



SAINT PAUL
MINNESOTA

Rent Stabilization Public Comments (Letters Received April 7-22)

TWIN CITIES HOUSING DEVELOPMENT CORPORATION

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April 21, 2022

DSI – Rent Stabilization
City of Saint Paul
375 Jackson, Suite 220
St Paul, MN 55102

RE: Proposed Stabilization Rules

As a nonprofit developer and owner of affordable rental housing we are committed to providing high quality housing for low-income families in our community. In doing so we seek to utilize the resources available for the creation of such housing in the most efficient way possible. We also seek to bring or keep available federal resources to our community to support the housing needs of low-income families.

The recommendations detailed in this letter are made in the hopes that the rent stabilization regulations can be crafted in a way that allows for the operation of high quality affordable housing for our community in the most efficient way possible.

Properties with HAP Contracts with HUD or an HRA/PHA (Section 8)

There are many older properties in our community that are in need of substantial renovation and that serve the very lowest income households through a Housing Assistance Payment (HAP) Contract with HUD. These properties are commonly referred to as Section 8 properties. We have acquired many properties with expiring Section 8 contracts that could have been converted to market rate housing at the end of the contract with HUD. Through our acquisition of the property and commitment to renew the contract with HUD for 20 years and with significant improvement of the property we are able to retain and significantly improve these housing resources for the lowest income households in our community. The contract with HUD allows residents to pay 30% of their income for rent and utilities and HUD pays the balance of the rent. If a household's income goes down their rent goes down and if their income goes up their rent goes up. Up or down they pay 30% of their income for rent and utilities.

HUD has a process for determining what initial rents can be set at and then how rents are adjusted annually. Often the change in initial rents is

significant and more than 15%. This is helpful to our community as it allows the property to support more amortizing debt and either make more improvements or use less deferred debt from entities like the St Paul HRA, depending on the circumstances. In addition, the HAP contract can allow for adjusting rents to market every five years. If this results in an increase in rent this can help significantly in allowing the property to operate for longer than originally projected and avoid having to use additional local affordable housing resources which can then be used for other projects. Bringing more federal resources to St. Paul in this way is a good thing. **These HUD determined increases do not impact what the resident pays for rent.** The resident pays 30% of their income and HUD pays the balance. It is in the best interest of residents and our broader community for HUD to agree to the highest annual increase allowable as that increase allows us to maintain and operate the property with no impact on the residents rent. The residents rent only changes based on how their household income changes, either up or down.

These properties should not be subject to the self-certification or staff determination process or the 15% limit on rent increases. Rather the owner should be able to simply identify that they are subject to a contract with HUD and are operating the property in compliance with the HUD requirements. Section 193A.06 of the ordinance addresses the change in household rent based on income but it does not provide an exception for the total rent that the property collects from HUD.

The same concept discussed above applies to tenant-based Section 8 vouchers that households obtain from local HRA's and PHA's. Again, residents pay rent based on their income and the balance of the rent is paid by the contract with the HRA/PHA. Landlords should be able to negotiate whatever level of increase can be obtained from the HRA/PHA to support the operation of the property. For example, a 5% increase in the HRA contract would not impact the tenants rent. The tenant rent is based on their income.

It is already hard to get many owners to accept tenant-based vouchers. Clarifying that the increase in the rent allowed by the PHA is not limited to 3% would certainly help to encourage owners to accept residents with these tenant-based rental subsidies.

Substantial Acquisition Rehab Projects

The ordinance does not address the redevelopment of existing properties as affordable housing. We regularly acquire properties that have existed for many years, often decades, and are in need of substantial rehabilitation and financial restructuring. New ownership entities should be able to establish new rents, within the rent limit restrictions required by the funding for the project. If the allowable rent restrictions allow for rents that are more than 3% higher than the previous owners' rents, the

rents should be able to be established as high as the allowable rent limits if determined to be appropriate for the project and the local market. This would allow the owner to maximize the size of the first mortgage and limit the amount of deferred debt required to finance the project. This would make more deferred debt available for other affordable projects.

This can be accomplished without burdening existing residents with large increases if a combination of strategies are employed. These strategies would include a combination of increases for current tenants of some amount, and allowing increases up to the limit allowed by the affordable housing funding when a unit becomes vacant. We have also established rent transition reserves to help fund a property's needs when existing households have very low rents, usually due to long term tenancy. The household gets a reasonable increase and then the property draws on the reserve to support the operation of the property. When the unit turns over the rent is increased within the limits of the affordable financing and likely more than 3% and the reserve is no longer necessary for that unit as the rent on the unit can now support the operations of the property. Note that lenders must agree to fund such a reserve and the expectation is that eventually all rents are at the higher level necessary to support the operation of the property.

Most affordable projects are precluded from terminating a household without cause under the tax credit rules and some lender rules thus the risk of affordable owners terminating a household without cause in order to increase the rent upon the unit turnover is much less likely to happen. A just cause termination requirement could also address this concern, but I don't think it is a significant concern for most affordable properties given the regulations associated with the affordable housing funding.

Operating Expenses

The various categories in VII Operating Expenses, are broad and it is hard to tell whether some expenses that are routinely incurred are included. These include the following: Audit and tax return preparation, bad debt, rent concessions, marketing and advertising, office contracts such as phone, internet and copier, mileage, training, bank fees, compliance fees, cost of interpreters, police reports, employee background checks and screening, exterminating, trash, fire related contracts, supportive services. Supportive services in particular can be a significant cost and can, for affordable housing developments, relate to commitments made to serve a certain number of households previously experiencing homelessness. In addition, many properties have been underwritten and designed in anticipation of resident services which are a critical part of the overall successful operation of a property and were an integral part of the underwriting for a project and the related expectations of lenders. Please

add more details as to specific expenses and include a line item for supportive services.

Property taxes assessed and paid doesn't appear to also include the separately billed fees such as storm water fees, street assessments, special lighting assessments, etc. all of which can be significant.

When a property requires more significant improvements it must seek out additional financial resources. The costs associated with these loans or other financing such as housing tax credits can be very significant and should be an allowable expense.

Please clarify what landlord performed labor is, particularly when a landlord retains a management agent to operate the property.

Allocation of Rent Increases

Affordable developments often have many sources of financing each with their own rent and income restrictions. In addition, most affordable developments serve households with tenant based vouchers. Equal allocation of rent increases is not possible in many situations. If affordable properties are not exempted in their entirety given that they are designed to be affordable, then units subject to rent or income restrictions must be allowed to allocate rent increases as determined to be appropriate by the owner and consistent with funder requirements so that these properties are not out of compliance with the complex requirements of the various affordable housing funders.

Affordable Housing in General

There are also many properties that provide affordable housing to low-income households through other funding mechanisms such as housing tax credits, CDBG, HOME, Housing Infrastructure Bonds and many other sources provided through MN Housing, counties and cities. These funding sources come with many regulations related to affordable rents and incomes. These affordable incomes and rents are established from annual surveys of incomes that HUD performs. These affordable properties are monitored and most must provide detailed annual reports and be subject to annual inspections to assure compliance with the income and rent restrictions.

There are already mechanisms in place to assure that these properties are affordable. Excluding them from the self-certification and staff determination process and the cap on rents would relieve what will be significant and costly administrative burdens of the staff assigned to administer this program. Again, these properties are all monitored not only for physical condition but also for compliance with rent and income restrictions.

Vacant Units

The ordinance should allow properties that already have rent and income restrictions to adjust rents upon turnover up to the rent limit of the relevant affordable program. This is particularly important in those situations where a household has been in an affordable rental unit for many years and the owner has not increased rents consistent with the market while still within the affordable housing rent limits. When these units become vacant it is an opportunity for the owner to increase rents to a level that reflects the cost of operating them, but still within the range of rents allowed by the affordable housing regulations. If this can occur, the rent remains affordable (because the property is subject to affordable rent limits) and the property is able to capture that increment of rent to use in maintaining the property for a longer period of time than they otherwise would be able to with the 3% cap. The result is that the property can operate for a longer period of time without seeking additional affordable housing subsidies and those subsidies can be available for new projects.

Most affordable projects are precluded from terminating a household without cause under the tax credit rules and some lender rules thus the risk of affordable owners terminating a household without cause in order to increase the rent upon the unit turnover is much less likely to happen.

We appreciate the opportunity to provide public comment. Please don't hesitate to contact me if you have questions or require clarification.

Sincerely,

Twin Cities Housing Development Corporation

By: 
Barbara M. McQuillan
Executive Director



1080 Montreal Avenue
St. Paul, MN 55116
commonbond.org

April 20, 2022

SENT VIA EMAIL TO rent-stabilization@ci.stpaul.mn.us

DSI- Rent Stabilization
City of Saint Paul
375 Jackson Suite 220
Saint Paul, MN 55102

RE: Comments: Proposed Rent Stabilization Rules

As an affordable housing owner, developer, manager, and service provider, CommonBond Communities is deeply committed to providing a dignified and affordable home to all residents. We appreciate the difficulty of creating rules quickly to enact the rent stabilization ordinance, particularly as they relate to the management and development of affordable housing. However, many sections of the draft rules do not consider the nuances of operating and maintaining affordable housing. Our experience leads us to believe that a failure to address these concerns will lead to fewer affordable housing units and that the affordable housing units that exist will decline in quality over time.

In this document you will find comments and proposed changes to many sections of the draft rules and to the draft forms. Before getting to those we would like to highlight key improvements that will ensure that organizations like CommonBond Communities can continue to provide and expand the number of dignified and affordable homes for the people of Saint Paul.

Key Comments

1. Supportive services are not explicitly mentioned as an operating expense. These services are absolutely essential to our residents' housing stability and often required by our funders. **We request that supportive services be specifically mentioned as an operating expense.**
2. The rules currently require rent increases to be allocated equally among all units. While we appreciate the desire for fairness, this does not reflect the reality of operating affordable housing. An affordable housing project can be subject to multiple programs, which place different rent and income limits on the same type of unit. Simply put, these programs do not allow CommonBond Communities to implement equal rent increases across all units. **We request that units subject to rent or income restrictions be allowed to allocate rent increases as deemed appropriate by the owner and consistent with funder (e.g., Internal Revenue Service, etc.) requirements.**
3. During a rehab of a property, CommonBond Communities may adjust unit sizes, common area space, or services provided in order to obtain funding necessary for the renovation, comply with requirements of our funders, including the City of Saint Paul and the State of Minnesota, or to better serve residents. The draft rule requires the consent from the majority of tenants to increase rents if we make those changes. This could allow tenants to block necessary rehab for asset preservation or renovation for required safety improvements (e.g., sprinkler systems, leaking roofs, etc.) by not allowing the increase in rents. **We request that this requirement be removed.**

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4. Many affordable housing units are subject to a federal Section 8 Housing Assistance Payment (“HAP”) contract, which limits the amount of rent paid by a tenant to 30% of the household’s adjusted income, with the remainder of the contract rent paid by the federal government. These HAP contracts are subject to an annual funding and/or contract renewal process and as part of this process, contract rents may be increased in several ways. This program already protects tenants from increases in rents and requires a great deal of work to comply with the program. **We request that units subject to a HAP or other rental assistance contracts be exempt from the self-certification process or the staff determination process. It is important to note these contracts require rent (plus utility allowance) paid by residents to not exceed 30% of the household’s adjusted income.**
5. CommonBond Communities appreciates the desire to protect tenants, but the draft rule of not allowing an increase in rents greater than 15% may result in the construction and rehab of fewer affordable units. For example, during a rehab of a property with a HAP contract, CommonBond Communities will often submit a request to the Contract Administrator to increase the contract rents up to market rents and sometimes this increase is greater than 15%. This allows the project to support additional debt (something funders – including the City of Saint Paul push to better leverage public dollars) and therefore more improvements to the property. **We request that units subject to a HAP contract be exempt from the 15% cap. It is important to note that even though the contract rent could increase by more than 15%, the rent (plus utility allowance) paid by the residents would not exceed 30% of the household’s adjusted income.**
6. The City is correct to recognize that, “the interests of justice,” sometimes requires rent increases to be allocated unequally across units. This is the case particularly as it relates to increasing rents on vacant units. For example, certain units at the Commerce Apartments, a historic building in downtown St. Paul, have been kept well below market for a mixture of mission and compliance reasons. When these units become vacant, it is an opportunity for the owner to increase rents on that unit to a level that reflects the cost of operating them – particularly as it relates to expenses we do not control, such as property taxes, special fees and assessments, utility costs, and property insurance. Over the past four years the Commerce Apartments’ property taxes are up 40%, property and liability insurance are up 50%, security is up 70%, and the City has just notified the site of a \$47,994 special assessment. It should be noted that these costs do not include the current inflationary pressure and tight labor environment that will further increase expenses at Commerce Apartments. Capping rent increases at 15% will force CommonBond Communities to increase rents on existing tenants by more than we would like to, given our mission of providing stable and affordable housing. **We request that vacant units be exempt from the 15% cap on rent increases.**

