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APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED FEBRUARY 26, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-538
D.C. No. 2:23-cv-04367-FMO-AGR

JAMES THOMAS BALLARD, INDIVIDUALLY, AND AS TRUSTEE OF THE JAMES T. BALLARD MILLENNIUM TRUST, DATED JANUARY 9, 2002,

Plaintiff-Appellant,

v.

CITY OF WEST HOLLYWOOD; CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD; WEST HOLLYWOOD RENT STABILIZATION COMMISSION; DOES, 1-10,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Submitted February 11, 2025*
Pasadena, California

Filed February 26, 2025

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appendix A

Before: GRABER, HAMILTON**, and BUMATAY, Circuit Judges.

Partial Dissent by Judge Bumatay.

MEMORANDUM***

James Ballard, an Angeleno landlord, appeals the dismissal of his lawsuit against the City of West Hollywood, its city council, and its rent stabilization commission (collectively "the City"). Ballard challenges municipal rent-control ordinances. Specifically, he alleges that the City violated his federal and state due process rights, along with protections against uncompensated takings. He also seeks declaratory relief under California law. Denying leave to amend, the district court dismissed for failure to state a claim. It dismissed the takings and substantive due process claims as unripe and the procedural due process claim for a pleading deficiency. Having dismissed the underlying claims, it did not expressly rule on the claim for declaratory relief under California law.

We review *de novo* dismissal for failure to state a claim. *Nayab v. Capital One Bank (USA), N.A.*, 942 F.3d 480, 487 (9th Cir. 2019). We review denial of leave to amend for abuse of discretion. *Brown v. Stored Value Cards, Inc.*,

** The Honorable David F. Hamilton, United States Circuit Judge for the Court of Appeals, 7th Circuit, sitting by designation.

*** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

953 F.3d 567, 573 (9th Cir. 2020). For the reasons below, we affirm.

1. Ballard argues that his takings and substantive due process claims are ripe.[1] We disagree. As-applied takings and substantive due process claims are not ripe until a plaintiff receives a final decision regarding the application of the regulations to the property at issue. *See Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985), *overruled on other grounds by Knick v. Twp. of Scott, Pa.*, 580 U.S. 180, 139 (2019) (takings); *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1456 (9th Cir. 1987), *as amended by*, 830 F.2d 968 (9th Cir. 1987) (substantive due process). Ballard has not received a final decision on the application of the rent control ordinance to his properties. Indeed, he has not even sought an exemption through the process established by the challenged ordinances. We are unpersuaded by his contention that he makes a facial challenge and thus need not satisfy *Williamson*'s finality element. To mount a facial challenge, he must allege that the ordinances are unconstitutional in every instance, regardless of the property or plaintiff to which they are applied. *Wash. State Grange v. Wash. State Republican*

1. Under California law, takings and due process claims are analyzed in the same way as their federal counterparts. *See San Remo Hotel L.P. v. City & County of San Francisco*, 27 Cal. 4th 643, 117 Cal. Rptr. 2d 269, 41 P.3d 87, 100-01 (Cal. 2002) (takings); *Owens v. City of Signal Hill*, 154 Cal. App. 3d 123, 201 Cal. Rptr. 70, 72 n.2 (Ct. App. 1984) (due process).

Party, 552 U.S. 442, 449, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008). He has not done so.

2. Ballard's procedural due process claim likewise fails. When an "action complained of is legislative in nature, due process is satisfied when the legislative body performs its responsibilities in the normal manner prescribed by law." *Hotel & Motel Ass'n of Oakland v. City of Oakland*, 344 F.3d 959, 969 (9th Cir. 2003). A legislative body "satisfies due process if [it] provides public notice and open hearings." *Gallo v. U.S. Dist. Ct.*, 349 F.3d 1169, 1181 (9th Cir. 2003). Here, the City's business was conducted following public notice and open hearings. Ballard was therefore afforded all the process he was owed.

3. We need not reach Ballard's state-law claim for declaratory relief because, as discussed above, the claims on which it depends fail. *Ball v. FleetBoston Fin. Corp.*, 164 Cal. App. 4th 794, 79 Cal. Rptr. 3d 402, 406 (Ct. App. 2008).

4. The district court did not abuse its discretion in denying leave to amend. "A district court does not err in denying leave to amend where the amendment would be futile." *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009); *see also Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296-97 (9th Cir. 1990) (noting that a plaintiff cannot contradict any of the allegations of his original complaint). Amendment here would be futile. For example, because the challenged regulation allows for individualized exceptions,

and because that process is not a sham, no facial claim can lie because the City can cure unconstitutional applications of the regulation through the individualized process. *See Sinclair Oil Corp. v. County of Santa Barbara*, 96 F.3d 401, 408 (9th Cir. 1996) (so holding as a matter of California law).

AFFIRMED.

Appendix A

Ballard v. City of West Hollywood, et al., No. 24-538
BUMATAY, Circuit Judge, dissenting in part:

I dissent solely on the denial of leave to amend. I would remand with instructions to allow James Ballard the chance to amend his substantive due process and takings claims. We have said that leave to amend should be granted with "extreme liberality." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th Cir. 2009). The district court construed his substantive due process and takings claims as "as applied" challenges, which requires satisfaction of the finality requirement. On appeal, Ballard asserts that his substantive due process and takings claims were in fact a facial challenge to the City of West Hollywood's rent control actions. According to Ballard, a facial challenge does not require a final decision. While his complaint in its present form cannot be read as a facial challenge, he should be given a chance to assert a facial challenge on these claims on remand. I am not as confident as the majority that amendment would be futile. *See, e.g., Hacienda Valley Mobile Ests. v. City of Morgan Hill*, 353 F.3d 651, 655 (9th Cir. 2003) ("Facial challenges are exempt from the [final-decision] prong of the *Williamson* ripeness analysis because a facial challenge by its nature does not involve a decision applying the statute or regulation."). We should have let the district court sort out a facial challenge—in the first instance—as we normally do.

I respectfully dissent.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED JANUARY 3, 2024

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 23-4367 FMO (AGRx)

JAMES BALLARD, INDIVIDUALLY AND AS TRUSTEE OF THE JAMES T. BALLARD MILLENNIUM TRUST, DATED JANUARY 9, 2002,

Plaintiff,

v.

CITY OF WEST HOLLYWOOD, *et al.*,

Defendants.

Filed January 3, 2024

ORDER RE: MOTION TO DISMISS

Having reviewed and considered all the briefing filed with respect to the City of West Hollywood's ("City"), City Council of the City of West Hollywood's ("Council"), and West Hollywood Rent Stabilization Commission's (collectively, "defendants") Motion to Dismiss [] (Dkt. 18, "Motion"), the court finds that oral argument is not necessary to resolve the Motion, *see* Fed. R. Civ. P. 78(b); Local Rule 7-15; *Willis v. Pac. Mar. Ass'n*, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

Appendix B

BACKGROUND[1]

Passed in 1985, West Hollywood Municipal Code ("WHMC") § 17.04.010, *et seq.* regulates rent increases for rental units within the City of West Hollywood by limiting the maximum allowable increase to 75% of the increase of the Consumer Price Index during the preceding 12 month period. *See* WHMC § 17.36.020. On April 6, 2020, the Council passed an emergency ordinance in response to the COVID-19 pandemic that temporarily prohibited commercial landlords from evicting a tenant based on an inability to pay rent, see WHMC Ordinance No. 20-1103U ("Emergency Ordinance") § 2.A., and issued a temporary moratorium on rent increases on occupied, rent-stabilized units. *See id.* § 4.A. The Emergency Ordinance permitted landlords to seek an exemption from the moratorium by applying for individualized rent adjustments in accordance with the procedures set out in WHMC §§ 17.44, *et seq.* *See id.* On November 7, 2022, the Council repealed the Emergency Ordinance, but capped maximum annual rent increases at no more than three percent. *See* WHMC Ordinance No. 22-1194 § 3 ("Termination Ordinance"); *see also* WHMC § 17.36.020.

Plaintiff's Complaint raises the following causes of action: (1) substantive due process, 42 U.S.C. § 1983, (*see id.* at ¶¶ 108-16); (2) procedural due process, 42 U.S.C. § 1983, (*see id.* at ¶¶ 117-22); (3) uncompensated *per se* takings, 42 U.S.C. § 1983, (*see id.* at ¶¶ 123-33); (4)

1. Because the parties are familiar with the facts of this case, the court recites them only as necessary.

uncompensated regulatory takings, 42 U.S.C. § 1983, (see id. at ¶¶ 134-38); (5) violations of the *ex post facto* clause of Article I, Section 10 of the United States Constitution, (*see id.* at ¶¶ 139-43); (6) violations of due process under Article I, Sections 7 and 15 of the California Constitution, (*see id.* at ¶¶ 144-48); and (7) uncompensated regulatory takings in violation of Article I, Section 19 of the California Constitution. (*See id.* at ¶¶ 149-54). Plaintiff's claims are based primarily on the Emergency Ordinance's rent increase freeze and on the Termination Ordinance's limit on rent increases to three percent. (*See id.* at ¶¶ 1-2). With the instant Motion, defendants move to dismiss the Complaint in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6).[2] (*See* Dkt. 18, Motion at 1).

LEGAL STANDARD

I. RULE 12(b)(6).

A motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim should be granted if plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly (Twombly)*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007); *Ashcroft v. Iqbal (Iqbal)*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009); *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference

2. All further "Rule" references refer to the Federal Rules of Civil Procedure unless otherwise indicated.

that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949; *Cook*, 637 F.3d at 1004; *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010). Although the plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do," *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1965; *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949; *see also Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004), *cert. denied*, 544 U.S. 974, 125 S. Ct. 1828, 161 L. Ed. 2d 724 (2005) ("[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.") (citations and internal quotation marks omitted), "[s]pecific facts are not necessary; the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S.Ct. 2197, 2200, 167 L. Ed. 2d 1081 (2007) (*per curiam*) (citations and internal quotation marks omitted); *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1964.

