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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0448**

Appeal of James W. Bush and Linda D. Dear, tenants,
to a Rent Stabilization Determination at 1391 Hazelwood Street,
Apartments, 10 and 11.

**Filed December 29, 2025
Affirmed in part, reversed in part, and remanded
Bond, Judge**

City of St. Paul
File No. RLH RSA 24-12

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Considered and decided by Connolly, Presiding Judge; Larson, Judge; and Bond,
Judge.

NONPRECEDENTIAL OPINION

BOND, Judge

Relators James W. Bush and Linda D. Dear are tenants who brought this certiorari
appeal challenging a decision by respondent St. Paul City Council allowing relators'
landlord, respondent Penelope A. Brown d/b/a Hazelwood Street Properties LLC
(landlord), to increase relators' rent by eight percent through the self-certification process

authorized under St. Paul’s Rent Stabilization Ordinance (the ordinance). *See* St. Paul, Minn., Legislative Code (SPLC) §§ 193A.01-.11 (2024). Relators argue that the city council’s decision is based on an error of law and is arbitrary because, contrary to the requirements of the ordinance, the city council did not consider landlord’s failure to comply with the implied warranty of habitability and landlord’s prior ordinance violation. We affirm in part, reverse in part, and remand.

FACTS

This appeal involves a challenge to the St. Paul City Council’s decision granting relators’ landlord’s application to increase relators’ rent beyond the presumptive three percent cap established by the ordinance. Before setting out the facts that led to this appeal, we begin by briefly describing the relevant provisions of the ordinance.

The Ordinance

In the summer of 2021, a group of St. Paul voters petitioned the city to place a rent-stabilization ordinance on the November 2021 general-election ballot. *See Woodstone Ltd. P’ship v. City of St. Paul*, 674 F. Supp. 3d 571, 580 (D. Minn. 2023) (discussing the ordinance’s proposal and enactment). A majority of voters approved the ballot initiative, and the ordinance went into effect on May 1, 2022. *Id.* at 580-81; *see* SPLC §§ 193A.01-.11.

Under the ordinance, landlords of residential properties seeking to increase rent more than three percent annually must seek approval from the St. Paul Department of Safety & Inspection (the department) and obtain a “final determination” in their favor. SPLC §§ 193A.03(h), (i), (k), .04, .07(c). The ordinance defines “rent” as “[a]ll monetary

consideration charged or received by a landlord concerning the use or occupancy of a rental unit pursuant to a rental agreement.” SPLC § 193A.03(v). A “rental unit” includes “[a]ny dwelling unit, or portion of a dwelling unit, that is rented or otherwise made available for rent for residential use or occupancy, together with all housing services connected with the use or occupancy of such property.” *Id.* (x). “Housing services” include “vehicle parking spaces . . . and any other benefit, privilege, or facility connected with the use or occupancy of any rental unit.” *Id.* (l).

A landlord seeking to increase rent over three percent may fill out a reasonable return on investment (RROI) application to demonstrate that a rent increase is “necessary for a reasonable return on investment.” SPLC §§ 193A.03(u), .07(c). This includes a “rent increase exception form” which a landlord may utilize to self-certify their eligibility to increase rent between three and eight percent.¹ SPLC § 193A.07(c)(1).

After notifying the tenants of a landlord’s RROI application, the department issues a determination granting or denying the application. SPLC § 193A.07(a)(6), (c)(2). If the department grants the RROI application, tenants have a right to appeal to a legislative hearing officer (LHO). *Id.* (g)(1). The LHO holds a public hearing and makes a recommendation to the city council as to whether the tenant’s appeal should be denied or granted. *Id.* (g)(3). The city council makes the final determination. SPLC §§ 193A.03(k), .07(a)(9).

¹ If a landlord requests to increase rent beyond eight percent, the landlord must undergo a more rigorous process and submit both the RROI application and additional information to city staff.

