terms of this Agreement supersede Contractor's terms and conditions, in the event of any inconsistency.

**15.6.** All section and paragraph captions, marginal references, and table of contents in this Agreement are inserted only as a matter of convenience, and in no way amplify, define, limit, construe, or describe the scope or intent of this Agreement nor in any way affect this Agreement.

**15.7.** Neither the City nor Contractor has made any representations or promises with respect to the Project except as expressly set forth herein.

**15.8.** The neuter, feminine, or masculine pronoun when used herein shall each include each of the other genders and the use of the singular shall include the plural.

**15.9.** This Agreement shall not be construed in favor or against either party on the basis that it was drafted by the City.

**15.10.** The waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach. Any waiver by the City of a requirement of this Agreement, including without limitation, any requirement that a notice be made in writing or that a notice or submission be made within a certain time, shall not operate as a waiver of the same or any other requirement of this Agreement, in any other circumstance or at any other time.

**15.11.** This Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

**15.12.** Contractor agrees to perform its services under this Agreement in such manner and at such times that the City and/or any Contractor who has work to perform, or contracts to execute, can do so without unreasonable delay. Contractor further agrees to coordinate its work under this Agreement with any and all other contractors that may be deemed necessary by the City.

**15.13.** Contractor shall be considered, for all purposes relating to this Agreement, an

independent Contractor. Contractor agrees that it is not an agent of the City and shall have no right or authority to enter into any agreements or otherwise bind the City or create any obligations on behalf of the City with any other parties. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship between the City and Contractor.

**15.14.** This Agreement may be executed electronically and in counterparts. All such counterparts will constitute the same agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by email and, upon receipt, will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

**[The remainder of this page is intentionally left blank—signature page follows.]**

**IN WITNESS WHEREOF**, the City and Contractor have executed this Agreement as of the date first written above.

Witness:

XXXXXXXXXX:

By: \_\_\_\_\_

By: \_\_\_\_\_  
XXXXXXXXXX Date

Witness:

City of Takoma Park:

By: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Date

Approved as to form and  
legal sufficiency:

\_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
E.I. Cornbrooks, IV  
City Attorney  
City of Takoma Park