In considering whether to dismiss a complaint, the court must accept the allegations of the complaint as true, *Erickson*, 551 U.S. at 93-94, 127 S.Ct. at 2200; *Albright v. Oliver*, 510 U.S. 266, 268, 114 S.Ct. 807, 810, 127 L. Ed. 2d 114 (1994) (plurality opinion), construe the pleading in the light most favorable to the pleading party, and resolve all doubts in the pleader's favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843, 1849, 23 L.

Ed. 2d 404 (1969); *Berg v. Popham*, 412 F.3d 1122, 1125 (9th Cir. 2005). Dismissal for failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the absence of factual support for a cognizable legal theory. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. *Franklin v. Murphy*, 745 F.2d 1221, 1228-29 (9th Cir. 1984), *abrogated on other grounds by*, 490 U.S. 319, 109 S.Ct. 1827, 104 L. Ed. 2d 338 (1989).

DISCUSSION

I. PLAINTIFF'S TAKINGS CLAIMS.

In *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S.Ct. 3108, 87 L. Ed. 2d 126 (1985), the Supreme Court reiterated the long-standing rule that "a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Id.* at 186, 105 S.Ct. at 3116, *overruled on other grounds by Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 139 S.Ct. 2162, 204 L. Ed. 2d 558 (2019); see also Patel v. City of S. El Monte, 2022 U.S. App. LEXIS 6343, 2022 WL 738625, *1 n.1 (9th Cir. 2022) (noting that *Williamson*'s finality requirement was unaffected by *Knick*). The finality requirement recognizes that "local agencies charged with administering regulations

governing property development are singularly flexible institutions; what they take with the one hand they may give back with the other." *MacDonald, Sommer & Frates v. Yolo Cnty.*, 477 U.S. 340, 350, 106 S.Ct. 2561, 2566, 91 L. Ed. 2d 285 (1986). Thus, although "[t]he finality requirement is relatively modest[,]" *Pakdel v. City & Cnty. of San Francisco, California*, 141 S.Ct. 2226, 2230, 210 L. Ed. 2d 617 (2021), "[w]hen such flexibility or discretion may be brought to bear on the permissible use of property as singular as a parcel of land, a sound judgment about what use will be allowed simply cannot be made by asking whether a parcel's characteristics or a proposal's details facially conform to the terms of the general use regulations." *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 738-39, 117 S.Ct. 1659, 1667, 137 L. Ed. 2d 980 (1997). In short, a takings claim must be dismissed for lack of finality where the plaintiff could have, but did not, seek a zoning variance. *See Patel*, 2022 U.S. App. LEXIS 6343, 2022 WL 738625 at *2 ("Although a plaintiff need not always exhaust every administrative procedure, failure to do so may render a claim unripe if avenues still remain for the government to clarify or change its decision.") (internal quotation marks and emphasis omitted).

Here, it is undisputed that both the Emergency and Termination Ordinances permit landlords to seek exemptions from the rent increase limits. *See* Emergency Ordinance § 4.A.; WHMC §§ 17.44.010-40; (*see also* Dkt. 1, Complaint at ¶ 2) (noting the existence of rent adjustment by application). Accordingly, before pursuing his takings claims, plaintiff was required to secure a final decision by availing himself of this process. *See Patel*, 2022 U.S. App.

LEXIS 6343, 2022 WL 738625 at *2; *see also Better Hous. for Long Beach v. Newsom*, 452 F.Supp.3d 921, 935 (C.D. Cal. 2020) ("Other than . . . a distinction not relevant here . . . the California Takings Clause is interpreted identically to its federal counterpart."). The Complaint makes clear that he did not do so. (*See* Dkt. 1, Complaint at ¶¶ 2, 82-87).

Although plaintiff alleges that the rent adjustment application process is "illusory, arbitrary, overly burdensome, unreasonable, and practically impossible[,]" (Dkt. 1, Complaint at ¶ 2), this general allegation is contradicted by the only specific example that plaintiff provides in the Complaint — the upshot of which is that plaintiff has personally succeeded in obtaining annual rent increase adjustments through the prescribed process. (*See id.* at ¶¶ 88-89). The so-called "futility exception" still requires evidence that plaintiff sought to follow the procedures for a variance or exception, but plaintiff provides no such allegations. (*See, generally*, Dkt. 1, Complaint at ¶¶ 82-89); *see Patel*, 2022 U.S. App. LEXIS 6343, 2022 WL 738625 at *2 ("[Plaintiff] did not satisfy the finality requirement, nor was he excused by the futility exception. Under either argument, courts generally require that a plaintiff seek a variance or exemption."). In short, the court is persuaded that plaintiff's takings claims are not ripe.

II. PLAINTIFF'S DUE PROCESS CLAIMS.

Plaintiff's first, second, and sixth claims allege violations of procedural and substantive due process under the United States and California Constitutions.

(*See* Dkt. 1, Complaint at ¶¶ 108-22, 144-48). The court considers the federal and state constitutional due process claims together. *See Allen v. Clendenin*, 2023 U.S. Dist. LEXIS 170457, 2023 WL 6213634, *8 (E.D. Cal. 2023) ("California's Due Process Clause is identical in scope with the federal due process clause.") (internal quotation marks omitted).

A. Substantive Due Process.

In *Kinzli v. City of Santa Cruz*, 818 F.2d 1449 (9th Cir. 1987), the Ninth Circuit held that a substantive due process claim was unripe when "the City ha[d] not yet made a final decision regarding the property." *Id.* at 1456. The court found that plaintiffs needed to "first obtain final decisions regarding the application of the regulations to their property and the availability of variances[,]" and the "absence of a meaningful application" rendered their substantive due process claim unripe for review. *See id.* at 1456-57. Here, plaintiff's substantive due process claim is unripe for the same reasons. *See supra* at § I.; *see, e.g., Hoffman Bros. Harvesting Inc. v. Cnty. of San Joaquin*, 2021 U.S. Dist. LEXIS 184420, 2021 WL 4429465, *6 (E.D. Cal. 2021) ("The Court finds Plaintiffs' substantive due process claim unripe for the same reason Plaintiffs' takings claim is unripe.").

B. Procedural Due Process.

To allege a violation of procedural due process, plaintiff must establish: "(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by

the government; [and] (3) lack of process." *Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993). A protected liberty or property interest "arises from legitimate claim(s) of entitlement . . . defined by existing rules or understandings that stem from an independent source such as state law." *Erdelyi v. O'Brien*, 680 F.2d 61, 63 (9th Cir.1982) (internal quotation marks omitted); *see Dittman v. State of California*, 191 F.3d 1020, 1029 (9th Cir.1999) ("A threshold requirement to a . . . procedural due process claim is the plaintiff's showing of a liberty or property interest protected by the Constitution.") (internal quotation marks omitted). Whether a city's rent control ordinance creates a property interest in a landlord's desired rent increase "is determined largely by the language of the [ordinance] and the extent to which the entitlement is couched in mandatory terms." *Wedges/ Ledges of California, Inc. v. City of Phoenix*, 24 F.3d 56, 62 (9th Cir. 1994). Where a city exercises "the unbridled discretion of an agency" to "approve, conditionally approve or reject" an alleged entitlement, then there is no "legitimate claim" to that entitlement to sustain a due process claim. *See Bateson v. Geisse*, 857 F.2d 1300, 1305 (9th Cir. 1988) (denying landowner's claimed "property interest" in a land-use application "because of the lack of any significant substantive restrictions on the City Council's powers" to grant or deny the application).

Here, as explained above, *see supra* at § I., both the Emergency Ordinance and the Termination Ordinance permit landlords to seek exemptions from the rent increase limits. *See* Emergency Ordinance § 4.A.; WHMC §§ 17.44.010-40. As such, plaintiff has not alleged that a

proposed rent increase constitutes a mandatory legal entitlement over which defendants lack discretion. *See Bateson*, 857 F.2d at 1305. Moreover, when "the action complained of is legislative in nature, due process is satisfied when the legislative body performs its responsibilities in the normal manner prescribed by law." *Hotel & Motel Ass'n of Oakland v. City of Oakland*, 344 F.3d 959, 969 (9th Cir. 2003) (internal quotation marks omitted). Thus, "[e]ven assuming that plaintiff had a vested interest in the rent increases allowed by prior law, it received all the process due it [if] the City's elected officials discharged their legislative responsibilities in the manner prescribed by law." *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951, 957 (9th Cir. 1991), *opinion vacated in part*, 987 F.2d 662, 663 (9th Cir. 1993) ("We retain Part II because the due process and equal protection claims it considered are unaffected by *Yee*.").

Here, the Complaint is devoid of any allegations that the Council did not perform its responsibilities in the normal manner prescribed by law. (*See, generally*, Dkt. 1, Complaint at ¶¶ 108-22, 144-48). At most, plaintiff argues that "West Hollywood went to great lengths to obfuscate the elimination of the Annual Increases . . . [and that] [t]here was a clear plan to deprive RRP Owners of the Annual Increases. . . . This was intentional deprivation and confiscation planned behind closed doors." (Dkt. 22, Opposition to [] Motion to Dismiss [] ("Opp."), at 20-21). Setting aside the fact that these allegations do not appear in his Complaint, (*see, generally*, Dkt. 1 at ¶¶ 108-22, 144-48), plaintiff's conclusory assertions in his Opposition

that defendants sought to eliminate annual rent increases for certain years is not tantamount to an allegation that defendants failed to follow legislative procedures or that plaintiff was deprived of notice and an opportunity to be heard before the passage of either ordinance. *See also Kagan v. City of Los Angeles*, 2022 U.S. App. LEXIS 31241, 2022 WL 16849064, *2 (9th Cir. 2022) ("Notice and a meaningful opportunity to be heard are the hallmarks of procedural due process.") (internal quotation marks and alteration omitted). In short, the court is persuaded that plaintiff's procedural due process claim must be dismissed.

