



Office of the City Auditor

**Report to the City Council
City of San José**

**TENANT PROTECTION
ORDINANCE: HOUSING
SHOULD REFINE ITS FEE
CALCULATION PROCESS
AND STANDARDIZE
PROCEDURES TO IMPROVE
PROGRAM ADMINISTRATION**

**Report 24-05
October 2024**

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October 21, 2024

Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

Tenant Protection Ordinance: Housing Should Refine its Fee Calculation Process and Standardize Procedures to Improve Program Administration

The Tenant Protection Ordinance (TPO) protects tenants in multiple dwelling units from unjust evictions by limiting terminations to 13 just causes, including at-fault and no-fault to the tenant. The Housing Department (Housing) administers the TPO as part of its Rent Stabilization Program and assesses a per-unit annual fee on property owners whose units are covered by the TPO. San José has a two-tier fee system: a lower fee for TPO-only units, and a higher fee for units covered by the Apartment Rent Ordinance and the TPO. In recent years, Housing has sought to increase the TPO-only fee to reflect the full cost of administering the program. The objective of this audit was to review the assessment and use of TPO fees.

Finding 1: Housing Should Develop a Standard Roster of Tenant Protection Ordinance Units and Better Document the Fee Calculation Process. The current process to identify TPO-only units is complicated, labor-intensive, and has led to errors in the past. We found:

- In the most recent count, Housing estimated there were roughly 48,000 TPO-only units in San José, though this included about 6,450 hotel and motel rooms which should be exempt.
- The unit counts in past fee calculations have fluctuated because of the inclusion of more than just TPO-only properties and ongoing data cleaning.
- Property exemptions from the TPO can be clarified in the San José Municipal Code and in communications with landlords.
- Better tracking of staff time by ordinance would further improve accuracy of the TPO-only fee calculation.

Recommendations: Housing should:

- Develop a standard roster or database of TPO-only properties, excluding hotels and motels.
- Document and clarify the methodology for identifying TPO and exempt properties.
- Formalize procedures to track staff time across the different Rent Stabilization Program areas.

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Background

During the FY 2023-24 budget process, the Housing Department (Housing) proposed a \$34 per unit fee for non-rent-controlled apartment units to recover the costs of administering the City’s Tenant Protection Ordinance (TPO).¹ This was an increase from the FY 2022-23 fee of \$15 per unit. In FY 2021-22, the fee was \$5.45 per unit.

With a \$34 per unit fee for TPO-only units, expected revenues for FY 2023-24 were estimated to be \$1.6 million, more than six and a half times than the revenues in FY 2021-22. Because of concerns about the substantial increase in fees, the City Council approved a smaller increase for FY 2023-24, setting the fee at \$23 per unit. The objective of this audit was to review the assessment and use of Tenant Protection Ordinance Fees.

Tenant Protection Ordinance

The San José Municipal Code §17.23, Part 12, known as the Tenant Protection Ordinance, protects tenants in multiple dwelling units from unjust evictions by limiting terminations to thirteen just causes, including at-fault and no-fault to the tenant. For no-fault evictions, the TPO requires relocation assistance to be paid to the tenant. The ordinance protects against retaliation, including based on immigration status.

Exhibit 1: 13 Just Causes for Evictions Under the Tenant Protection Ordinance

At-Fault Just Causes	No-Fault Just Causes
1. Nonpayment of rent	1. Substantial rehabilitation of the apartment
2. Material violation	2. Ellis Act Ordinance for building removal from the rental market
3. Damage to the unit	3. Owner move-in
4. Refusal to agree to new rental agreement	4. Order to vacate unit to comply with a court or governmental agency order
5. Nuisance behavior	5. Terminating use of an unpermitted apartment
6. Refusing access to the unit	
7. Unapproved holdover subtenant	
8. Criminal activity	

Source: San José Municipal Code §17.23, Part 12

The TPO has protocols on how landlords inform tenants, and the City, about an eviction. The process consists of the following steps:

¹ Rent-stabilized units under the Apartment Rent Ordinance are also covered by the TPO. Those units pay a separate, higher fee which is meant to capture the administration costs of both ordinances.

- Landlord provides a Notice of Termination in writing to the tenant with one of the 13 just causes cited as the reason for termination and attaches a required City form about renter resources.
- Landlord submits a copy of the Notice of Termination to the City via the online portal, email, or mail within three days of serving the notice.
- If it is a no-fault eviction, the landlord must provide relocation benefits to the tenant, the amount of which depends on the type of unit initially occupied.

The City Council passed the TPO in 2017 to promote housing stability and fairness within the residential rental market. The TPO covers rental units in any multiple unit dwelling, including rent-stabilized units under the City’s Apartment Rent Ordinance; guest rooms in any guesthouse; and unpermitted units. Hotels, motels, eligible affordable units, and single-family homes (when rented as one unit) are excluded, as are mobilehomes, which have separate protections.

Rent Stabilization Program

Housing administers the TPO as part of its Rent Stabilization Program along with four other City ordinances: the Apartment Rent Ordinance, the Ellis Act Ordinance, the Mobilehome Rent Ordinance, and the Housing Payment Equality Ordinance. All ordinances except for the Housing Payment Equality Ordinance are cost recovery and have their own fees. Rent Stabilization Program staff work across different areas, but typically specialize in tasks pertaining to one or two specific ordinances.

Exhibit 2: Overview of Five Ordinances Under the Rent Stabilization Program

Ordinance	Main Provisions
Tenant Protection Ordinance	Limitation of evictions to 13 just causes and relocation benefit payments for no-fault terminations
Apartment Rent Ordinance	Limitation of rent increases to no more than 5 percent per year for apartment units in buildings issued a certificate of occupancy on or before September 7, 1979
Ellis Act	Regulates owner move-in or demolition, and requires relocation assistance.
Mobilehome Rent Ordinance	Protection of mobilehome owners from excessive rent increases
Housing Payment Equality Ordinance	Protection of tenants with housing vouchers or other rental assistance from discrimination based upon their source of income

Source: Housing Department’s Rent Stabilization Program 2024-27 Housing Strategic Plan and San José Municipal Code.

In August 2024, Housing developed a strategic plan for the Rent Stabilization Program.² The plan states that “the three goals of the program are to stabilize housing for families, preserve the units people live in, and provide broad outreach and education to better protect tenants and support housing providers.” The plan also identified different short- and long-term strategies within each of these areas.

Administration of the Tenant Protection Ordinance

To administer the TPO, Housing staff conduct outreach to landlords and tenants to inform them of their rights and responsibilities under the ordinance. Housing also operates a weekly Eviction Prevention Program Courthouse Clinic at the Santa Clara County Superior Courthouse, providing unlawful detainer (eviction lawsuit) complaint and response packets, and information about financial and community resources.³ Additional responsibilities include:

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

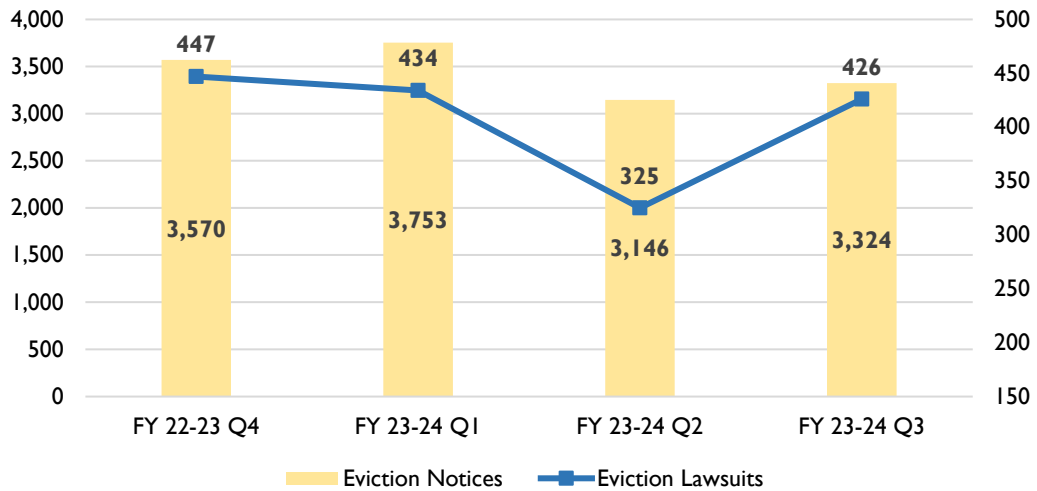
In addition, Housing coordinates with the Department of Planning, Building and Code Enforcement for annual billing for the TPO and other Rent Stabilization Program fees. As of March 2024, the Rent Stabilization Program had 20 staff members.

