

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: November 29, 2023

Approved



Date

12/1/23

INFORMATION

**SUBJECT: RENT STABILIZATION PROGRAM – NON-RENT CONTROL
APARTMENT PER UNIT FEE FISCAL YEAR 2023-2024**

The purpose of this memorandum is to provide information requested by Vice Mayor Kamei for item 3.6 “Approval of the 2023-2024 Proposed Operating and Capital Budgets for the City of San José and Schedule of Fees and Charges” at the June 13, 2023 City Council meeting¹. In response to the Vice Mayor’s request, the City Manager directed staff to provide a breakdown of costs, staff commitments, and per unit fee information with respect to the Tenant Protection Ordinance through an information memorandum.

BACKGROUND

The Annual Apartment Non-Rent Control Fee is commonly referred to as the Tenant Protection Ordinance Fee (TPO Fee). The TPO Fee is charged to owners of residential properties covered only by the Tenant Protection Ordinance (TPO). This fee applies to residential buildings with three or more rental units built after September 7, 1979. These properties charge rents that are not regulated by the City, as they are not subject to the City’s Apartment Rent Ordinance² (ARO). The purpose of the TPO is to promote housing stability and reduce displacement throughout San José’s rental market. The TPO requires owners to have a just cause to evict tenants, and it prohibits retaliation against tenants. The Rent Stabilization Program's (Program)

¹Item 3.6, Approval of the 2023-2024 Proposed Operating and Capital Budgets for the City of San José and Schedule of Fees and Charges: <https://sanjose.legistar.com/View.ashx?M=M&ID=1088259&GUID=7CB8B65A-0BD3-466D-881E-489B69EF1D08>

² For clarity’s sake, the TPO Fee is not charged to any properties subject to the ARO. The ARO covers properties with three or more rental units built before September 7, 1979. Properties subject to the ARO are charged a different fee, called the Annual Apartment Rent Control Fee.

role in implementing the TPO is to educate residents and property owners regarding the TPO, collect tenancy termination data and ensure compliance with the TPO.

All categories of the Program are cost recovery, so the fees charged must cover 100% of Program costs. As part of the annual budget process, Program staff completes an analysis of Program costs to evaluate what fees should be charged to adequately cover projected costs for the Program during the next fiscal year (FY). Program staff presents this analysis and recommended fee amounts to the Housing and Community Development Commission (HCD Commission) each spring prior to the budget approval for their review and comment. The HCD Commission is advisory to the City Council and provides recommendations to the City Council regarding the fees as part of the annual budget process.

In 2020, fees across all categories in the Program, including the TPO Fee, were reduced significantly in response to impacts of the COVID-19 pandemic and remained at the reduced rate for two years to provide relief to property and mobilehome owners. In April 2022, the HCD Commission requested a robust analysis of staff time and costs for each program³. At its April 21, 2022 meeting, the HCD Commission voted to approve staff's recommendation to gradually increase fees to return to full cost recovery over a three-year recovery period. The intent of the gradual phase-in was to allow owners more time to recover from COVID-19 financial impacts while ensuring the Program would not be significantly underfunded. FY 2023-2024 is the second year of this three-year cost-recovery period.

In preparing proposed fees for FY 2023-2024, Program staff performed an updated analysis of staff time, costs and revenue related to the TPO Fee and TPO units. To sufficiently recover costs, staff calculated the proposed TPO Fee to be \$34 per unit per year. At its meeting on April 13, 2023, the HCD Commission voted to recommend that City Council approve the proposed TPO Fee of \$34 per unit per year for FY 2023-2024.

At the May 15, 2023 City Council Budget Study Session for FY 2023-2024 that covered fees and charges, direction was given to staff to consider reducing the proposed TPO fee and present a Manager's Budget Addendum. In Manager's Budget Addendum #51⁴, staff recommended that the TPO Fee (Annual Apartment Non-Rent Controlled Fee) rate be set at \$23 per unit for FY 2023-2024. The City Council approved the reduced TPO fee of \$23 per unit when it approved the budget for FY 2023-2024.