III. *EX POST FACTO* CLAUSE.

Finally, the court considers plaintiff's claim for violations of the *ex post facto* clause. (*See* Dkt. 1, Complaint at ¶¶ 139-43). The Supreme Court long ago limited the application of the *ex post* facto clause to criminal or penal statutes that fall within one of four categories, none of which apply here. *See Calder v. Bull*, 3 U.S. 386, 390, 1 L. Ed. 648, 3 Dall. 386 (1798) (describing the four categories to which the ex post facto clause may apply); *Stogner v. California*, 539 U.S. 607, 611, 123 S.Ct. 2446, 2450, 156 L. Ed. 2d 544 (2003) (noting that *Calder* still provides "an authoritative account of the scope of the *Ex Post Facto* Clause"); *see also Taverns for Tots, Inc. v. City of Toledo*, 341 F.Supp.2d 844, 860 (N.D. Ohio 2004) (The *ex post facto* clause "applies only to statutes that are criminal or penal in nature."). Thus, because the ordinances at issue are neither criminal nor penal, the *ex post facto* clause does

not apply.[3] In short, plaintiff's *ex post facto* clause claim must be dismissed.

IV. LEAVE TO AMEND.

Rule 15 of the Federal Rules of Civil Procedure provides that the court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2); *see Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (The policy favoring amendment must "be applied with extreme liberality."). However, "[i]t is settled that the grant of leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330, 91 S.Ct. 795, 802, 28 L. Ed. 2d 77 (1971).

Having liberally construed and assumed the truth of the allegations in the Complaint, the court is persuaded that plaintiff's claims cannot be saved through amendment. *See Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) ("Courts are not required to grant leave to amend if a complaint lacks merit entirely."). Accordingly, plaintiff's Complaint will be dismissed without leave to amend.

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3. Plaintiff contends that "[t]he claim for Violation of the Ex Post Facto Clause offers an invitation for the courts to reconsider the limits of *Calder v. Bull*, 3 U.S. 386 (1798)[.]" (Dkt. 22, Opp. at 1 n.2). The Supreme Court recently reiterated the viability of the *Calder* case. *See Stogner*, 539 U.S. at 611, 123 S.Ct. at 2450. In other words, this court has no authority or basis to disregard binding precedent.

Appendix B

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Defendants' Motion **(Document No. 18)** is **granted.**

2. The Complaint **(Document No. 1)** is **dismissed without leave to amend.**

3. Plaintiff's *Ex Parte* Application to Stay [] **(Document No. 32)** is **denied as moot.**

4. Judgment shall be entered accordingly.

Dated this 3rd day of January, 2024.

/s/ Fernando M. Olguin
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED APRIL 17, 2025

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-538
D.C. No. 2:23-cv-04367-FMO-AGR
Central District of California, Los Angeles

JAMES THOMAS BALLARD, INDIVIDUALLY, AND AS TRUSTEE OF THE JAMES T. BALLARD MILLENNIUM TRUST, DATED JANUARY 9, 2002,

Plaintiff-Appellant,

v.

CITY OF WEST HOLLYWOOD; *et al.*,

Defendants-Appellees.

Filed April 17, 2025

ORDER

Before: GRABER, HAMILTON, and BUMATAY, Circuit Judges.*

Judges Graber and Hamilton voted to deny the petition for panel rehearing, and Judge Bumatay voted to grant the petition for panel rehearing. Judge Bumatay

* The Honorable David F. Hamilton, United States Circuit Judge for the Court of Appeals, 7th Circuit, sitting by designation.

has voted to deny the petition for rehearing en banc, and Judges Graber and Hamilton have so recommended. Fed. R. App. P. 40. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. *Id.* The petition for panel rehearing and rehearing en banc (Dkt. No. 45) is therefore **DENIED.**

APPENDIX D — RELEVANT PROVISIONS INVOLVED

WEST HOLLYWOOD, CAL., MUN. CODE ORDINANCE 22-1101U (EXCERPTS)

Title:

"AN URGENCY ORDINANCE OF THE CITY OF WEST HOLLYWOOD ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT FOR RESIDENTIAL TENANTS WHERE THE FAILURE TO PAY RENT RESULTS FROM INCOME LOSS RESULTING FROM THE NOVEL CORONAVIRUS (COVID-19), AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY"

Findings:

Section 1.A: "International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19, ("COVID-19")."

Section 1.E: "On March 16, 2020, the City Council proclaimed the existence of a local emergency to ensure the availability of mutual aid and an effective City response *to* the novel coronavirus ("COVID-19")."

Appendix D

Section 1.H: "As a result of the public health emergency and the precautions recommended by health authorities, many tenants in West Hollywood have experienced or expect soon to experience sudden and unexpected income loss."

Section 1.K: "The situation is unprecedented and evolving rapidly. Further economic impacts are anticipated, leaving tenants vulnerable to eviction."

Section 1.L: "This Ordinance is temporary in nature and only intended to promote stability and fairness within the residential rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes."

Section 1.M: "In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise authority to adopt this ordinance related to the protection of life and property, to ensure renters can remain in their homes and prevent proliferation of homelessness and further spread of COVID-19. . . ."

Section 1.O: "The City desires to prohibit evictions due to non-payment of rent for residential tenants where the failure to pay rent results from income loss resulting from the novel coronavirus (COVIO-19)."

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Section 1.P: "This Ordinance is adopted pursuant to the City's police powers and powers afforded to the city in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and the Chapter 2.80 of the West Hollywood Municipal Code to protect the peace, health, and safety of the public. The West Hollywood City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City and finds urgency to approve this ordinance immediately based on the facts described herein and detailed in the staff report. Under Government Code Section 8634, this ordinance is necessary to provide for the protection of life and property."

Temporary Moratorium on Evictions for Non-Payment of Rent by Residential Tenants Impacted by the COVID-19 Crisis:

Section 2.A: "Notwithstanding anything to the contrary in West Hollywood Municipal Code Title 17, during the period of local emergency declared in response to COVID-19, no landlord shall endeavor to evict a tenant for nonpayment of rent if the tenant demonstrates that the tenant is unable to pay rent due to financial impacts related to COVID-19."

Section 2.D: "This ordinance applies to nonpayment eviction notices and unlawful detainer actions based on such notices, served or filed on or after the date on which a local emergency was proclaimed."

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Section 2.E: "Violation of this ordinance shall be punishable as set forth in Section 2.80.100 of the West Hollywood Municipal Code. In addition, this ordinance grants a defense in the event that an unlawful detainer action is commenced in violation of this ordinance."

Section 2.F: "Nothing in this ordinance shall relieve the tenant of liability for the unpaid rent, which the landlord may seek after expiration of the local emergency and the tenant must pay within six months of the expiration of the local emergency. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this ordinance; nor may a landlord seek rent that is delayed or the reasons stated *in* this *ordinance through* the eviction process."

Section 2.H: "This ordinance shall remain in effect for sixty days, unless extended, and the Director of Emergency Services may extend the ordinance *during* the term of the local emergency. . . ."

Adopted: Unanimously "PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 15th day of March 2020. . . ."

Appendix D

WEST HOLLYWOOD, CAL., MUN. CODE ORDINANCE 20-1103U (EXCERPTS)

Title:

"AN URGENCY ORDINANCE OF THE CITY OF WEST HOLLYWOOD ENACTING A TEMPORARY MORATORIUM ON EVICTIONS DUE TO NONPAYMENT OF RENT BY COMMERCIAL TENANTS IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19), RETROACTIVE TO MARCH 16, 2020, AND AMENDING THE RESIDENTIAL EVICTION MORATORIUM AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY"

Findings:

Section 1.N: "The situation is unprecedented and evolving rapidly. Further economic impacts are anticipated, leaving tenants vulnerable to eviction and other residents vulnerable to foreclosure. Adding increased financial burden through rental increases at a time of extreme economic strain will further exacerbate the economic strain on residents and further threaten the public peace, health, safety and welfare by threatening housing security and increasing the potential for homelessness, which can exacerbate the vulnerability to COVID-19 exposure."

Section 1.O: "This Ordinance is temporary in nature and only intended to promote stability and fairness

within the commercial rental market in the City during the COVID-19 pandemic outbreak, and to prevent avoidable homelessness thereby serving the public peace, health, safety, and public welfare and to enable tenants in the City whose income and ability to work is affected due to COVID-19 to remain in their homes."

Section 1.P: "In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise authority to adopt this ordinance related to the protection of life and property, to ensure residents can remain in their homes without added burden of increased rents and prevent proliferation of homelessness and further spread of COVID-19. . . Nevertheless, the RSO has a mechanism for a landlord to seek an exception to the rule to ensure a just and reasonable return and to maintain net operating income."

Section 1.S: "The City desires to prohibit evictions due to non-payment of rent for commercial tenants where the failure to pay rent results from income loss resulting from the novel coronavirus (COVID-19). Increasing the rental burden at this time may also create an incentive for people to leave their homes and work, in violation of state and county health orders in order to make increased rental obligations. The City desires to avoid that incentive."

Section 1.T: "This Ordinance is adopted pursuant to the City's police powers and powers afforded to the city in time of national, state, county and local emergency during an unprecedented health pandemic, such powers

being afforded by the State Constitution, State law and the Chapter 2.80 of the West Hollywood Municipal Code to protect the peace, health, and safety of the public... Under Government Code Section 8634, this ordinance is necessary to provide for the protection of health, life and property."

