CITY OF MOUNTAIN VIEW
RENTAL HOUSING COMMITTEE
HEARING OFFICER DECISION

Rental Housing Committee Case No.:	17180002
Address of Rental Property:	141 Del Medio Avenue Mountain View, CA 94043
Rental Units Noted in the Petition or Petitions:	101, 102, 105, 108, 109, 110, 112, 113, 115, 116, 117, 119, 121, 123, 124, 126, 127, 128, 130, 131, 132, 133, 135, 201, 205, 206, 208, 209, 210, 211, 213, 214, 215, 218, 219, 220, 222, 223, 224, 229, 230, 232, 233, 234, 235, 301, 304, 306, 307, 308, 309, 310, 312, 313, 314, 315, 317, 318, 319, 322, 324, 327, 328, 329, 331, 332, 333, 334
Date(s) of Hearing	May 22, 2018
Date Evidence Closed after Supplemental Briefing	June 13, 2018
Date of Decision:	July 5, 2018
Date of Mailing:	See attached Proof of Service.
Hearing Officer:	Jil Dalesandro

I. Definitions:

1. "Landlord" as used herein shall mean Lindsay Properties, LLC;
2. "Tenants" as used herein shall mean the members of the Del Medio Manor Tenants Association, who are tenants of units 101, 108, 109,128,131,135, 201, 206, 208, 209, 210, 213, 218, 219, 222, 223, 233, 310, 319 and 328;
3. "Original Petition" as used herein shall mean the Landlord's Petition dated December 22, 2017 and supporting documentation;
4. "Amended Petition" as used herein shall mean the Landlord's Response to Hearing Officer's Request for Documents, and supporting Documents (Binders 1 and 2) dated April 4, 2018;
5. "The Act" as used herein shall mean the Mountain View Community Stabilization and Fair Rent Act ("CSFRA");

6. "The Property" as used herein shall mean the subject property located at 141 Del Medio Avenue, Mountain View, CA 94043, APN 148-15-011. The Property consists of 104 rental units. The Property has been owned by Landlord since 1974.

II. Issues Presented by the Petition(s):

1. Which Petition shall control this Adjustment – the Original Petition filed December 22, 2017, or the Amended Petition submitted on April 4, 2018;
2. Which CPI should be used;
3. Whether Landlord is entitled to a Vega Adjustment;
4. Was Landlord in compliance with the CSFRA regarding rent rollbacks with regard to Units 109 and 233 prior to filing its Petition.
5. Whether Landlord is entitled to an individual upward adjustment in the rent as requested in the Petition beginning after the Notice Date, and if so, how much and across which Units.

III. Appearances at the Hearing:

The following persons attended the hearing:

1. Landlord Authorized representative, Elizabeth Lindsay;
2. Landlord Witness Wilson Walch;
3. Landlord Witness, Bookkeeper Ms. Mary Anne Whitman;
4. Landlord Witness, Manager Ms. Stephanie Valle;
5. Attorneys Khyrstyn McGarry, Margaret McBride, Jason Tarricone, of Community Legal Services in East Palo Alto for Respondent Del Medio Manor Tenants Association;
6. Ric Kirk, Tenant in Unit 333, appeared and was sworn, read his statement into the record, but gave no testimony
7. Tenants in Units 101, 108, 109,128,131,135, 201, 206, 208, 209, 210, 213, 218, 219, 222, 223, 233, 310, 319 and 328 appeared through their Declarations.