To contextualize the volume of evictions, Exhibit 3 shows how many eviction notices and eviction lawsuits were submitted to the Rent Stabilization Program between April 2023 and March 2024.

² During the audit, the strategic plan was presented to the Community and Economic Development Committee and was subsequently presented to and approved by the full City Council.

³ The Eviction Help Center and Eviction Diversion Program were launched to help renters during the COVID-19 pandemic with dedicated funding. The Eviction Diversion Program continues to support the Rent Stabilization Program through FY 2024-25.

Exhibit 3: Eviction Notices and Lawsuits Submitted, April 2023-March 2024



Source: Housing Stabilization and Eviction Prevention Status reports, Department quarterly reports.

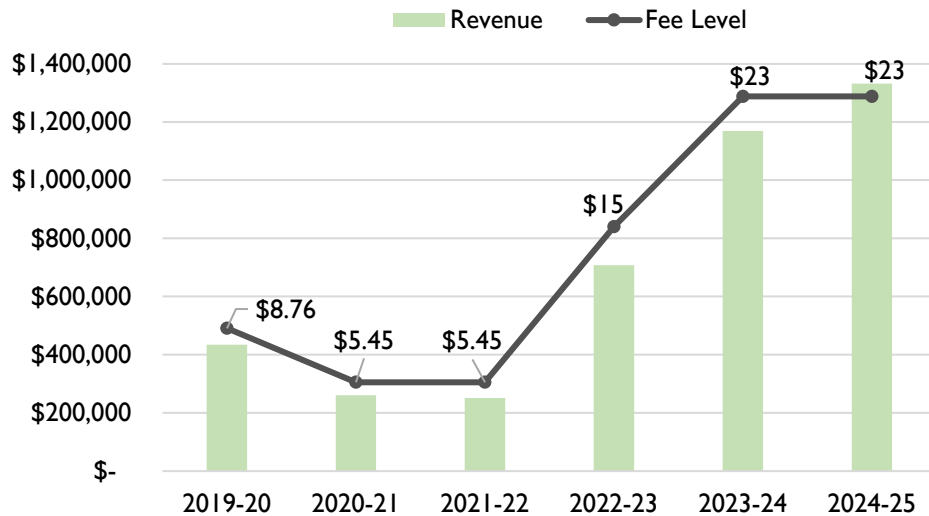
TPO Fees and Fee History

Landlords of units covered only by the TPO are charged a per unit fee to cover the costs of administering the TPO for those units. When administration of the TPO began in FY 2017-18 the fee was \$4. The fee increased in FY 2018-19 to \$6. In FY 2019-20, the fee was set at \$9 per unit, which generated roughly \$430,000 in fee revenue. In 2020, the TPO fee was reduced to \$5.45 per unit in response to the COVID-19 pandemic.⁴ These reduced rates were maintained for two years to alleviate any financial burden on property owners.

In April 2022, the City’s Housing and Community Development Commission,⁵ which advises City Council on its rent stabilization fees, recommended approving a staff recommendation to gradually increase fees over a three-year period to achieve full cost recovery. The phased increase was designed to help property owners recover from the pandemic’s financial impacts while ensuring adequate funding for the program.

⁴ The State of California instituted an eviction moratorium during the COVID-19 pandemic. The City launched the Eviction Help Center with federal funding to provide resources and assistance to renters facing economic hardship.

⁵ The Housing and Community Development Commission is a 14-member advisory body which advises the Housing Director, Mayor, and City Council on matters related to policy, programs, fees, community engagement, and more.

Exhibit 4: TPO Fee Levels and Revenues, FY 2019-20 to FY 2024-25⁶

Source: Revenues from the FY 2021-22 Adopted Operating Budget, FY 2022-23 Adopted Operating Budget, FY 2023-24 Adopted Budget, and FY 2024-25 Proposed Operating Budget. Fee levels from the Housing and Community Development Commission agenda from March 13, 2024, 2024-2025 Adopted Fees and Charges Memo from September 7, 2024, and Housing reports.

Landlords with units covered by the Apartment Rent Ordinance pay a separate, higher fee that is intended to recover the costs of administration of the Apartment Rent Ordinance and the TPO for those units. In this way, San José has a two-tier fee system: a lower fee for TPO-only units, and a higher fee for Apartment Rent Ordinance and TPO units.

Other Laws and Regulations

The California Tenant Protection Act of 2019 limits annual rent increases to 5 percent plus the percentage change in the cost of living, or 10 percent, whichever is lower, over the course of a 12-month period. Additionally, it requires just cause for evicting tenants who have resided in a property continuously and legally for 12 months. Per state law, local just cause ordinances must provide more protections than the Tenant Protection Act, not less.

Per the City Attorney's Office, San José's TPO covers different properties and has different requirements than the state's Tenant Protection Act.

Tenant Protections in Other Jurisdictions

Other jurisdictions have adopted just cause ordinances similar to San José. The fees and level of service vary across jurisdiction. Some jurisdictions charge one fee to all units, while others have a tiered fee system or do not have a fee.

⁶ The fee was reduced in FY 2020-21 and FY 2021-22 due to COVID-19. In FY 2024-25, the fee was frozen at the previous year's \$23 per unit amount while this audit was conducted.

Jurisdictions surveyed with a two-tier system like San José are Richmond and Los Angeles County. For example, Richmond charges \$239 to fully covered units, which is similar to units covered by San José's Apartment Rent Ordinance and Tenant Protection Ordinance, and \$136 for partially covered (just cause units) only. Los Angeles County charges \$90 for fully covered units, and \$30 for partially covered units. On the other hand, the City of Berkeley has a four-tier system (based on the type of unit and ordinances that cover the unit) with fees ranging from \$53 to \$344 per unit.

Among surveyed jurisdictions, San José's fees are lower than others, which range from \$30 per unit to the \$344 per unit in Berkeley's top tier. Oakland, Mountain View, and West Hollywood all had fees higher than \$100 per unit. In Santa Ana, 50 percent of the \$100 fee is allowed to be passed to tenants, equating to approximately four dollars per month. However, three jurisdictions (Fresno, Long Beach, and Santa Monica) do not collect fees for their just cause ordinances.

Outreach and services vary across jurisdictions. For example, Santa Ana reports that they have established a partnership with the local school district to send information to parents via the district's emailing system because they found that parents are active in schools and sending information via the schools is effective. This is supplemented with presentations at all the schools within that school district. Also, they send text alerts via the city phone service for those that sign up because they have found that texting is more effective than emailing. Mountain View staff reports hosting office hours for tenants and landlords to bring services providers to one location.

Finding I Housing Should Develop a Standard Roster of Tenant Protection Ordinance Units and Better Document the Fee Calculation Process

Summary

The current process to identify TPO-only eligible units is complicated and labor intensive. It has also led to errors in the past. In the most recent count, Housing estimated that there were about 48,000 TPO-eligible units in San José; however, this included roughly 6,450 hotel and motel rooms that should be exempt. Housing can improve the process by more fully documenting how the unit count is calculated or maintaining a database or roster of TPO units. Housing can make further improvements by clarifying what properties are exempt from the ordinance and coordinating with the Department of Planning, Building and Code Enforcement to ensure property unit counts are accurate. Lastly, better tracking of staff time would further improve the accuracy of the TPO fee calculation.

Better Tracking of TPO-Only Units Can Ensure Fees Are Set Accurately

The current process for identifying TPO-only units is complicated, labor intensive, and, according to staff, takes weeks to complete. In past years, it also has led to errors. Using data from the City's integrated permitting system, Housing estimated there were roughly 48,000 rental units subject to the TPO fee in the most recent count. This comprises units that are only covered by the TPO and not the Apartment Rent Ordinance. However, the list included roughly 6,450 hotel and motel rooms, even though they are explicitly exempted in the Municipal Code.