Section 3 (Amending Section 2 of Ordinance No. 20-1101U in its entirety):

Section 3.F: "... A landlord may not charge or collect a late fee or interest for rent that is delayed for the reasons stated in this ordinance; nor may a landlord seek rent that is delayed for the reasons stated in this ordinance through the eviction process. A landlord shall not commence an eviction during the twelve months after the end of the local emergency, so long as the tenant pays rent in a timely manner after the period of local emergency and is repaying the past due rent that accrued during the emergency period. Nonpayment of rent in accordance with the terms of this ordinance shall not be grounds for eviction of a tenant even after expiration of the local emergency. To the extent it applies, this ordinance is intended to be more restrictive that Civil Code Section 1946.2 by further limiting the reasons for termination of a residential tenancy during the twelve month repayment period Landlords are strongly encouraged to offer payment plans to tenants after the period of local emergency, which may go beyond the twelve month repayment period upon mutual written agreement of the parties. Tenants may draw down on a security deposit during the repayment period to pay back rent and such

security deposit shall be replenished by the end of the twelve month repayment period or longer if mutually agreed upon in writing between the parties."

Section 4: Temporary Moratorium on Rent Increases For Occupied Rental Units Subject to the Rent Stabilization Ordinance.

Section 4.A: "Landlords shall not increase rents on occupied rental units subject to the West Hollywood Rent Stabilization Ordinance (WHMC Title 17) beginning on April 61 2020 through sixty days after the expiration of the local emergency period. This ordinance suspends any conflicting provision of Title 17 of the West Hollywood Municipal Code. Any landlord seeking an exception to this rule may apply for an individual rent adjustment through the rent adjustment process set forth in WHMC Chapter 17.44 if necessary to provide a just and reasonable return and to maintain net operating income."

Adopted: Unanimously "PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 6th day of April, 2020 . . ."

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WEST HOLLYWOOD, CAL., MUN. CODE ORDINANCE 22-1194

AN ORDINANCE OF THE CITY OF WEST HOLLYWOOD AMENDING TITLE 17 OF THE WEST HOLLYWOOD MUNICIPAL CODE RELATING TO A REPEAL OF THE FREEZE ON RENT INCREASES, LIMIT ON THE ANNUAL GENERAL ADJUSTMENT, BAD FAITH RENT INCREASES AND THE EXEMPTION OF NO-COST INTERIM OR TRANSITIONAL HOUSING FOR PEOPLE EXPERIENCING HOMELESSNESS

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Findings.

A. On April 6, 2020, consistent with measures to protect tenants from the impacts of the emerging COVID-19 crisis, the City Council adopted Urgency Ordinance No. 20-1103U. The Urgency Ordinance included, among other things, a provision that prohibited the application of the annual general adjustment to rent stabilized tenancies from that date until sixty (60) days after the expiration of the local emergency period ("rent increase freeze"). The City Council finds, in order to ensure certainty for landlords and tenants, acknowledge the changing nature of the COVID-19 crisis, and to ensure that landlords receive a just and reasonable return, it is necessary and appropriate to repeal the rent increase freeze effective March 1, 2023.

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B. The City Council finds that the current annual general adjustment limit of seven percent is unreasonably high in light of the changes to state law since that limit was enacted, specifically vacancy decontrol as imposed by the Costa Hawkins Rental Housing Act (Cal. Civil Code Section 1954.50, et seq.). The City Council further finds that vacancy decontrol has allowed landlords to collect rents that have far outpaced inflation since the City's incorporation and are able to receive a just and reasonable return pursuant to annual general adjustments that have historically been available to them. A reduction of the limit to the annual general adjustment in no way prevents a grant of a rent adjustment upon application by a landlord when required to permit a just and reasonable return to the landlord.

C. Where a unit is not subject to any form of rent control, a landlord may attempt to circumvent eviction protections to remove a tenant for otherwise impermissible reasons by imposing an unconscionable rent increase. In order to protect such tenants from an unjustified displacement, the City Council finds it necessary to include this conduct as a proscribed form of harassment consistent with the holding in *San Francisco Apartment Association v. City and County of San Francisco* (2022) 74 Cal.App.5th 288.

D. No-cost interim or transitional housing for people experiencing homelessness is not intended to provide long-term housing and people utilizing such housing are not tenants of the properties owned, operated, financed or managed by government entities

and non-profit organizations. To ensure that such housing facilities can operate in a manner consistent with their intended purpose, and for clarity, the City Council finds it necessary to specify such housing as being exempt from the provisions of the Rent Stabilization Ordinance and declarative of existing law.

SECTION 2: Notwithstanding Section 4.A. of Urgency Ordinance No. 1103U, landlords may increase rents on occupied rental units subject to the controls imposed by Title 17 of the West Hollywood Municipal Code beginning March 1, 2023 regardless of the date the declared local emergency ends. Section 4.A. of Urgency Ordinance No. 1103U is repealed effective March 1, 2023.

SECTION 3: Section 17.36.020 (Post-1985 Increases) of Chapter 17.36 (Annual General Rent Increases) of Title 17 (Rent Stabilization) of the West Hollywood Municipal Code is amended to read as follows:

On or after September first of each year after 1985, the maximum allowable rent for a rental unit may be increased without application to the city in an amount not to exceed seventy-five percent of the increase in the Consumer Price Index (CPI) during the preceding twelve months. Said percentage increase shall be equal to the percentage increase between the CPI last reported as of May of the prior year and the month of May of the current year.

The increase shall be annually calculated by the Commission. The amount of the permitted increase shall be rounded to the nearest one-quarter of one percent.

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In the event that the CPI decreases, no increase or decrease in rents shall be authorized pursuant to this chapter.

In the event that the CPI increases by four percent or more, the annual general adjustment shall be limited to a maximum of three percent. This limit shall be effective upon adoption, and any annual general adjustment in effect at the time of adoption that exceeds the limit, shall be reduced to three percent.

SECTION 4: Subsection 22 of subsection (b) of Section 17.52.090 (Prohibition of Tenant Harassment) of Chapter 17.52 (Permissible Reasons for Permanently or Temporarily Terminating or Refusing to Renew Tenancy) of Title 17 (Rent Stabilization) of the West Hollywood Municipal Code is added to read as follows:

22. Attempting to recover possession of a rental unit that is exempt from rent increase limitations under this title or any other provision of law by means of a rent increase that is imposed in bad faith with an intent to coerce the tenant into vacating the rental unit in circumvention of Section 17.52.010. Evidence of bad faith may include but is not limited to the following: (1) the rent increase was substantially in excess of market rates for comparable units; (2) the rent increase was within six months after an attempt to recover possession of the unit; and (3) such other factors as a court or the Commission may deem relevant.

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SECTION 5: Subsection 15 (Interim or Transitional Housing for People Experiencing Homelessness) of subsection (a) (Types of Property Exempted) of Section 17.24.010 (Exempt Property) of Chapter 17.24 (Exempt Property) of Title 17 (Rent Stabilization) of the West Hollywood Municipal Code is added to read as follows:

15. Interim or Transitional Housing for People Experiencing Homelessness. Housing accommodations offered at no cost to people experiencing homelessness which a government or nonprofit agency owns, operates, finances, or manages.

SECTION 6: Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this ordinance.

SECTION 7: CEQA. The City Council finds that adoption and implementation of this ordinance is not a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378(b)(5). Alternatively, this ordinance is exempt from CEQA pursuant to 15061(b)(3), because it has no potential for causing a significant effect on the environment and because it is an administrative regulation aimed at preventing bad faith, pretextual rent increases designed to avoid existing local eviction regulations.

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SECTION 8: Effective Date. This ordinance shall take effect 30 days after its passage and adoption pursuant to California Government Code section 36937.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 7th day of November, 2022 by the following vote:

AYES:	Councilmember:	D'Amico, Erickson, Horvath, Mayor Pro Tempore Shyne, and Mayor Meister.
NOES:	Councilmember:	None.
ABSENT:	Councilmember:	None.
ABSTAIN:	Councilmember:	None

/s/ Lauren Meister
LAUREN MEISTER, MAYOR

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WEST HOLLYWOOD, CAL., MUN. CODE (EXCERPTS)

CHAPTER 17.04
TITLE AND FINDINGS

§ 17.04.010. Title.

This title shall be known as the "Rent Stabilization Ordinance" of the City of West Hollywood. (Prior code § 6400; Ord. 85-59U § 1, 1985; Ord. 85-59 § 1, 1985; Ord. 85-79U § 1, 1985; Ord. 85-79 § 1, 1985; Ord. 97-485 § 1, 1997)

§ 17.04.020. Findings.

The City Council hereby finds that there presently exists a critical shortage of rental housing within the city and surrounding areas. Due to this shortage it is very difficult to find adequate, safe and decent rental housing in the city at reasonable rates and many tenants may be forced to move and relocate.

Due to the shortage of residential rental units, rents in the city are increasing at an excessive rate. Due to high interest rates and high land costs new construction of rental units has been occurring at a very low rate. A substantial number of persons in the city who rent apartments are age sixty-five or older and spend a high proportion of their income on rent. When low and moderate income tenants are displaced as a result of rent increases that they cannot afford to pay, they have extreme difficulty

finding affordable apartments within the city. As a result of the shortage of moderately priced rental space, freedom of contract and the ability of tenants to bargain in the setting of rents has become an illusory concept.

Prior to the formation of the city on November 29, 1984, rental rates were regulated by County of Los Angeles Ordinance No. 11950, as amended. Total deregulation at that time would have led to immediate, widespread and excessive rent increases resulting in the forced eviction and dislocation of tenants, many of whom are living on low and moderate incomes. The city, therefore, adopted a temporary moratorium ordinance as an urgency measure on November 29, 1984 rolling back rents to those in effect on August 6, 1984 and limiting evictions to certain specified grounds.

