

DRAFT JULY 2023



RENT STABILIZATION PROGRAM

Draft Strategic Work Plan 2023-2026

**City of San José
Housing Department**

July 2023



TABLE OF CONTENTS

INTRODUCTION	1
Rent Stabilization Program Background and Goals	1
Ordinance	2
Apartment Rent Ordinance (ARO)	2
Tenant Protection Ordinance (TPO).....	2
Ellis Act Ordinance (EAO).....	2
Mobilehome Rental Ordinance (MRO).....	2
Housing Payment Equality Ordinance (HPEO).....	2
STRATEGIC WORK PLAN GOALS OVERVIEW	2
1. Data Collection and Metrics.....	3
2. Process/Operations	3
3. Outreach and Engagement	3
4. Program Design.....	3
GOAL 1 – IMPROVE DATA COLLECTION AND METRICS	4
Key Findings	4
Objectives	5
GOAL 2 – IMPROVE IMPLEMENTATION THROUGH PROCESS AND OPERATIONAL ENHANCEMENTS	6
Key Findings	6
Objectives	7
GOAL 3 – IMPROVE COMMUNITY OUTREACH AND MARKETING	8
Key Findings	8
Objectives	9
GOAL 4 –EXAMINE ARO, TPO, AND RELATED POLICIES	11
Key Findings	11
Objectives	12

INTRODUCTION

The City of San José (“City”) Rent Stabilization Program (“Program” or “RSP”) consists of education, engagement, collaboration, and enforcement of policies and regulations intended to build and maintain safe, healthy, and sustainable communities. Over the last several years, the City has developed, adopted, and implemented policies and programs aimed at protecting its rental community, which according to the City’s 2020-2021 annual report, includes over 38,000 rent stabilized apartments, over 47,000 market rate units (buildings with three units or more built after September 1979), and more than 10,000 mobilehome spaces.

Over the past year, Program staff procured the services of a consultant, RSG Inc., to assist with research, data analysis, and stakeholder engagement focused on assessing program effectiveness. Based on their findings, RSG and Program staff prepared this Strategic Work Plan (“Plan”) to guide Program implementation over the next three years¹, by establishing a set of goals and objectives intended to evaluate and improve the effectiveness of the overall Program. This Plan also draws from the goals and strategies for housing stability and tenant protections that were recently developed for the Draft Housing Element.

Rent Stabilization Program Background and Goals

The City originally adopted a rental dispute ordinance in 1979 which covered both apartments and mobilehome park spaces. Beginning 2017, the City expanded the scope and services of the Rent Stabilization Program through significant legislative and policy changes, including amendments and adoption of five (5) related Ordinances intended to stabilize and protect the renter community². These actions also included bifurcating the original rental dispute ordinance so mobilehome parks and spaces are covered by their own stand-alone ordinance³. The current suite of rental stabilization ordinances and their primary goals are as follows:

¹ Due to the rapid changes in housing markets, community demographics, and legislation, the Plan should be reviewed periodically and course action updated after several years at a minimum.

² It should be noted that in response to the COVID-19 pandemic, beginning in March 2020 and ending in March 2022, action was taken by the City and State and Federal government bodies at different times to limit evictions and rent increases and to ensure emergency rental assistance funds were deployed to property owners on behalf of impacted tenants.

³ Mobilehome parks are governed by the State’s Mobilehome Residency Law and having an ordinance that only pertains to mobilehome parks was necessary to avoid inconsistencies or intereference with State law.

<i>Ordinance</i>	Key Provisions	Primary Goals
<i>Apartment Rent Ordinance (ARO)</i>	Limits rent increases to 5% per annum.	Promote stable and long renter tenancy. Stabilize rents in apartments covered by the ARO.
<i>Tenant Protection Ordinance (TPO)</i>	Limits termination notices to 13 just causes; provides for relocation assistance.	Keep tenants housed. Maintain tenancies and mitigate displacement of apartment residents.
<i>Ellis Act Ordinance (EAO)</i>	Regulates owner move-ins or demolitions, provides for relocation assistance, tenant right to return, and re-control of new rental units.	Maintain rent stabilized housing stock.
<i>Mobilehome Rental Ordinance (MRO)</i>	Allows rent increases based on 75% of CPI, with a min of 3% and max of 7%. Provides for a fair return petition process.	Stabilize mobilehome rents and support residents to maintain affordable housing.
<i>Housing Payment Equality Ordinance (HPEO)</i>	Prohibits refusing to rent to households due to source of income, such as rental assistance.	Protect low-income households receiving rental assistance from discriminatory practices, particularly those who are disabled, single-parent female households, or formerly homeless.