ANALYSIS

In late 2022 and early 2023, as part of FY 2023-2024 budget development process, staff conducted analysis of actual staff time, costs, and revenues related to administering all categories of the Program: ARO related activities, TPO related activities, Mobilehome Rent Ordinance

³ Staff Report dated April 14, 2022

<https://www.sanjoseca.gov/home/showpublisheddocument/84566/637856220492670000>

⁴ <https://www.sanjoseca.gov/home/showpublisheddocument/98954/638214973734030000>

activities, and Ellis Act Ordinance activities⁵. A robust analysis of staff time and how it is balanced across the Program categories is a key part of the budget process and assessing fees. The apportionment of staff time can vary year to year due to a variety of factors. For example, there can be an increase or decrease in the number of petitions received, notices filed, or potential Ellis Act Ordinance projects submitted. Staff conducts this analysis to ensure that the fees are balanced across the Program and that one fee category is not being used to cover costs related to a different fee category. Some examples of work relating to different Program categories is provided below. Tasks and activities related to units covered by the ARO represent the highest number of staff hours.

Examples of tasks related to administering the ARO include:

- Supporting tenants and property owners with the petitions process and administering the mediation and hearing process;
- Maintaining and improving the rent registry, managing the annual rent registry cycle, overseeing enforcement compliance with the annual rent registry requirement; and
- Answering and logging inquiries from tenants, property owners and the public about rights and obligations under the ARO.

Examples of tasks related to administering the TPO include:

- Logging, reviewing, and conducting data analysis of eviction notices and unlawful detainer (eviction) lawsuits submitted to the Program;
- Answering and logging inquiries from tenants, property owners, and the public about rights and obligations under the TPO; and
- Responding to disasters like fire and flooding to inform tenants and property owners of TPO requirements and connect them with resources.

Examples of tasks related to the Mobilehome Rent Ordinance include:

- Answering and logging inquiries from mobilehome park residents and owners about the Mobilehome Rent Ordinance, the state Mobilehome Residency Law, and available resources;
- Supporting residents and park owners or managers in resolving their disputes; and
- Calculating the annual allowed rent increase and processing exemptions.

Examples of tasks that concern all Program categories include:

- Regular outreach and education to community members across the City on the Program and rental housing resources;
- Responding to Public Records Act requests;

⁵ A detailed list of tasks related to implementation of the Ordinance was presented to the Housing Commission in April 2022 per the Commission's as part of the three-year phase-in cost recovery proposal for Program fees. See Exhibit D <https://www.sanjoseca.gov/home/showpublisheddocument/84566/637856220492670000>

- Coordinating with the Department of Planning, Building and Code Enforcement for annual billing of Program Fees including compiling accurate rosters and mailing addresses for close to 90,000 units covered by the Program;
- Compiling information and data for regular reporting; and
- Responding to and logging inquiries received by phone, email and walk-in from tenants, property owners and the public about the Program or housing issues, regardless of whether the property or issue is covered by the Program.

TPO Fee Cost Evaluation Analysis

In this past year's budget process, staff performed a thorough analysis of actual staff time, costs, and revenues related to administering the TPO program. This analysis better captured the amount of actual staff time spent on TPO-related tasks and also determined a more accurate count of TPO units. Among the various TPO tasks staff performs, a considerable amount of staff time is spent logging received termination notices and unlawful detainers and responding to individual inquiries about the TPO from tenants and property owners of properties only covered by the TPO. As a large amount of data is collected from these activities, time to maintain the systems, as well as cleaning, compiling and analyzing data, and preparing reports from that data must be assessed and factored into budgeting. At the beginning of the TPO program just before the COVID-19 pandemic, it was difficult to assess what the balance of work would be across all categories of the Program. Also, a great deal of upfront work was needed to implement the ARO, with some TPO implementation tasks being performed later. In this fiscal year's analysis, staff adjusted percentages of staff time spent on TPO tasks reflecting a more up to date and accurate assessment.

During the past fiscal year, the Program had sufficient staff capacity⁶, data, and time to determine a more accurate count of units covered only by the TPO. This is a key component of projecting revenue. Original estimates for TPO unit counts were derived from a number of sources including the Department of Planning, Building and Code Enforcement's systems and RealQuest, a subscription housing data source based on county assessor records. The data from these sources provides limited information about the character and use of the properties. Staff used data derived from the City's recent annual billing cycles and further verified the use of certain properties using other internal data sources. The analysis of staff time, costs, and revenues indicated that an increase from \$15 to \$34 per unit annually, would be necessary to bring the Program to full cost recovery in FY 2023-2024.

Revised TPO Fee Pursuant to City Council Direction

In response to City Council direction, staff prepared a budget analysis with a reduction in the TPO Fee which was presented as Manager's Budget Addendum #51 and adopted as part of the FY 2023-2024 budget. The adopted TPO Fee of \$23 per unit was projected to result in only a

⁶ During the COVID-19 pandemic, vacant positions in the Program helped mitigate the impact of reduced fees. In addition, during this time staff was tasked with duties related to responding to the COVID-19 emergency and shutdowns.