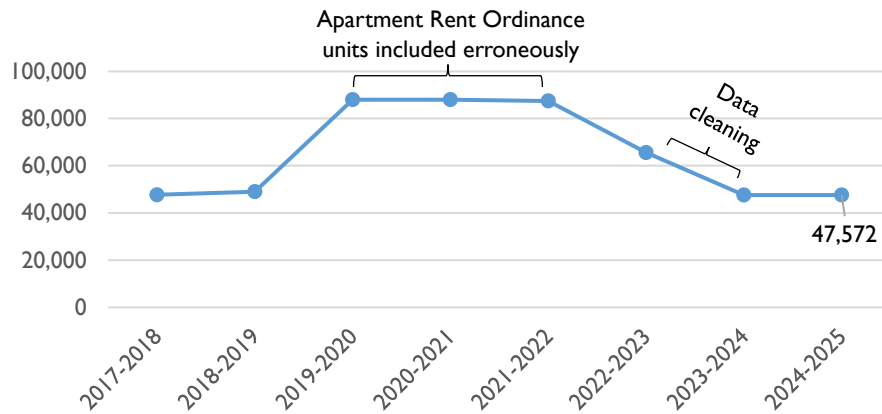
Units covered by the Apartment Rent Ordinance are still subject to the TPO. Those units pay a separate fee which is meant to capture the proportional amount of TPO administration costs as well as the administration of the Apartment Rent Ordinance.

The Unit Count of TPO-Only Units Has Fluctuated Over Time

Overall, Housing estimates that around 86,000 units are covered by the TPO; of these, around 48,000 are only covered by the TPO and thus are charged the TPO fee. The remainder, about 38,000 units, are covered by the Apartment Rent Ordinance and are charged that fee.

In the TPO-only fee calculation, the number of units has fluctuated over time. Between FY 2019-20 and FY 2021-22, the calculated unit count inadvertently included units under the Apartment Rent Ordinance, according to Housing staff. Housing then conducted some data cleaning for the unit count. During the most recent analysis, Housing calculated there were 47,572 units subject to the TPO fee, which excludes all units under the Apartment Rent Ordinance.

Exhibit 5: The TPO Unit Count Has Fluctuated Over Time



Source: Data provided by Housing staff. Documentation included counts only for previous years and the complete TPO unit count list for FY 2023-24.

To achieve cost recovery, it is important to have an accurate count of TPO eligible units. The TPO fee is calculated by dividing the resource costs for administering the ordinance by the total number of units covered only by the TPO.

Changes to the unit count have only partly affected fee changes. Some of the years with incorrect counts coincided with COVID-19 when the fee was capped at \$5.45. There were also positions left unfilled to reduce costs, and the Rent Stabilization Program’s services were supplemented by the Eviction Help Center, which the City launched using federal funding.

The Current Unit Count Includes More Than 6,450 Units Identified as Hotel or Motel Rooms

Among the 47,752 units used in calculating the most recent TPO fee, 6,456 units were identified in the City’s permitting system as being hotel or motel rooms. In total, there were 47 hotels or motels included. Some of these included large franchise hotels near the San José Mineta International Airport and other well-known downtown hotels. These units were included in the TPO count and paid the fee.

Under the Municipal Code, hotels and motels are exempt from the TPO. According to Housing, the onus has been on the hotel or motel owner to apply for an exemption from the TPO. They report there is a risk that hotel or motel

rooms may be rented out for other purposes, and they need affirmative confirmation about the current use. However, neither the Municipal Code, Housing procedures, or Housing's website specify that the motel and hotel owner must file an exemption request. Housing reports that during the audit, they removed motels and hotels from the TPO list.

The Unit Count Review Process Is Inefficient and Not Well Documented

Housing does not have a written methodology that covers all parts of the unit count preparation and verification. Per Housing staff, verifying the unit list from the City's integrated permitting system is a time-consuming process that involves reviewing the permitting system data line by line to identify subject properties and exemptions. According to Housing, the overall review takes several weeks and includes multiple staff members. The general process includes:

- The Department of Planning, Building and Code Enforcement (PBCE) generates a list of multiple housing units from the City's integrated permitting system (which is also the system that bills landlords for the TPO fee).⁷ Within the database is a field that can identify units that may be exempt from the TPO or the Apartment Rent Ordinance; however, this field is not always filled in.
- Housing reviews the list of multiple housing units from PBCE and splits it to create two separate lists based on the date the property was built. Properties built on or before September 7, 1979, are included in the Apartment Rent Ordinance list and after this date are included in the TPO list.
- In the TPO list, Housing staff review the properties line by line to determine whether they are subject to the TPO, if the unit counts are correct (based on landlord feedback), and to determine whether units should be exempt such as affordable properties.

Housing receives feedback from landlords regarding the correct number of units for a property. In some cases, this does not align with data in the permitting system. However, the process to verify and potentially update the integrated permitting system is not clear.

During the audit, Housing staff prepared draft procedures, but these have some gaps. To help with the process, Housing also has prior rosters of TPO units, a training video on examples of how the unit count would be calculated, and raw data on the multiple housing units and units billed. However, these do not cover every step or requirement. Housing staff described the process as complicated

⁷ The Office of the Assessor, County of Santa Clara shares updated property information with PBCE to update the system weekly.

and labor-intensive. As noted previously, the process has led to past errors and fluctuating unit counts.

The San José Municipal Code and Housing Communications Are Not Clear on TPO Exemptions

Per the Municipal Code, hotel and motel rooms are specifically exempted from the TPO. Affordable units that meet certain criteria are also exempt in the Municipal Code. Housing staff reports that residential care facilities and sorority/fraternity houses are also exempt from paying the TPO fee. Though the City Manager has the authority under the Municipal Code to determine whether additional property types are exempt from paying the fee, these exemptions are not identified in the Municipal Code nor documented elsewhere.⁸

Housing's communications to landlords are also not clear on which units are exempt. Housing sends a notice to landlords to provide them the opportunity to request that some units be exempted and explain why they qualify for the exemption. However, the FY 2023-24 notice only refers to the criteria for Apartment Rent Ordinance units and exemptions. It does not include criteria for what is covered as a TPO unit, and which would qualify for a TPO exemption. See Appendix B for an example of the exemption form and letter from FY 2023-24. Housing reports that they are revising the forms to clarify TPO exemptions.

A Standard List or Roster of Properties Would Streamline the Calculation of Units

One of the goals outlined in the draft Rent Stabilization Program Strategic Plan is to:

Review capabilities of existing rental registry system to allow for modifications to collect additional information and easily report out on program metrics aimed at measuring program effectiveness. If necessary, the City could consider a request for proposal to solicit a vendor that specializes in the creation of such systems that include built-in reporting functions.

Though this goal is identified in the Unit Preservation section about streamlining administrative processes by removing hurdles that slow down unit maintenance and repairs, it could potentially be applicable to maintain lists of properties subject to the different ordinances under the Rent Stabilization Program. Currently, the City's rent registry is only for units subject to the Apartment Rent Ordinance.

⁸ In contrast, the Municipal Code section for the Apartment Rent Ordinance lists a variety of specific exemptions. It appears Housing has adopted some of the Apartment Rent Ordinance exemptions as criteria for whether the similar properties are exempt from the TPO fee.

Other Jurisdictions Maintain and Verify Lists of Properties Subject to Their Just Cause Eviction Ordinances

Other jurisdictions, such as Berkeley, Oakland, and Richmond, maintain registries of properties subject to their just cause eviction ordinances. Richmond requires landlords to register their rental properties. Berkeley also does this and then verifies the unit counts against other county and city databases (such as tax assessor records or utility billings). In the future, Berkeley also plans to conduct site visits to verify property information. However, it should be noted, each of these jurisdictions have much higher fees for the units protected by their just cause ordinances.

Recommendations:

- 1: To improve the efficiency and consistency of the Tenant Protection Ordinance (TPO) fee calculation, the Housing Department should:**
 - a. Document the methodology for how units are identified as covered by the TPO, if using data from the City's integrated permitting system, or**
 - b. Develop a database or roster of TPO units based on data from the integrated permitting system or a landlord registry.**
- 2: To better identify properties subject to the Tenant Protection Ordinance and ensure accurate billings, the Housing Department should work with Planning, Building and Code Enforcement to:**
 - a. Create a process to correct and validate unit counts in the integrated permitting system as necessary based on landlord feedback, and**
 - b. Ensure the exemption field in the City's integrated permitting system is properly filled in.**
- 3: The Housing Department and the City Attorney's Office should clarify the Tenant Protection Ordinance exemptions in the San José Municipal Code and update communications to landlords accordingly.**
- 4: To ensure a proper count of Tenant Protection Ordinance (TPO) units and properly exempt hotels and motels from the TPO fee, Housing should remove hotels and motels from their unit count and coordinate with Planning, Building and Code Enforcement to ensure hotels and motels are not billed for the TPO fee.**

Better Tracking of Staff Time Would Further Improve the Accuracy of the TPO-Only Fee Calculation

Housing has created charge codes within the City’s human resource management system to better track staff time across the different Rent Stabilization Program areas. Housing also provided a training to staff in June 2023 and circulated guidance on how the charge codes should be used. However, these are not consistently used.