Proposed Rules

Section	Section Name	Reason for Comment	Change Proposed
A.5.b	Operating Expenses	Supportive services for residents not specifically mentioned as an operating expense.	Specifically include supportive services as an operating expense.
A.5.b.iv	Property taxes assessed and paid	This section does not capture special assessments and additional charges levied by a unit of government.	Specifically include special assessments and additional charges as an operating expense.
A.5.b.vii	Landlord-performed labor	The definition of landlord-performed labor is unclear.	Please clearly define landlord-performed labor and specifically exempt labor performed by affiliated parties like supportive services and the management agent.
A.5.b.vii	Landlord-performed labor	If landlord-performed labor includes supportive services and management, then limiting it to 5% of gross income is not reflective of the costs of operating affordable housing.	Please clearly define landlord-performed labor and specifically exempt labor performed by affiliated parties like supportive services and the management agent.
A.6	Allocation of Rent Increases	Affordable housing programs place different limits on the same units. For example, the Section 236 program limits rent increases in a different way than the Tax Credit or Section 8 programs.	Please exempt affordable housing from the equal allocation of rent increases requirement.
A.6	Allocation of Rent Increases	Certain units have been kept well below market for a mixture of mission and compliance reasons. When these units become vacant, it is an opportunity for the owner to increase rents on that unit to a level that reflects the cost of operating them – particularly as it relates to expenses we do not control, such as property taxes, special fees and assessments, utility costs, and property insurance. This might result in more pressure to raise rents for existing tenants.	Please allow for a greater than 15% increase in rents on vacant units.
A.6	Allocation of Rent Increases	The rules appear to be silent on concessions.	Please clarify that concessions should not be factored into the calculation of gross receipts or tenant paid rent.

Section	Section Name	Reason for Comment	Change Proposed
A7.	Relationship of Individual Rent Adjustment to Annual General Adjustment	Unclear what this section is referring to.	Please clarify or delete.
B.1	Capital Improvement Standard	This section states that, “costs do not include costs incurred to bring the Rent Unit into compliance of a provision of the Saint Paul legislative code or state law where the original installation of the improvement was not in compliance with code or state law,” does not clearly define the period of time for the code or state law. For example, a property may switch from complying to not up to code based on new laws or regulations enacted by various levels of government.	Please make clear that the original installation must comply with the code or state law at the time of installation.
B.2.a.i	Exclusions from operating expenses	Excluding, “Mortgage principal or interest payments or other debt service costs and costs of obtaining financing” limits the owner’s ability to maintain their property through refinancing and re-syndication (via the Low-Income Housing Tax Credit Program – an affordable housing funding tool administered by the City of Saint Paul). The cost of accessing these products, especially for affordable housing, is significant – fees, bond and legal counsel, and other required professional services. Additionally, some loans have variable interest rates. By excluding debt service, the draft rule will make refinancing and re-syndicating affordable housing extremely difficult and will lead to a decline in investment and property improvements.	Please allow for the costs of obtaining financing and increases in mortgage principal and interest payments to be considered as a factor for requesting an increase in rents.
B.2.a.vii	Exclusions from operating expenses	The exclusion for, “unreasonable increases in expenses since the Base Year,” is vague.	Please define unreasonable.
B.3.a.	Allocation of Rent Increases	Requiring that, “rent increases for building-wide or common area capital improvements shall be allocated equally among all units,” does not reflect the reality of operating affordable housing. See previous explanation in point two of the Key Improvements section.	Please exempt affordable housing from the equal allocation of rent increases requirement.
B.3.b	Allocation of Rent Increases	The section requiring that, “rent increases for building-wide or common area capital improvements shall be allocated equally among all units,” does not reflect the reality	Please exempt affordable housing from the equal allocation of rent increases requirement.

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Section	Section Name	Reason for Comment	Change Proposed
		of operating affordable housing. See previous explanation in point two of the Key Improvements section.	
B.3.c.	Allocation of Rent Increases	The section requiring that, "Rent increases resulting from the Net Operating Income analysis shall be allocated equally among all units," does not reflect the reality of operating affordable housing. See previous explanation in point two of the Key Improvements section.	Please exempt affordable housing from the equal allocation of rent increases requirement.
B.4.e	Grounds for Objections	This section references a, "Maximum Allowable Rent." This is not defined, and the ordinance does not call for a Maximum Allowable Rent, only a Maximum Allowable Rent increase.	Please clarify or remove this section.
D.1.	Increase in Space	Requiring the written agreement of the majority of tenants puts necessary and often required maintenance at risk if we do not have the income to cover the costs of those improvements. For example, community or unit space may be altered in order to comply with the Americans with Disabilities Act (ADA). Residents desire to keep rents low should not override the need for owners to maintain their assets.	Please remove this section.
D.1.c	Increase in Space	As a result of a refinancing, rehab, and/or re-syndication, CommonBond Communities may increase the level of supportive services in order to better support a specific population. These services may not be available to all residents. This section would unreasonably allow one tenant to block any rent increases.	Please remove the section allowing one tenant to object.
D.2.	Decrease in Space	During a rehab CommonBond Communities may have to make some spaces unavailable or adjust the level of supportive services. This is the reality of rehabs and requiring rents to be decreased would make it difficult to generate the income necessary to perform needed maintenance.	Please remove this section.
D.2.	Decrease in Space	This section does not appear to be authorized by the Rent Stabilization Ordinance.	Please remove this section. The City of St. Paul does not have the authority to require decreases in rent as part of the Rent Stabilization Ordinance.

Request for Rent Increase Greater Than 3% - Landlord Application

Section	Section Name	Issue/Concern	Suggestion
13.	Factors	When renewing HAP contracts there is often an option to increase the contract rents by an Operating Cost Adjustment Factor (OACF). The OCAF is set by HUD annually and is based on CPI. If an owner does not choose to increase contract rents by the OCAF, then the program requires the owner to either not take an increase or submit a request for a budget-based increase, which means contracting with a vendor to provide a Rent Comparability Study. This added work and expenses onerous.	Add a check-box for increases in contract rents that are subject to a HAP contract.

Landlord Worksheet Rent Increase using Fair Return Standard

Section	Section Name	Issue/Concern	Suggestion
I.1.	Parcel Number(s)	Not enough room for sites with multiple PIDs.	Make more room for multiple PIDs.
I.6.	Exemption	This references units subject to an exemption.	Define which units are exempt from the Rent Stabilization Ordinance.
XVII	Monthly Rents for Each Unit	Says "charged each tenant" but subsidized unit rents are not charged to a tenant, they are primarily charged to a government agency	Please clarify.

CommonBond Communities appreciates the opportunity to provide public comment to assist the City of St. Paul with operationalizing rent stabilization. If you need anything further, please contact me by phone at or by email at henry.parker@commonbond.org.

Sincerely,

Henry Parker

Henry Parker
Senior Asset Manager
CommonBond Communities
henry.parker@commonbond.org

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Public Comment on Proposed St. Paul Rent Stabilization Ordinance Rules

Legal Problems with Proposed Self-Certification Rules and Lack of Tenant Notice and Opportunity to Be Heard on Exceptions

Jim Poradek, Housing Justice Center
jporadek@hjcmn.org

The City's proposed self-certification rules violate the express language and purpose of the Rent Stabilization Ordinance ("Ordinance"). Moreover, the failure of the rules to provide tenants with notice and an opportunity to be heard regarding exceptions to the 3% limit violates the procedural due process rights of St. Paul tenants under the Minnesota and U.S. Constitutions. While there is a potential role for self-certification to play in efficiently implementing the Ordinance, the proposed rules directly contradict the very law those rules purport to implement. These comments discuss how to repair the most severe legal problems with the proposed rules.

A. At a Minimum, the Rules Must Require the Landlord to Submit the MNOI/Capital Improvement Worksheet with Its Self-Certification Application to Meet the Ordinance's Requirement that the "Landlord Demonstrate" Entitlement to an Exception.

The Ordinance is unequivocal that "exception to [the 3%] limitation on rent increases be made only when the Landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment." Sec. 193A.05(b). This legal requirement that the "Landlord demonstrates" entitlement to an exception means that—under the standard dictionary definition of the word "demonstrate"—the Landlord must **"show clearly"** and **"prove or make clear by reasoning or evidence"** that an exception from the 3% rent limit is appropriate. See *Merriam-Webster Dictionary* (definition of "demonstrate" at merriam-webster.com/dictionary).

Yet the current self-certification rules permit landlords to obtain an exception from the 3% rent limit without "showing clearly" or "proving by reasoning or evidence" their factual basis for an exception. Indeed, the current proposed rules seem to indicate that a landlord seeking a rent increase above 3% and up to 8% need only submit a self-certified request without any supporting factual material and the requested exception will be effective absent a potential future adverse audit by the City. This is a blatant violation of the Ordinance. To comply with the "Landlord demonstrates" requirement of Sec. 193A.05(b), the rules must at a minimum require that any landlord applying for a self-certified exception **complete and submit** the MNOI/Capital Improvement Worksheet that the proposed rules only currently "recommend" that landlords utilize when preparing an exception request. It is only after that this certified documentation is submitted to the City that any expedited City approval for the exception can be obtained.

Further, consistent with the "Landlord demonstrates" requirement, the rules and forms should also make it clear that all supporting documentation for the request and the MNOI/Capital Improvement Worksheet must be maintained by the landlord in the event of future review by the City or challenge by the tenants. Finally, the rules and forms should require a more robust statement of self-certification in which the landlord certifies that (1) the information provided is truthful and accurate, (2) the landlord understands it is being relied upon by the City in

evaluation the request for exception, and (3) the landlord understands that fraudulent applications are potentially subject to civil and criminal remedies.

B. The Rules Must Require the Landlord to Certify That It Complies with the Implied Warranty of Habitability.

The Ordinance also expressly requires that “the city will not grant an exception to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability.” Sec 193A.05(c). Thus, under the Ordinance, any self-certification rules must include an express certification by the Landlord that all affected rental properties are “in compliance with the implied warranty of habitability” set forth at Minn. Stat. Section 504B.161. In addition, the City must establish a procedure by which it independently confirms code compliance at the property before it approves any exception to the 3% rent limit.

C. The Rules Must Provide Tenants with Their Constitutional Right to Notice and an Opportunity to Be Heard When an Exception from the 3% Limit is Granted by the City.

Inexplicably, the current rules do not require notice to tenants of buildings that obtain an exception from the Ordinance, and do not include an opportunity for those tenants to object or appeal that determination. This is a violation of the constitutional due process rights of St. Paul renters to have notice and an opportunity to be heard before their property interest in a 3% rent limit is taken away by the City.

There is no question that the baseline 3% limit on rent increases is a constitutionally protected property interest as set forth by the U.S. Supreme Court: “The hallmark of property, the Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except ‘for cause.’” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982). The 3% limit is exactly such “an entitlement grounded in state law” that “cannot be removed except ‘for cause.’” The Minnesota Supreme Court has emphasized that “[a]t its core, due process requires” that the government must provide individuals “with notice and an opportunity to be heard at a meaningful time and in a meaningful way” before taking away their property interests. *Olson v. One 1999 Lexus MN License Plate*, 924 N.W.2d 594, 601 (Minn. 2019).

Here, the proposed rules provide no required procedures for notifying affected tenants of exception requests or approvals, and provide no opportunity for tenants to challenge or appeal such requests or approvals. This scenario is what the Minnesota Supreme Court calls an “extreme case” of constitutional deprivation that “violates due process on its face”: “[I]f there is no provision for a meaningfully prompt post-deprivation merits hearing, [taking away] property without first giving a person notice and an opportunity to be heard violates due process on its face.” *Id.* at 607. Thus, under the state and federal constitutions, the City has no choice but to provide affected tenants “with notice and an opportunity to be heard at a meaningful time and in a meaningful way” before granting any exception to the 3% limit at the tenants’ property.