The City Council hereby finds that a comprehensive rent stabilization ordinance is required to protect tenants from unreasonable and excessive rents, to protect tenants from involuntary displacement, to keep rents within the city at a moderate level and at the same time to ensure a just and reasonable return to landlords.

(Prior code § 6401; Ord. 85-59U § 1, 1985; Ord. 85-59 § 1, 1985; Ord. 85-79U § 1, 1985; Ord. 85-79 § 1, 1985)

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CHAPTER 17.08 — DEFINITIONS

§ 17.08.010. Definitions.

As used in this title:

"Banked amount" shall mean that portion of the maximum allowable rent which resulted from the base rent, increased by any subsequent lawful adjustments between September 1, 1985 and August 31, 1996, but which the landlord has not charged to a tenant. This amount is still available to the landlord to demand, collect or receive, in accordance with the provisions of this title, from a tenant whose tenancy commenced prior to January 1, 1996.

"Base rent," on and after September 1, 1985 shall mean the rent in effect for a rental unit on April 30, 1984 except in the following circumstances:

a. For a unit rented between January 1 and April 29, 1984, which was vacant on April 30, 1984, "base rent" shall mean the rent in effect during the last month the unit was rented prior to April 30, 1984.

b. For a unit not rented between January 1 and April 30, 1984, "base rent" shall mean the rent first charged for the unit after April 30, 1984.

c. For a unit rented for the first time after April 30, 1984, "base rent" shall mean the rent first charged for the unit.

d. For a unit subject to this title, then exempted under the provisions of this title and then no longer exempt, the base rent as of the termination of the exemption shall be the lawful rent immediately before the effective date of the exemption adjusted by the intervening general adjustments which would have been permitted for that unit if it had not been exempt.

e. For a government-owned or assisted housing unit exempt at the adoption of this title and then no longer exempt, the base rent shall be the first rent charged for the unit unless the previous tenancy was terminated by the landlord by notice pursuant to Civil Code Section 1946, or was terminated upon a change in the terms of the tenancy noticed pursuant to Civil Code Section 827, except a change permitted by law in the amount of rents or fees, in which case the base rent shall be the last contract rent charged for the unit.

f. For a unit occupied by a resident manager whose tenancy commenced contemporaneously with his or her employment, and then placed in the rental market, the base rent shall be the rent first charged for the unit after departure of the resident manager; except that if the unit was rented to a tenant at any time after January 1, 1984, the base rent shall be the last rent charged for the unit, adjusted by any annual adjustments permitted under this title.

g. For a unit occupied by a resident manager whose tenancy commenced prior to his or her employment, and is no longer the resident manager, the base rent shall be the same as the base rent charged for a unit in the building with the same number of bedrooms adjusted by any annual adjustments permitted under this title, unless the amount of the rent can be established from the parties' agreement concerning the resident manager services. If there is more than one unit in the building with the same number of bedrooms and with different rents, the base rent shall be the same as the average of the rents charged for the units with the same number of bedrooms.

h. For tenants whose tenancy commenced on or after January 1, 1999, base rent shall mean the rent charged to the tenant(s) at the inception of the tenancy provided that amount is not in violation of this title or any provision of state law.

The City Council finds that a substantial portion of the rent increases imposed during 1984 occurred between April 30, 1984 and September 1, 1984. Further, the petition for incorporation of the city was filed well before April 30, 1984 and the incorporation and the imposition of rent controls by the city were probable and widely known by April 30, 1984 and rent increases were thereafter imposed in anticipation of a city rent control measure. The City Council therefore finds the rents in effect on April 30, 1984 to be the appropriate base rents.

i. For tenancies governed by a Section 8 Housing Choice Voucher Program on March 1, 2003, "base rent" shall mean the contract rent, referred to in the Section 8 contract as "rent to owner." The contract rent shall remain the base rent as long as the Section 8 contract remains in effect.[1]

j. For tenancies governed by a Section 8 Housing Choice Voucher Program entered into after March 1, 2003, "base rent" shall mean the contract rent established at the inception of the Section 8 contract. The contract rent shall remain the base rent for as long as the Section 8 contract remains in effect.[2]

"Building improvement" shall mean a substantial change in the housing accommodations such as would materially increase the rental value in a normal market and will provide tenants with a benefit or service which they had not previously enjoyed. Replacement of facilities, materials or equipment so as to maintain the same level of services as previously provided shall not constitute a building improvement.

"Buyout agreement" shall mean an agreement wherein the landlord pays a tenant money or other consideration to vacate a rental unit. An agreement to settle a pending unlawful detainer action shall not be a "buyout agreement."

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1. Editor's Note: This subsection added by Ord. 03-650U; effective May 1, 2003.

2. Editor's Note: This subsection added by Ord. 03-650U; effective May 1, 2003.

"Buyout offer" shall mean an offer, oral or written, by a landlord to pay a tenant money or other consideration to vacate a rental unit. An offer to settle a pending unlawful detainer action shall not be a "buyout offer."

"Commission" shall mean the Rent Stabilization Commission or its designee (the Department of Rent Stabilization or the Director of the Department of Rent Stabilization) of the City of West Hollywood.

"Condominium" shall mean the same as defined in Sections 783 and 1357 of the California Civil Code.

"Consumer Price Index" shall mean that portion of the Consumer Price Index for All Urban Consumers published by the United States Bureau of Labor Statistics for Los Angeles—Riverside—Orange County (all items, 1967 = 100).

"Dwelling unit" shall mean a room or a group of two or more rooms designed, intended, or used for human habitation.

"Disabled tenant" shall mean a person who has a physical or mental impairment that substantially limits one or more of the major life activities, and who identifies him or herself as disabled. "Electric vehicle charging station" or "charging station" shall mean any level of electric vehicle supply equipment station that is designed and built in compliance with Article 625 of the California Electrical Code, and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.

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"Hearing examiner" shall mean a person who has been appointed by the City Manager or the City Manager's designee to perform the duties set forth in Section 17.12.010.

Housing Services.

a. "Housing services for tenancies commencing before January 1, 1999," shall mean services provided by a landlord on or after April 30, 1984, connected with the use or occupancy of a rental unit including, but not limited to, utilities (such as cable television, light, heat, water, and telephone), ordinary repairs or replacements, and maintenance (including painting, window coverings, carpeting and other floor coverings). Housing services also include the provision to tenants of elevator service, laundry facilities and privileges, common recreational facilities, janitorial service, a resident manager, refuse removal, furnishings, parking, private street cleaning and maintenance, security garages, security locks, dead bolts and any other benefits, privileges or facilities or the terms and conditions of tenancy.

b. "Housing services for tenancies commencing on or after January 1, 1999," shall mean services listed on the unit re-registration form filed with and accepted by the city and any other services actually provided by the landlord or agreed to by the landlord and tenant. If said re-registration form has not been filed with and accepted by the city, housing services shall mean services provided

on or after April 30, 1984 unless otherwise agreed to by the landlord and tenant.

c. "Housing Services for Section 8 Tenants" shall mean services listed on a unit re-registration form filed with and accepted by the city. If said re-registration form has not been filed with and accepted by the city, housing services shall mean services provided on or after March 1, 2003, or on or after the inception of the Section 8 contract, whichever occurs later.[3]

"Landlord" shall mean an owner, lessor, sublessor or any other person or entity entitled to offer any residential unit for rent or entitled to receive rent for the use and occupancy of a rental unit, and the agent, representative, or successor of any of the foregoing.

"Maximum allowable rent" or "MAR" shall mean the maximum monthly amount, determined in accordance with the provisions of this title, that may be demanded, collected or received by a landlord as rent for any rental unit covered by this title.

"Parking space(s)" shall mean a carport, garage, parking lot, parking stall or parking structure owned by the landlord and designated under the terms of a written or oral rental agreement for rent-stabilized housing as an area for vehicle parking either assigned to a single tenant or residential unit, or designated as a resource shared in common.

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3. Editor's Note: This subsection added by Ord. 03-650U; effective May 1, 2003.

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"Principal residence" is that dwelling unit in which habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one principal residence. In determining whether a person occupies a dwelling unit as a principal residence the following factors shall be considered: (i) whether the person carries on basic living activities at the dwelling unit; (ii) the amount of time that the person spends at any other dwelling unit; (iii) whether the person is a registered voter at the dwelling unit; (iv) whether the person maintains utility services in their name at the dwelling unit; (v) whether the person's vehicle registration, driver's license or identification card contains the address of the dwelling unit; (vi) whether the person receives mail at the dwelling unit; and (vii) any other relevant factors.

"Rent" shall mean the consideration paid for the use or occupancy of a rental unit and for the provision of related housing services.

"Rental units" shall mean all dwelling units in the City of West Hollywood, rented or offered for rent for human habitation, the land and buildings appurtenant thereto, and all housing services provided in connection with the use or occupancy thereof. Rental units shall include, but not be limited to, apartments, condominiums, stock cooperatives, single-family residences, and hotel units not exempted under Section 17.24.010.

"Rent increase" shall mean an increase in the rent charged for a rental unit, any substantial decrease in housing

services without a corresponding decrease in rent or an increase in any security deposit or nonpayment of interest in violation of Chapter 17.32.

"Resident manager" shall mean a person who resides on the premises and is employed to perform or to be responsible for the operation and/or maintenance of the rental units and the premises.

"Security deposit" or "security" shall mean the same as the term "security" as defined in Section 1950.5(b) of the California Civil Code, as may be amended.

"Senior citizen" shall mean a person who is sixty-two years of age or older.

"Single-family residence" shall mean one single detached structure containing one dwelling unit for human habitation and accessory buildings appurtenant thereto located on a lot or parcel and all housing services provided in connection with the use or occupancy thereof. "Single-family residence" shall not mean two or more detached dwelling units located on the same lot or parcel.

"Stock cooperatives" shall mean the same as defined in Section 11003.2 of the California Business and Professions Code.