Relevant to this case, the ordinance provides that “[t]he department shall receive, review and process all RROI applications and complaints under this section and shall consider all factors established in section 193A.06.” SPLC § 193A.07(f). Section 193A.06 sets out nine factors, one of which is at issue here. In deciding whether to grant an RROI application and deviate from the limitation on rent increases, any “rationale . . . must take into account”:

Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health, and safety codes, or the rental agreement.

SPLC § 193A.06(a)(8).

Further, the ordinance states:

The city will not grant an exception to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Sta[t]. § 504B.161 [(2024)].

Id. (c).

Minnesota Statutes section 504B.161 “establishes several covenants, known as the covenants of habitability, which are implied in every residential lease.” *Wise v. Stonebridge Cmtys., LLC*, 927 N.W.2d 772, 775 (Minn. App. 2019). Specific to this case, landlords must “supply or furnish heat at a minimum temperature of 68 degrees Fahrenheit from October 1 through April 30.” Minn. Stat. § 504B.161, subd. 1(a)(5).

This Litigation

Relators are tenants in an apartment building owned and operated by landlord. In August 2024, landlord raised relators' base rent for the 2024-2025 lease term by three percent and raised the monthly cost of relators' garage parking by \$25.²

On October 16, 2024, landlord submitted an RROI application as provided by the ordinance's self-certification process requesting the department's permission to increase relators' rent by eight percent for the 2025-2026 lease term. The department approved landlord's request two days later. Relators appealed the department's determination.

On December 6, relators sent a complaint letter to the department's fire safety inspection division alleging, in part, that landlord was providing inadequate heat to relators' rental units. In support, relators submitted approximately 50 photographs of thermostats purporting to show temperature readings below 68 degrees during a seven-day period. Relators admitted in their complaint letter that they had not contacted landlord about the inadequate heat during the seven-day period.

On December 12, an LHO held a hearing on relators' appeal. Relators testified that landlord had previously violated the ordinance by raising their rent, including garage parking costs, over three percent for the 2024-2025 lease term without seeking department approval. Because relators chose to pay a fee to obtain garage parking spots, and because landlord billed relators separately for their garage parking and rent, the LHO expressed uncertainty about whether relators' garage parking spots were "housing services" under the

² The relevant leases are not part of the record on appeal.

ordinance. Given the ambiguity in the ordinance's language, the LHO adopted "the more conservative reading" in favor of relators and concluded that the garage parking spots were "housing services" and therefore the three percent rent cap should encompass relators' garage parking costs.

Relators also argued that the cold temperatures in their rental units violated Minnesota's implied warranty of habitability. Relators acknowledged that, after they submitted their thermostat photographs to the department's fire safety inspection division, the fire marshal told them "they [could not] go by all the documentation that [relators] submitted." Relators testified that the fire marshal gave them a phone number to call when the temperature dropped below 68 degrees, though they did not specify whether they had used the phone number to report an implied warranty violation.

The LHO stated she was "looking at the code violations that are alleged" but ultimately did not think the allegations "r[ise] to the level that they would cause me to recommend diminishing the eligible rent increase." The LHO expressed concern that, because the temperature complaints were new, there were no official findings and the temperature readings themselves on the photographs were "unaudited." Further, the LHO noted that, while landlords have a responsibility to work with tenants on this type of issue, relators had not stated if, when, or how they had provided landlord notice of the cold temperatures in their rental units. The LHO concluded that she "hesitate[d] to include [relators' heating complaints] as part of [the rent appeal] until there's an actual finding made by a professional examining the situation."

On January 7, 2025, the LHO issued a revised report recommending that the city council deny relators' appeal.³ The report stated that "[p]arking is considered a housing service, per the [ordinance]." Therefore, the LHO "recommend[ed] that a maximum of 8% of rent be applied to the sum of the rent and garage parking expenses." Additionally, the LHO's report referenced relators' heating complaint, stating that "[a] number of complaints were filed by [relators] in the week prior to the hearing. It is possible that fact finding in those complaints would touch on issues covered in this appeal." The LHO found that landlord's building was sufficiently habitable, noting that it had "a Class A rating from its last Fire Certificate of Occupancy inspection March – April of 2023. No deficiencies were noted for Unit 11 at the beginning of the inspection process March 8, 2023. Three deficiencies were noted for Unit 10, all of which were addressed by April 27, 2023."