66% cost recovery. Staff anticipates that an increase to \$35 per unit annually in FY 2024-2025 would be necessary to achieve 100% cost recovery. To mitigate impacts of decreased revenue, staff reduced the personal services budget by \$116,000, including holding open a vacant Office Specialist position. In addition, the unrestricted ending fund balance was reduced by \$407,292. This analysis is summarized in the Program cost evaluation in **Attachment A – Program Cost Evaluation**. **Table 1** provides a breakdown of the TPO Fee, actual and proposed, for a three-year cost recovery period.

Table 1: TPO Fees Charged in FY 2022-2023, Proposed and Amended FY 2023-2024 Fees, and Expected Fee for FY 2024-2025

	Adopted FY 2022-2023 Fee	Original Proposed FY 2023-2024 Fee	Adopted FY 2023-2024 Fee	Projected FY 2024-2025 Fee
Annual TPO Fee per Unit	\$15.00	\$34.00	\$23.00	\$35.00
Cost per Unit per Month	\$1.25	\$2.83	\$1.92	\$2.92

Comparison to Program Fees in Similar Jurisdictions

The TPO Fee for FY 2023-2024 and what is projected for FY 2024-2025 is in line, if not lower than, that what other jurisdictions with similar rent stabilization programs charge per unit. **Attachment B – Rent Stabilization Jurisdictions Fee Comparison** is a compilation of other jurisdiction’s rent stabilization programs that are similar to San José, including population, number of units, staffing and two-tiered fee structure for rent stabilized units versus units only covered by a just cause (tenant protection) ordinance. The two jurisdictions closest in characteristics to San José as measured by the number of units covered are Oakland and Los Angeles County. In Oakland, all 80,000 units, whether covered by its rent stabilization ordinance or only their just cause ordinance, pay the same per-unit fee, which was \$101 for FY 2022-2023. Like San José, Los Angeles County has a two-tiered fee structure for its 122,000 rental units. Units fully covered by its rent stabilization ordinance pay \$90 per unit, and the fee for units only covered by the just cause ordinance is \$30 per unit. Both Oakland’s and Los Angeles County’s programs have similar features to San José’s Program, and their staff also perform tasks related to a rent registry, submission of notices, petitions, public inquiries, and education and outreach.

Program Fees Pre-Pandemic, Post-Pandemic, and Phase-In to Cost Recovery

Table 2 details the per unit fees charged for each Program category over the past five years and the projected fees for FY 2024-2025 to be at full cost recovery. Per unit fees were intentionally suppressed in FY 2020-2021 and FY 2021-2022 to mitigate financial impacts to property owners resulting from the COVID-19 pandemic. To manage not having the Program at full cost recovery during this period, staff left open a vacant position for a period of time and waited to fill vacancies when staff members separated from the City.

Table 2: Program Fee Levels for Last Four Years and Projected Levels for FY 2024-2025

Fee Levels	FY2019-2020	FY2020-2021	FY 2021-2022	FY2022-2023	FY2023-2024	FY 2024-2025 <i>(Projected)</i>
Apartment Rent Ordinance	\$85.00	\$55.00	\$55.00	\$65.00	\$72.00	\$74.00
Tenant Protection Ordinance	\$9.00	\$5.00	\$5.00	\$15.00	\$23.00	\$35.00
Mobilehome Rent Ordinance	\$24.00	\$20.00	\$20.00	\$30.00	\$33.00	\$33.00

EVALUATION AND FOLLOW-UP

Program staff will begin cost evaluation of the Program in the next two months as part of the annual budget process and will present proposed Program Fees for FY 2024-2025 to the HCD Commission in spring 2024. Program staff will continue to monitor the rental market and the needs of property owners and tenants during the upcoming year to assess any necessary adjustments to staffing and nonpersonal expenditures for next fiscal year.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

/s/
 ROSALYNN HUGHEY
 Deputy City Manager and
 Acting Housing Director

HONORABLE MAYOR AND CITY COUNCIL

November 29, 2023

Subject: Rent Stabilization Program – Non-Rent Control Apartment Per Unit Fee Fiscal Year 2023-2024

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For questions, please contact Rachel VanderVeen, Assistant Director of Housing, at Rachel.VanderVeen@sanjoseca.gov or 408-535-8231.