Comments on the Proposed St. Paul Rent Stabilization Ordinance Rules

Daniel Suitor, on behalf of HOME Line

HOME Line is a nonprofit organization providing free legal, organizing, educational, and advocacy services to tenants throughout Minnesota in an effort to empower them to solve their own rental housing problems. HOME Line works to improve public and private policies relating to rental housing, and to provide resources to help tenants work collectively towards solving common issues. Our Tenant Hotline is the first and only statewide tenant hotline in the country. The Hotline advises over 15,000 households each year and has advised over 280,000 households since opening in 1992. In the past three years, we have advised over 6,500 households in St. Paul. In the past year, more St. Paul renters have raised issues about rent increases on our hotline than in the prior two combined. Rent increase calls from St. Paul residents are up 254% as a proportion of total calls since the Rent Stabilization Ordinance (“RSO”) was passed in November 2021.

HOME Line would like to thank the City of St. Paul Department of Safety & Inspections (“DSI”) for the time and care it has taken to draft these rules, and for providing the public an opportunity to be heard on an issue which affects it deeply. These efforts evince a commitment to honoring the electoral charge of the people of St. Paul. We are confident that the DSI will find a way to balance the requirements of the law, the needs and desires of the law’s stakeholders, and the practical challenges of implementation and enforcement. We write today to highlight strengths of the DSI’s proposed rules, as well as identify areas for improvement.

I. Strengths of the DSI’s Proposed Rules.

The DSI’s definition of “rent” is an equitable rule that upholds the letter and spirit of the RSO. By defining rent as “[a]ll monetary consideration charged or received by a Landlord concerning the use or occupancy of a Rental Unit,” including “all Housing Services connected with the use or occupancy,” the DSI will prevent landlords from trying to nominally reclassify rent as fees or other expenses in order to charge unlawfully high rents. This broad standard will ensure that landlords cannot move the goalposts determining what rent is, and that tenants receive the full benefit of their rights under the RSO.

The Maintenance of Net Operating Income (“MNOI”) standard for ensuring that landlords can receive a reasonable rate of return provides a detailed and transparent process for evaluating the financial condition of a rental property. It provides landlords with a clear standard which they can use to operate their business, and ensures that rent increase determinations are based on a common technical standard which can be applied fairly to all applicants. The rules are rooted in fundamentally sound accounting principles, and provide useful explanations to the affected parties. The provision which caps MNOI rent increases at 15% per year, but allows landlords to roll any uncharged increase forward and include interest on the uncharged increase as an expense, is a fair compromise between the right of landlords to receive a reasonable rate of return and the RSO’s goals of preventing tenants from being priced out a property by large year-over-year rent increases.

The inclusion of a procedure for requesting a rent increase due to capital improvements to the rental unit promotes investment in and improvement of the city’s rental stock, working to ensure

that rent increases are tied to an increase in quality and services provided to tenants. The ability for a landlord to proactively request a capital improvements rent increase, which can then be charged to tenants once the improvements are complete, is a worthy inclusion in the rules. This provision gives landlords the opportunity to evaluate the potential return on their investments in advance and receive tentative approval to recover that investment. This level of downstream transparency and security will likely lower the overall capital risk landlords face when evaluating improvements.

The rules surrounding rent increases or decreases for a change in the number of tenants or in available space and services fairly balance the needs of both landlords and tenants. They ensure that tenants get the benefit of their bargain by preventing unlawful reductions in space or services to functionally increase rent. Similarly, they provide landlords a greater return when they increase such space or services. Providing a clear set of grounds on which to challenge any such proposed increase in rent ensures that determinations are made in accordance with a fair, intelligible standard. The requirement that only tenants actually occupying the unit count towards an increase in rent for increased occupancy prevents landlords from requiring unnecessary co-signers or other paper-only parties to the lease in order to increase rent. Finally, the provision which excludes first-degree relatives, children for whom a tenant is a legal guardian, or live-in caretakers for tenants with a reasonable accommodation for a disability from counting towards such a rent increase is a humane measure which protect tenants from incurring a rent increase because they get married, have or adopt a child, take in an elderly parent, or secure the aid and care they need to live in comfort and dignity.

II. The Proposed Rules' Authorization of Landlord Self-Certification is Not Supported by the Plain Text of the RSO.

The Proposed Rules would allow landlords to request a rent increase of up to 8% by self-certifying that such a rent increase is necessary to provide a reasonable rate of return. This self-certification requires nothing more than filling out a “web-based intake form.” It does not require that a landlord provide any actual evidence of the landlord’s financial state or even complete the simple financial worksheet provided by the DSI. This will likely result in the rubber-stamp approval of a high proportion of such rent increases in excess of the 3% cap with no meaningful review of substantive evidence supporting the rent increase.

This proposed self-certification procedure is unlawful under the RSO. The RSO requires that any “exception to [the 3%] limitation on rent increases be made only when the landlord *demonstrates* that such adjustments are necessary.”¹ Landlord self-certification does not meet the standard set forth by the word “demonstrates.” The plain language definition of the word “demonstrates” clearly requires evidence to accomplish that act. To “demonstrate,” one must “establish the truth . . . by providing practical proof or evidence.”² There is no “practical proof or evidence” required by a self-certification process requiring just a few checkboxes and no submission of reasoning or proof. It requires nothing more of landlords than their assertion that they deserve their requested rent increase, “Because I said so.”

¹ St. Paul, Minn., Code of Ordinances pt. II, tit. XIX, ch. 193A, § 193A.03(b) (2022) (emphasis added).

² *Demonstrate*, OXFORD ENGLISH DICTIONARY (3d. ed. 2014).

Venturing beyond the plain text of RSO § 193A.03(b) itself, other uses of the word “demonstrates” in the St. Paul Code of Ordinances clearly indicate that the City understands that evidence is required to “demonstrate” something. The words “demonstrate” and “demonstrates” appear in 50 different provisions of the Code of Ordinances. One of those is RSO itself, and another refers to the act of displaying goods for sale in a market. Of the remaining 48, 40 uses of “demonstrates” expressly or inherently require the submission of substantive evidence or otherwise refer to the production of substantive evidence. Many of these uses occur in zoning ordinances, which require the rigorous submission of evidence such as traffic impact analysis reports, floor plans, and elevation plans.³ Others require proof of a secured interest in property, proof of insurance, or proof of professional licensure.⁴ Some even require specific showings to “demonstrate,” the same as RSO § 193A.03(a).⁵ Of the 8 less categorical uses of “demonstrates” in the Code of Ordinances, 3 almost certainly require the submission of substantive evidence such as financial information.⁶ Finally, while the 5 remaining laws could be interpreted as requiring substantive evidence, a conservative reading of their text might permit merely descriptive or narrative evidence. However, those ordinances generally require an attestation of a far higher degree of specificity than the current set of required submissions by the DSI.⁷

The overwhelmingly prevalent use of the word “demonstrates” in the St. Paul Code of Ordinances makes its definition readily apparent: “demonstrates” requires substantive evidence. That is what 90% of St. Paul ordinances using the word clearly require. Any interpretation of RSO § 193A.03(b) that does not require more than cursory, easily falsified statements of financial need is unlawful under the RSO.

Given the requirements of the plain text of the RSO, the DSI must issue rules requiring that any rent increase above 3% be substantiated by meaningful substantive evidence. A landlord’s unsubstantiated self-certification, not even subject to the penalty of perjury, cannot support the standard that “demonstrates” sets. Any rule which authorizes landlord self-certification is in direct violation of the RSO, and will not carry out the mission assigned to the City of St. Paul by a vote of its citizens.

III. The Proposed Rules’ Authorization of Landlord Self-Certification Will Likely Result in Misrepresentation and Malfeasance by Landlords in Requesting Rent Increases.

Beyond the legal infirmities of self-certification, there is strong evidence that, when landlords are allowed to self-certify information, many landlords will almost certainly decide it is in their best financial interests to lie to get what they want. In the case of the RSO, they will either knowingly lie to the DSI to charge higher rents or simply not spend their time working on any real justification of the higher rent because the ordinance doesn’t require it. If the DSI allows self-certifications, it will defeat the stated and clear goals of the RSO. This undermining of the core policy of the RSO

³ See, e.g., St. Paul, Minn., Code of Ordinances pt. II, tit. VIII, ch. 61, art. IV, § 61.402(b)(3)–(4) (2022).

⁴ See, e.g., *id.* pt. II, tit. XV, ch. 162, § 162.07.

⁵ See, e.g., *id.* pt. II, tit. XXIX, ch. 409, § 409.235(b)(2).

⁶ See, e.g., *id.* pt. III, tit. IV, ch. 98, § 98.07(b).

⁷ See, e.g., *id.* pt. II, tit. XXIX, ch. 409, § 409.06(g)(2)(b) (requiring a liquor licensee to demonstrate “in writing with respect to specific properties that a good faith effort was made to fulfill all petition requirements”).



cannot be authorized by the DSI. The DSI must issue rules requiring substantive evidence to prevent moral hazard and exploitation of the process by landlords.

By way of example: in March 2020, Governor Jay Inslee issued an eviction moratorium for the State of Washington.⁸ In June 2020, Governor Inslee added an exception to the moratorium permitting eviction if a landlord self-certified that they wanted to sell the rental property.⁹ In King County, comprising almost 30% of Washington's population, there were almost no evictions on these grounds prior to the moratorium. After the sale exception was added, it became the second-most common grounds for eviction in King County, surpassing 25% of all eviction filings over the life of the moratorium. However, in those cases, less than half of the properties in question were ever listed for sale or sold. This suggests that around 13% of all evictions in King County during that period were based on fraudulent misrepresentations by landlords.¹⁰

This case study demonstrates that, given the opportunity to self-certify, a substantial portion of landlords will lie to obtain a favorable result. If the DSI allows an 8% rent increase based solely on landlord self-certification, then the RSO's 3% limitation is entirely illusory. The cap will be 8% in practice, subverting the intent of the people of St. Paul and violating the text of the ordinance itself. Callers to HOME Line's tenant hotline from St. Paul over the past year who reported their rent payment averaged around \$1,022 a month in rent, which generally comports with U.S. Census and Minnesota Housing Partnership statistics.¹¹ With an estimated 47,044 rental households in the City, the difference between a 3% and 8% rent increase is worth over \$2.2 billion to the renters of St. Paul, or \$47,112 per household, over the next 10 years. Of that sum, \$1 billion will fall on the people who can least afford it: cost-burdened renters spending greater than 30% of their income on housing.

A few billion dollars seems like the very sort of incentive which might induce many members of the landlord industry to lie on their self-certifications. The DSI cannot issue a rule which permits this unjust and unlawful enrichment on grounds that it would be too costly to enforce the law that was passed. It is simply too costly to the renters of St. Paul *not* to enforce the clear requirements of the RSO.

⁸ See GOVERNOR JAY INSLEE, STATE OF WASH., PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATION 20-05: 20-19 EVICTIONS (2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-19%20-%20COVID-19%20Moratorium%20on%20Evictions%20%28tmp%29.pdf>.

⁹ See GOVERNOR JAY INSLEE, STATE OF WASH., PROCLAMATION BY THE GOVERNOR AMENDING EXTENDING AND AMENDING 20-05, 20-19, AND 20-19.1: 20-19.2 EVICTIONS AND RELATED HOUSING PRACTICES(2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-19.2%20Coronavirus%20Evictions%20%28tmp%29.pdf>.

¹⁰ For reference, see data compiled by the King County Bar Association's Housing Justice Project at *Evictions During COVID-19 – Analysis from the First Year of the Eviction Moratorium*, KING. CNTY. BAR ASS'N, <https://www.kcba.org/For-the-Public/Free-Legal-Assistance/Housing-Justice-Project/Explore-Data> (last visited Apr. 22, 2022).

¹¹ See MINN. HOUS. P'SHIP, STATE OF THE STATE'S HOUSING: 2021, at 16 (2021), <https://mhponline.org/state-of-the-states-housing-2021> (reporting the 2019 average gross rent in Ramsey County as \$1,007); *QuickFacts: St. Paul City, Minnesota*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/stpaulcityminnesota/PST045221> (last visited Apr. 22, 2022) (reporting the five-year, 2016–2020, estimated median gross rent in St. Paul as \$1,013).