STRATEGIC WORK PLAN GOALS OVERVIEW

This Plan aims to improve the Rent Stabilization Program in four general areas. Each area addresses related key findings derived from data analysis, research, comparable jurisdiction program review, and stakeholder feedback. In general, the Program would benefit from more robust data collection and tools for evaluating program effectiveness, enhancements to implementation and enforcement, increased engagement efforts, and modification of Program administration to better protect tenants and support property owners.

1. <i>Data Collection and Metrics</i>	Consider methods and tools to improve the breadth and quality of program-related data and metrics.
2. <i>Process/Operations</i>	Consider systems and operational enhancements to more effectively implement the Ordinances.
3. <i>Outreach and Engagement</i>	Foster positive relationships between residents and property owners. Further fair housing through inclusive education and outreach.
4. <i>Program Design</i>	Evaluate the effectiveness of the existing RSP Ordinances to provide residents with more effective protections from displacement, while ensuring a fair return on investment to owners.

DRAFT

GOAL 1 – IMPROVE DATA COLLECTION AND METRICS

Key Findings

Collecting high-quality data in rent stabilization programs offers numerous benefits, including accurate decision-making, effective policy evaluation, compliance monitoring, and long-term planning. Reliable data empowers policymakers to make equitable decisions based on accurate information, fostering trust among tenants, landlords, and policymakers. It allows for the evaluation of existing policies, identification of improvements, and informed adjustments. Furthermore, high-quality data serves as a foundation for proactive long-term planning, enabling anticipation of future challenges and informed strategy development. This enhances the effectiveness and fairness of the program.

The City's rent registry system provides a good, but limited, base for the collection of information from apartment building owners. In its current form, the rent registry can only be viewed and utilized by the City which reduces transparency and the ability for both landlords and tenants to access information. With modifications and enhancements, the rent registry system could be a more effective tool for gathering and tracking data, and providing transparency and reporting to tenants and property owners.

For example, the system collects information relating to rent increases, security deposits, vacancies and reasons for vacancies. However, this information can be hard to extract for reporting and monitoring purposes, and is missing some key elements such as outcomes of unlawful detainer proceedings and termination notices which are necessary to determine the effectiveness of the RSP. This is not unique to San José's program, as many other jurisdictions report a lack of data and limited access to eviction outcomes.

The rent registry includes only apartments covered by the ARO, which are those in buildings with 3 or more units and built before September 7, 1979. This represents approximately 27% of the entire rental housing market in San José. As such, the registry does not track tenant outcomes for units under the TPO, nor can it provide data on how ARO tenants fare versus those in market-rate units.

Over 96% of property owners with ARO rental units have registered in the most recent registration period. Program staff have previously issued Notices of Violation and Corrective Action letters, to be followed by issuing Administrative Citations.

There is a lack of program data available for assessing the acceptance by landlords of tenants with rental assistance (e.g. vouchers), nor is there any demographic details that would provide insight on potential

discrimination. Rent registry analysis shows that approximately 5% to 7% (depending on registration period) of rent registry units are tenants who receive rental assistance vouchers, and that rent increases were greater for those receiving rental assistance vouchers. This suggests a need to better monitor equity impacts for this vulnerable group of tenants.

To effectively measure outcomes specifically related to unlawful detainer court proceedings, it is crucial for the City to establish a reliable method of capturing this data and tracking outcomes. Unfortunately, consistent and accurate reporting of relevant information, such as reasons for eviction and outcomes is not available.

Relating to the Ellis Act Ordinance, rental registry data revealed that more rent-stabilized units and fewer market rate units were withdrawn in recent years, and the average relocation assistance amount decreased. Further investigation would be needed to identify the reasons behind these changes.

Objectives

Ultimately, the City should seek to enhance its ability to measure how well ARO tenants are faring compared to non-ARO tenants, and how well the TPO is allowing tenants to maintain stable occupancy by having the capability to measure outcomes. To address the need for improved data collection and metrics and allow the City to better measure if the ARO and TPO are successfully stabilizing rents and preventing unjust evictions, the following objectives are being recommended. Short-term objectives are reasonable to pursue over the next 3 years, while the long-term objectives will require additional review and planning.