ATTACHMENTS

ATTACHMENT A: Program Cost Evaluation

ATTACHMENT B: Rent Stabilization Jurisdictions Fee Comparison

Attachment A
Program Cost Evaluation
Tenant Protection Ordinance

Tenant Protection Ordinance Fee ("Apartment Unit") - Program: PM01 - Grant: G_M016			
	2022-2023	2023-2024 Adopted	2024-2025 (Forecast)
Activity Level (Total Units)	65,560	47,572	47,572
Base Revenue			
<i>Prior Year Fee/Rate (Adopted)</i>	\$5.45	\$15.00	\$23.00
Total Base Revenue	\$357,302	\$713,580	\$1,094,156
Base Costs (Base Budget, exc. Proposed Budget Adjustments)			
Personal Services	\$1,189,155	\$1,615,253.74	\$1,663,711.35
Non-Personal/Equipment	\$7,300	\$7,300	\$7,300
Total Base Cost	\$1,196,455	\$1,622,554	\$1,671,011
Base Cost Recovery	29.90%	43.98%	65.48%
Proposed Costs (inclusive of Proposed Budget Adjustments)			
Personal Services	\$1,144,094	\$1,615,254	\$1,663,711
Non-Personal/Equipment	\$7,300	\$12,049.99	\$12,049.99
Total Proposed Cost	\$1,151,394	\$1,622,554	\$1,671,011
Cost Rate (per unit)	\$17.56	\$34.11	\$35.13
Proposed Fee/Rate	\$15.00	\$23.00	\$35.12
Proposed Revenue	\$983,400	\$1,094,156	\$1,670,729
<i>Excess/(Shortfall)</i>	(\$167,994)	(\$528,398)	(\$283)
Proposed Cost Recovery	85.40%	67.43%	99.98%

Attachment B

Rent Stabilization Jurisdictions Comparison

Below is a sample of California cities and counties with rent stabilization programs. Each jurisdiction requires registration of covered units and each include rent stabilization and just cause provisions in its ordinances or city charter. If a jurisdiction enacted its law after February 7, 1995, units built after that date cannot be subject to local rent stabilization provisions due to a state law called the Costa-Hawkins Act. All units can be subject to local just cause provisions. The fees shown (besides San José) are what jurisdictions charged for Fiscal Year 2022-2023.

	San José	Los Angeles County	Oakland	San Francisco	Santa Monica	Berkeley	Inglewood	Richmond	Mountain View
Population	1,015,785	1,057,162	413,775	873,965	93,076	124,321	107,762	116,448	82,376
Effective Date	Sept. 1979	Apr. 2020	Jan. 1983	Jun. 1979	Apr. 1979	Jun. 1980	Nov. 2019	Jan. 2017	Dec. 2016
# of Units	38,421	55,500	80,000*	173,000*	27,500*	19,000	23,000*	7,775	15,000*
# of Just Cause Only Units	47,572	66,790	n/a	n/a	n/a	7,000	n/a	10,700	n/a
Annual Allowable Increase	5%	100% CPI-U (3% - 8%)	60% CPI-U (cap 3%)	60% CPI-U (cap 7%)	75% CPI-U	65% CPI-U	>5 units = 3% or CPI-U	100% CPI-U	100% CPI-U (2% - 5%)
Per Unit Fee Rent Stabilized	\$72	\$90	\$101	\$59	\$228	\$250	\$206	\$218	\$96
Annual Per-Unit Fee Just Cause only (TPO Fee)	\$23	\$30	--	--	--	\$150	--	\$123	--
Same fee for all units?	no	no	yes	yes	no	no	yes	no	yes
Fee Cost per Unit per Month***	\$6.00 / \$1.91	\$7.50 / \$2.50	\$8.42	\$4.92	\$19.00	\$20.83 / \$12.50	\$17.17	\$ 19.83 / \$10.25	\$8
# of Full-time Staff	22	n/a	26	31	24	25	17	13	7
# of Units per Staff	3,909**	n/a	3,077	5,581	1,146	1,040	1,353	1,421	2,143
Staff per 1,000 Units	0.26**	n/a	0.32	0.18	0.87	0.96	0.74	0.65	0.47

*Total number includes just cause only units

**These calculations do not reflect the 10,000 mobilehome spaces staff also supports. Including that number would be 4,363 units per staff and 0.23 staff per 1,000 units.

***Where two amounts are shown, the first amount represents the fee cost per unit per month for rent stabilized units and the second amount is the fee costs per unit per month for units covered only by the just cause ordinance.