IV. The Proposed Rules' Authorization of Landlord Self-Certification Likely Violates the Due Process Clause of the United States Constitution.

It was only a few short months ago that the United States Supreme Court ruled a provision allowing self-certification of financial information with regards to housing law to be unconstitutional. In *Chrysafis v. Marks*, the Court struck down a law that denied a landlord an eviction hearing if a tenant “self-certifies financial hardship” on due process grounds.¹² Here, if a landlord self-certifies financial hardship, they can receive a rent increase above the 3% limitation without a hearing or even input from the affected tenants. *Chrysafis* quotes long-standing precedent which states that “no man can be a judge in his own case.”¹³ This sort of prohibited self-judgment is precisely what the DSI’s self-certification procedure would allow.

Furthermore, the tenant’s private right of action provided in RSO § 193A.07(b) is an illusory right. The ordinance makes a tenant’s case to challenge a rent increase a case of equity, which requires a filing in the Housing Division of Ramsey County District Court, as conciliation courts can only hear cases for damages or the return of specific personal property. It is not clear whether an aggrieved tenant must file their case seeking compliance with the RSO against their landlord or the City of St. Paul. It could cost a tenant as much as \$300 to file such a case, an amount that the cost-burdened renters of St. Paul likely cannot spare. That same lack of financial resources will likely mean that tenants must represent themselves in court, against lawyers hired by their landlord or the City, subject to complicated procedural and evidentiary rules that can stymie even experienced, licensed attorneys, especially when a new law is at the core of the case. Even if the City is not a party to the RSO suit, the DSI will likely be required to comply with extensive records requests, and DSI personnel will likely be required to comply with civil discovery requests and testify at trials. If tenants avail themselves of the cheaper-to-file rent escrow procedure, under MINN. STAT. § 504B.385, they may sacrifice much of the leverage that a typical civil suit offers. Judges in rent escrow proceedings often forgo extensive civil discovery in favor of informal disclosures, and the statute denies tenants the opportunity for a jury trial.

Litigation of RSO cases will be incredibly costly to landlords, tenants, and the City of St. Paul. In an effort to save money on enforcement by denying tenants an administrative remedy, the DSI has created a nexus of civil court costs and shifted those expenses to landlords and tenants alike, while doing nothing to reduce the city staffing costs necessary to meet the DSI’s obligations under the RSO.

This is a legal landscape that benefits no one, and which can be easily averted by issuing a rule which requires a landlord to demonstrate via meaningful evidence that their above-3% rent increase is necessary. Without substantive review of evidence by the DSI, tenants will be deprived of any meaningful due process. The clear evidentiary requirements of the RSO will be completely undermined by a rule that permits landlords to say, “trust me, I need the money,” and it will be the tenants of St. Paul who get stuck with the bill.

¹² 141 S. Ct. 2482, 2482 (2021).

¹³ *Id.* (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).



V. The DSI Must Issue a Rule Providing Tenants Proper Notice of Proposed Rent Increase and Administrative Remedy to Challenge Unlawful Increases.

For the reasons discussed above, the tenants of St. Paul will not be able to effectively enforce their right to limit rent increases above 3% to cases of genuine need by a landlord. Even worse, the DSI has declined to issue a rule providing tenants any notice of a proposed rent increase by their landlord. This flies in the face of both the text of the RSO and established administrative practices in Minnesota. The DSI must issue a rule that requires proper notice to a tenant of a proposed rent increase, and an opportunity for a tenant to demand an administrative hearing to challenge such an increase. Anything less unlawfully deprives tenants of their rights under the RSO and the United States Constitution.

The DSI disclaims any responsibility to issue a rule providing tenants notice by stating that “There is no provision in the ordinance to notify tenants of any of the actions above, including a hearing.” This is a risible claim in light of the DSI’s generous grant of procedure to landlords. There is no provision in the ordinance that expressly provides landlords with a hearing to argue for their proposed rent increases, but the DSI saw fit to create that remedy despite dubious support in the law. The RSO merely requires “a process by which landlords can request” rent increases. The DSI would be within the text of the RSO to require landlords to challenge an adverse determination in civil court, just like tenants must. Instead, the DSI’s proposed rules provide landlords the right to a cost-efficient and speedy administrative process, but deny even the thinnest sliver of notice to tenants, much less the chance to meaningfully participate in an administrative process which may unlawfully deprive them of hundreds or thousands of dollars per year. This is both unequal and inequitable, and deprives tenants of their ability to effectively assert their rights while providing a relatively easy path for landlords to obtain unlawful rent increases.

The City of St. Paul cannot claim that tenants are not a necessary party to an administrative proceeding under the RSO. A clear analogue are unemployment insurance hearings. If an applicant’s request to the Minnesota Department of Employment and Economic Development (“DEED”) for unemployment benefits is denied, the applicant-employee can request an administrative hearing to challenge the factual or legal basis for DEED’s denial of benefits. The case is strictly between the applicant and DEED, but employers are granted an ironclad right to participate in such hearings. And why not? They have a financial stake in the outcome, in the form of increased unemployment insurance tax rates. Despite the rights and obligations solely flowing between the State and the employee, employers are permitted to argue for their own financial interests in an administrative hearing that determines whether an employee receives benefits.

Proposed rent increase hearings are no different. The enforcement relationship exists between the City of St. Paul and the applicant-landlord, but tenants have a substantial financial stake in the outcome of such a hearing. To deny tenants the right to participate in such hearings, or even the most minimal requirement of procedure in proper notice, flies in the face of the RSO’s purpose and established administrative practice. Tenants must be given proper notice of any proposed rent increase, and must be given the opportunity to assert their rights under the RSO in any procedure—written or a proceeding—provided to landlords.



What use is it to possess a right if you cannot actually enjoy it? The DSI's proposed rules deny tenants the ability to effectively enforce and enjoy their rights under the RSO. The DSI must issue a rule requiring proper notice to tenants of a proposed rent increase, and the opportunity to request a hearing to challenge a determination by the DSI or participate in any hearing called by their landlord. The DSI should take responsibility for providing such notice itself. Service by mail is an appropriate and affordable process in such cases and, given the opportunities for moral hazard discussed above, landlords should not be entrusted with the duty to properly notify a tenant. Regardless of the responsible party, strict compliance with such a notice provision must be required. The consequences of a rent increase proceeding are too great for tenants to risk the loss of their rights due to faulty notice. The DSI's rules must permit tenants to initiate and participate in rent increase determination appeal hearings. The text of the RSO does not prohibit such a rule, and the DSI has granted those rights to landlords based on the scantest of support in the RSO. The interests of justice require the DSI to provide tenants an opportunity for administrative remedy equal to that of landlords. The DSI need not provide tenants any procedural advantage, merely a remedy commensurate with that of their landlords.

VI. The DSI Must Issue a Rule Requiring Disclosure of Prior-Year Rents at the Commencement of a New Tenancy.

As discussed above, the DSI's rules incentivize, enable, and encourage landlord misrepresentation and malfeasance to obtain unlawful rent increases in excess of the RSO's 3% limitation. Nowhere in the rental process presents a higher risk of rent increases than in the changeover between tenancies. The RSO states that a landlord may not demand or accept rent that is 3% higher than any rent charged within the prior 12 months. But how does a new tenant know what was charged for their dwelling over the prior 12 months? This information asymmetry between landlords and new tenants presents less scrupulous landlords the opportunity to unlawfully increase rents between tenancies.

To close this loophole in the enforcement of the RSO, the DSI must issue a rule that requires truthful and accurate disclosure of prior rent amounts before the creation of a new tenancy. The DSI should create a standardized disclosure form that landlords must use to disclose rent amounts for the prior 12 months, and that must be provided to tenants before any lease is executed or other rental agreement is confirmed. This disclosure should require the landlord or an agent thereof to sign the form, and subject both the signing party and any corporate owner to the administrative and criminal penalties authorized in RSO § 193A.07 for inaccurate or misleading disclosures. This required disclosure could also provide tenants with a brief summary of their rights and available remedies under the RSO, as well as direct them to available resources such as free or reduced cost legal aid organizations or county emergency assistance funds.

A few hours gap between tenancies can create a wide gulf in the information necessary to enforce a tenant's rights under the RSO. If landlords are not required to disclose prior rents, how will tenants know the basis for any proposed rent increase? It is wildly inefficient to require a tenant to pay for a civil case filing and take a landlord to discovery to discern the prior rents at their dwelling. Declining to require disclosure will increase costs for both landlords and tenants, and could prevent new tenants from ever enforcing their rights under the RSO. Requiring disclosure of prior rents promotes good-faith compliance with the RSO, and will likely reduce the need for both public and



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private enforcement actions. The answer is simple and clear: the DSI must issue a rule requiring disclosure of rents for the prior 12 months before the commencement of any new tenancy, or the substantive protections of the RSO will be entirely illusory every time a tenancy changes over.



home changes everything

April 21, 2022

Dr. Eric Anthony Johnson
Direct: 612.746.4873
ejohnson@aeon.org

SENT VIA EMAIL: rent-stabilization@ci.stpaul.mn.us

DSI- Rent Stabilization
City of Saint Paul
375 Jackson Suite 220
Saint Paul, MN 55102

RE: Comments: Proposed Rent Stabilization Rules

Local government policies developed to encourage affordable housing, including programs that provide support for building and or preserving affordable housing supports the economic growth and stability of the community. Equally important in this equation is flexibility and a comprehensive approach in that a one shoe fits all approach rarely works.

As an affordable housing owner, developer, manager, and service provider, Aeon is deeply committed to providing affordable home to all residents. We appreciate the difficulty of creating rules quickly to enact the rent stabilization ordinance, particularly as they relate to the management, preservation, and development of affordable housing. However, many sections of the draft rules do not consider the nuances of operating and maintaining affordable housing as nonprofit developers. Our experience (as with many others) leads us to believe that a failure to address these concerns will lead to fewer affordable housing units and that the affordable housing units that exist will decline in quality over time.

We would like to recommend the *establishment of a waiver provision* for nonprofit developers working to preserve and develop affordable housing to ensure the development of affordable housing is not stifled. This recommendation is based on the impact the proposed rules would have on

non-profit developers that operate in a context distinctly different from traditional profit-making developers that do not encounter the challenges faced by nonprofit developers.

See key comments below for examples per the proposed rules.

Key Observations/Examples Not Applicable to the Private Sector that Impact Nonprofit Developers

Supportive services are not explicitly mentioned as an operating expense. These services are absolutely essential to our residents' housing stability and often required by our funders.

The rules currently require rent increases to be allocated equally among all units. While we appreciate the desire for fairness, this does not reflect the reality of operating affordable housing. An affordable housing project can be subject to multiple programs, which place different rent and income limits on the same type of unit. Simply put, these programs do not allow Aeon to implement equal rent increases across all units.

During a rehab of a property, Aeon may adjust unit sizes, common area space, or services provided in order to obtain funding necessary for the renovation, comply with requirements of our funders, including the City of Saint Paul and the State of Minnesota, the Federal Government or to better serve residents. The draft rule requires the consent from the majority of tenants to increase rents if we make those changes. This could allow tenants to block necessary rehab for asset preservation or renovation for required safety improvements (e.g., sprinkler systems, leaking roofs, etc.) by not allowing the increase in rents.

Many affordable housing units are subject to a federal Section 8 Housing Assistance Payment ("HAP") contract, which limits the amount of rent paid by a tenant to 30% of the household's adjusted income, with the remainder of the contract rent paid by the federal government. These HAP contracts are subject to an annual funding and/or contract renewal process and as part of this process, contract rents may be increased in several ways. This program already protects tenants from increases in rents and requires a great deal of work to comply with the program.

Aeon appreciates the desire to protect tenants, but the draft rule of not allowing an increase in rents greater than 15% may result in the construction and rehab of fewer affordable units. For example, during a rehab of a property with a HAP contract, Aeon will often submit a request to the Contract Administrator to increase the contract rents up to market rents and sometimes this increase is greater than 15%. This allows the project to support additional debt (something funders – including the City of Saint Paul push to better leverage public dollars) and therefore more improvements to the property.

An established waiver provision may be an effective way to mitigate the potential impact of the proposed rules on nonprofit developers in producing affordable housing. In the event a waiver is not established, you will find comments and proposed changes to many sections of the draft rules and to the draft forms.