Short-Term	
1.1	Identify all property owners of rent stabilized units that are not in the rent registry. Use notification, encouragement, and administrative citations to achieve at least 95% compliance of units.
1.2	Review capabilities of existing rental registry system to allow for modifications to collect additional information and easily report out on RSP metrics aimed at measuring the effectiveness of the program. If necessary, the City could consider an RFP to solicit a vendor that specializes in the creation of such systems that include reporting functions.

Short-Term	
1.3	<p>Consider an operational policy and database configuration plan for the rental registry that would:</p> <ul style="list-style-type: none"> • standardize the registration period dates for consistent comparison across periods. • automatically notify property owners and tenants when no data was entered in a registration period. • proactively notify property owners and tenants of potential violation if rent increase field is greater than 5%. • track when units are subject to eviction proceeding and track the outcomes. • add data fields for building location zip code, unit sq ft, total tenure of household in unit, % change in rent at start of lease and thereafter, age of building or year of completion and dates of any major rehab, notes to explain any unusual circumstances for the unit or tenant. <p>If and when changes are made to the registry requirements, the City will need to modify the annual registration process, including landlord noticing, to include information on the additional requirements.</p>
1.4	Consider requesting demographic data on petition forms.
1.5	Determine what resources and procedures are needed to identify and track termination notices, voluntary vacancies and unlawful detainer proceedings.
Long-Term	
1.6	Consider creating a tool for tracking impacts/outcomes of tenants displaced through Ellis Act buyouts.

GOAL 2 – IMPROVE IMPLEMENTATION THROUGH PROCESS AND OPERATIONAL ENHANCEMENTS

Key Findings

Rent stabilization programs have been implemented in several jurisdictions throughout California. As part of the comparable jurisdiction research process for this Plan, interviews were conducted with representatives from other cities with rent stabilization programs including Mountain View, Berkeley, Richmond, Santa Monica, West Hollywood, and Inglewood. Some of these rent stabilization programs have been in place for several decades, while others were established more recently. Each city's program has its own unique structure and approach. This diversity provides an opportunity to gather best practices from a range of rent stabilization programs. Many jurisdictions interviewed mentioned the positive impact of being a member of the Rent Stabilization Consortium. The Rent Stabilization Consortium is a group of

representatives from California cities, including San José, with rent stabilization programs. This consortium provides opportunities to discuss challenges, successes, and collaborate with other cities on the topic of rent stabilization.

The ARO provides that tenants who live in rent stabilized units may file petitions for mediation and/or hearing to the Rent Stabilization Program. These petitions may be based on invalid rent increases, health and safety concerns, or a service reduction. The current petition hearing and mediation process may require enhancements. In Mountain View, having separate individuals serve as mediators and hearing officers was considered a strength. Mediation is a confidential voluntary proceeding where mediators assist parties in coming to a resolution of their own making which can address matters outside of the petitions if the parties wish. In contrast, a hearing officer considers evidence presented by parties at the hearing and in their petition or response and then issues a binding decision. Different hearing officers can present alternative solutions that may lead to more favorable outcomes for both tenants and property owners. Mountain View’s hearing officers hold regular meetings to foster collaboration and stay informed about the latest regulations and developments in the field of rent stabilization.

As part of the stakeholder engagement process for this Strategic Plan, landlords reported they struggle with the current capital improvement process. Landlords believe the limited ability to recoup repair costs through a 3% pass-through creates disincentives for landlords to make improvements, particularly in older properties subject to ARO regulations. They argue this is due to the financial challenge posed by ongoing repairs without sufficient cost recovery, hindering investment in necessary upgrades.

Objectives

To improve the implementation, processes, and operations of the Program, the following objectives are recommended. Short-term objectives are reasonable to pursue over the next 3 years, while the long-term objectives will require additional review and planning.

Short-Term	
2.1	Continue to participate and leverage relationships as part of the Rent Stabilization Consortium where members share best practices and results.
2.2	Evaluate staffing level for the current Program and determine if any additional resources are necessary to meet Strategic Plan goals and objectives.