"Tenancy" shall mean the right or entitlement of a tenant to use or occupy a rental unit.

"Tenant" shall mean a tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a written

or oral rental housing agreement to the use or occupancy of a rental unit.

"Vacancy" shall mean the departure from a rental unit of all of the tenants. For the purposes of this paragraph the term tenant shall not include persons who took possession as sublessees or assignees after January 1, 1999, if the rental agreement restricts or prohibits subletting or assignment and the restriction has not been satisfied or the prohibition has not been waived.

"Voluntary vacancy" means a vacancy which occurs by the independent choice of the tenant(s) without intimidation or pressure, and does not include a vacancy which results from conduct by the landlord or the landlord's agent which constitutes harassment prohibited by law, constructive eviction, or a breach of the covenant of quiet enjoyment of the property or a vacancy where the previous tenancy has been terminated by the landlord by notice pursuant to Civil Code Section 1946, or was terminated upon a change in the terms of the tenancy noticed pursuant to Civil Code Section 827, except a change permitted by law in the amount of rents or fees.

(Prior code § 6402; Ord. 09-810 § 1, 2009; Ord. 13-925U §§ 1, 3, 2013; Ord. 17-1017 § 2, 2017; Ord. 18-1052 § 1, 2018; Ord. 22-1177 § 2, 2022; Ord. 23-13 § 8, 2023; Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 § 1, § 2, 1985; Ord. 85-79U § 1, § 2, 1985; Ord. 87-135 § 1, 1987; Ord. 87-135U § 1, 1987; Ord. 89-238 § 1, 1989; Ord. 95-449U §§ 1, 2, 1995; Ord. 97-485 §§ 1– 5, 37–41, 46–50, 70, 1999; Ord. 99-539 § 1, 1999; Ord. 03-650U §§ 1, 2, 2003)

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CHAPTER 17.36 — ANNUAL GENERAL RENT INCREASE

§ 17.36.010. 1985 Increase.

On or after September 1, 1985, landlords shall be permitted to demand the base rent, increased by three percent.

(Prior code § 6409(a); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-67U § 1, 1985; Ord. 85-79 § 1, 1985; Ord. 85-79U § 1, 1985; Ord. 87-135 § 8, 1987; Ord. 87-135U § 8, 1987; Ord. 91-372 § 3, 1991; Ord. 94-414 § 1, 1994; Ord. 94-428 § 5, 1994; Ord. 95-440 § 1, 1995; Ord. 95-449U § 8, 1995; Ord. 96-469 § 1, 1996; Ord. 97-485 § 2, 1997)

§ 17.36.020. Post-1985 Increases.

On or after September first of each year after 1985, the maximum allowable rent for a rental unit may be increased without application to the city in an amount not to exceed seventy-five percent of the increase in the Consumer Price Index (CPI) during the preceding twelve months. Said percentage increase shall be equal to the percentage increase between the CPI last reported as of May of the prior year and the month of May of the current year.

The increase shall be annually calculated by the Commission. The amount of the permitted increase shall be rounded to the nearest one-quarter of one percent.

In the event that the CPI decreases, no increase or decrease in rents shall be authorized pursuant to this chapter.

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In the event that the CPI increases by four percent or more, the annual general adjustment shall be limited to a maximum of three percent. This limit shall be effective upon adoption, and any annual general adjustment in effect at the time of adoption that exceeds the limit, shall be reduced to three percent.

(Prior code § 6409(b); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 § 1, 1985; Ord. 85-79U § 1, 1985; Ord. 87-135 § 8, 1987; Ord. 87-135U § 8, 1987; Ord. 91-372 § 3, 1991; Ord. 94-414 § 1, 1994; Ord. 94-428 § 5, 1994; Ord. 95-440 § 1, 1995; Ord. 95-449U § 8, 1995; Ord. 96-469 § 1, 1996; Ord. 97-485 § 2, 1997; Ord. 22-1194 § 3, 2022)

§ 17.36.030. Announcement of Amount of Annual General Adjustments.

The amount of the annual general adjustment shall be announced by the Commission on or before July first of each year and there shall be a mailing to tenants and landlords indicating the amount and conditions for said increase.

(Prior code § 6409(c); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 § 1, 1985; Ord. 85-79U § 1, 1985; Ord. 87-135 § 8, 1987; Ord. 87-135U § 8, 1987; Ord. 91-372 § 3, 1991; Ord. 94-414 § 1, 1994; Ord. 94-428 § 5, 1994; Ord. 95-440 § 1, 1995; Ord. 95-449U § 8, 1995; Ord. 96-469 § 1, 1996; Ord. 97-485 § 2, 1997)

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§ 17.36.040. Extra Increases for Landlords Who Pay for Gas and/or Electricity.

At the time of the annual adjustment permitted under Sections 17.36.010 and 17.36.020, a landlord providing electricity and/or gas utilities to a tenant without charge may increase the rent by an additional one-half of one percent of the rent for each utility provided.

1. No additional increases for utilities may be taken in connection with the annual general adjustments that were effective September 1, 1994, September 1, 1995, and September 1, 1996.

2. No additional increases for utilities may be taken in connection with any annual general adjustments that are effective after September 1, 1996, unless, after reviewing the recommendation of the Commission, the City Council has determined by resolution that the additional increases may be taken.

(Prior code § 6409(d); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 § 1, 1985; Ord. 85-79U § 1, 1985; Ord. 87-135 § 8, 1987; Ord. 87-135U § 8, 1987; Ord. 91-372 § 3, 1991; Ord. 94-414 § 1, 1994; Ord. 94-428 § 5, 1994; Ord. 95-440 § 1, 1995; Ord. 95-449U § 8, 1995; Ord. 96-469 § 1, 1996; Ord. 97-485 § 2, 1997)

§ 17.36.050. Post-1995 Increases.

On or after September first of each year after 1995, rent adjustments permitted pursuant to this chapter may be

taken for a rental unit only if the unit has not been given a general adjustment within the preceding twelve months and the tenancy was created more than twelve months prior to the effective date of the increase. The annual general adjustment announced by the Commission each year shall be available only for annual rent increases which first become effective at any time during the period of September first of the year in which the adjustment is announced through August thirty-first of the following year.

(Prior code § 6409(e); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 § 1, 1985; Ord. 85-79U § 1, 1985; Ord. 87-135 § 8, 1987; Ord. 87-135U § 8, 1987; Ord. 91-372 § 3, 1991; Ord. 94-414 § 1, 1994; Ord. 94-428 § 5, 1994; Ord. 95-440 § 1, 1995; Ord. 95-449U § 8, 1995; Ord. 96-469 § 1, 1996; Ord. 97-485 § 2, 1997)

§ 17.36.060. Preconditions to the Right to Take Annual General Adjustments.

A landlord who is not in substantial compliance with any of the provisions of this title shall not demand, accept or retain the annual rent increase otherwise permitted by this chapter.

(Prior code § 6409(f); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 § 1, 1985; Ord. 85-79U § 1, 1985; Ord. 87-135 § 8, 1987; Ord. 87-135U § 8, 1987; Ord. 91-372 § 3, 1991; Ord. 94-414 § 1, 1994; Ord. 94-428 § 5, 1994; Ord. 95-440 § 1, 1995; Ord. 95-449U § 8, 1995; Ord. 96-469 § 1, 1996; Ord. 97-485 § 2, 1997)

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§ 17.36.070. Compliance with State Law.

Rent increases permitted pursuant to this chapter shall not be effective and shall not be demanded, accepted or retained until the landlord has first given notice to the affected tenant(s) as required by state law and the terms of any written lease or rental agreement applicable to the tenancy. Such notice shall contain a statement to the effect that the landlord is in compliance with all of the provisions of this title.

(Prior code § 6409(g); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 § 1, 1985; Ord. 85-79U § 1, 1985; Ord. 87-135 § 8, 1987; Ord. 87-135U § 8, 1987; Ord. 91-372 § 3, 1991; Ord. 94-414 § 1, 1994; Ord. 94-428 § 5, 1994; Ord. 95-440 § 1, 1995; Ord. 95-449U § 8, 1995; Ord. 96-469 § 1, 1996; Ord. 97-485 § 2, 1997)

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CHAPTER 17.44 — RENT ADJUSTMENTS UPON VACANCY

§ 17.44.010. Procedure for Filing and Hearing Applications.

1. *Basis for Application.* A landlord may file a rent adjustment application for all rental units in the landlord's rental complex with the city in order to establish the amount of the maximum allowable rent, to establish a reduction in the maximum allowable rent based upon a discontinuance or substantial reduction in housing services, or to achieve a just and reasonable return based on net operating income principles as set forth in Section 17.44.030, or on any other ground authorized by this title or by regulations promulgated pursuant thereto. A tenant or group of tenants may file a rent adjustment application based on failure to perform required maintenance, reduction in housing services without a corresponding decrease in rent, to establish the maximum allowable rent, for a refund of illegal rent, or any other ground authorized by this title or by regulations promulgated pursuant thereto.

   (a) Common-Area Rent Decrease Applications. When an application filed by one or more tenants seeks a rent decrease due to an alleged failure to perform common-area maintenance or a substantial reduction of a common-area housing service, the Department shall mail an opt-out form to every tenant in the building. The form shall identify

the common-area issues raised in the application and shall state that every tenant in the building is deemed a party to the application unless he or she opts otherwise. The form shall include a statement that the tenant may sign indicating that he or she opts not to participate in the application. Any tenant who signs the form and returns it to the Department shall not be deemed an applicant. All other tenants shall be deemed applicants and shall be entitled to any rent adjustment awarded in the hearing decision.