Though all Rent Stabilization Program staff engage with tenants and landlords about the TPO when answering incoming calls, payroll records show that very few staff consistently charge time to TPO. Housing reports that the majority of rental units are TPO-only, but calls about the TPO may be charged to the Apartment Rent Ordinance program if the rental unit is covered by that ordinance. However, staff reported using different approaches to charging time, and some timecards showed no charge codes used at all during the period of time reviewed.

In the TPO fee calculation, Housing estimates that Rent Stabilization Program staff spend roughly 30 percent of their time on TPO as it relates to units only covered by the TPO. Based on the Rent Stabilization Program staffing assignments, about five of the 20 FTE in the Rent Stabilization Program are allocated to the TPO as it relates to units only covered by the TPO.

One of the goals in the Rent Stabilization Program Strategic Plan is to “Assess staffing level and structure of the current Program to determine when changes or additional resources are necessary to meet the objective.” Getting a clear understanding of how much time is spent on administering the different Rent Stabilization Programs will help achieve that goal. This is particularly important as Housing staff have noted that the Rent Stabilization Program may absorb work that currently is undertaken in the Eviction Help Center when state funding ends.

Recommendation:

- 5: To better allocate staff time across the Rent Stabilization Program areas, the Housing Department should assess the most appropriate way to track and estimate staff time spent on different fee programs and formalize related procedures, including supervisory review.**

Finding 2 Standard Procedures and Data Collection Would Enhance the Tenant Protection Ordinance’s Performance Management

Summary

A key part of implementing the TPO is providing landlords and tenants with information to ensure compliance and to exercise their rights. Through the Rent Stabilization Program’s phone line, email, and office walk-ins, staff documented about 1,500 TPO-related inquiries across 600 properties in 2023. Common topics included the validity of eviction notices, the requirement for relocation assistance, and general information about tenant and landlord rights and responsibilities. However, the Rent Stabilization Program’s procedural manual was last updated in 2018 and has yet to be updated to include guidance for staff on how to manage TPO interactions or when to escalate enforcement activities. Additionally, developing program-specific performance measures would help assess the TPO’s effectiveness in promoting housing stability and preventing unjust evictions.

TPO-Specific Procedures Are Needed to Standardize Enforcement and Guide Interactions

The current procedure manual for the Rent Stabilization Program does not provide guidance to staff on how to escalate enforcement measures or manage TPO-related interactions. The Rent Stabilization Program Manual was last updated in 2018 and has not yet been updated to include detailed information related to the TPO.

Enforcement of the TPO Should Follow a Clear Process

There is not a standardized process for enforcing the TPO. When Rent Stabilization Program staff learn of TPO non-compliance, they mostly address it by informally reaching out to landlords via phone and email. These communications can often help resolve the issue, but sometimes additional action is needed.

- *Compliance Notices:* Housing has issued formal compliance notices (warning letters prior to a citation) to seven properties for TPO violations since the ordinance was adopted. However, it is unclear what criteria is used to determine when cases should be escalated to issuance of a compliance notice. Housing should develop procedures to ensure

that staff have a consistent process for escalating violations to compliance notices.

- *Administrative Citations:* The Rent Stabilization Program’s Administrative Citation Manual, adopted in 2019, contains procedures for citing ordinance violations. No TPO citations have been issued to date, as many TPO-related violations are classified as “curable,” meaning they can usually be resolved without the need for a citation. This differs from the Apartment Rent Ordinance, for which staff do periodically issue citations, such as for failure to annually register units in the Rent Registry.

Given that citations have not been a major part of TPO enforcement, there should be a more robust process for pre-citation enforcement, particularly when moving from informal communication efforts to formal compliance noticing.

Formal Procedures Would Guide Interactions with Tenants and Landlords

Rent Stabilization Program staff do not have written guidance for their interactions with tenants and landlords. Staff have described their training as reading the ordinances and informational materials, discussing them with supervisors, and learning how to handle interactions on-the-job.

Not having standard operating procedures creates a risk of providing inaccurate or inappropriate information. In one case, logs indicate that staff gave inaccurate advice as to whether a tenant was owed relocation assistance. In another instance, staff provided information to a tenant about whether their neighbor was served an eviction warning, which should not be shared with anyone except the tenant and landlord.

Staff communicate with tenants and landlords about the TPO through phone calls, emails, and walk-in visits to Housing. These interactions happen daily. All Rent Stabilization Program staff are expected to answer initial questions about any ordinance, including the TPO. Two staff members specialize in the TPO and handle more intensive questions or concerns relating to the ordinance.

In 2023, staff logged about 1,500 interactions across 600 properties which were related to the TPO.⁹ The topics that stakeholders ask about cover a wide range, from straightforward questions to more complex situations. They typically include:

- Whether a unit is covered under the TPO.
- Whether a landlord issued a notice of eviction properly.

⁹ This includes inquiries received through the Rent Stabilization Program’s phone line, email, and office walk-ins, but does not include inquiries received through the Eviction Help Center’s channels. Housing estimates about 3,000 Eviction Help Center interactions in 2023, many of which would involve units covered under the TPO.

- How to respond when a landlord has filed a notice of eviction.
- What legal resources are available if a tenant thinks an eviction is unjust.
- Whether a tenant is owed relocation assistance from their landlord.

Formal, documented guidance which talks about how to handle interactions would serve as training material for new staff. It would also serve as an ongoing reference for current staff, many of whom do not specialize in TPO as their primary duty. Housing management sent an email to staff in July 2024, which outlined general standards and expectations for writing interaction logs. The type of procedural information provided in that email, as well as guidance or trainings that may be provided at meetings, should be expanded upon and formalized to make available for Rent Stabilization Program staff on an ongoing basis.

TPO-specific procedures would also help ensure the consistency and appropriateness of how Rent Stabilization Program staff interact with tenants. This is especially important for more complex situations, such as those described in Exhibit 6.

Exhibit 6: Examples of How TPO Procedures Would Improve Service Delivery

Common Situation	Significance	Benefit of Procedures
Determining what type of advice is appropriate to provide to a tenant.	Staff inform tenants about their rights but should not give legal advice.	Guidelines on how to give useful, practical info that is not legal advice.
Following up with tenants and landlords to provide information and enforce the TPO if needed.	TPO relies on staff follow-up to relay necessary information and address non-compliance.	Structure for follow-ups; when staff should contact people and how best to enforce common cases.
Considering if a tenant may require a staff referral due to their high-risk situation.	A sudden or unexpected eviction may put a tenant at risk of being unhoused.	Clear criteria ensure staff consistently make direct referrals when a tenant needs urgent support.

Source: Interviews with Housing staff and the City Attorney’s Office.

Standard Operating Procedures Help Ensure Quality Customer Service

Another benefit of having standard procedures for TPO interactions is improved customer service generally. The City’s Customer Service Vision and Standards emphasize the need for continually improving customer service through people, processes, and technologies. While staff regularly provide timely and valuable

information to stakeholders, documentation of staff's procedures would enable management to make improvements as needed and communicate the changes to staff. Additionally, to keep the procedures up to date with programmatic changes in the future, the Department should create a review schedule.

Recommendation:

- 6: To standardize service delivery, the Housing Department should update its Rent Stabilization Program Manual to include procedures to guide day-to-day interactions with stakeholders and establish an enforcement process for addressing Tenant Protection Ordinance non-compliance. Additionally, the Department should create a review schedule to ensure procedures continue to align with program needs and practices.**

Expanding Interaction Data and Developing Performance Measures Would Better Demonstrate Program Outcomes

The Department's interaction log database does not contain fields to capture which ordinances are associated with each stakeholder interaction. As a result, it is challenging to determine how many interactions pertain to the TPO and identify the specific issues happening within each ordinance's interactions. For example, in 2023, there were about 5,500 interactions logged in the Rent Stabilization Program database. Of these, about 500 had "TPO Noticing" or "Evictions" labels in the "Advice Selection" field, which contains general topic areas. However, a review of the interaction logs based on content, keywords, and other possible advice selections yield about 1,500 TPO-related interactions.

This gap in information may limit Housing's ability to analyze the scope of TPO-related activities using the log data. This can also make it more difficult to identify trends in the community and assess the impact of the program's interventions.