Proposed Rules

Section	Section Name	Reason for Comment	Change Proposed
A.5.b	Operating Expenses	Supportive services for residents not specifically mentioned as an operating expense.	Specifically include supportive services as an operating expense.
A.5.b.iv	Property taxes assessed and paid	This section does not capture special assessments and additional charges levied by a unit of government.	Specifically include special assessments and additional charges as an operating expense.
A.5.b.vii	Landlord-performed labor	The definition of landlord-performed labor is unclear.	Please clearly define landlord-performed labor and specifically exempt labor performed by affiliated parties like supportive services and the management agent.
A.5.b.vii	Landlord-performed labor	If landlord-performed labor includes supportive services and management, then limiting it to 5% of gross income is not reflective of the costs of operating affordable housing.	Please clearly define landlord-performed labor and specifically exempt labor performed by affiliated parties like supportive services and the management agent.

Section	Section Name	Reason for Comment	Change Proposed
A.6	Allocation of Rent Increases	Affordable housing programs place different limits on the same units. For example, the Section 236 program limits rent increases in a different way than the Tax Credit or Section 8 programs.	Please exempt affordable housing from the equal allocation of rent increases requirement.
A.6	Allocation of Rent Increases	Certain units have been kept well below market for a mixture of mission and compliance reasons. When these units become vacant, it is an opportunity for the owner to increase rents on that unit to a level that reflects the cost of operating them – particularly as it relates to expenses we do not control, such as property taxes, special fees and assessments, utility costs, and property insurance. This might result in more pressure to raise rents for existing tenants.	Please allow for a greater than 15% increase in rents on vacant units.
A.6	Allocation of Rent Increases	The rules appear to be silent on concessions.	Please clarify that concessions should not be factored into the calculation of gross receipts or tenant paid rent.
A7.	Relationship of Individual Rent Adjustment to Annual General Adjustment	Unclear what this section is referring to.	Please clarify or delete.
B.1	Capital Improvement Standard	This section states that, “costs do not include costs incurred to bring the Rent Unit into compliance of a provision of the Saint Paul legislative code or state law where the original installation of the improvement was not in compliance with code or state law,” does not clearly define the period of time for the code or state law. For example, a property may switch from complying to not up to code based on new laws or regulations enacted by various levels of government.	Please make clear that the original installation must comply with the code or state law at the time of installation.
B.2.a.i	Exclusions from operating expenses	Excluding, “Mortgage principal or interest payments or other debt service costs and costs of obtaining financing” limits the owner’s ability to maintain their property through refinancing and re-syndication (via the Low-Income Housing Tax Credit Program – an affordable housing funding tool administered by the City of Saint Paul). The cost of accessing these products, especially for affordable housing, is significant – fees, bond and legal counsel, and other required professional services. Additionally, some loans have variable interest rates. By excluding debt service, the draft rule will	Please allow for the costs of obtaining financing and increases in mortgage principal and interest payments to be considered as a factor for requesting an increase in rents.

Section	Section Name	Reason for Comment	Change Proposed
		make refinancing and re-syndicating affordable housing extremely difficult and will lead to a decline in investment and property improvements.	
B.2.a.vii	Exclusions from operating expenses	The exclusion for, “unreasonable increases in expenses since the Base Year,” is vague.	Please define unreasonable.
B.3.a.	Allocation of Rent Increases	Requiring that, “rent increases for building-wide or common area capital improvements shall be allocated equally among all units,” does not reflect the reality of operating affordable housing. See previous explanation in point two of the Key Improvements section.	Please exempt affordable housing from the equal allocation of rent increases requirement.
B.3.b	Allocation of Rent Increases	The section requiring that, “rent increases for building-wide or common area capital improvements shall be allocated equally among all units,” does not reflect the reality of operating affordable housing. See previous explanation in point two of the Key Improvements section.	Please exempt affordable housing from the equal allocation of rent increases requirement.
B.3.c.	Allocation of Rent Increases	The section requiring that, “Rent increases resulting from the Net Operating Income analysis shall be allocated equally among all units,” does not reflect the reality of operating affordable housing. See previous explanation in point two of the Key Improvements section.	Please exempt affordable housing from the equal allocation of rent increases requirement.
B.4.e	Grounds for Objections	This section references a, “Maximum Allowable Rent.” This is not defined, and the ordinance does not call for a Maximum Allowable Rent, only a Maximum Allowable Rent increase.	Please clarify or remove this section.
D.1.	Increase in Space	Requiring the written agreement of the majority of tenants puts necessary and often required maintenance at risk if we do not have the income to cover the costs of those improvements. For example, community or unit space may be altered in order to comply with the Americans with Disabilities Act (ADA). Residents desire to keep rents low should not override the need for owners to maintain their assets.	Please remove this section.
D.1.c	Increase in Space	As a result of a refinancing, rehab, and/or re-syndication, CommonBond Communities may increase the level of supportive services in order to better support a specific population. These services may not be available to all residents. This section would unreasonably allow one tenant to block any rent increases.	Please remove the section allowing one tenant to object.

Section	Section Name	Reason for Comment	Change Proposed
D.2.	Decrease in Space	During a rehab CommonBond Communities may have to make some spaces unavailable or adjust the level of supportive services. This is the reality of rehabs and requiring rents to be decreased would make it difficult to generate the income necessary to perform needed maintenance.	Please remove this section.
D.2.	Decrease in Space	This section does not appear to be authorized by the Rent Stabilization Ordinance.	Please remove this section. The City of St. Paul does not have the authority to require decreases in rent as part of the Rent Stabilization Ordinance.

Request for Rent Increase Greater Than 3% - Landlord Application

Section	Section Name	Issue/Concern	Suggestion
13.	Factors	When renewing HAP contracts there is often an option to increase the contract rents by an Operating Cost Adjustment Factor (OCAF). The OCAF is set by HUD annually and is based on CPI. If an owner does not choose to increase contract rents by the OCAF, then the program requires the owner to either not take an increase or submit a request for a budget-based increase, which means contracting with a vendor to provide a Rent Comparability Study. This added work and expenses onerous.	Add a check-box for increases in contract rents that are subject to a HAP contract.

Landlord Worksheet Rent Increase using Fair Return Standard

Section	Section Name	Issue/Concern	Suggestion
I.1.	Parcel Number(s)	Not enough room for sites with multiple PIDs.	Make more room for multiple PIDs.
I.6.	Exemption	This references units subject to an exemption.	Define which units are exempt from the Rent Stabilization Ordinance.
XVII	Monthly Rents for Each Unit	Says "charged each tenant" but subsidized unit rents are not charged to a tenant, they are primarily charged to a government agency	Please clarify.

Aeon appreciates the opportunity to provide public comment to assist the City of St. Paul with operationalizing rent stabilization. If you need anything further, please contact me by phone at 612.746.4873 or email at ejohnson@aeon.org.

Sincerely,

Dr. Eric Anthony Johnson



April 22, 2022

DSI-Rent Stabilization
375 Jackson St, Suite 220
Saint Paul, MN 55101

Dear Saint Paul “Rent Stabilization Policymakers”,

We are providing this feedback as part of the Public Comment Process concerning the Rent Stabilization Rulemaking and Implementation Guidelines as outlined on the Saint Paul City website.

As a Certified Public Accounting Firm based in Saint Paul since 1989, we represent a significant number of property owners and operators of residential rental housing in the city of Saint Paul, including large and small for-profit owners, and a number of non-profit housing providers. Notably our firm is known for its expertise in providing accounting and development services for developers of Affordable Housing, including properties with Section 8 and Section 42 (Low Income Housing Tax Credit Program) funding, and as such we have extensive understanding of both market-rate and affordable housing financial and economic matters.

In reviewing the proposed rules and regulations concerning rent-control we offer the following comments and recommendations:

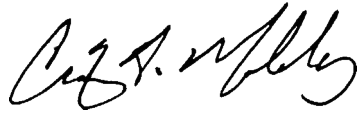
1. The term “Self-Certification” suggests a relatively streamlined way for property owners to seek an increase above 3% to cover expense increases. The proposed process instead is quite complex, and it is unlikely to provide a straight-forward way for owners to seek relief when needed.
 - a. In general, the Self-Certification process being proposed is subjective and complex, and it will present a significant obstacle for property owners to complete and qualify for an increase above 3%. In addition, these proposed rules will place additional compliance requirements on property owners and city staff.
 - b. Our specific comments on the Self-Certification process are as follows:
 - i. Many rental housing properties are financed with debt, and principal and interest payments on this debt make up a large portion of their cash disbursements. Principal and interest payments are not included in Operating Expenses under Paragraph A which is the “Reasonable Return Standard.” In addition, on page 11, Paragraph B.(2)a., principal and interest payments are mentioned but are specifically excluded from Operating Expenses under the “Capital Improvement Standard.” We recommend allowing owners to achieve “Net Operating Income” levels that take into consideration their debt covenants, including Replacement Reserve requirements, and certain Debt Service Coverage ratios.

- ii. We also recommend a more simplified Self-Certification to increase gross rents just by the CPI index without these stringent requirements. An additional Self-Certification could be completed with more requirements to increase rents by greater than the CPI. This is appropriate because the rent control ordinance was originated before the current economic environment of high inflation rates, which are currently well in excess of 3%.
 - iii. The “Capital Improvement Standard” reporting requirements will be unduly burdensome to track on both a property wide and individual unit basis, especially for larger rental buildings. This will essentially create a second set of books for owners to track expenses, and additional fixed asset reporting for the depreciation/amortization related to each capitalized improvement.
 - 1. The IRS’s current de minimis safe-harbor election for capital improvements on a tax return is \$2,500. This means improvements less than this amount are not capitalized and depreciated into the future. Your capital improvement threshold is only \$250. We recommend complying with the IRS regulations.
 - 2. In addition, the tracking of substantial Legal Expenses and amortizing them over a five-year period also differs from the IRS regulations. We recommend eliminating this requirement.
 - iv. Under the proposed rules, property owners will be required to track capital improvements every year even if they are not requesting a 3% rent increase. We recommend allowing properties that have independent “audited” financial statements to calculate “Net Operating Income” based on these financial statements. The reason is some properties are already required to comply and report financial information from other rent restriction programs. Another separate financial reporting system is excessive and unduly burdensome.
 - v. Other items related to Self-Certification we wanted to address are as follows:
 - 1. Clarification on base year operating expenses when there are no actual operating expenses. We are unsure how to increase an expense that was originally zero. See Paragraph A.(5)c. on page 4.
- 2. For properties enrolled in government sponsored affordability programs such as Section 8, Section 42, HOME, HTF and others, we recommend these units be excluded from the Self-Certification process since each property’s rents are already restricted by the US Department of Housing and Urban Development (HUD) or other government agencies.
 - a. These affordable housing programs have been in existence for decades and are administered by the Federal Government and HUD. Property owners, both for-profit and not-for-profit, are legally committed to only raise rents in accordance with the allowed limits published by HUD annually. Furthermore, a third-party compliance system already exists which provides oversight to verifying rent limits are met.
 - i. Under the Section 8 program specifically, the government subsidized rent portion for each tenant should not be subject to rent control restrictions.

As outlined above, it is important that the above concepts are addressed in the final rules to allow property owners the ability to remain solvent, properly maintain their properties, and minimize compliance costs so they have the possibility of obtaining a reasonable return on their property investment.

Thank you for your consideration and feel free to contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig A. Mulcahy". The signature is fluid and cursive, with the first name "Craig" being more prominent.

Craig A. Mulcahy, CPA
On behalf of 'Saint Paul Rent Control' Working Group at
Mahoney CPAs and Advisors
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April 21, 2022

DSI- Rent Stabilization
375 Jackson Suite 220
Saint Paul, MN 55101
VIA EMAIL

Re: Proposed Rent Stabilization Rules

To Whom It May Concern:

On April 13th, 2022, the Housing and Land Use Committee of the Macalester Groveland Community Council ("MGCC") held a special public eMeeting via Zoom, at which it considered the Proposed Rules for Rent Stabilization in Saint Paul.

Prior to the meeting, MGCC received 1 letter in opposition of the proposed rules and did not receive any letters in support. Furthermore, 14 non-voting community members attended the eMeeting to discuss the proposed rules and offer recommendations.