On January 15, the city council held a public hearing to discuss the LHO's report and recommendation. The LHO provided an oral staff report to the city council. The LHO first addressed relators' allegation that landlord had previously violated the ordinance by raising rent more than three percent without department approval. The LHO stated that relators' 2024-2025 lease term "included a 3 percent rent increase . . . and included . . . an increase for the garage parking." The LHO recommended that relators' garage parking and rent payments "be considered together." Therefore, the LHO found that landlord had raised the total "rent" over three percent. Despite this determination, the LHO informed the city council that the current 2024-2025 lease term was beyond the scope of its review. The

³ The original recommendation on January 6 misstated relators' current rent.

LHO told the city council that it should not “go[] backwards in time to discuss the garage and the rent . . . decisions that were made” in relators’ 2024-2025 lease term because alleged ordinance violations are “appropriately investigated by the [department] should that be requested, but that isn’t something that’s in front of the city council today to deal with.”

The LHO also addressed relators’ heating complaints. The LHO stated that relators’ heating complaints “need[ed] separate investigation,” because relators’ thermostat photographs were not adequate to “make a finding that those temperatures were taken where they should be taken if you’re . . . a fire inspector checking it.” The LHO noted that the fire inspector, not an LHO or the city council, should “make that finding.” The LHO also stated “that the fire certificate of occupancy which was conducted most recently in April of ’23 gave it a class A rating. And . . . the information I saw does not indicate that there should be any change [to that rating].” Based on this information, the LHO concluded that the “building is in good shape and has been in good shape for a while.” The city council laid over the appeal for one week.

On January 21, relators sent a letter to the city council explaining that they had submitted a complaint about the substandard heating to the “fire marshal,” who stated it could not rely on the documents submitted by relators but offered to come to relators’ rental units to take an official temperature reading should the temperature in the units drop below 68 degrees.⁴

⁴ It appears that relators were referencing their December 6 letter to the department’s fire safety inspection division. There is no evidence in the record that the fire marshal or any

On January 22, the city council adopted the LHO's recommendation and voted unanimously to deny relators' appeal. During the meeting, the city council discussed relators' argument that landlord had previously violated the ordinance. One city council member noted that landlord had raised relators' total rent, including garage parking and rent costs, "around 5.6 percent" for the 2024-2025 lease term. The city council member urged the department to investigate the alleged ordinance violation because the city council's role "is to hear the appeal of the staff determination rather than [to] act[] as enforcement." The city council concluded that the alleged prior ordinance violation was beyond the scope of its decision, which focused solely on landlord's proposed rent increase for the 2025-2026 lease term. The city council did not discuss relators' implied warranty concerns.

The city council adopted a final resolution denying relators' appeal. The resolution states:

WHEREAS, in the matter of James W. Bush and Linda D. Dear, tenants, to a Rent Stabilization Determination at [tenants' apartments], the Legislative Hearing Officer has reviewed the appeal and considered the testimony of City staff and the appellants;

WHEREAS, the Legislative Hearing Officer recommends denial of the appeal, allowing a maximum 8% in rent, inclusive of parking as a housing service; and

WHEREAS, the appellants have requested the City Council consider the terms of their current leases (2024-2025) and potential adjustments in its deliberations on the application

other department employee went to relators' rental units or conducted a temperature reading.

for their rent increase to be proposed in their next (2025-2026) lease; and

WHEREAS, the Legislative Hearing Officer has advised such consideration is beyond the scope of the appeal under consideration and recommends that concerns about the rent increase in the current lease be directed to the Department of Safety and Inspections to investigate and pursue enforcement action if appropriate; Now, Therefore, Be It

RESOLVED, that the Saint Paul City Council hereby accepts and adopts the Legislative Hearing Officer's recommendation in this matter.

Relators appeal.