Another useful field which Housing's database does not currently contain is when staff are informally enforcing the ordinance(s). These interactions are the initial and main way staff enforce the TPO. Logging when enforcement is happening in the database would allow the Department to monitor what kind of non-compliance is happening and assess how effectively the program is able to address those cases. It also can help management allocate resources efficiently for staff and conduct targeted outreach if there are much more or less inquiries about a specific ordinance.

The interaction log database contains some unnecessary and outdated fields which, while unused anyway, would be beneficial to remove so that staff can focus on filling out only what is needed. Housing recently began holding bi-weekly

meetings to discuss database optimization amongst key staff, including the staff who can implement the back-end changes once they are finalized.

TPO-Related Performance Measures Can Help Program Effectiveness

Existing Rent Stabilization Program performance measures in the City's operating budget do not adequately reflect the performance of the TPO. Metrics currently used, such as the percentage of households stabilized by the Eviction Diversion Program or the resolution rates of tenant/landlord petitions, focus on other program activities rather than specific outcomes of TPO work. This means there is not a clear way to measure whether the TPO is achieving its goals of promoting housing stability and preventing unjust evictions.

The Rent Stabilization Program Strategic Plan, adopted by the City Council in September 2024, outlines three main goals: Family Housing Stabilization, Unit Preservation, and Outreach and Engagement. Under its first goal of Family Housing Stabilization, one short-term strategy includes determining what resources and procedures are needed to identify and track termination notices and notices to pay, voluntary vacancies, and unlawful detainer proceedings. It also includes a possible performance measure for the rate of vacancy turnover for rental units and the cause of vacancy.

This proposed measure represents an opportunity to measure the TPO's performance in a way that is not currently reflected. Tracking the turnover rate of vacant rental units and the reason for their vacancy would measure housing stability in the City's rental market, which the TPO seeks to increase. Measurement and reporting on TPO performance in this way would bolster transparency and accountability to stakeholders, particularly when it comes to the City's use of fees.

Recommendations:

- 7: To better track interactions with tenants and landlords, the Housing Department should refine their interaction data collection to label which ordinances are being inquired about, clarify when staff are enforcing ordinances, and eliminate unnecessary data fields.**

- 8: To better assess performance of Tenant Protection Ordinance activities, the Housing Department should develop individual performance measures for the Tenant Protection Ordinance that are aligned with the overall goals and measures highlighted in the Rent Stabilization Program Strategic Plan.**

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Finding 3 Outreach, Education, and Coordination Efforts Should be More Proactive and Data-Driven

Summary

The Rent Stabilization Program's outreach efforts, while valuable in educating stakeholders, can be enhanced by incorporating data about areas of highest need into planning. Adopting a data-driven approach to identify and target high-need areas could improve the program's effectiveness in educating tenants and landlords about the City's ordinances. Based on a survey of landlords, there are significant gaps in landlord awareness of their obligations under the TPO, highlighting the need for more targeted and proactive education. Lastly, Housing can work with the Fire Department on informational materials to ensure timely assistance to displaced tenants.

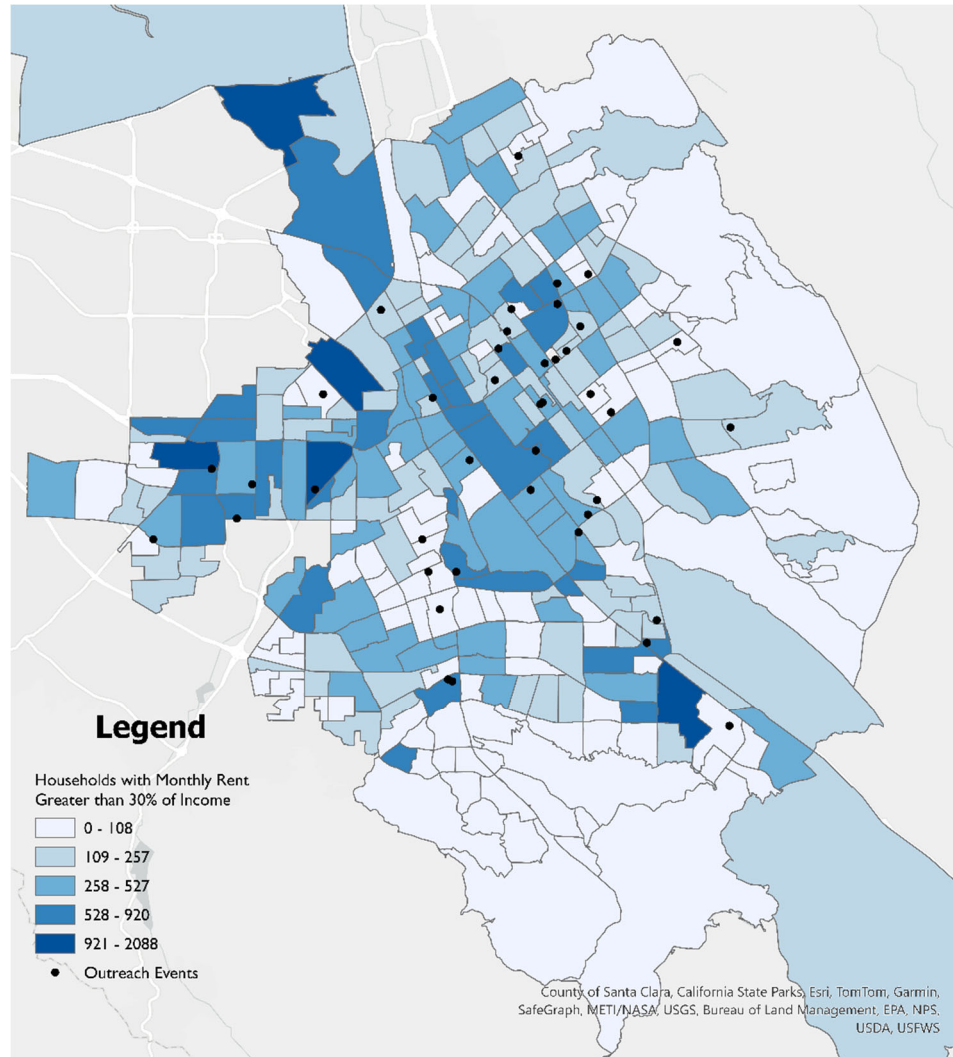
The Rent Stabilization Program's Community Outreach Plan Can Better Target High-Need Neighborhoods

The Rent Stabilization Program Community Outreach Plan can be enhanced by integrating data on areas of highest need to guide its outreach efforts. Current engagement and outreach efforts are mainly dependent on attending events upon request, which may limit the program's ability to reach all neighborhoods and audiences who may benefit.

Exhibits 7 and 8 show the distribution of outreach events in comparison to where there are significant numbers of units in multiple housing properties and where there are households paying more than 30 percent of their monthly income on rent. The majority of notices of eviction submitted to Housing are related to nonpayment of rent, so these households may have greater need of TPO support.