After reviewing the proposed rules and considering neighborhood feedback, the MGCC Housing and Land Use Committee unanimously passed the following resolution by a final vote of 13-0:

**** The MGCC Housing and Land Use Committee recommends that the City of Saint Paul simplify the self-certification and staff determination processes and make the processes accessible to include the multiple languages as spoken by St. Paul residents. ****

The MGCC Housing and Land Use Committee was unable to vote on specific changes to the Proposed Rules for Rent Stabilization in Saint Paul due to the short timeline provided to review and submit community feedback. However, the following concerns, questions, and recommendations were shared by community and committee members at the public eMeeting:

Overall Recommendations

The city should also consider simplifying the process dramatically for landlords who own fewer than 3 rental properties in Saint Paul. This process will be most burdensome on small local landlords, who make up the majority of landlords in Saint Paul.

A sentence defining a reasonable Return on Investment (ROI) as no lower than 8% should be added to the proposed rules with the intent of easing the burden of the proposed rules on small landlords.

Are the proposed rules for landlords and renters? How are renters able to understand if their rental increase is supported by these rules if they do not have access to the documentation required? Landlords and renters should have the same access to the documentation used to determine justified rent increases.

Does the maximum percentage increase per year disincentivize landlords from retaining long-term renters through lower annual rent cost increases? The City should review vacancy decontrol policies for inclusion or modify the ordinance itself to deal with this issue.

How will the city support non-English speaking landlords or landlords for whom English is not their primary language? Will translation services be available for landlords?

There are concerns from community and committee members that while these proposed rules address increased rent costs, there are no such rules for capping or limiting expenses from the City of Saint Paul on property owners, including utilities and property taxes. How is the city intending to better support rent stabilization by helping to ensure reasonable ROI with caps on these expenses to landlords?

Section 1: Maintenance of Net Operating Income (MNOI) Reasonable Return Standard

Modify section A.3.a. to define “Base Year” as “the calendar year 2019 or the landlord’s most recent tax year, at the landlord’s discretion”.

“Base Year”, defined in section A.3.a. should take into account the year of the most recent market value of the building.

Community members would like to understand the intent behind using the calendar year 2019 as the “Base Year”.

Section 2: Planned or Completed Capital Improvements

Paragraph 5 of section B.1 should be struck from the proposed rules or amended to allow for the value of capital improvements to be retained. The current language may disincentivize landlords from improving their properties over time.

The Amortization schedule in Section B.1 should be removed and replaced with the following guidance: “Amortization periods shall be determined by the amortization schedules of the owner's federal tax return(s) for the year(s) in question, in accordance with applicable GAAP and Federal Income Tax code regulations and standards”. The amortization schedules could also be provided as an addendum to the proposed rules which would help simplify and shorten the length of this document tremendously.

The following items should be removed from Section B.2.a. Exclusion from Operating Expenses, and therefore be allowable as operating expenses:

- i. Mortgage interest payments
- iii. Land lease expenses
- v. Depreciation

Section 3. Changes in the Number of Tenants

Clarification is needed in *Section C.2.b*. Is this section meant to provide compliance with A.D.A. standards? What is the definition of caretaker/attendant for this rule?

Section C should be removed entirely in order to simplify these rules and create workable processes for landlords.

Section 4. Changes in Space or Services

Section D should be removed entirely in order to simplify these rules and create workable processes for landlords.

Section 5. Pattern of Recent Increases or Decreases in Rent

City Processes

The proposed rules should include expectations for city processing timelines. For example: "After submitting a complete "Web Intake Form" and receiving a confirmation of application submission, the petition shall be automatically approved if no staff determination is made within 60 calendar days thereafter, provided that any requested supporting documents and information are submitted to staff within 5 working days of the request."

If you have questions or concerns, please do not hesitate to contact me.



Alexa Golemo
Executive Director
Macalester-Groveland Community Council

cc (via email): Ward 3 Office, City of Saint Paul
Ward 4 Office, City of Saint Paul



Housing Justice Center
Dedicated to expanding
and preserving the supply
of affordable housing in
Minnesota and nationwide.

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April 22nd, 2022

Dear Department of Safety & Inspections Leadership and Staff,

My name is Tram Hoang and I am the Director of Policy & Research at the Housing Justice Center, a housing-focused legal advocacy organization based in Saint Paul. Thank you for the opportunity to provide suggestions and ask questions about the proposed rules for rent stabilization implementation. We appreciate the time that staff have taken to thoughtfully outline and draft these rules. It demonstrates a commitment to honoring the will of the voters, who passed a very specific ordinance on November 2nd, 2021, and is an important step towards May 1st implementation. We look forward to May 1st, when every Saint Paul renter will be protected from egregious rent hikes.

Please see below for comments and questions, organized by portion of proposed rule addressed.

Topic: Maintenance of Net Operating Income (MNOI)

Reason: We support the usage of MNOI as the reasonable return standard because it has been implemented successfully in cities across the country that have rent stabilization policies. Furthermore, it is fair, effective and there is legal precedent for its application.

Proposed Change: We have no proposed changes but have the following questions about MNOI usage.

- Why is the MNOI standard connected to the Consumer Price Index?
- What other cities or states use the MNOI standard to determine a reasonable return?
- Does the city feel that other reasonable return standards like capitalization and rate of return are circular standards? How did this figure into the city's decision to use the MNOI standard for reasonable return?

Topic: Self-Certification

Reason: Self-certification is an inequitable process for renters that does not enforce the rent stabilization ordinance. The current process of self-certification essentially automatically allows for rent increases up to 8% without any evidence or proof of need from the landlord. This contradicts the ordinance language, which requires landlords to demonstrate the need for a rent increase above 3%. Perhaps city staff assumed they would be overloaded with requests if they made everyone complete an application, but just the act of requiring an application (rather than automatically granting a rent increase) will disincentivize landlords *who don't have proof* from submitting an application, thus solving the capacity issue.

Proposed Change: Self-certification should be removed from the process.

Topic: Self-certification

Reason: The rent stabilization ordinance requires that landlords are maintaining basic habitability standards in their property before requesting a rent increase above 3%. This is currently not included in the proposed rules.





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Proposed Change: Add a requirement to ensure that landlords are maintaining basic habitability standards in their property in order to request a rent increase above 3%. Add a staff step to this, which would require a staff member to look up the property to verify that the property does not have any current code violations. We also have the following questions about the self-certification process:

- Where can landlords find regional net operating income data for the Twin Cities region? Can this trend data be used to support in filing petitions?
- Does the city feel that the self-certification process is equitable to renters? If so, how is the self-certification equitable to renters?
- Why doesn't the City require the "Landlord Worksheet-Rent Increase using Fair Return Standard: Maintenance of Net Operating Income (MNOI)-Amortized Costs of Capital Improvements included in Operating Expenses" paperwork to be submitted as part of the self-certification process?
- In the draft landlord web intake form, the 5th option for Q13 is confusing. An increase in tenants occupying the rental unit is clear, but the rest of the sentence isn't clear. For example, is the City saying a landlord can apply for an exception for an increase in furniture? What constitutes an increase in furniture?

Topic: Tenant Notice

Reason: As proposed, there is no requirement for tenants to be notified at any point during the process of landlords requesting exceptions to the 3% cap.

Proposed Change: Tenants should be given notice throughout the process of their landlord requesting exceptions to the 3% cap. Specifically:

- Landlords should be legally required to notify tenants when they apply for a rent increase above 3% the same day that they apply
- Tenants should have access to the completed MNOI/Capital Improvement Worksheet that their landlord is submitting as proof on the day it is submitted
- Tenants should have access to the web intake form submitted by the landlord on the day it is submitted
- Tenants should have access to the staff determination on the day that it is communicated to the landlord
- Tenants should be notified when their landlord files for an appeal on the staff determination on the same day the appeal is filed
- Tenants should have access to the landlord's testimony for an appeal and related documentation
- Tenants should be granted the opportunity to be heard and/or fight the rent increase above 3% via an **administrative route**. Tenants should not have to get legal support or representation in order to fight rent increases; that is an unfair and inequitable burden on tenants.

Topic: Tenant Notice

Reason: There is currently no legal requirement that would notify a tenant entering a rental unit what the history of rent increases in their unit is, thus inhibiting their ability to ensure that the landlord is not increasing rent more than 3% on their unit in a 12-month period.





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Proposed Change: The City must require landlords to disclose a 12-month history of rent for tenants on new leases. This 12-month disclosure between tenancies will allow new tenants to understand the history of rent increases in their unit, and better understand their rights under the rent stabilization ordinance. This is not only required for the tenant's benefit, but for the City's benefit as it is responsible for enforcing the ordinance.

We also have the following general questions regarding the draft rules:

- How will the city enforce the rule?
- What are the penalties or consequences for landlords who break the law?

Sincerely,
Tram Hoang
Director of Policy & Research





April 21, 2022

DSI- Rent Stabilization
375 Jackson Suite 220
Saint Paul, MN 55101

Re: Public Comment, Rent Stabilization Ordinance Proposed Rules

To Whom it May Concern:

Thank you for the opportunity to provide public comment regarding the recently published rent stabilization ordinance rules. **First and foremost, Ryan Companies would like to strongly advocate for the immediate adoption of a new construction exemption to support continued production of housing to meet the City's growing housing needs. We advocate for an exemption for a period of no less than 30 years from the date a new construction project achieves its initial certificate of occupancy.** From discussions with institutional investors that companies like Ryan rely on to develop new housing, an exemption of this length is critical in order to retain any investor interest in new construction in Saint Paul. We also feel that a longer term exemption of no less than 30 years will drive investment into new construction and away from the investment strategy of purchasing and improving Saint Paul's already undersupplied inventory of NOAH housing units.

With regards to the rent stabilization ordinance draft rules published on April 1, 2022 we offer the following comments in the order the draft rules are written:

-Reasonable return should break out real estate taxes, special assessments and insurance separately. These items often increase at a greater percentage than CPI. Presuming that a reasonable return will be derived based on CPI level increases applied to these items is a false assumption- as the increases will likely be higher. Revise the reasonable return definition for NOI to cover the increases in real costs of these items, not limit them at CPI.

-Exceptional Circumstances in Base Year-Suggest that if the building is less than 5 years old from May 1, 2022 the market rate in effect as of May 1, 2022 is the Base Year

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Equal Opportunity Employer

rent, OR the time when the building reaches stabilized occupancy for rent and expenses (including full taxes) with the rent being set by the market. This will help adjust for lease up periods that may have occurred in 2019 and may have been further impacted by COVID. Also, because taxes lag there must be some accounting for this- either adjusting definition of Base Year and/or adding taxes that are not fully assessed as exceptional expenses in the Base Year.

-Gross rents calculation noted in this document is based on “all other income or consideration received or receivable in connection with the use or occupancy of the Rental Unit.” This conflicts with the definition of Rent being advanced in the council. Rules should be adjusted to income received in connection with a rental agreement to align these items.

-Gross Rental Income should not include fees such as pet fees, usage of party spaces, etc. whereby the building operator is charging to allow residents to receive additional services or accommodations. There must be an offset for increased operating costs due to this type of elective tenant usage or accommodation.

-Operating Expenses- Property taxes assessed and paid. Special assessments and additional charges levied by a unit of government are presently not included. These are actual costs that will burden the operations of a building. Request special assessments be included as an operating expense.

-Capital Improvement Standard. The proposed allocation of capital improvements and amortizations noted for improvements creates practical difficulties for implementation. The varied amortization schedule makes the process even more arduous as a landlord may perform a single improvement with items that have varying amortization (i.e. a kitchen remodel). It is not typical to amortize improvements for capital improvements over a period of time nor is it typical to distinguish between the different improvements (mirrors, counters, etc.) in terms of amortization. Requiring amortization of expenses on a line by line basis overly complicates the requirements and the staff approval and monitoring process. Suggest eliminating the amortization concept and allow for a permanent increase in rent for these units. If increased rent is adjusted back downwards after an amortization period a landlord has no incentive to improve the units.

-The rules currently require rent increases to be allocated equally among all units. This does not reflect the reality of a typical building which may have studio, one and two bedroom units- all of different sizes and with different amenities, rents, etc. We request that rent increases be divided among the units as deemed commercially reasonable by the landlord.

-Capital improvements should include costs incurred to bring the unit into compliance with St Paul Legislative Code or state law. Regulations change and improvements to meet with current regulations should be encouraged rather than penalized.