IV. Witnesses

The following persons were duly sworn, testified at the hearing, and presented the following testimony:

1. Landlord Authorized representative, Elizabeth Lindsay;
2. Landlord Witness, Wilson Walch;
3. Landlord Witness, Bookkeeper Ms. Mary Anne Whitman;
4. Landlord Witness, Manager Ms. Stephanie Valle;
5. Ric Kirk, Tenant in Unit 333, appeared and was sworn, read his statement into the record, but

gave no testimony

6. Tenants in Units 101, 108, 109,128,131,135, 201, 206, 208, 209, 210, 213, 218, 219, 222, 223, 233, 310, 319 and 328 appeared through their Declarations

V. Evidence

1. Landlord's Petition dated December 22, 2017 and supporting documentation in this matter was admitted into evidence as Exhibit A;
2. Landlord's Response to Hearing Officer's Request for Documents, and supporting Documents (Binder 1) dated April 4, 2018 (known also as the "Amended Petition") were collectively admitted into evidence as Exhibit B;
3. Landlord's Response to Hearing Officer's Request for Documents, and supporting Documents (Binder 2) dated April 4, 2018 (known also as the "Amended Petition") were collectively admitted into evidence as Exhibit C;
4. Respondent Del Medio Manor Tenants Association's Response to Petition and to Hearing Officer's Request for Documents, and supporting Documents were collectively admitted into evidence as Exhibit D;
5. Landlord's Response Respondent Del Medio Manor Tenants Association's Response to Petition was admitted into evidence as Exhibit E;
6. Analysis: Average Rent Increase Over Life of Tenancy dated 5-1-18 was admitted into evidence as Exhibit E-1;
7. Declaration of Khyrstyn McGarry in Support of Del Medio Manor Tenants Association's Response in Opposition to the Petition Requesting Upward Adjustment of Rent and attached Exhibits were collectively admitted into evidence as Exhibit F;
8. Expert Declaration of Stephen Barton Ph.D. and attached Exhibits were collectively admitted into evidence as Exhibit G;
9. Second Declarations of Emrah Onur Toprak, Elena Francois, Tatiana Bartz, and attached exhibits were collectively admitted into evidence as Exhibit H;
10. Written Statement of Ric Kirk, Tenant in Unit 333 was admitted into evidence as Exhibit I;
11. Landlord's Tenant Ledger for Unit 233 admitted into evidence as Exhibit J; and
12. Landlord's Tenant Ledger for Unit 109 admitted into evidence as Exhibit K;
13. On June 12, 2018, Supplemental Brief of Landlord after Petition was admitted into evidence as Exhibit L, and
14. On June 12, 2018, Supplemental Brief of Del Medio Manor Tenants Association after Petition was admitted into evidence as Exhibit M; and
15. Sworn testimony taken from Witnesses at the Hearing;
16. Evidence was closed without objection, and the Hearing was adjourned on June 13, 2018, thus beginning the time period for the rendering of this Decision. The Hearing was adjourned on said date due to the unusually large volume of documentation submitted by all Parties. As a result thereof, the Hearing Officer made a thorough supplemental review of the same, in light of the newly submitted briefs to ensure that no further evidence was necessary

before this Decision could be rendered. Once that review was completed, the hearing was adjourned on June 13, 2018.

17. There was no evidence that was offered but not accepted into evidence.

VI. Findings of Fact Supporting This Decision

1. **Operative Petition**:

The operative Petition in this matter is the Amended Petition. All references to the "Petition" from this point forward shall be to the Amended Petition.

2. **Operative CPI**:

In its Amended Petition, Petitioner changed the Consumer Price Index ("CPI") used to calculate the CPI percentage increase on Worksheet 5. The Act states clearly states:

> The Consumer Price Index for the Petition Year shall be the Consumer Price Index that was most recently published as of the date a Petition for Upward Adjustment of Rent is submitted.

See, The Act at Regulation 6(C)(4)(b). The original Petition was signed and submitted on or about December 22, 2017. *See, Exhibit A*, at p. 3. The proper CPI for the Petition Year is 421.940, published in October 2017, and used in the original Petition at Worksheet 5. The CPI percentage used shall be 1.14.

3. **Landlord was in compliance with the CSFRA regarding rent rollbacks**:

With Exhibits J and K, Landlord has shown by a preponderance of the evidence that it was in compliance with the CSFRA regarding rent rollbacks prior to filing its Original Petition. Landlord has proven that it properly rolled back rents as of December 23, 2016.