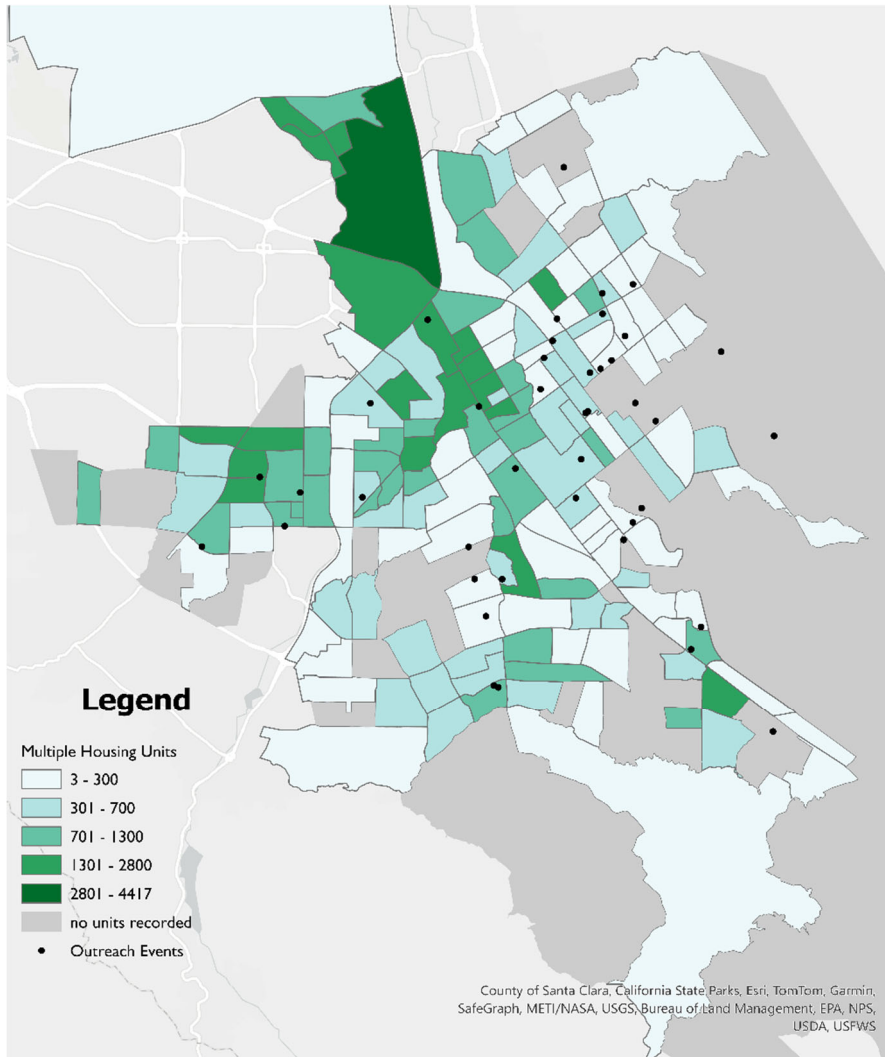
Housing did not attend outreach events in North San José and attended relatively few events in West San José, even though there are high numbers of rent-burdened households and multiple housing units in those areas. On the other hand, Housing attended several events in areas that have very few rent-burdened households and very few multiple housing units.

Exhibit 7: Outreach Events do not Always Align with Areas Where Rent-Burdened Tenants May be in Most Need of TPO Assistance



Source: American Community Survey 5-year estimates from 2022 for households with monthly rent greater than 30 percent of income; Housing Department list of outreach events from January through August 2024. Data is shown by census tract.

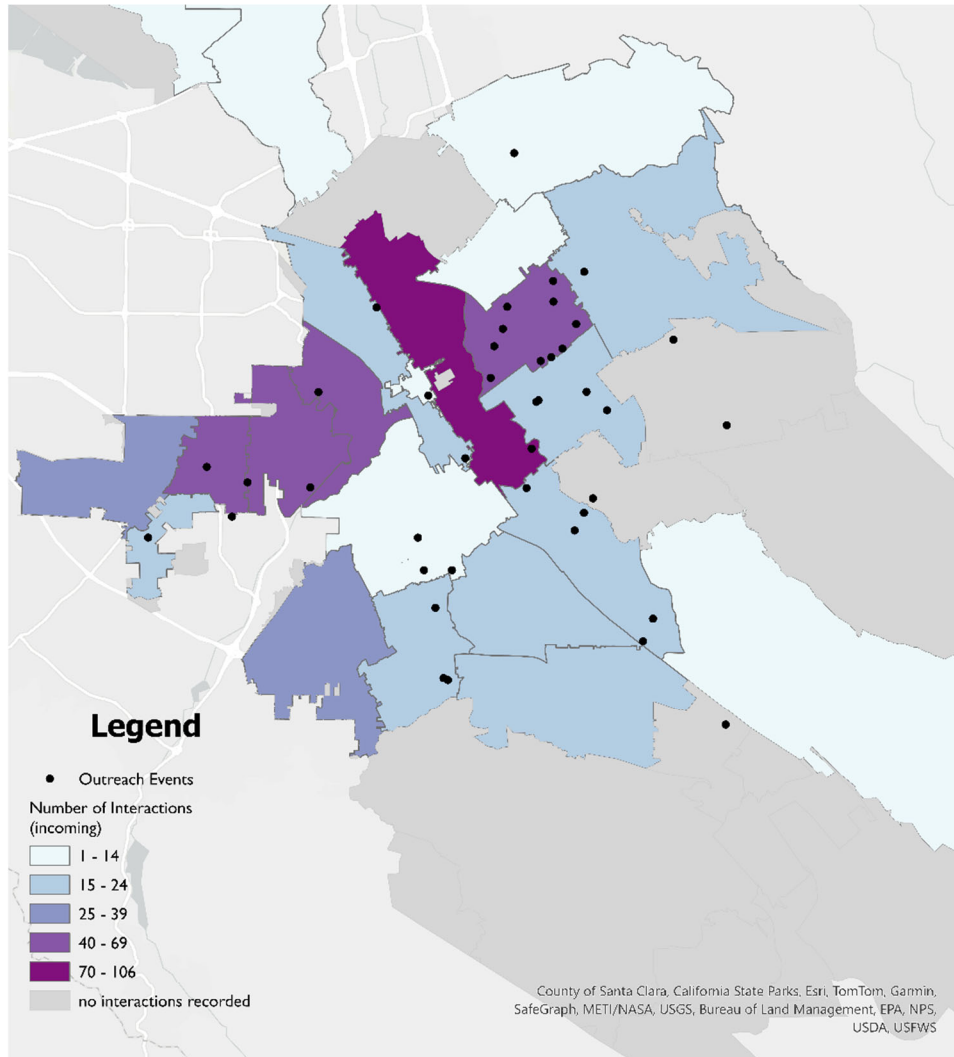
Exhibit 8: Outreach Events Do Not Always Align with Areas with More Multiple Housing Units



Source: Housing Department list of outreach events from January through August 2024; Multiple Housing Unit data from Planning, Building and Code Enforcement as of April 2024. Data is shown by census tract.

In 2023, RSP staff received calls, emails, and walk-in interactions from some areas of the city more than others. There are some areas, such as Downtown and the central part of the city, that generated relatively more incoming inquiries. However, Housing had few outreach events in those areas. Some places, such as North San José, had very few interactions even though there are relatively more rent-burdened households and more multiple housing units. This indicates that there could be a need for more outreach to this area.

Exhibit 9: Some Areas of the City Had More TPO-Related Interactions with Rent Stabilization Program Staff in 2023



Source: Housing Department interaction logs for incoming requests to Rent Stabilization Program staff for 2023 that related to the Tenant Protection Ordinance; Housing Department list of outreach events from January through August 2024. Data is shown by zip code.

Note: 50 percent of incoming TPO-related interactions from 2023 had an address for the rental unit. This represents 40 percent of all TPO-related interactions for 2023. Outgoing calls/emails (made by RSP staff to contact renters or landlords) and interactions that did not have a renter property address listed are excluded.

The FY 2023-24 Rent Stabilization Community Outreach Plan Did Not Provide Guidance on How to Target Outreach

The Rent Stabilization Program outreach team primarily engages stakeholders by participating in community and school events. On average, Housing staff participate in three to four outreach events per month. The FY 2023-24 Rent Stabilization Community Outreach Plan provided goals for the number of events

that staff should participate in, as well as key messages for property owners and tenants.

While this level of engagement demonstrates a commitment to community interaction, according to staff, these events are generally attended upon request. A more proactive and strategic approach could involve identifying and prioritizing high-need areas, ensuring that resources and information are delivered where they are most required. The Community Outreach Plan created by Housing as a roadmap for outreach and education efforts did not provide guidance in this area.

The effectiveness of the Rent Stabilization Program’s education efforts could be enhanced by integrating data of identified areas of highest need into those efforts. This data-driven approach would allow the program to allocate resources more efficiently, focusing on neighborhoods or demographics that are currently underrepresented or underserved. Targeting these areas with intentional outreach could help bridge gaps in knowledge and access to services, thereby improving overall community awareness and compliance with City ordinances.

Housing Provides Rent Stabilization Program Materials in Multiple Languages

The City’s Language Equity Policy and Guidelines (CPM 6.I.10) recommends that vital documents and regularly used documents be translated into Spanish, Vietnamese, and Chinese. Printed TPO materials are generally available in English, Spanish, and Vietnamese. We noted that some materials are also available in Chinese.

Exhibit 10: Rent Stabilization Program Informational Outreach Table at a San José Elementary School



Source: Photograph of outreach event taken by audit staff on April 17, 2024 at Hacienda Environmental/Science Magnet.

Exhibit II: Rent Stabilization Program Informational Outreach Table at Plata Arroyo Park



Source: Photograph of outreach event taken by audit staff on July 30, 2024.