DECISION

“City council action is quasi-judicial and subject to certiorari review if it is the product or result of discretionary investigation, consideration, and evaluation of evidentiary facts.” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted). We apply the common-law certiorari standard when reviewing quasi-judicial decisions not subject to the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-.69 (2024). *Anderson v. Comm’r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *rev. denied* (Minn. Apr. 17, 2012).⁵ Under that standard,

[w]e examine the record to review questions affecting the jurisdiction of the agency, the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive,

⁵ The city council's decision to deny relators' appeal is a quasi-judicial decision not subject to MAPA. *See City of Mankato v. Mahoney*, 542 N.W.2d 689, 693 (Minn. App. 1996) (“MAPA's definition of a contested case is thus limited to proceedings before an entity with statewide jurisdiction. As a city council does not have statewide jurisdiction, it cannot be considered an ‘agency’ under MAPA.”).

unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.

Id. (quotation omitted). On appeal, relators bear the burden to demonstrate that the city council's decision meets this standard. *Manteuffel v. City of N. St. Paul*, 538 N.W.2d 727, 729 (Minn. App. 1995). When conducting our review, we will not retry facts or make credibility determinations and will uphold the city council's decision if it "furnished any legal and substantial basis for the action taken." *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996) (quotation omitted).

I.

Relators argue that the city council disregarded evidence of landlord's failure to provide adequate heat to their rental units in violation of the implied warranty of habitability, resulting in a decision that was based on an error of law and arbitrary. To resolve relators' claim, we must first consider the language of the ordinance. *Reetz v. City of St. Paul*, 956 N.W.2d 238, 244-45 (Minn. 2021) (stating that "[t]o decide whether the [city council's] decision was based on an erroneous theory of law, we must first determine whether the [city council] applied the correct interpretation of" the ordinance). Interpretation and application of a city ordinance is a question of law we review de novo. *Staeheli*, 732 N.W.2d at 307.

We apply the rules governing statutory interpretation to the interpretation of city ordinances. *Yeh v. County of Cass*, 696 N.W.2d 115, 128 (Minn. App. 2005), *rev. denied* (Minn. Aug. 16, 2005). Under those rules, we first determine whether the language of the ordinance in question is ambiguous because it is susceptible to more than one reasonable

interpretation. *Spann v. Minneapolis City Council*, 979 N.W.2d 66, 73 (Minn. 2022). If the language is unambiguous, we must give effect to the ordinance’s plain language. *Walsh v. State*, 975 N.W.2d 118, 122 (Minn. 2022).

The ordinance provides that, in its rationale for deviations from the limitations on rent increases, the city council “must take into account” a “[f]ailure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, [and] local housing, health, and safety codes.” SPLC § 193A.06(a)(8). Additionally, the ordinance requires that, “[u]pon receipt of a complete RROI application or complaint, the department shall conduct [a] review of the RROI application or complaint and conduct any necessary investigation to determine whether rent conforms to the requirements of this chapter.” SPLC § 193A.07(a)(5). Finally, the ordinance provides: “The city will not grant an exception to the limitation on rent increases for any unit where the landlord has failed to bring the rental unit into compliance with the implied warranty of habitability in accordance with Minn. Stat[.] § 504B.161.” SPLC § 193A.06(c).⁶

Significantly, the ordinance provides that the city council “must” take into account a landlord’s failure to comply with housing laws and “shall” perform any necessary investigation. “Must” and “shall” are mandatory. *See* Minn. Stat. § 645.44, subds. 15a, 16 (2024); *see also Riehm v. Comm’r of Pub. Safety*, 745 N.W.2d 869, 875 (Minn. App. 2008)

⁶ The phrase “landlord has failed” is in the present-perfect tense. *The Chicago Manual of Style* § 5.132 (17th ed. 2017). The present-perfect tense “denotes an act, state or condition that is now completed or continues up to the present.” *Id.*

(stating that “shall” and “must” are generally defined to mean “mandatory”), *rev. denied* (Minn. May 20, 2008). We therefore agree with relators that the plain language of the ordinance unambiguously requires the city council’s decision to “take into account” a landlord’s failure to comply substantially with applicable housing laws and to deny a landlord’s RROI application if the landlord “has failed to bring tenant’s rental unit into compliance” with the implied warranty of habitability required by Minn. Stat. § 504B.161. *See* SPLC § 193A.06(a)(8)(c).

