

**ATTORNEY TO CLIENT
CORRESPONDENCE**

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: December 28, 2007

TO: Irma Curtis, San Diego Housing Commission
Cissy Fisher, Housing Finance & Development

FROM: City Attorney

SUBJECT: Legal Opinion on Modification to Formula for Adjustment of Low Income Rents
at Rancho del Rio

You have asked for a legal opinion on whether the Commission may administratively execute a change to the formula for calculation of rent increases for low-income units at the Rancho del Rio mobile home park. In making your request, you cite the ground lease between the Housing Authority (Authority) and Rancho del Rio (Tenant), and specifically the powers granted to the Executive Director of the Housing Commission under Section 14.22 of the ground lease.

In Section 14.22, the Landlord (Authority) grants the Executive Director the authority to “make and effectuate any and all decisions under this Lease to be made by Landlord, to implement the provisions of this Lease and to receive all notices pursuant to this Lease.”

Section 5.08 B. of the ground lease specifies the manner in which Tenant may increase the rent for tenants of the low-income units. This section specifically identifies the “housing cost component in the Consumer Price Index for All Urban Consumers for San Diego, California” – an index published by the Bureau of Labor Statistics – as the means for calculating any rent increases. Further, this section of the lease limits the increase in rents to “75% of the percentage increase in the Extension Index over the Beginning Index.”

What is being requested is a change to allow the rent increases to be implemented administratively by the Commission utilizing the annual changes in Area Median Income (AMI)

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as published by HUD, rather than utilizing the formula spelled out in the lease for the use of a percentage of the housing cost component of the CPI.

Under the terms of the lease, this is not a change that can be accomplished administratively. Section 14.22 provides the Executive Director the power to "make and effectuate any and all decisions under this Lease to be made by Landlord," however, the Executive Director is also obliged to "implement the provisions of this Lease."

In this instance, the provisions of the lease include the mutually-agreed upon formula for implementation of the rent increases utilizing the housing cost component of the CPI, and the Executive Director is obligated to implement this provision of the lease unless or until it is modified through a lease amendment.

MICHAEL J. AGUIRRE, General Counsel
Housing Authority of the City of San Diego

By



Alex W. Sachs
Deputy General Counsel

AWS

cc: Charles Christensen, General Counsel, San Diego Housing Commission