



April 29, 2022

Re: Summary of Comments and DSI Responses

Introduction

On November 2, 2021, Saint Paul voters approved a Rent Stabilization Ordinance for the City of Saint Paul. The Ordinance limits residential rent increases to no more than 3% in a 12-month period, regardless of whether there is a change of occupancy. The Ordinance also directs the City to create a process for landlords to request an exception to the 3% limit based on the right to a reasonable return on investment.

After the Rent Stabilization Ordinance became law, the Department of Safety and Inspections (“DSI”) was tasked with working toward a May 1, 2022 implementation date. To that end, DSI proposed rules to clarify and implement the Rent Stabilization Ordinance. The rules were posted and open for public comment from April 7 to April 22, along with proposed processes and definitions by which landlords would request an exception to the 3% limit.

Upon receipt of the comments, DSI found it necessary to make several changes to the proposed rules, which are now reflected in the final rules. The following serves to illustrate some of the common themes of the comments, as well as the DSI Director’s response to the comments. While the summary does not address each comment received, the Department carefully reviewed every comment to determine whether a rule change was necessary.

Summary of Comments and DSI Responses

The most common responses centered around the following:

1. Changes in the Number of Tenants

The Director fielded questions concerning the number of tenants impacting a rental unit. Some commenters requested that the Director change the designation from including “children” of a renter to simply refer to “resident children,” rather than designate as family.

Director response: the Director has adopted a final rule that clarifies that, in addition to the situations outlined in the proposed rule, “other resident children” is included to ensure that the rule is inclusive of all situations where children reside in the home.



2. Designation of 2019 as the Base Year

The Director fielded comments that generally supported the designation of 2019 as the base year but requested clarification on certain issues. For instance, some comments inquired whether the base year is implicated by increases in rent less than 3%.

Director response: the use of base year for purposes of the Maintenance of Net Operating Income (“MNOI”) standard pertains to petitions for rent increases above 3%. No consideration of 2019 as the base year is necessary for rent increases below 3% annually. If a landlord petitions to increase rent by more than 3%, one way the landlord can demonstrate that the increase is tied to a reasonable return on investment is to demonstrate that the Consumer Price Index, relative to the base year, coupled with other eligible costs and expenses related to the property results in a need for an increase of greater than 3%. Importantly, a base year of 2019 does not mean that the Rent Stabilization Ordinance is retroactive to 2019.

Other comments indicated that certain landlords purposely suppressed rent during 2019 for various reasons. The comments expressed a concern that 2019 is not representative of normal income.

Director response: to the extent a landlord suppressed contract rent during Base Year 2019, Final Rule (A)(4) creates an opportunity for a landlord to rebut the presumption that Base Year 2019 net operating income provided a reasonable return on investment.

Multiple comments asked for clarification on the rules use the Consumer Price Index as the basis for determining a reasonable return on investment.

Director response: the Department chose the Consumer Price Index because it is a reliable proxy for measuring the change in a landlord’s cost of providing rental housing. This is the practice in almost every other jurisdiction that has a rent stabilization ordinance in effect.

Finally, multiple comments asked for clarification on what the base year is for rental properties that were not on the market in 2019.

Director response: the Director has adopted a final rule that clarifies that the base year for rental properties that were not on the market in 2019 is the year that the property entered the market.

3. Capital Improvements and Amortization



The Director fielded multiple comments regarding amortization schedules for capital improvements. For instance, some commenters asked how capital improvement expenses not listed in the amortization schedule should be handled.

Director response: the Department has adopted a final rule that includes amortization schedules for a number of capital improvements, but is not able to capture every possible situation. Landlords should submit evidence of the amortization schedule they use for any capital improvements not listed in the schedule. Amortization schedules for unlisted items must not be less than 36 months.

4. Maintenance of Net Operating Income

The Director fielded comments on the use of the MNOI standard for determining what constitutes a reasonable return on investment, including the rationale for proposing a rule around MNOI.

Director response: upon review of these comments, the Department has adopted a final rule implementing the MNOI standard for determining a reasonable return on investment. The Department selected MNOI based on the practices of other jurisdictions that enforce rent stabilization, case law from those jurisdictions, case law from jurisdictions of binding precedent, literature supporting the use of MNOI, comments supporting the use of MNOI, and other pertinent information.

The Director also fielded comments on MNOI as it pertains to the percentage cap on rent increases.

Director response: the 3% cap is required by the voter-approved ordinance. However, the final rules indicate that landlords may petition for increases above the 3% cap, up to 15%, so long as the landlord can demonstrate through a petition that the increase is necessary to recover a reasonable return on the landlord's investment. The final rule also provides that any amount of any rent increase granted in excess of 15% must be deferred and implemented in subsequent years.

Finally, the Director did receive feedback on using 2019 as the base year for measuring MNOI.

Director response: given the COVID-19 pandemic and ensuing economic volatility, the final rule adopts 2019 as the base year. The Department felt 2019 was an appropriate base year, given the relative lack of general economic volatility during 2019, as well as it being a fairly recent time



period. As noted above, Rule (A)(4) allows a landlord to rebut the presumption that 2019 Base Year net operating income provided a reasonable return on investment.

5. Operating Expenses

The Director fielded several comments asking for clarification on why mortgage principal and interest payments, land lease expenses, and depreciation are excluded from the definition of “operating expenses.”

Director response: operating expenses refer to ongoing costs that are necessary to operate and maintain a residential rental property and ensure its ability to produce income. As such, the Department’s final rule adopts a definition of “operating expenses” that does not include mortgage principal and interest payments, land lease expenses, and depreciation.

6. Petition Process

The Director fielded several comments on the petition process, including feedback on self-certification.

Director response: regarding self-certification, landlords are still required to demonstrate the need for a deviation from the 3% limitation on rent increases to achieve a reasonable rate of return on their investment. The Department has determined that the audit process is an effective, efficient, and appropriate means of enforcing this requirement. The Department will also investigate self-certified petitions upon receipt of a complaint from a tenant.

The Director also received several questions regarding the tenant complaint and appeals processes.

Director response: regarding the complaint process, tenants may file complaints against landlords who they believe are violating the Rent Stabilization Ordinance by completing and submitting a web-based complaint form, which can be found on the City of Saint Paul Rent Stabilization website. Regarding the appeals process, landlords and tenants may appeal a staff determination to the Legislative Hearing Officer within ten (10) days.

7. Tenant Notification

The Director fielded comments requesting tenant notification that a landlord has applied for a rent increase.



Director response: the Rent Stabilization Ordinance only grants the Department authority to create rules defining and clarifying a landlord's right to a reasonable return on investment. It does not give the Department authority to impose a tenant notification requirement on landlords. That said, the Department generally supports amending the Rent Stabilization Ordinance to require notification requirements for tenants.

8. Translation

The Director fielded several comments regarding the need for translation of the rules into various languages, and the need for translation services, generally.

Director response: efforts are underway to provide translation services to non-native English speaking tenants, landlords, and other members of the public.