For the first time on appeal, the city council argues that the ordinance prevents it from granting an RROI application only if a tenant first obtains a court order in a separate breach-of-contract action finding that the rental unit is in violation of the implied warranty of habitability. We discern nothing in the ordinance’s language that imposes such a requirement. Instead, the ordinance plainly requires *the department* to conduct any necessary investigation to determine whether rent conforms to the ordinance’s requirements and *the city* to “consider” and “take into account” a landlord’s failure to comply with housing laws and the implied warranty of habitability. SPLC §§ 193A.07(a)(5), .06(a)(8). Had the city intended the ordinance to require a tenant to obtain an order or judgment from a district court as part of a tenant’s appeal of a landlord’s rent-exception application, it would have done so explicitly. Courts “cannot add language to a statute; rather, [they] must apply the plain language of the statute as written.” *Firefighters Union Loc. 4725 v. City of Brainerd*, 934 N.W.2d 101, 109 (Minn. 2019) (quotation omitted); *see also State v. Holl*, 966 N.W.2d 803, 812 (Minn. 2021) (holding that appellate courts are “not permitted to rewrite a statute or add additional statutory

language” (quotation omitted)). Because the interpretation of the ordinance advanced by the city council on appeal is not supported by the ordinance’s plain language, it is unreasonable. *See Spann*, 979 N.W.2d at 73; *Walsh*, 975 N.W.2d at 122.

While we agree with relators’ interpretation of the ordinance, we disagree that the city council’s determination to deny relators’ appeal was based on an error of law or arbitrary. An agency engages in arbitrary decisionmaking when it

- (1) . . . relied on factors not intended by the ordinance;
- (2) entirely failed to consider an important aspect of the issue;
- (3) offered an explanation that conflicts with the evidence; or
- (4) arrived at a decision that ‘is so implausible that it could not be explained as a difference in view or the result of the city’s expertise.

Staehele, 732 N.W.2d at 312 (alteration in original) (quotations omitted).

The ordinance provides that the city council “must take into account” a landlord’s failure “to comply substantially with applicable state rental housing laws, local housing, health, and safety codes.” SPLC § 193A.06(a)(8). The ordinance does not specify the manner in which the city council must consider a landlord’s failure to comply substantially with the law or the extent of the investigation the city must undertake to make that determination.⁷ Regardless, here, the record reflects that the city council heard relators’

⁷ We observe that, under the ordinance, “[t]he department may create and publish rules concerning the implementation of this chapter.” SPLC § 193A.07(f). The department’s website states that “[w]hile Section 193A.06 of the Ordinance lays out nine factors that [the department] must consider when determining whether a landlord’s request should be granted, it does not specify a means of analyzing those factors.” *Rules & Processes* (2025), Saint Paul Minnesota, <https://www.stpaul.gov/departments/safety-inspections/rent-buy-sell-property/rent-stabilization/rules-processes> [<https://perma.cc/6RQK-374P>]. The website provides a link to a set of rules which provide “a means to analyze landlord requests using the nine factors required by the Ordinance.” *Id.* The rules require the department to

arguments and considered relators' evidence that landlord had violated the implied warranty of habitability.

After filing their appeal but before the LHO's hearing, relators sent a letter to the department's fire safety inspection division alleging that landlord had failed to provide adequate heat to relators' rental units. Relators later informed the city council in a letter that, although they had submitted the complaint and accompanying thermostat photographs to the department, the "fire marshal" responded that it could not rely on the photographs, indicating that they are insufficient to permit a finding that landlord violated the implied warranty of habitability. During the public hearing on January 15, the LHO told the city council that relators' heating complaints were "unaudited" and "need[ed] separate investigation" because the thermostat photographs were inadequate to prove an implied warranty violation and because the "fire inspector [should] make that finding" rather than the city council. The LHO's recommendation letter acknowledged relators' implied warranty argument while also noting that landlord's "building has a Class A rating from