Housing staff report that they bring translated materials to outreach events depending on the language needs of the community. As Housing updates their outreach plan to target high-need areas, the availability of multilingual materials in compliance with the City’s Language Equity Policy and Guidelines should continue to be a focus.

Recommendation:

- 9: To better reach tenants and landlords in areas where there is a high risk of evictions, the Housing Department should update the Rent Stabilization Program Community Outreach Plan to detail how staff will identify designated high-risk areas or neighborhoods and develop goals and targets for outreach and education events in such areas. This should also include addressing any language accessibility needs within these communities.**

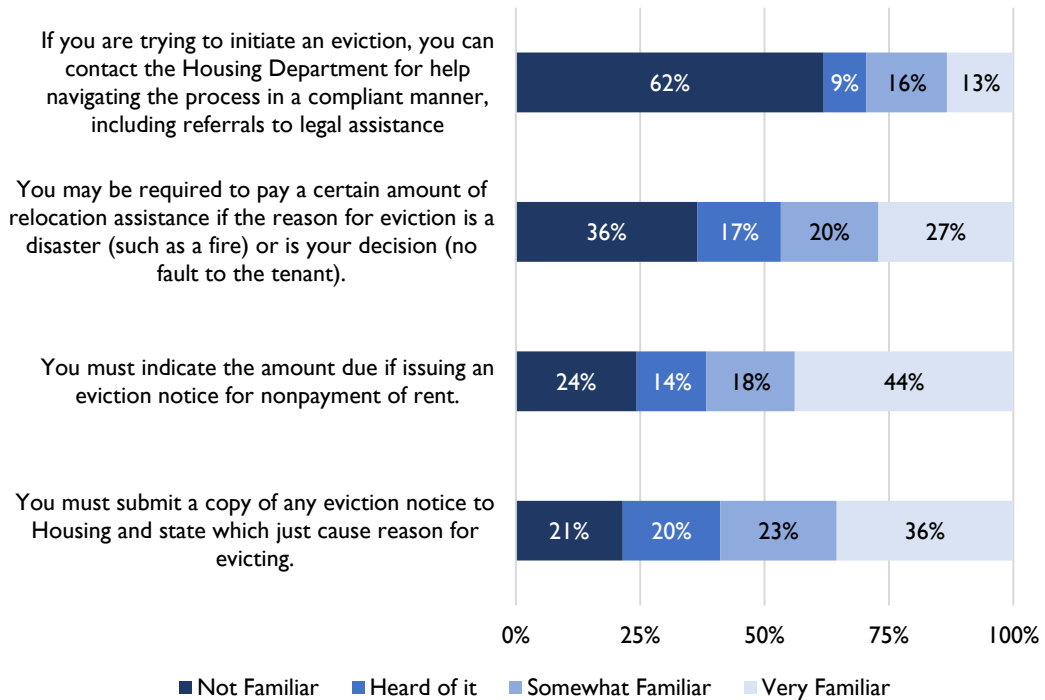
The Rent Stabilization Program Should Enhance Outreach to Landlords and Develop a Mechanism to Better Monitor Compliance

In an auditor survey of landlords, respondents reported that they were not familiar with aspects of the TPO or their ability to contact Housing for information about the TPO.

- 62 percent of respondents reported being unaware that they could contact Housing for assistance navigating the eviction process.

- 36 percent of respondents reported being unaware of their responsibility to provide relocation assistance in certain circumstances.
- 21 percent of respondents reported not knowing that they were required to submit all eviction notices to Housing.

Exhibit 12: There Are Gaps in Understanding About the TPO Among Landlords



Source: Auditor conducted survey of landlords and property managers.

Note: The survey question was: *These are some examples of your responsibilities under the City’s Tenant Protection Ordinance. How familiar are you with this information?*

Though the Rent Stabilization Community Outreach Plan identifies property owners as a target audience for their outreach, the survey results highlight the need for more targeted outreach and education.

Landlords Are Required to Distribute or Display Information About the TPO

To ensure tenants are aware of their rights, the TPO requires landlords to either distribute information about the ordinance to tenants or display it in common areas of their rental properties. Because of the volume of properties and limited staffing, Rent Stabilization Program staff stated they do not have a mechanism in place to ensure compliance with these requirements. Staff are made aware of any non-compliance issues only when a tenant informs Housing that their landlord may be violating the ordinance.

Staff in Code Enforcement do visit properties as part of the Multiple Housing Inspection Program, but do not currently check for the TPO informational postings. Collaborating with Planning, Building, and Code Enforcement to incorporate checking for the TPO posting into their routine multiple housing property inspections could help ensure tenants are aware of their rights.

For any properties that do not have a posting, this is an opportunity to engage with landlords to better understand their responsibilities.

Recommendations:

- I0: To better communicate responsibilities under the Tenant Protection Ordinance, the Housing Department should update the Rent Stabilization Program Community Outreach Plan to detail how staff will proactively communicate ordinance information and requirements to landlords.**

- I1: To ensure landlord compliance with the Tenant Protection Ordinance (TPO), the Housing Department should:**
 - a. Coordinate with the Department of Planning, Building and Code Enforcement’s Multiple Housing Inspection Program to check whether TPO information is posted during routine inspections of multiple housing properties, and**
 - b. Develop a process to follow up with landlords to determine whether information had been distributed to tenants in accordance with the Municipal Code.**

Rent Stabilization Program Staff Can Bolster Coordination Regarding Relocation of Tenants After Fires or Other Incidents

Housing, the Fire Department (Fire), and the American Red Cross have discussed how to best respond to tenants and landlords after an incident when a tenant is displaced. However, timely communication about tenant’s rights to receive relocation assistance for TPO-protected properties could be improved.

Rent Stabilization Program staff stated they are often informed weeks after an incident and displacement of residents. As a result, there may be a significant delay before tenants are informed of their right to receive relocation assistance. This can lead to prolonged periods of uncertainty and hardship for displaced tenants.

The TPO Requires Landlords to Provide Relocation Assistance in Certain Circumstances

If a tenant is ordered to vacate a property, such as the unit becoming uninhabitable after a fire or other incident, they may be eligible for relocation assistance.¹⁰ Base amounts of relocation assistance are included in Exhibit 13, but the exact amount of and eligibility for relocation assistance varies based on specific circumstances.

Exhibit 13: No-Fault Just Cause Terminations Relocation Assistance

	Studio	1 Bedroom	2 Bedroom	3 Bedroom
Base Relocation Assistance	\$6,925	\$8,400	\$10,353	\$12,414

Source: Housing Department’s Tenant Protection Ordinance Fact Sheet

In the event of a fire, the Fire Department reports that they can provide \$200 of relief that is funded by the state and an informational pamphlet to tenants. However, these pamphlets, currently undergoing a scheduled revision, do not provide information about their rights under the TPO if they are displaced. Fire does not notify Housing about tenants that may be displaced because of a fire.¹¹

To provide more immediate assistance to impacted tenants, Housing should work with Fire to update materials that Fire can share with impacted residents informing them of their rights and responsibilities.

Recommendation:

- 12: To increase landlord and resident awareness regarding relocation assistance, the Housing Department should work with the Fire Department to develop or update informational materials provided to residents following an incident.**

¹⁰ Relocation assistance is detailed within the *Ellis Act* (17.23.11) and can vary based on the size of the unit and tenant income. Additionally, some circumstances give tenants a right to return to the unit once it is available on the rental market.

¹¹ Fire does notify the Red Cross at the time of the incident, so they can assist displaced residents with resources. However, there is not typically direct communication with Housing at the time of the incident.

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Conclusion

The current process to identify TPO-eligible units is complicated, labor intensive, and has led to errors in the past. Better documentation is needed to improve the efficiency and consistency of the TPO fee calculation. The TPO does not have specific policies and procedures, resulting in day-to-day interactions and enforcement occurring without clear guidelines. Housing should develop and implement procedures for routine interactions and enforcement to ensure that inquiries are handled more seamlessly, and ordinance enforcement follows a standard process. Community outreach for the TPO and Rent Stabilization Program can be enhanced to target high-need areas for tenants and proactively communicate key information to landlords. The Department should also continue collaboration efforts with the Fire Department to inform displaced tenants about their TPO rights following incidents such as a residential fire.

RECOMMENDATIONS

Finding 1: Housing Should Develop a Standard Roster of Tenant Protection Ordinance Units and Better Document the Fee Calculation Process

Recommendation #1: To improve the efficiency and consistency of the Tenant Protection Ordinance (TPO) fee calculation, the Housing Department should:

- a. Document the methodology for how units are identified as covered by the TPO, if using data from the City's integrated permitting system, or
- b. Develop a database or roster of TPO units based on data from the integrated permitting system or a landlord registry.