-There are no city staff review time limits indicated for these applications. Suggest a maximum 60 day staff review period as is done with other city applications. Further, there should be ability for landlord to recoup costs through rent increase if there is an

emergency and immediate need for unit improvements- fire damage, water damage, etc. that negatively impact use of the rental unit or building.

Summary of Requested Modifications:

Section	Comment	Proposed Change
A2	Reasonable return should break out real estate taxes, special assessments and insurance separately. These items often increase at a greater percentage than CPI. Presuming that a reasonable return will be derived based on CPI level increases applied to these items is a false assumption- as the increases will likely be higher.	Revise the reasonable return definition for NOI to cover the increases in real costs of these items, not limit them at CPI.
A4b	New construction that has been built or was stabilized around the time of the Base Year as defined in the proposed rules should be treated differently than older buildings as they may not have reached stabilized occupancy for rent and expenses, including full taxes- which lag. This will help adjust for lease up periods that may have occurred in 2019 and may have been further impacted by COVID.	If the building is less than 5 years old from May 1, 2022 the Base Year rent should be the later of 1) the market rate in effect as of May 1, 2022 OR 2) the time when the building reaches stabilized occupancy for rent and expenses (including full taxes) with the rent being set by the market. Consider adding taxes that are not fully assessed as exceptional expenses in the Base Year.
A5ai	Gross rents calculation noted in this document is based on "all other income or consideration received or	Rules should be adjusted to income received in connection with a rental agreement to align these

	receivable in connection with the use or occupancy of the Rental Unit.” This conflicts with the definition of Rent being advanced in the council.	items.
A5ai	There must be an offset for increased operating costs due to this elective tenant usage or accommodation such as pet or usage of party spaces. Gross Rental Income should not include fees such as pet fees, usage of party spaces, etc. whereby the building operator is charging to allow residents to receive additional services or accommodations.	Clarify Gross Rental Income does not include elective tenant accommodation and service items.
A5bv	Operating Expenses- Property taxes assessed and paid. Special assessments and additional charges levied by a unit of government are not included in current language. These are actual costs that will burden the operations of a building.	Include special assessments as an operating expense.
B1	The proposed allocation of capital improvements and amortizations noted for improvements creates practical difficulties for implementation. The varied amortization schedule makes the process even more arduous as a landlord may perform a single improvement with items that have varying amortization (i.e. a kitchen	Suggest eliminating the amortization concept and allow for a permanent increase in rent for these units.

	remodel).	
B1	As written allowances for capital improvements do not include costs incurred to bring the unit into compliance with St Paul Legislative Code or state law. Regulations change and improvements to meet with current regulations should be encouraged rather than penalized.	Remove this condition in Section B1.
B3a	The current text states that rent increases be allocated equally among all units. Unit sizes vary within the building and a studio unit should not be allocated rent increases related to capital improvements a the same rate as a three bedroom unit.	Modify language to allow for allocation of costs by the landlord as deemed commercially reasonable.

If you should have questions regarding our comments I may be reached at Maureen.michalski@ryancompanies.com.

Kind Regards,



Maureen Michalski

Vice President, Real Estate Development

April 22, 2022

DSI – Rent Stabilization
375 Jackson Suite 220
Saint Paul, Minnesota 55101

Re: Weidner Apartment Homes comments on Rent Stabilization Rulemaking for St. Paul MN.

Dear St. Paul City Council,

Thank you for the opportunity to offer comments on the proposed rules that have been drafted to guide the newly enacted Rent Stabilization Ordinance in St. Paul. I am writing on behalf of Weidner Apartment Homes, an owner and manager of rental housing in the Twin Cities and throughout the US.

There has been ample public commentary regarding the nature of “one of the nation’s strictest rent control measures” that was approved by St. Paul voters in November of 2021. Reviewed separately, many of the specific components of the Residential Rent Stabilization ordinance are onerous on their own merits. Combined, the net effect creates an environment where it is reasonable to predict that very few, if any, new construction projects will be undertaken in the coming years as the financial risks are too great when analyzed via a standard underwriting process.

According to the National Multifamily Housing Council – “when a community artificially restrains rents by adopting rent control, it tells builders not to make new investments and current providers to reduce their investments in existing housing. Under such circumstances, *rent control has the perverse consequence of reducing, rather than expanding, the supply of housing in time of shortage*”.

Furthermore, the implementation of this ordinance sends a chilling signal to all providers of rental housing – especially the owners and operators of smaller apartment projects, as well as single family owners of older homes that have subdivided their dwellings into multiple rental units under the same roof. This is the demographic that may have taken a basement or additional stories of their house and made them available to renters looking for an affordable place to call home. By definition, this older housing stock necessitates more intensive updates, repairs and maintenance, which requires predictable and steady cash flow. Numerous studies support this assertion. These landlords are often the providers of what is known as Naturally Occurring Affordable Housing (NOAH) buildings that are at the greatest risk of disappearing from the market altogether with the implementation of Rent Stabilization programs. Faced with an onerous and overly complicated process by which to potentially recover legitimate costs to maintain or upgrade their aging buildings, these operators will simply exit the market. The aggregate effect of this exodus over the next few years will be staggering; once those units are gone from the rental stock of the city, they will not come back.

In recent panel interview, local developers Bob Lux and Kou Vang offered the following insights from the developer/housing provider perspective:

- In the last decade only 4,300 total market rate units have been produced/built in St. Paul. That was insufficient to meet the needs to the community, and the new ordinance all but ensures a decline of private investments in the city.
- Kou says that if this ordinance moves forward as written, market rate construction will stall and the primary development will be subsidized affordable housing projects where funding is much more difficult to assemble. He estimates that number to be approximately 60 – 120 units annually (which is the rate of construction now, and is woefully inadequate to meet the needs of the community). “It will be hard to attract the market rate product, which alleviates the pressure, and allows for movement between product types (for renters) and leads to Naturally Occurring Affordable Housing”.
- “This is a simple math problem. If the costs to build new product is in the \$250K to \$350K range per unit..... all that’s needed to determine if you move forward or not (notwithstanding the ability to raise capital) is to do the math. If you can get a 6% yield on it after paying all costs including property taxes – then you’ll be able to build it. What this ordinance introduced is uncertainty as far as what happens to expenses”. The determination of whether or not a new property is built turns on whether the project will yield a certain percentage after costs. The Ordinance fails to account for the wild fluctuation of expenses typically associated with rental property.

Advocates of rent control have publicly claimed that the developer community is overstating the potential impacts to the current and future housing stock of St Paul and will eventually learn to live with the new situation, in the hopes of winning changes to the new ordinance. Speaking from the perspective of an owner and operator of market rate rental housing, that is simply not true. When looking at the changing nature of the regulatory landscape in St Paul, and evaluating the significantly heightened risk of either owning and operating existing apartment communities, or pursuing new development opportunities in the city – Weidner Apartment Homes, like many others in the industry—believes that beginning new projects will be economically infeasible under the ordinance as written.

In addition to my comments above regarding the general concerns with the establishment of a rent control policy within the city, I offer some more specific critiques of the proposed rules below.

Sincerely,

Greg Cerbana

Greg Cerbana
Vice President
Weidner Apartment Homes

Per the instructions on the city's website under Public Comment Process - Commenters should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The more constructive and specific, the better.

MNOI Reasonable Return Standard

1. Reasonable Return Standard. The imposition of an arbitrary expectation for what is "reasonable" will be based on so many different factors that it will be impossible to accurately apply a standard that will pass the federal fair housing rules of treating similar cases in the same manner. The investment strategy, leverage position, and liquidity of each ownership entity is vastly different, and the notion that a Rent Administrator, or a Hearing Officer will be able to adequately account for those factors when rendering a decision strains credulity.
2. In order to apply for a larger than standard 3% increase, the requirement is to complete and submit an MNOI/Capital Improvement worksheet. The document is an onerous 22 pages long, and riddled with confusing instructions, and requires the disclosure of proprietary corporate or private individual financial information. It is likely that this information will become part of the public record, a significant gating item for any privately held business.
3. The interplay between a general 3% rent increase, an approved capital rent increase, and CPI on an overall rent increase when the project's amortized cost is completed is unclear. This is important because "At the end of the amortization period, the allowable monthly rent shall be decreased any amount it has increased due to the application of this provision." For example, the general 3% annual general increase is denied for the period of time of the approved capital rent increased. If the project is long-term, does the rent revert back to the original rent amount and therefore the 3% general increase for the years of the approved capital increase are not included?

Planned or Completed Capital Improvements

1. The allowable costs of a property wide capital improvement project may not be less than \$250 per unit affected. This means that a \$95K project at a 400-unit community would be excluded from the calculation to raise rents. That is a substantial expense that under the new rules, landlords will be unable to afford
2. Under the allocation of rent increases section, it states that the Rent Administrator or Hearing Officer, in the interests of justice, shall have the discretion to apportion the rent increases in a manner and to the degree necessary to ensure fairness. This standard of "ensuring fairness" is overly vague, too broad, lacks transparency and invites an arbitrary application by an administrator in which the qualification standards and requisite expertise for the position have not been defined.
3. A landlord may request an undefined "preliminary approval" up to 24 months in advance of a project. There are no timelines for approval or disapproval and there is no defined appeals

process if denied. The “final approval” is made through an addendum procedure which has no timeline or appeal process. What if the approved expenses deviate from the preliminary approval? At what point is the addendum denied or as the project continues, the preliminary approval of part of the project is denied in the addendum process? The benefit of a “preliminary approval” is unclear.

Changes in the Number of Tenants

1. This subsection of the rules introduces for many housing providers a new methodology of assessing rents which is by the number of occupants in a specific apartment. This is not the norm in the market, or throughout the United States, as rents are generally determined based on the characteristics of the real estate, not on the number of occupants. The proposed rules add unnecessary complexity and ambiguity to what has been a very standard way of establishing rents.

Self-Certification

1. The lack of clear timelines and a transparent appeals process is untenable. Self-certification has no timeline for audit results or an appeals process should those results be unfavorable to the petitioner.

Staff Determination

1. There is no timeline for approval or disapproval of the Rent Administrator.
2. There is no defined process on how to appeal to the Hearing Officer, or what timeframe they are bound to respond by.
3. There is no information regarding the structure and staffing of the Department that will oversee the Rent Stabilization program. How many members and who are they? If the increase is appealed, eventually is successful but tenant(s) have moved during the appeals process, what is the remedy to remain whole? Is it a claw back for increased rent due?

To: DSI- Rent Stabilization

CC:

- Mayor Melvin Carter
- Councilmember Dai Thao-Ward 1
- Councilmember Rebecca Noecker-Ward 2
- Councilmember Chris Tolbert-Ward 3
- Councilmember Mitra Jalali- Ward 4
- Councilmember Amy Brendmoen-Ward 5
- Councilmember Nelsie Yang-Ward 6
- Councilmember Jane L. Prince-Ward 7

RE: Rent Control

We are opposed St. Paul's Maintenance of Net Operating Income (MNOI) Reasonable Return Standard and encourage the City Council on November 6th, 2023 to **repeal rent control in it's entirety as permitted in Section 8.06 of St. Paul's Charter** . St. Paul's draft was based on a California model which does not factually represent the costs associated with rental properties in St. Paul. It's based on assumptions, does not allow exclusions for new construction or vacancy increases and it utilizes a cumbersome and costly implementation process.

St. Paul's draft of the (MNOI) is a copy of Richmond California's (MNOI) rent control process. Richmond has a population of only **116,448** and a rent control budget of almost **three million per year**. St. Paul has a population of **311,572** and 85% more proposed rent-controlled units than Richmond. What will this cost St. Paul? What will this cost rental property owners? Richmond charges \$218 per unit per year. It should be noted that St. Paul's MNOI is actually even stricter than Richmond's because California State Law provides some exemptions from the rent cap limitation which St. Paul real estate investors are not afforded:

- Units constructed in the last 15 years are exempt (on a rolling basis)
- Units are exempt if they are restricted to be affordable for low- or moderate-income residents.
- A single-family home is exempt unless it's owned by a real estate investment trust (REIT), a corporation, or an LLC where one of the members is a corporation.
- Duplexes and other two-unit properties are exempt, unless one unit is occupied by the owners.