2.3	Collaborate with representatives of Housing and RSP program staff, Police Dept, Code Enforcement, other key City and County Depts including local courts, Legal Aid and other tenant support groups, churches, and schools to share current trends and concerns in the community as it relates to the RSP.
2.4	Establish regular meetings among Hearing Officers to create consistency and coordination, and to elevate best practices.
Long-Term	
2.5	Consider improvements to petition hearing and mediation process.
2.6	Conduct a study to establish base year rent standards for use in fair return petition reviews.
2.7	Implement a pre-approval process for proposed capital improvements to allow property owners to determine feasibility of cost recovery.
2.8	Allow tenants to file a “hardship petition” in response to a proposed increase petition from property owner.

GOAL 3 – IMPROVE COMMUNITY OUTREACH AND MARKETING

Key Findings

Public awareness is a challenge for all jurisdictions, even programs like Berkeley's which have been in effect for decades. All jurisdictions consider public awareness of their programs a challenge and engage in a variety of activities—many of which San José does as well—for their marketing efforts. All jurisdictions emphasized the importance of outreach to both landlords and tenants through multiple channels. Collaboration with other entities can create opportunities both for providing services and receiving input from landlords and tenants, as exemplified by Mountain View's partnership with their Housing and Eviction Help Center.

As part of the stakeholder engagement process for this Plan, both residents and landlords indicated that they were only somewhat familiar with the various provisions of the Rent Stabilization Program. All stakeholder groups provided feedback that minority groups are more vulnerable to displacement and would like the City to ensure protection of these groups, including language accessibility, building trusting

relationships with racial minorities, posting requirements for notices in mobilehome parks, and accessibility for people with disabilities, etc. Landlords indicated they would seek to develop greater partnerships between the City and advocacy groups. The overall feedback received from tenants and landlords during the stakeholder engagement was for greater communication and outreach from the City to ensure landlords and tenants are aware of the ordinances and enforcement of regulations, particularly for the most vulnerable communities.

Objectives

To increase community awareness, outreach, and marketing, the following objectives are recommended. Short term objectives are reasonable to pursue over the next 3 years, while the longer term objectives will require additional review and planning.

DRAFT

Short-Term	
3.1	Collaborate with community organizations and other City/public departments who can assist in sharing information with the public.
3.2	Consider collaboration with community organizations who may have well-established relationships with vulnerable populations in an effort to increase awareness of tenants' rights under the TPO.
3.3	Create basic 'Know Your Rights and Responsibilities' materials for landlords and tenants, including fair housing information. Produce materials in multiple languages with accessible vocabulary, pictures, and infographics. Create an outreach strategy to share this information widely including partners such as schools, community-based nonprofits, and housing providers. Provide links to additional resources including more information on fair housing. Identify eligible ongoing funding for this purpose.
3.4	Increase education and resources provided to tenants and landlords on City programs and their rights at tenant / landlord education centers located throughout the City. Locations should include Diridon Station Area, the City's forthcoming transit center, to maximize transit access as well as neighborhoods with high displacement risk according to UC Berkeley Urban Displacement Project analysis. Use digital tools, pop-ups, and/or mobile sites, and partner with community-based organizations to deliver services in ways that are convenient and accessible for all users, especially those with disabilities.
3.5	Distribute periodic program surveys to tenants and property owners.
3.6	Organize annual engagement sessions, such as listening sessions, with mobilehome park residents and owners.
Long-Term	
3.7	Increase fair housing education, monitoring, and enforcement in target neighborhoods, especially on source of income discrimination. Consult legal assistance partners and analyze City data to determine target neighborhoods. Create a plan for outreach together with nonprofit and community-based partners. Identify more ongoing funding for this activity. Enter into contracts with qualified legal services organizations.
3.8	Identify ongoing funding to increase nonprofit organizations' support of San José tenants' rights. Increase funding of nonprofits to do broad tenant outreach, education, and legal representation on housing issues, including fair housing issues, to all tenants in the City. Support a nonprofit-run hotline for information and referrals on general tenant/landlord issues (not legal advice) for all tenants, regardless of income or type of home.