consider any "condition[s] at the Rental Unit [that] threaten[] the health or safety of the occupants but does not actually impair the use of the unit" and to reduce the maximum allowable rent "in an amount that reflects the reduction in value of the Rental Unit due to the unsafe or unhealthy condition." *Rent Stabilization Rules Update-Effective June 13, 2025*, Saint Paul Safety & Inspections, <https://www.stpaul.gov/sites/default/files/2025-07/Rent%20Stabilization%20Rules%206-13-25.pdf> [<https://perma.cc/NUU2-9FP4>]. The rules further state that tenants appealing a department decision on habitability grounds "must be able to establish the basis for the reduction" and must submit "[a] copy of a housing code inspection report from the City of Saint Paul" with the appeal. *Id.* Neither party referenced these rules in their briefs or at oral arguments and we do not consider them.

its last Fire Certificate of Occupancy inspection March – April of 2023.”⁸ The city council’s resolution “accept[ed] and adopt[ed] the [LHO’s] recommendation in this matter.”

“[W]e afford city council decisions great deference and will set them aside only in rare instances.” *In re Krenik*, 884 N.W.2d 913, 917 (Minn. App. 2016) (quotation omitted), *aff’d sub nom. Appeal of Krenik*, 903 N.W.2d 224 (Minn. 2017). The ordinance requires that the city conduct “any necessary investigation to determine whether rent conforms to the requirements of this chapter.” SPLC § 193A.07(a)(5). The record indicates that the LHO considered relators’ evidence in support of their implied warranty complaints but ultimately did not find the evidence sufficiently persuasive to grant relators’ appeal, and the city council adopted the LHO’s report. *See id.* (“[T]his court considers whether the record supports an agency’s decision before reversing the decision.”); *see also Zylka v. City of Crystal*, 167 N.W.2d 45, 50 (Minn. 1969) (considering whether the evidence supported the agency’s decision when findings of fact were not made). While it would

⁸ The city council argues that any concerns about implied warranty violations are resolved by the existence of a valid fire certificate of occupancy. This argument is misplaced. A fire certificate of occupancy indicates that a “building meets, at the time of inspection, all relevant codes to maintain the health, safety and welfare of the building’s occupants and the general public,” and a class A rating means that the property does not need to be inspected again for another six years. SPLC §§ 40.01(a), .05(1)-(2) (2024). But a fire certificate of occupancy that is over a year and a half old is not equivalent to a current finding that a rental unit complies with habitability laws. *See* SPLC § 40.05(4) (2024) (“The classification system shall be used exclusively for the purpose of establishing a renewal schedule. Classifications shall have no bearing on enforcement actions undertaken by the city, such as notices and orders related to code deficiencies and violation.”); *compare* SPLC § 40.01(a), *with* Minn. Stat. § 504B.161, subd. 1(a).

have been better practice for the city council to explicitly address relators' concerns about the implied warranty of habitability in its adopted resolution, on this record, we are not persuaded that the city council legally erred or acted arbitrarily.

In sum, because the city council's action is not inconsistent with the plain language of the ordinance and the record demonstrates the city council did not "entirely fail[] to consider" relators' allegation that landlord had failed to provide adequate heating to their units in breach of the implied warranty of habitability, relators failed to meet their burden to show the city council legally erred or acted arbitrarily when it reached its decision.