4. **Landlord is Not Entitled to a Vega Adjustment**:

A Vega adjustment is unwarranted where

> [T]he physical condition of the property or any individual [unit], the market conditions that related to the property or any individual [unit], and/or any other relevant evidence" demonstrates "that a recalculation of the Base Year Gross Income … is unnecessary for the landlord to receive a fair return on investment for the property, fails to ensure fairness, or is otherwise contrary to the purposes of the Act."

See, the Act, at Regulation 6(G)(3)(d).

a. The Property is old and the Tenants' Units are not newly remodeled.

According to the majority of the evidence, and declarations of the tenants, the Property is an aged property located next to a noisy lumberyard and Caltrain, which shakes the units as it passes and

causes much noise pollution.

Tenants testified that they are disturbed by the sound of large vehicles idling and the train's vibrations. The evidence shows that new tenants (not the subjects of this Petition) live in remodeled units, with new kitchens, some bathrooms, and new flooring. Subject Tenants -- according to their testimony, the photos attached to their Declarations, and emails provided by Landlord --reside in units that have not been remodeled since they moved in, and which contain worn carpets, minimal outdated heating with little to no temperature control (they can turn them on or off, but cannot control them further), faulty plumbing, no air conditioning, and leaking pipes. Although some units have balconies, many tenants are uneasy about using them; photographs attached to their Declarations show apparent structural deficiencies, such as wood pulling away from the wall, cracked and aging wood, and in some cases, dry rot. Tenants testify that since the heaters do not work effectively to heat all the living spaces in most of the Affected Units; many are forced to supplement with space heaters in the cold months. The Subject Tenants also testify that the Units, especially on upper floors are sweltering in the hot months.

Tenants also testify that (1) some of the facilities listed in the Petition such as covered parking and storage units are available only for some tenants, (2) the elevator breaks down frequently and (3) the on-site manager is very difficult to reach; tenants are often advised to call a locksmith for lockouts rather than contact her.

A preponderance of the evidence supports a rebuttal to any presumption of a *Vega* Adjustment to the Net Operating Income for the Base Year. The market conditions of the property show that the rents as charged adequately reflect the condition of the property and that such an increase is "unnecessary for the landlord to receive a fair return on investment for the property." (Regulation 6(G)(3)(d).) As a result of all of these factors, Landlord's request for a *Vega* adjustment for the units is hereby **denied**.

b. Valuing all one bedroom units at the same rental rate is unreasonable.

Landlord requests that 35 "junior one bedroom" units be granted the same *Vega* adjustment as true one bedroom units at the property. Currently, the Petition requests a Vega adjustment for 51 of the one bedroom units at the property. It further requests that, for the purpose of a Vega adjustment, each of those units be valued at the same 2015 HUD fair market value of $1,419. *See, Exhibit B and C* at Worksheet 2.1.

Valuing all one bedroom units at the same rental rate is unreasonable and unfair. Landlord admitted at the hearing that there are three different types of one bedroom units at the property: (1) the

"junior one bedroom," (2) a small one bedroom, and (3) a large one bedroom. *See, Exhibit B and C* at Attachment to Worksheet 1A.

Landlord, in its Petition, admits that it values each unit very differently – it admitted that a "junior" one bedroom is allegedly worth $2,000 a month while a "small" one bedroom is worth $2,400 per month. *See, Exhibit B and C* at Attachment to Worksheet 1A. Landlord thus admits that a "junior one bedroom" is worth only $100 more per month in rent than a studio. According to the testimony of the Tenants and the photos attached to their Declarations, a "junior one bedroom" is merely a one room studio with an attached bath. Rather than a wall and door separating the bedroom, it has only an accordion door to separate the bedroom from the rest of unit. This door does not go to the floor, but instead floats a few inches above it, providing no more privacy than a dressing screen. Further, one must pass through the "bedroom" area of the main room to enter the bathroom, again, providing no privacy. For that reason, the "Junior One Bedroom" is hereby considered a Studio for purposes of this Order.