3.9	Explore a San José Right to Counsel program and/or alternative housing collaborative court model for the City Council's consideration. Issue a Request for Proposals and work with selected consultant to study costs and benefits of a right to counsel program and other court intervention alternatives and identify necessary legal, financial and other resources. Evaluate program options and seek City Council approval of a feasible program. Additionally, explore potential regional partnerships for a regional Right to Counsel study and implementation as an alternative.
-----	--

GOAL 4 – EVALUATE PROGRAM EFFECTIVENESS OF ARO, TPO AND RELATED POLICIES

Key Findings

The vast majority of ARO tenants experienced rent increases under 5% over the four rent registration periods from August 2018 through September 2022. In the most recent rent registration period (Aug. to Sep. 2022), ARO tenants had an average rent increase of about 2%. In contrast, for units with new tenants following vacancy decontrol, the average rent increase was 8.7% in the fourth registration period. The average increase over the four registration periods was 2.3%. The low average increase is partly due to rent moratoriums that occurred for seven months in 2020 and another five months in 2021. However, even with a rent registry in place, noncompliance with the rent limit was not uncommon and hundreds of ARO tenant households experienced rent increases above the allowed limit of 5%. Although the rent registry identifies this as non-compliant, and the City sends the tenant information about their rights, other tools may be needed to ensure compliance.

A review of rent stabilization policies in six comparable jurisdictions revealed that it is more common to use CPI as a variable for setting annual allowable rent increases, versus a fixed 5% in San José. The cities of Mountain View and Inglewood use 100% of CPI, while Richmond, Berkeley, Santa Monica, and West Hollywood use 60-75% of CPI. Several jurisdictions also included a cap or maximum, as well as a floor or minimum. For example, Mountain View uses the CPI change, but also has a max of 5% and a minimum rent increase of 2%. Some jurisdictions also allow property owners to “bank” allowable increases and apply them in subsequent years.

Any evaluation of rent increases in ARO units must also examine whether property owners are able to preserve their rights to a fair return on investment under the ARO and its provisions. This would consider the outcomes of any petition for fair return or for specified capital improvements that is submitted to RSP.

The ARO and TPO together apply only to buildings with 3 or more units (unless units fall under an exemption) which accounts for approximately 97% of the multifamily units. There are also more than 49,000 duplexes, single-family homes, condominiums, and townhomes that are rented and not subject to the ARO or TPO.⁴

In the past five years, the number of ARO units has been declining and EAO withdrawals have increased. Although EAO-affected tenants are entitled to relocation assistance, the number and amount of relocation benefits has not increased at a similar rate.

While San José has its own local Ordinances that cover most units multi-family structures, almost all tenants and rental property owners in California are subject to State law known as AB 1482 (The Tenant Protection Act of 2019) that limits rent increases and provides just cause eviction, discrimination, and other tenant protections. San José ARO and TPO rental units are not subject to most of AB 1482’s provisions, but other rental units in the City are covered by AB 1482. How this interacts with the RSP provides both challenges and opportunities for enforcement.

Objectives

To improve enforcement outcomes for the RSP, the following objectives are recommended. Short-term objectives are reasonable to pursue over the next 3 years, while the longer term objectives will require additional review and planning.

Short-Term	
4.1	Consider establishing a policy to identify, notify, and investigate within 18 months all instances where an ARO property owner has increased the rent by more than the allowed 5%.
4.2	Consider adopting enforcement measures for the ARO to compel property owners to refund tenants for any rent increases for covered units above the allowed 5% limit.
4.3	Review the Tenant Protection Ordinance for ways it could apply to restricted affordable apartments and still be consistent with rules for common funding sources such as low-income housing tax credits and State funding programs, and propose TPO amendments to the City Council.

⁴ Some portion of the 49,000+ rentals not covered by the ARO or TPO are covered by the State’s Tenant Protection Act of 2019 which establishes just cause for eviction protections and an annual rent increase cap.

4.4	Work with the State to establish that San José can enforce AB 1482. Assess whether desired enforcement authority can be granted administratively or if legislation is needed.
Long-Term	
4.5	Request that the City Council expand the Tenant Protection Ordinance to not count immediate household members against occupancy limits, to the extent allowed by State Health and Safety Code.
4.6	Evaluate the current Apartment Rent Ordinance and its effectiveness to determine if possible amendments should be recommended to achieve the goals of (1) stabilizing rents, (2) promoting stability and long renter tenancy, and (3) ensuring a fair return on investment to property owners.

DRAFT