St. Paul has not experienced widespread unreasonable rent increases. Rents in **Richmond had risen by more than 30 percent in five years – (equating to approximately 6% average rent increase per year)**, according to the Haas Institute. CURA states "that from 2000 to 2019 incomes increased faster than (Minneapolis) rents for renter households at the median and above. Tenants in the bottom quartile saw rent increases (44% increases from 2006 to 2019) and almost no growth in income. Yes, 44% sounds like cause for concern- however **44% is for 13 years**. This increase **equates to a less than 2.75% average rent increase per year**."

Richmond has approximately **10,000 rent-controlled units with a rent program budget for five employees of \$2,886,764.** St. Paul MN has over 82,000 registered rental units. Again, at what cost? Richmond's program is funded by "landlord" registration fees of \$218 per rent-controlled unit per year+ an annual \$234 business fee per parcel. Using the Richmond model-if a St. Paul "landlord" rents a unit for \$900 per month the following year's rent increase would be capped at 3%- **\$27 per month rent. The monthly cost of the registration fees would be \$21. 76% of the 3% rent increase would go to pay for the rent control program registration fees.** Interestingly Richmond's original draft estimated the fee at \$47 per unit.

St. Paul's draft states the Base Year CPI shall be 2019. A Landlord has the right to obtain a net operating income equal to the Base Year net operating income adjusted by 100% of the percentage increase in the Consumer Price Index (CPI), since the Base Year. It shall be presumed this standard provides a reasonable return.

The Consumer Price Index (CPI) is not a good barometer because this statistical estimate keeps a pulse on the prices of consumer goods and does not adequately reflect the rising cost of operating a rental business. Nor does it adequately display the ratio of the percentage actual expenses as they relate to the total expense or income.

The CPI does not track the increases in commercial property insurance or other costs such as commercial real estate taxes and assessments which are at a significantly higher rate than homesteaded properties. The cost affiliated with income producing properties are exclude from the shelter index. The shelter index only measures the costs associated with housing and it's makes up makes 32.8% of total CPI.

The two main components of the shelter index are the owners' equivalent rent of primary residence (23.8% of CPI) and rent of primary residence (5.9% of CPI). The cost of shelter for renter-occupied housing is rent, while owners' equivalent rent measures homeowners' expected rent if they were renting their homes in the current market.

During the past five years (2017-2021) our building in St. Paul has experienced:

- 52% increase property insurance (not part of CPI)
- 31% increase property taxes (not part of CPI)
- 41% increase in refuse collection (not part of CPI)

2022 expenses are up over 50% for the 1st quarter. Gas and Electric are up 89% over 2021

The Draft states: Landlord-performed labor compensated at reasonable hourly rates. However, no Landlord-performed labor shall be included as an operating expense unless the Landlord submits documentation showing the date, time, and nature of the work performed. There shall be a maximum allowed under this provision of five percent (5%) of gross income unless the Landlord shows greater services were performed for the benefit of the residents.

Capping owner-performed maintenance at 5% of gross is absurd. St. Paul's housing is more expensive to manage than Richmond California. An individual can't maintain a grade A property in St. Paul and have the value of their labor capped at 5% of gross revenue. **This clause clearly demonstrates the disdain the drafters hold for owners of rental property and or their lack of understanding for all goes into owning a well-maintained property.** St. Paul's housing stock is substantially older than Richmond CA and required additional maintenance due to age and climate. Let's do some math: A 10 unit building with rents averaging \$900 per month generates a \$9,000 gross monthly income. The maximum amount an owner could use as a labor deduction would be \$450 per month. There are acceptable local industry standards for maintenance labor and it is not based on a percentage income. It is calculated per unit depending on the age of the property. **Maintenance is not a luxury expense.**

Amortization of Capital Improvements and Expenses			
In amortizing capital improvements and/or expenses, the following schedule shall be used to determine the amortization period of the capital improvements and/or expenses	Years		
Appliances			
Air Conditioners	10	Cabinets	10
Refrigerator	5	Carpentry	10
Stove	5	Counters	10
Garbage Disposal	5	Doors	10
Water Heater	5	Knobs	5
Dishwasher	5	Screen Doors	5
Microwave Oven	5	Fencing and Security	5
Washer/Dryer	5	Management	5
Fans	5	Tenant Assistance	5

St. Paul's draft states that the above schedule shall be used when amortizing capital improvements and or expenses. This amortization schedule is out of sync with IRS guidelines. It is excessive and burdensome to require owners of rental properties to maintain two sets of books. Section 179 of the IRS tax code allows landlords to immediately expense new or used appliances. It's unclear to me why "tenant assistance" is on an amortization schedule or why door knobs need to be amortized.

St. Paul's draft an interest allowance shall be allowed on the cost of amortized expenses. The allowance shall be the interest rate on the cost of the amortized expense equal to the "average rate" for thirty-year fixed rate on home mortgages plus two percent. The "average rate" shall be the rate Freddie Mac last published in its weekly Primary Mortgage Market Survey (PMMS) as of the date of the initial submission of the petition. In the event that this rate is no longer published, the Rent Administrator shall designate by regulation an index which is most comparable to the PMMS index.

This makes no sense. The local industry standard for a capital improvement expense is managed through a 5% annual reserve expense. Again, this DRAFT unnecessarily complicates the process which results in further unnecessary expenses.

St. Paul's draft assumes a crisis that doesn't exist. St. Paul does not lack affordable housing. An April 8th 2022 Zillow search found that the majority of units listed are affordable.

St. Paul: 122-2 bed units available between 1000-1,500 per month
59- 1 bed units with between \$875-\$950

The free market was working in St. Paul. In 2019 The Department of Housing and Urban Development, Office of Policy Development and Research Comprehensive Housing Market Analysis Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin U.S defined our housing market as "modestly affordable". The affordability Index, a measure of median renter household income relative to qualifying income for the median-priced rental unit, has generally risen since reaching a low in 2010 with **median renter household incomes rising an average of 5.0 percent annually from 2010 to 2017, whereas median gross rents rose an average of only 3.2 percent during the period.**

In an effort to expand the pool of affordable rental housing, in April 2018, the city of Minneapolis adopted the 4d Affordable Housing Incentive Program, which provides property tax breaks in exchange for developers maintaining affordable rent levels in their non-subsidized apartments, using the HUD Area Median Income standards. St. Paul should do the same.

St. Paul Public Housing Payment Standard are:

0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
970	1130	1395	1800	2185	2510	2840

The initiative was flawed, present to the voters without any indication of cost. The City Council should repeal the ordinance in whole or implement all of the following:

1. Exempt new construction for 20 years and:
2. Exempt all housing that maintain affordable rent levels in their non-subsidized apartments in HUD Standards similar to MPLS 4D Affordable Housing Program and:
3. Allow property owners to reset rents when vacancy occurs. There is no supporting proof that "landlords" are going to force evictions in order to raise rents. On the contrary; many residents each year enjoy below market rents because the length of their tenancy is beneficial to the owners. And:
4. Raise the rent increase cap to 7%+CPI (similar to Oregon) and:
5. All fees charged to rental property owners to register, appeal and the additional administrative costs be added back on to each unit above the 3% rent increase cap instead lumped into operating expenses and:
6. Banking unused allowable rent increase should be allowed.

Sincerely,

Connie and Mike Buskirk



April 22, 2022

DSI – Rent Stabilization
375 Jackson Suite 220
Saint Paul, Minnesota 55101

Re: Residential Rent Stabilization Ordinance for the City of St. Paul, Minnesota

City Council,

Thank you for the opportunity to comment on the proposed rules (the “Proposed Rules”) for the Residential Rent Stabilization Ordinance, Chapter 193A Of the Legislative Code (Title XIX) (the “Ordinance”). We submit the following comments on behalf of StuartCo, a property management company with rental properties located in St. Paul and greater Minnesota.

With respect to both the Proposed Rules and the Ordinance, there are troubling omissions that will have adverse impacts on landlords, tenants, and the City of St. Paul community that run contrary to the general purpose of providing affordable housing to the City of St. Paul.

I. The Ordinance is not indexed for inflation.

As it is currently written, the Ordinance only provides a 3% per year cap on rent increases. This percentage does not account for inflation. Instead, the Proposed Rules establish a process for landlords to request an exception to the 3% limit based on the right to a reasonable return on investment. Such process involves the use of a Maintenance of Net Operating Income (“MNOI”) formulation, which is indexed for inflation vis-à-vis the Consumer Price Index (“CPI”).

The lack of indexing in the Ordinance itself, and the requirement that landlords submit yearly exception requests to account for inflation, is unduly burdensome on landlords. For context, the CPI has increased 8.5 percent over the last 12 months.¹ In the Minneapolis-St. Paul-Bloomington area, prices as measured by the CPI have increased 2.1 percent for the two months ending in March 2022.² Under the Ordinance and Proposed Rules, it can be assumed that every landlord in St. Paul will file an exception to the 3% cap to account for these increases. Assuming these landlords seek to raise their rents to account for inflation, many landlords will likely have to seek

¹ See Bureau of Labor Statistics, *Consumer Price Index*, <https://www.bls.gov/cpi> (last updated April 12, 2022).

² See Bureau of Labor Statistics, Midwest Information Office, *Consumer Price Index, Minneapolis-St. Paul-Bloomington area—March 2022* (April 12, 2022) https://www.bls.gov/regions/midwest/news-release/consumerpriceindex_minneapolis.htm.

an exception by staff determination. At present, it appears that only five people have been hired to manage this process, only two of whom would actually be directly involved in reviewing and deciding exceptions. Accordingly, the City of St. Paul will be overburdened by the thousands of exception applications it will receive from the landlords, which will result in prejudice to the landlords as they wait months or longer for approval to raise their rents simply to keep up with the pace of inflation.

II. The 2019 Base Year is arbitrary.

The Proposed Rules provide that the base year for the MNOI formulation to determine reasonable returns shall be 2019. This is an arbitrary selection that will adversely impact landlords who have purchased property after 2019 and who otherwise lack the financial information of their property relating to 2019.

III. The MNOI Capital Improvement Worksheet is complex, burdensome, and requests irrelevant and confidential business information.

In order to qualify for an exception to the 3% cap on rent increases, a landlord must submit the MNOI Capital Improvement Worksheet (the “Worksheet”). Currently, the Worksheet is 22-pages long and must be fully completed by the landlord. This is unduly burdensome on all landlords, and in particular on smaller landlords whose primary source of income is not derived from the rental property but rather through a full-time or multiple part-time positions and who do not otherwise have the time or resources to complete the Worksheet.

Moreover, the Worksheet is confusing, and the Proposed Rules do not provide a clear method by which landlords may seek assistance with the Worksheet. Moreover, it is unclear whether any proprietary information included with the Worksheet or through the subsequent Web Intake Form will be made publicly available. Disclosure of such information will, among other things, adversely impact landlords’ abilities to stay competitive in the market and to safeguard confidential business information.

IV. It is unclear whether self-certification could result in criminal penalties.

Under the Proposed Rules, a landlord may seek to adjust their rent either through self-certification for any adjustments between 3% and 8% or through staff-determination for adjustments exceeding 8%. All self-certifications are subject to audit, wherein the landlord must demonstrate that an adjustment is necessary to provide a fair return. The Proposed Rules provide that the number of audits performed by the City will “largely be determined by the volume of applications.”

Under Section 193A.07 of the Ordinance, a landlord may be subject to criminal prosecution and/or administrative fines for failure to comply with the provisions of the Ordinance.



It is unclear under the Proposed Rules whether a landlord who self-certifies in good faith but is found to be non-compliant with the Ordinance and the Proposed Rules will be subject to such criminal prosecution and/or administrative fines.

V. The Ordinance and Proposed Rules do not establish with specificity a rental control board and its authority with respect to the exceptions process.

Neither the Ordinance nor the Proposed Rules establish a board or other sub-agency responsible for the exceptions process. The Proposed Rules make vague reference to a “Rent Administrator” but does not provide a definition of such individual or their responsibilities. It is unclear whether the St. Paul itself will be responsible for the exception process and the enforcement of this Ordinance.

VI. The Proposed Rules do not establish with specificity the appeals process.

The Proposed Rules make vague reference to an appeal of the staff determination by the Legislative Hearing Officer. However, the Proposed Rules do not provide any instruction or guidance on how such appeals process will work or what level of judicial review will be afforded to the landlords seeking appeal.

A handwritten signature in blue ink that reads 'Lisa Moe'.

Lisa Moe
President & CEO
StuartCo