Manteuffel, 538 N.W.2d at 729.⁹

⁹ The city council devotes a significant portion of its brief to its contention that it did not have jurisdiction to consider relators' implied warranty complaints. According to the city council, relators' allegations of violations of the implied warranty of habitability should have been brought in a breach-of-contract claim between relators and landlord, who was not a party to the quasi-judicial rent-appeal process. The city council's argument is unpersuasive and contrary to the plain language of the ordinance, which, as we have explained, requires the city council to consider relators' implied warranty allegations in deciding whether to grant or reject a landlord's RROI application. See SPLC § 193A.06(a)(8), (c). Further, such consideration is not precluded by "basic due-process rules," as the city council claims. Landlord was provided adequate notice of relators' appeal and had the right to be heard, which she exercised in testifying before the LHO. See *Barton Contracting Co. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978) ("The basic rights of procedural due process required in [quasi-judicial] case[s] are reasonable notice of hearing and a reasonable opportunity to be heard."). And it is common practice in municipal decisions to grant applications, such as for variances or conditional-use permits, which are then subject to appeal by third parties. See, e.g., *Schulz v. Town of Duluth*, 936 N.W.2d 334 (Minn. 2019); *State ex rel. Neighbors for E. Bank Livability v. City of Minneapolis*, 915 N.W.2d 505 (Minn. App. 2018); *Mohler v. City of St. Louis Park*, 643 N.W.2d 623 (Minn. App. 2002). That the city council is required by its own ordinance to consider relators' implied warranty argument, which may in turn impact landlord's ability to increase relators' rent by eight percent, is not unusual, let alone unconstitutional.

II.

Relators argue that the city council legally erred and acted arbitrarily because it failed to consider that landlord increased rent more than three percent for the 2024-2025 lease term without department approval, in violation of the ordinance. Relators contend that, under the plain language of the ordinance, this prior ordinance violation requires the city council to deny landlord's RROI application.

The ordinance requires that the city council must "take into account" a landlord's failure "to comply substantially with applicable state rental housing laws, local housing, health, and safety codes." SPLC § 193A.06(a)(8). Because the ordinance is a local housing code, the ordinance requires the city council to consider a landlord's failure to comply with the ordinance in evaluating a landlord's RROI application.

Under the ordinance, landlords of residential properties may not increase rent for a residential rental unit more than three percent annually without approval from the department. SPLC §§ 193A.04, .07(c). A "residential rental unit" means the dwelling unit that is rented together with "all housing services connected with the use or occupancy of such property." SPLC § 193A.03(x). "Vehicle parking spaces" are considered "housing services." *Id.* (l). "Rent" is defined as "[a]ll monetary consideration charged or received by a landlord concerning the use of occupancy of a rental unit," except for authorized pass-through expenses. *Id.* (v).

Relators argue that the city council acted under "an erroneous theory of law" because it did not "appl[y] the correct interpretation of" the ordinance. *Reetz*, 956 N.W.2d at 244-45. We agree.

The LHO’s recommendation noted “ambiguity in the code” on whether relators’ payment for vehicle parking spaces should be considered rent, but ultimately recommended that relators’ parking costs “be considered together” with rent for ordinance purposes. The city council agreed and stated in its adopted resolution that it would “allo[w] a maximum 8% in rent, inclusive of parking as a housing service.” In the public hearing, there was discussion that landlord had raised relators’ rent for the current 2024-2025 lease term “around 5.6 percent” without department approval, yet its resolution denying relators’ appeal expressly stated that it would not “consider the terms of [relators’] current leases” in deciding whether to grant landlord’s RROI application to increase rent for the 2025-2026 lease term. The plain language of the ordinance instructs that the city council “*must* take into account” prior ordinance violations of local housing codes—such as the ordinance itself—as a factor in determining whether to grant a landlord’s RROI application. SPLC § 193A.06(a)(8) (emphasis added). The city council’s decision thus appears to be directly contrary to the ordinance’s requirement that the city council “must take into account” a landlord’s failure to “comply substantially with” the ordinance. *Id.*

We conclude that the city council’s decision is based on an erroneous theory of law because, contrary to the plain language of the ordinance, the city council expressly determined that it would not consider relators’ claims that landlord raised the rent for the current 2024-2025 lease term in violation of the ordinance. *Reetz*, 956 N.W.2d at 244-45. We therefore reverse in part and remand to the city council for further proceedings on relators’ rent appeal consistent with this opinion. Because we agree that the city council’s

decision was based on an erroneous view of the law, we do not reach relators' argument that the city council acted arbitrarily.

Affirmed in part, reversed in part, and remanded.