Obviously, to value this studio arrangement the same as a true one bedroom unit with walls at the same rental rate for the purposes of a Vega adjustment is unjustified. The Act prescribes that a Vega adjustment should be calculated in reference to the 2015 HUD fair market value for "the most similar unit type based on the number of bedrooms," such a valuation here fails to ensure fairness, [and] is . . . contrary to the purposes of the Act." *See, the Act* at Regulation 6(3)(G)(a)-(d).

As a result, the market conditions of the property show that the rents as charged for all one bedroom and studio units adequately reflect the condition of the property and that such an increase is "unnecessary for the landlord to receive a fair return on investment for the property." As a result of all of these factors, Landlord's request for a *Vega* adjustment up to $1,419 for these units is hereby **denied**.

5. **Landlord Is Entitled To An Individual Upward Adjustment In Rent.**

Landlord has owned this property since 1974. Evidence shows that the units subject to this Petition are, for the most part, old and not remodeled (see above). Inspections are current. Based on proper evidence and calculations under the Act, Landlord has proven that it is entitled to a rent increase of $ 5.70 per month for each of 104 units as follows:

a. **Adjusted Gross Income in the Base and Petition Years**:

The Evidence and testimony shows proper Adjusted Gross Income of $1,662,979 in the Base Year and $1,837,472.20 in the Petition Year. The Act requires Gross Income to be calculated using rents that are "lawfully collectible," not simply rents that were actually collected. *See, The Act* at

Regulation 6(D)(1). It appears that Landlord used the Vega calculations to calculate income in the Base Year. Application of the Vega adjustment in this Petition results in an increase in Gross Income for the Base Year as compared to the actual rent collected. Since no Vega adjustment is justified for any of the units in the building, those calculations shall not be used. *See, Exhibit B at Worksheet 2.*

Similarly, the Petition Year income must include all lawfully collectable rent, including annual adjustments not yet taken. *See. The Act* at Regulation 6(D)(l). The Base Year Income shall be based on actual gross income at $ 1,662,979.00, and the Petition Year Income at $ 1,837,472.20.

b. **Total Operating Expenses in the Base and Petition Years**.

1. Business License Fees:

Evidence presented shows that $1,080.05 worth of expenses labeled "Business License Fees" are improperly claimed in the petition year. These include Go Daddy charges that were refunded and California Apartment Association Fees, which as "lobbying expenses" are improper under the Act. *See, Act* at Regulation 6(E)(2)(j). Petition Year Business License Fees are thus reduced to $11,442.02.

2. Reasonable Costs of Ordinary Repair, Replacement, and Maintenance.

In this category, several expenses that must be excluded.

a. Salary:

First, the claimed salary costs must be properly re-categorized as management expenses in both years and appear to be duplicative; since Management Costs have been capped (see below), these extra costs are excluded. Neither Landlord nor its Bookkeeper, Ms. Whitman, met their burden of proof in proving the differences in tasks delineated for Salaries vs Management Expenses. Further, none of the employees appear to have contractor or other relevant licenses which would allow them to command the extremely high salaries that a preponderance of the evidence shows to have been paid. Additionally, Landlord failed to keep time records of any sort to justify the salaries or what work was actually performed for which they were paid. Since Landlord failed to meet its proof burden, all Salary entries (and attendant benefits) are properly excluded. As a result, this exclusion reduces these expenses to $ 130,625.70 in the Base Year and $ 168,141.88 in the Petition Year.

b. Management Expenses:

Reasonable Management Expenses are presumed to be 6% of gross income. *See, Act* at Regulation 6(E)(l)(g).) As stated, it appears that Landlord's expenses total well over 6% in both years. See, Exhibits B and C. Regulation 6(E)(l)(g) prohibits

Management expenses in excess of [6%] of Gross Income ... unless it is established that

such expenses do not exceed those ordinarily charged by commercial management firms for similar residential rental properties.