(b) *Designated Cultural Resources.* When an application filed by one or more tenants seeks a rent decrease due to an alleged failure to perform the interior common area or building exterior painting as required by Section 17.56.010(c) at a building that is a designated cultural resource pursuant to Chapter 19.58 (Cultural Heritage Preservation), a copy of the application shall be transmitted to the Community Development Department upon acceptance. Upon receipt of the application, the Community Development Department shall forward to the hearing examiner any order(s) to paint the interior common area or building exterior or a written statement that no such order is pending. The Community Development Director or their designee may request an extension from the hearing examiner of up to 45 days from receipt of the application .in order to conduct an inquiry into the condition of the property.

2. *Application.* An application for a rent adjustment pursuant to this chapter shall be filed upon a form prescribed by the City and shall be accompanied by the payment of a fee as determined by resolution of the City Council. The applicant shall produce at the request of the hearing examiner any records, receipts, reports or other documents under the applicant's possession, custody or control that the Commission or hearing examiner or Commission on appeal may deem necessary to determine whether a rent adjustment should be approved. The application shall be made under penalty of perjury and supporting documents shall be certified or verified as requested. No application from a landlord shall be accepted unless the building in which the unit is located is registered and any registration fees have been paid. If a landlord is seeking an adjustment pursuant to subdivision (g)(2) of subsection (1) of Section 17.44.030, the application shall not be filed with or accepted by the city unless the landlord provides any and all documents and information on which the landlord relies to establish that the base date rent was disproportionately low.

3. *Incomplete Applications.* The Department shall determine whether said application is complete within such time as is provided by regulation of the Commission. If it is determined that an application is not complete, the applicant shall be notified in writing as to what additional information is required. In the event the applicant notifies the hearing examiner that the requested information is unavailable, the hearing examiner shall proceed with scheduling a hearing

as though the application is complete. Notice that an application has been filed shall be sent to the landlord and all affected tenants by the hearing examiner; said notice shall invite submittal of evidence from all concerned parties. Requests for the issuance of subpoenas to obtain necessary and relevant documents or witnesses to evaluate an application may be made to the City Council by the Director of Rent Stabilization, the Commission or hearing examiner.

4. *Hearing Date.* The hearing examiner shall hold a hearing on said application within such time after the application is determined to be complete as provided by regulation of the Commission. Notice of the time, date, and place of the hearing shall be mailed to the applicant and the affected parties at such time prior to the hearing as is provided by regulation of the Commission. The notice to the affected parties shall include a brief summary of the stated justification therefor and state that all submitted documents and materials as well as any report prepared by the hearing examiner or staff will be available for public review prior to the hearing.

5. *Hearing Rules.* At the hearing, the parties may offer any documents, testimony, written declarations, or other evidence that is relevant to the requested rent adjustment. Formal rules of evidence shall not be applicable to such proceedings.

6. *Hearing Decision.* Within such time as is provided by regulation of the Commission after the hearing is

closed, the hearing examiner shall issue a decision, with written findings in support thereof, approving, partially approving or disapproving a rent adjustment.

7. *Notice of Decision.* A notice of decision on a rent adjustment application shall be mailed to the applicant and all affected tenants within one day of the decision. Such notice shall be accompanied by a copy of the hearing decision.

8. *Appeal.* The decision by a hearing examiner may be appealed in writing by the landlord or affected tenants in accordance with the procedures for appeal set forth below and in regulations of the Commission. If the decision of a hearing examiner is appealed, the decision and all further proceedings (including compliance determinations) relating to that decision are stayed pending appeal. If no appeal is filed, the decision of the hearing examiner shall constitute the final decision of the Commission.

9. *Violation.* Any violation of a hearing examiner's decision which has not been modified, reversed or vacated by the Commission constitutes a violation of this title.

(Prior code § 6411(a); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 §§ 1, 10, 11, 1985; Ord. 85-79U §§ 1, 10, 11, 1985; Ord. 87-135 § 10, 1987; Ord. 87-135U § 10, 1987; Ord. 87-168 § 1, 1987; Ord. 89-227 § 1, 1989; Ord. 89-236 § 2, 1989; Ord. 89-236U § 2, 1989; Ord. 89-247 §§ 1, 2, 1989; Ord. 91-300 § 1, 1991; Ord. 91-300U § 1, 1991; Ord.

91-305 § 1, 1991; Ord. 92-325, 1992; Ord. 92-350 § 1, 1992; Ord. 93-364, 1993; Ord. 93-378 §§ 1, 2, 1993; Ord. 93-391 § 1, 1994; Ord. 94-428 §§ 1–3, 1994; Ord. 95-451 § 10, 1995; Ord. 99-548 §§ 18, 19, 26, 76, 1999; Ord. 04-680 § 1, 2004; Ord. 09-827 § 1, 2009; Ord. 17-1000 § 2, 2017; Ord. 20-1100 § 2, 2020; Ord. 24-16, 6/24/2024)

§ 17.44.020. Procedures for Appeal.

1. *Appeal.* An appeal of a hearing examiner's decision must be filed with the Department within such number of days of the decision by the hearing examiner as is established by regulation of the Commission. The appeal must set forth the grounds upon which it is claimed that the decision is in error, is not supported by the findings made or the evidence in the record, constitutes an abuse of discretion or is contrary to specific provisions of the Rent Stabilization Ordinance or state law. An appeal must be accompanied by an appeal fee as determined by resolution of the City Council.

2. *Evidence.* Upon receipt of an appeal the complete record of the proceeding before the hearing examiner shall be transmitted to the Commission, including the original application, all documentary evidence submitted to the hearing examiner, all minutes and/or transcripts of proceedings, if any, pertaining to the matter and the findings and decision of the hearing examiner.

3. *Hearing.* The Commission may consider the appeal solely on the basis of the written record established before the hearing examiner. No new matter or evidence shall be received or considered unless the applicant can show why such new matter or evidence could not with due diligence have been produced at the prior hearing. Oral arguments may be heard in the discretion of the Commission. In the alternative, the Commission may conduct a *de novo* hearing in accordance with procedures adopted by regulation. The appeal shall be heard and determined within the number of days from receipt of the appeal provided by regulation of the Commission. Reasonable notice of the date, time and location of the hearing shall be provided to all parties.

4. *Decision.* The action of the Commission shall be by majority vote. The written findings and determination on appeal shall be transmitted to the parties. The action of the Commission shall be final ten business days after the filing of the written findings and determination with the secretary of the Commission.

5. *Effect of Decision on Appeal.* In the event that an adjustment to the maximum allowable rent is granted by the decision of the Hearing Examiner, and is then reduced or nullified by the Commission on appeal, the rent shall immediately be adjusted in accordance with the Commission's decision. In addition, the party to have benefited from the hearing examiner's decision shall refund to the other party any rent collected or withheld following the hearing examiner's decision

which is in excess of those amounts permitted by the decision of the Commission.

6. *Time.* The overall time between the initial finding of an application to be complete by the hearing examiner and determination by the Commission on appeal shall not exceed one hundred fifteen days, unless the delay is caused or is requested by the applicant. The hearing examiner and/or the Commission may extend this one hundred fifteen-day deadline in rent increase proceedings for forty-five days for good cause. Factors which may constitute good cause include but are not limited to the unusual complexity of a case, reasonable requests for continuance(s), allowing parties time to obtain representation, scheduling difficulties, and a remand of the case by the Commission to the hearing examiner. Notification of a time limit extension for good cause shall be made in writing to all parties.

(Prior code § 6411(b); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 §§ 1, 10, 11, 1985; Ord. 85-79U §§ 1, 10, 11, 1985; Ord. 87-135 § 10, 1987; Ord. 87-135U § 10, 1987; Ord. 87-168 § 1, 1987; Ord. 89-227 § 1, 1989; Ord. 89-236 § 2, 1989; Ord. 89-236U § 2, 1989; Ord. 89-247 §§ 1, 2, 1989; Ord. 91-300 § 1, 1991; Ord. 91-300U § 1, 1991; Ord. 91-305 § 1, 1991; Ord. 92-325, 1992; Ord. 92-350 § 1, 1992; Ord. 93-364, 1993; Ord. 93-378 §§ 1, 2, 1993; Ord. 93-391 § 1, 1994; Ord. 94-428 §§ 1–3, 1994; Ord. 95-451 § 10, 1995; Ord. 99-548 §§ 27, 56, 77, 78, 1999; Ord. 09-827 § 2, 2009; Ord. 17-1000 § 3, 2017)

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§ 17.44.030. Substantive Grounds for Rent Adjustment Applied for by Landlords.

A rent adjustment shall be approved in order to provide a just and reasonable return and maintain net operating income in accordance with the following criteria:

1. *Fair Net Operating Income.* Fair return applications shall be considered according to the following guidelines:

   (a) Net operating income equals gross income minus operating expenses.

   (b) Gross income equals the following:

      (1) Gross rents, computed on the basis of one hundred percent occupancy, using rent levels which include all previously approved and banked rent increases other than the current year annual general adjustment. To the extent that such increases were not fully implemented or received during the entire current year, they shall be annualized to reflect the total annual gross rents to which the property owner is already entitled, plus

      (2) Interest from security and cleaning deposits (except to the extent that said interest is payable to the tenants), plus

      (3) Income from services, garage and parking fees, plus

(4) All other income or consideration received or receivable for or in connection with the use or occupancy of rental units and housing services, minus

(5) Uncollected rents due to vacancy and bad debts, to the extent that the same are beyond the landlord's control. Uncollected rents in excess of three percent of gross rents shall be presumed to be unreasonable and shall not be deducted from gross rents unless it is established that they result from circumstances that are likely to continue to exist in future years.