See, Act at Regulation 6(E)(l)(g). The evidence fails to support such an exception, and Management Expenses are hereby capped at 6% of Gross Income or $ 99,778.74 in the Base Year and $ 111,825.36 in the Petition Year.

c. Reasonable Costs of Capital Improvement:

Landlord is prohibited from including capital improvement costs that are not necessary to achieve or maintain compliance with health and safety codes. *See, Act* at Art. XVII, Sec. 1710 (a)(3)(C). Costs "that could have been avoided by ... reasonable diligence in ... making timely repairs" and "[o]verimprovements" not approved of by the tenant in writing are also prohibited. *See, Act* at Regulation 6(F) (2)(a)-(c).

Landlord provided no evidence that the common area pavers were a necessary cost rather than an unnecessary overimprovement and provided only two pictures to support parking lot resurfacing expenses of over $44,000. Further, Tenants testify that the property had been resurfaced two (2) years prior to the paver expense, Landlord has not met its proof burden as to the pavers, so said expense is hereby excluded. Thus the Capital Expenses for the Base year are reduced to $ 14,699.02. Similarly, Landlord failed to meet its proof burden with regard to the $ 14,000 elevator expense in the Petition Year and said expense is excluded, reducing Petition Year Capital Expense to $ 9,016.57.

d. Allowable Attorneys' Fees and Costs:

The claimed attorney's fees shall be excluded. Landlord's testimony at the Hearing revealed these fees and costs related to its intervention in an existing lawsuit challenging the CSFRA, and did not benefit the Tenants or Units – in fact, said action worked to their detriment. These fees and costs do not fall into the narrow categories set forth in the Act and are therefore excluded in their entirety. *See, Act* at Regulation 6(E)(l)(i).

e. Owner-Performed Labor:

The alleged owner-performed labor expenses must be excluded entirely. There were no such fees in the original Petition, filed under penalty of perjury. Further, said owners are paid salaries, and it appears that they are also paid under Management Expenses as well. Landlord failed to differentiate the differences between Salary, Management Expense, and Owner Labor. As a result, Landlord did not meet its burden of proof concerning these expense amounts and they shall be excluded in their entirety.

f. Other Operating Expenses:

First, the unsupported expense of $738.35 must be excluded. *See, Exhibits* B and C, Landlord's Response to Attachments at 2 ("I don't know where $738.35 comes from.").

Second, all improperly categorized Other Expenses, must be re-categorized as Management Expenses, and thus capped at 6% as set forth above. These include various accounting fees, postage, employee benefits, salaries, and rollback expenses. Additionally, the Landlord admits that some credit check fees were eligible for repayment. *See, Exhibits* B and C, Landlord's Response at 2 ("[T]hose who don't qualify are charged for the credit check.") Since Landlord failed to meet its proof burden as to which fees were eligible to be reimbursed, all are excluded.

Given these deductions, Other Operating Expenses are reduced to $58,922.73 in the Base Year and $51,819.10 in the Petition Year.

g. Total Operating Expenses:

Operating Expenses for the Base and Petition Years are hereby ordered to be:

Category	Base Year	Petition Year
Rental Housing Fees	N/A	$ -0-
Business License Fees	$ 3,588.79	$ 11,422.02
Real Property Taxes	$ 36,387.16	$ 37,008.88
Landlord Utility Costs	$ 128,463.67	$ 155,103.23
Insurance	$ 28,364.89	$ 21,005.43
Reasonable Repair, etc.	$ 130,625.70	$ 168,141.88
Reasonable Management Expense	$ 99,778.74	$ 111,825.36
Reasonable Capital Improvement	$ 14,699.02	$ 9,016.57
Allowable Attorneys' Fees	-0-	-0-
Owner Performed Labor	-0-	-0-
Other Operating Expenses	$ 58,922.73	$ 51,819.10
TOTAL OPERATING EXPENSE	$ 500,830.70	$ 565,342.47

h. The Allowable Upward Adjustment Shall Be Divided Equally Across all Units in the Property:

The Act requires that, except for a Vega increase – which is denied here -- any rent increase

should be allocated equally among all units in a property. *See, Act* at Regulations 6(G)(3)(e) & 6(J). Further, since Landlord admits that it does not charge expenses to any specific unit, but charges expenses across all of them, the same should apply to any rent increases under the Act. *See, Amended Petition*, at Worksheet 6. As a result, any rent increase hereby granted shall be applied equally to all 104 units of the Property. Since Landlord only petitioned for rent increase for 67 of those units, they shall be charged based on using 104 total units for the calculation.

i. Rent Increase Calculation:

Category	Base Year	Petition Year
NOI		
AGI	$ 1,662,979.00	$ 1,837,472.20
Total Operating Expense	$ 500,830.70	$ 565,342.47
Net Operating Income	$ 1,122,148.30	$ 1,272,129.73
NOI Plus CPI Adjustment		
Net Operating Income	$ 1,122,148.30	$ 1,272,129.73
CPI	371.075	421.940
CPI Percentage	14% or 1.14	
Adjusted NOI	$ 1,279,249.06	
Petition Year NOI		($ 7,119.33)
Allowed Rent Increase/Month		$ 593.27
Allowed Increase/Unit/Month		**$ 5.70**

This upward rent adjustment awarded herein presumes that any Allowable General Adjustments available in the Petition Year have been taken. Here, the Annual General Adjustment ("AGA") of 3.4% was available to the Landlord for 2017. Unless none of the available 3.4% 2017 AGA was implemented as a rent increase on a Unit, Landlord may not "bank" the 2017 AGA by using it at a later time. See, the Act at Section 1707(d)).

Landlord may charge rent in the amounts set forth above after this Decision becomes final and upon Landlord's serving proper notice of such increase to each tenant at least 30 days prior to implementing the rent increase pursuant to California Civil Code Section 827.

VII. Discussion

See Section VI above.

VIII Conclusions of Law Supporting this Decision

In addition to those sections of the Act cited above, the following also applies to this Petition and Decision:

The CSFRA regulates rent increases as set forth in section 1706:

> No Landlord shall increase Rent for a Covered Rental Unit except as authorized by this Article. Rent increases shall be limited to those imposed pursuant to Section 1707 (Annual General Adjustment) and Section 1710(a) (Petition for Upward Adjustment—Fair Rate of Return). A Landlord may set the initial Rent for a new tenancy pursuant to Section 1708 (Initial Rents for New Tenancies).

See, CSFRA § 1706.

As set forth above, based on the Annual General Adjustment of 3.4 percent and Fair Rate of Return, Landlord's proposed rate increase is not reasonable.

1. Fair Rate of Return:

CSFRA Chapter 6 B of the Regulations states:

> A Landlord's fair rate of return on investment for a property containing a Covered Rental Unit for the Petition Year is the "Adjusted Net Operating Income." For purposes of this Section (B), the Adjusted Net Operating Income shall equal the Net Operating Income for the Base Year, adjusted by the percentage increase or decrease in the Consumer Price Index between the Base Year and the Petition Year. If the Landlord's actual Net Operating Income for a property in the Petition Year is less than the Adjusted Net Operating Income, then the Landlord shall be entitled to an Upward Adjustment of Rents for that property sufficient to provide a Net Operating Income equal to the Adjusted Net Operating Income.

See, Regs, at Chapter 6(B).

CSFRA Regulations at Chapter 6(F) define Capital Improvements as

> [A]dditions to or modifications of a physical feature of a Covered Rental Unit or of a building or property containing a Covered Rental Unit. To qualify as a Capital Improvement, the addition or modification must:
>
> > a. Be necessary to bring the property or Covered Rental Unit into compliance, or to maintain compliance, with applicable building or housing codes

See, Regs, at Chapter 6(F)1.