(c) Operating Expenses—Inclusions. Operating expenses shall include the following:

(1) Rent increase application filing fees and vacancy increase application fees (if the application is found to be meritorious);

(2) Annual registration fees which pursuant to resolution of the City Council cannot be passed through to tenants;

(3) License fees, real property taxes, utility costs, insurance;

(4) Normal repair and maintenance expenses, which shall include, but not be limited to, painting, normal cleaning, fumigation, landscaping, repair and replacement of all standard services, including electrical, plumbing, carpentry,

furnished appliances, drapes, carpets and furniture. Owner-performed labor shall be counted at reasonable rates as established by Commission regulation;

(5) Allowable legal expenses, and management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting, other managerial expense. Management expenses are presumed to be six percent of gross income, unless established otherwise. Management expenses in excess of eight percent of gross income are presumed to be unreasonable and shall not be allowed unless it is established that such expenses do not exceed those ordinarily charged by commercial management firms for similar residential properties;

(6) Attorney's fees and costs incurred in connection with successful good faith attempts to recover rents owing and successful good faith unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from tenants;

(7) Building improvements, major repairs, replacement and maintenance, except to the extent such costs are compensated by insurance proceeds, subject to the condition that said expenses shall be amortized in accordance with Commission regulations.

(d) Excluded from Operating Expenses. Operating expenses shall not include:

(1) Maintenance and repair work which resulted from the intentional deferral of other repairs or work, which deferral caused significant deterioration of housing services, the building or individual units (if the time since the work was performed significantly exceeds the amortization periods established by the Rent Stabilization Regulations, it shall be presumed that it was intentionally deferred);

(2) Avoidable and unnecessary expense increases since the base year;

(3) Mortgage interest and principal payments; fees, other than fees expressly authorized by subsection (c) of this section;

(4) Penalties and interest awarded for violation of this or any other law; or legal fees, except as provided in this section, and depreciation of the property.

(e) Base year for the purpose of this chapter shall be 1983 for tenancies commencing on or after January 1, 1999. In the event that an owner for good cause cannot produce base year income and expense information, or in the event net operating income as measured by April 30, 1984 rents (annualized) minus 1984 operating expenses substantially

differs from base year net operating income, the Commission may use a different base period or estimate base year income and expenses.

(f) Presumption of Fair Base Year Net Operating Income. Except as provided in subdivision (g), immediately below, it shall be presumed that the net operating income produced by the property during the base year provided a fair return (fair net operating income). Landlords shall be entitled to earn a just and reasonable return and to maintain and increase their base year net operating income in accordance with subdivision (h) of this subsection, below.

(g) Rebutting the Presumption. It may be determined that the base year net operating income yielded other than a fair return, in which case, the base year net operating income may be adjusted accordingly. In order to make such a determination, the Commission must make at least one of the following findings:

(1) The landlord's operating and maintenance expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating such expenses so that the base year operating expenses reflect average expenses for the property over a reasonable period of time. In considering whether the base year net operating income yielded more or less than a

fair net operating income the Commission shall consider the following factors:

(i) The landlord made substantial capital improvements during the base year, which were not reflected in the base year rent levels;

(ii) Substantial repairs were made due to damage caused by uninsured disaster or vandalism;

(iii) Maintenance and repair were below accepted standards or resulted from the intentional deferral of other repairs or work, which deferral caused significant deterioration of housing services, the building or individual units. If the time since the deferred work was performed significantly exceeds the amortization periods established by the Rent Stabilization Regulations, it shall be presumed that it was intentionally deferred;

(iv) Other expenses were unreasonably high or low, notwithstanding prudent business practice.

(2) The rent on the base date was disproportionately low due to the fact that it was not established in an arms-length transaction or other

peculiar circumstances. To establish peculiar circumstances, the landlord must prove one or more of the following: there existed between the tenant and the owner a family or close friend relationship; the rent had not been increased for five years prior to the base date; the tenant performed services for the owner; there was low maintenance of the property by the owner in exchange for low rent increases or not rent increases; or any other special circumstances which affected the rent level outside of market factors.

(h) Fair Net Operating Income. The Commission shall permit rent increases in the MAR such that the landlord's net operating income shall be increased by sixty percent of the percentage increase in the Consumer Price Index, over the base year. (For example, if the Consumer Price Index has increased by ten percent since the base year, the landlord shall be entitled to a net operating income which is six percent above the base year level). Unless the Commission selects a base period other than the year 1983, the base year CPI shall be 292.7. For the purposes of this chapter, the current CPI shall be the CPI last reported as of the date of the application. A rent increase granted pursuant to this chapter shall not exceed the increase requested in the application.

However, the MAR for a unit shall be increased by a maximum of twelve percent during the first twelve

months after the date of the final decision of the Commission. If the final decision of the Commission determines that the landlord is entitled to an increase in the MAR which is greater than twelve percent, then the MAR for the unit during the second twelve months following the final decision shall be increased by the amount of the increase over twelve percent which was not charged during the first twelve months plus ten percent interest on that amount, plus any other adjustments to which the landlord is entitled under this title. Thereafter, the MAR shall be the amount determined by the Commission plus any other adjustments to which the landlord is entitled under this title.

(i) Allowable Professional Services. The commission shall adopt reasonable rules and regulations, for including in the net operating income calculation, reasonable expenses, fees, and other costs for professional services reasonably incurred in the course of successfully pursuing or defending rights under or in relationship to this title.

(j) A rent increase shall not be permitted for any unit rented on or after January 1, 1999 which was rented after completion of the work as outlined in the rent increase application.

2. *Building Improvement Increases.* The Commission shall adopt reasonable rules and regulations pursuant to Section 2.64.090 establishing standards to govern applications for building improvement increases.

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(Prior code § 6411(c); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 §§ 1, 10, 11, 1985; Ord. 85-79U §§ 1, 10, 11, 1985; Ord. 87-135 § 10, 1987; Ord. 87-135U § 10, 1987; Ord. 87-168 § 1, 1987; Ord. 89-227 § 1, 1989; Ord. 89-236 § 2, 1989; Ord. 89-236U § 2, 1989; Ord. 89-247 §§ 1, 2, 1989; Ord. 91-300 § 1, 1991; Ord. 91-300U § 1, 1991; Ord. 91-305 § 1, 1991; Ord. 92-325, 1992; Ord. 92-350 § 1, 1992; Ord. 93-364, 1993; Ord. 93-378 §§ 1, 2, 1993; Ord. 93-391 § 1, 1994; Ord. 94-428 §§ 1–3 , 1994; Ord. 95-451 § 10, 1995; Ord. 99-548 §§ 11, 12, 28, 29, 57, 1999)

§ 17.44.040. Substantive Grounds for Rent Adjustment Applied for by Tenants.

1. *Grounds for Application.* A tenant or group of tenants may file a rent adjustment application for one or more rental units in the same rental complex:

   (a) On the grounds that there has been a discontinuance or substantial reduction of housing services to tenants without a corresponding reduction in rent, or that maintenance required by Section 17.56.010, including the requirements for resident manager, posting of business hours and posting of emergency telephone numbers, has not been performed; provided, however, that the basis for the application arose on or after April 30, 1984; or

   (b) To determine the base rent or the maximum allowable rent charged for units; or

   (c) On the ground that the landlord has accepted and retained rent and/or fees in excess of that permitted

by this title or by its predecessor moratorium adopted November 29, 1984. The remedies here are cumulative and do not preclude any other remedy that may be available under any provision of law.

(d) Limitations Period.

(i) A tenant may apply to recover illegal rent overcharges resulting from a landlord's failure to file a re-registration form, except that no tenant may recover overcharges collected more than three years before the filing date of a re-registration form or a rent adjustment application by the tenant to recover the overcharges, whichever is earlier.

(ii) A tenant may apply to recover excess fees for a period not to exceed three years before the filing date of the rent adjustment application.

2. *Procedures.* The application, notice, hearing and appeal procedures applicable to such an adjustment application shall be the same as set forth in subsection (4) of Section 17.44.010 and as set forth in regulations promulgated by the Commission. All required notices shall be sent to the parties as set forth in those sections.

3. *Decision.*

(a) The hearing examiner or Commission on appeal may approve a rent adjustment under subsection

(1)(a) of this section if it determines that required maintenance has not been performed and/or there has been a discontinuance or a substantial reduction of housing services without a corresponding reduction in rent and provided that such reduction or discontinuance was not caused by an intentional act of the tenant. For purposes of this subsection, an intentional act of the tenant shall not include performance of maintenance pursuant to subsection (g) of Section 17.56.010.

(b) If an application for a refund of illegally collected rents and/or fees is granted by determination of a hearing examiner or by the Commission on appeal, such determination shall specify the manner in which the excess rent and/or fees shall be refunded or credited as to each affected tenant. In no event shall a refund be required to be paid or a rent credit allowed to be taken until after the time for appeal of the hearing examiner's determination has elapsed.

If the Commission orders a rent refund or rent credit on appeal, such refund or credit shall not be made effective until after the expiration of the time period within which the party against whom the order is made may seek a stay of the order from a court of competent jurisdiction.

(Prior code § 6411(d); Ord. 85-59 § 1, 1985; Ord. 85-59U § 1, 1985; Ord. 85-79 §§ 1, 10, 11, 1985; Ord. 85-79U §§ 1, 10, 11, 1985; Ord. 87-135 § 10, 1987; Ord. 87-135U § 10,

1987; Ord. 87-168 § 1, 1987; Ord. 89-227 § 1, 1989; Ord. 89-236 § 2, 1989; Ord. 89-236U § 2, 1989; Ord. 89-247 §§ 1, 2, 1989; Ord. 91-300 § 1, 1991; Ord. 91-300U § 1, 1991; Ord. 91-305 § 1, 1991; Ord. 92-325, 1992; Ord. 92-350 § 1, 1992; Ord. 93-364, 1993; Ord. 93-378 §§ 1, 2, 1993; Ord. 93-391 § 1, 1994; Ord. 94-428 §§ 1–3, 1994; Ord. 95-451 § 10, 1995; Ord. 00-566 § 2, 2000; Ord. 09-826 § 1, 2009; Ord. 12-886 § 2, 2012)