CSFRA Regulations at Chapter 6(E) define "Operating Expenses" to include not only

Capital Expenses as set forth above, but also:

> a. The portion of annual fees assessed under Section 1709(j)(1) of the Community Stabilization and Fair Rent Act that is not allowed to be directly passed through to Tenants; and
>
> b. Business license fees; and
>
> c. Real property taxes; and
>
> d. Utility costs paid by the Landlord, to the extent that such costs are not passed through to Tenants; and
>
> e. Insurance; and
>
> f. Reasonable costs for ordinary or routine repair, replacement, and maintenance of one or more Covered Rental Units and the property containing Covered Rental Units. Repair, replacement, and maintenance costs shall include, but not be limited to, building maintenance, including carpentry, painting, plumbing and electrical work, supplies, equipment, refuse removal, and security services or systems, cleaning, fumigation, landscaping, and repair or replacement of furnished appliances, drapes, and carpets; and
>
> g. Reasonable management expenses (contracted or owner-performed), including necessary and reasonable advertising, accounting, or other managerial expenses. Management expenses are presumed to be six percent (6%) of Gross Income, unless established otherwise.. . and
>
> i. Attorney's fees incurred in the normal operation of the [units.]

See, Regs, at Chapter 6(E)1.

Mountain View voters enacted the Act in November 2016 to control

> [E]xcessive rent increases . . . while ensuring Landlords a fair and reasonable return on their investment."

See, the Act at Art. XVII, Sec. 1700. That same law permitted Landlords to increase rents for existing residents by 3.4% in 2017. This increase accounts for inflation to ensure that landlords earn a fair and reasonable rate of return on their investment by maintaining their net operating income. *See, the Act* at Regulation 6(A)(3) and 6(B); *see also, Palos Verdes Shores Mobile Estates, Ltd. v. City of Los Angeles* (1983) 142 Cal.App.3d 362, 371.

The California Supreme Court has consistently held that any increase in rents sought by the landlord must be balanced against the tenants' interests in keeping their homes affordable:

> [T]he rate regulator is balancing the interests of investors, i.e. landlords, with the interests of consumers, i.e. [tenants], in order to achieve a rent level that will on the one hand

maintain the affordability of the [property] and on the other hand allow the landlord to continue to operate successfully.

See, Galland v. Clovis (2001) 24 Cal.4th 1003, 1026. The Supreme Court has further held that if investment returns for landlords are merely "disappointing" without being confiscatory,

> [T]he solution is not constitutional litigation but, as with nonregulated investments, the liquidation of the investments and the transfer of capital to more lucrative enterprises.

Ibid. Thus, as long as rent levels permit a growth in net operating income, the constitutional minimum for a "fair rate of return" has been met. *See, Fisher v. City of Berkeley* (1984) 37 Cal.3d 645, 680-683.

3. Allocation of Upward Adjustment of Rents:

CSFRA Regs at Chapter 6 (J) state:

> Upward Adjustments of Rents authorized by Hearing Officers and/or the Rental Housing Committee shall be allocated equally among all Rental Units in the property, subject to the condition that in the interests of justice, a Hearing Officer and/or the Rental Housing Committee may allocate Rent increases in another manner necessary to ensure fairness and further the purposes of the Act.

See, Regs, at Chapter 6(J).

IX. Decision

Based on the above findings of fact and conclusions of law, it is hereby decided that,

The Petition filed by Landlord is **hereby granted in part and denied in part** as follows:

1. The Petition is Granted in that Landlord is hereby granted a rent increase in the amount of $ 5.70, to be assessed against the Affected Units in the Property that were subject to this Petition.
2. The Petition is Denied as to the request to apportion all of the available upward adjustment against only the Affected Units in differing amounts;
3. Landlord may charge rent in the amounts set forth above after this Decision becomes final and upon Landlord's serving proper notice of such increase to each tenant at least 30 days prior to implementing the rent increase pursuant to California Civil Code Section 827; and
4. No decision is hereby rendered regarding the constitutionality of the Act, and no decision is hereby rendered as to the Tenants' assertion that several portions of the regulations exceed the statutory authority granted by the CSFRA. These assertions were disallowed as not within the jurisdiction of the Hearing Officer,

the Petition, or this Hearing.

SO ORDERED.

Dated: July 5, 2018
Hearing Officer

Jil Dalesandro