Recommendation #2: To better identify properties subject to the Tenant Protection Ordinance and ensure accurate billings, the Housing Department should work with Planning, Building and Code Enforcement to:

- a. Create a process to correct and validate unit counts in the integrated permitting system as necessary based upon landlord feedback, and
- b. Ensure the exemption field in the City's integrated permitting system is properly filled in.

Recommendation #3: The Housing Department and the City Attorney's Office should clarify the Tenant Protection Ordinance exemptions in the San José Municipal Code and update communications to landlords accordingly.

Recommendation #4: To ensure a proper count of Tenant Protection Ordinance (TPO) units and properly exempt hotels and motels from the TPO fee, Housing should remove hotels and motels from their unit count and coordinate with Planning, Building and Code Enforcement to ensure hotels and motels are not billed for the TPO fee.

Recommendation #5: To better allocate staff time across the Rent Stabilization Program areas, the Housing Department should assess the most appropriate way to track and estimate staff time spent on different fee programs and formalize related procedures, including supervisory review.

Finding 2: Standard Procedures and Data Collection Would Enhance the Tenant Protection Ordinance’s Performance Management

Recommendation #6: To standardize service delivery, the Housing Department should update its Rent Stabilization Program Manual to include procedures to guide day-to-day interactions with stakeholders and establish an enforcement process for addressing Tenant Protection Ordinance non-compliance. Additionally, the Department should create a review schedule to ensure procedures continue to align with program needs and practices.

Recommendation #7: To better track interactions with tenants and landlords, the Housing Department should refine their interaction data collection to label which ordinances are being inquired about, clarify when staff are enforcing ordinances, and eliminate unnecessary data fields.

Recommendation #8: To better assess performance of Tenant Protection Ordinance activities, the Housing Department should develop individual performance measures for the Tenant Protection Ordinance that are aligned with the overall goals and measures highlighted in the Rent Stabilization Program Strategic Plan.

Finding 3: Outreach, Education, and Coordination Efforts Should be More Proactive and Data-Driven

Recommendation #9: To better reach tenants and landlords in areas where there is a high risk of evictions, the Housing Department should update the Rent Stabilization Program Community Outreach Plan to detail how staff will identify designated high-risk areas or neighborhoods and develop goals and targets for outreach and education events in such areas. This should also include addressing any language accessibility needs within these communities.

Recommendation #10: To better communicate responsibilities under the Tenant Protection Ordinance, the Housing Department should update the Rent Stabilization Program Community Outreach Plan to detail how staff will proactively communicate ordinance information and requirements to landlords.

Recommendation #11: To ensure landlord compliance with the Tenant Protection Ordinance (TPO), the Housing Department should:

- a. Coordinate with the Department of Planning, Building and Code Enforcement’s Multiple Housing Inspection Program to check whether TPO information is posted during routine inspections of multiple housing properties, and
- b. Develop a process to follow up with landlords to determine whether information had been distributed to tenants in accordance with the Municipal Code.

Recommendation #12: To increase landlord and resident awareness regarding relocation assistance, the Housing Department should work with the Fire Department to develop or update informational materials provided to residents following an incident.

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APPENDIX A

Audit Objective, Scope, and Methodology

The mission of the City Auditor's Office is to independently assess and report on City operations and services. The audit function is an essential element of San José's public accountability, and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, effectiveness, and equity of City operations and services. In accordance with the City Auditor's Fiscal Year (FY) 2024-25 Audit Work Plan, we have completed an audit of the assessment and use of Tenant Protection Ordinance fees. The audit was conducted in response to a request by members of the City Council.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objective of this audit was to review the assessment and use of the Tenant Protection Ordinance fees. We sought to understand the relevant internal controls over the administration of the Tenant Protection Ordinance, and have performed the following to achieve the audit objective:

- To understand the legal requirements related to the Tenant Protection Ordinance, we reviewed the San José Municipal Code (Chapter 17.23, Part 12) and the California Tenant Protection Act of 2019 and discussed with the City Attorney's Office.
- To understand program administration and fee calculation processes, we:
 - Interviewed staff in Housing, PBCE, and Finance to understand unit count and fee calculations, TPO personnel and non-personnel expenses, and fee billing and collections.
 - Reviewed unit count and fee calculation worksheets provided by Housing.
 - Interviewed Housing staff to understand the eviction process, what landlords need to submit to comply, what the City provides tenants, and outreach activities.
 - Observed interactions with tenants to understand services provided.
 - Reviewed Housing's communication and outreach to tenants and landlords.
 - Interviewed Housing staff about their process to assist tenants after disasters.
 - Analyzed data on Housing staff interactions with tenants and landlords.
- To assess landlords understanding of the TPO, conducted a survey of landlords based on a distribution list provided by the Housing Department. There were 150 respondents out of 2,640 who received the survey via email, a response rate of six percent.
- Benchmarked ten other jurisdictions (Los Angeles County and the cities of Berkeley, Fresno, Long Beach, Mountain View, Oakland, Richmond, Santa Ana, Santa Monica, and West Hollywood) to understand their just cause ordinances and program.
- Interviewed staff from a legal assistance non-profit to understand the assistance provided to tenants.

We would like to thank the Housing Department, the City Attorney's Office, the City Manager's Office, and staff from Planning, Building and Code Enforcement and Finance Department for their time and insight during the audit process.

APPENDIX B

Housing Department Exemption Form and Communication to Property Owners



ANNUAL REQUEST FOR FEE EXEMPTION Rent Stabilization Program • 2023-2024

If you are the owner of a building in San José with three or more units that was built and first rented prior to September 7, 1979, your property is subject to the City's Apartment Rent Ordinance (ARO). Buildings with units subject to the ARO are required to pay an annual fee. If an apartment unit in a rent-controlled building is rented with a government-funded rent subsidy (i.e. Section 8, Housing Choice voucher, etc.), the apartment is not exempt from the annual rental fees. However, a project based building is exempt. Additionally, owner occupied, hotel/motel, guesthouse (rented less than 30 days), housing owned and operated by an educational institution, convents and monasteries, or housing accommodations that are medical and care facilities (as defined in the Unruh Act, as may be amended) may be exempt.

If you believe your ARO unit(s)/building(s) qualifies for an exemption, please fill out this form and return the original—**along with required supporting documents**—to the City of San José Rent Stabilization Program, 200 E. Santa Clara Street, 12th Floor, San José, CA 95113-1905. Keep a copy for your records. *If you own more than one property, please submit one exemption form per property.*

The exemption form must be received by 5pm, September 15, 2023

OWNER CONTACT INFORMATION

Name of Owner	
Owner Mailing Address	
City, State, Zip Code	
Daytime Phone #	
Email Address	

PROPERTY INFORMATION (ONE PROPERTY PER EXEMPTION FORM)

Property Address	
Building Completion Date	

Multiple Housing Permit Number (RSN)		APN	
Total # of Units		# of Units Exempt	



ANNUAL REQUEST FOR FEE EXEMPTION

Rent Stabilization Program • 2023-2024

Unit Exemption(s) (check all that apply and attach a copy of the required documentation):

- Owner occupied:** # of units: _____
Please provide at least 3 of the following:
 - Utilities—4 consecutive months for the following utilities: telephone, cable, gas, electric.
 - Banking/Financial—Credit card statements (4 consecutive months), Bank statements (4 consecutive months), Income tax return.
 - Property or Moving—Car and home insurance policies, Post Office change of address order, Moving company receipt or other proof of move-in date.
 - Government Issued—Driver's license, Car registration, Property tax bill, Voter registration.
- Used as a hotel or permitted guest house:** # of units: _____
 - Copy of the Transient Occupancy Registration Certificate.
- Affordable Project based or owned/operated by a governmental agency:**
of units: _____
 - Documents designating Affordable and proof of ownership or operation.
- Housing accommodations in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended):**
of units: _____
 - Copy of Permit
 - Copy of License
 - Copy of Ownership
- Fraternity house, sorority house, or in dormitories owned and operated by an institution of higher education, a high school, or an elementary school:**
of units: _____
 - Copy of Permit
 - Copy of License
 - Copy of Ownership

I declare under penalty of perjury that the foregoing statements are true and correct.

Signature _____

Date _____



August 1, 2023

Property Owner Name
Property Owner Address
Property Owner City, State, Zip

Dear (Property Owner Name),

You are receiving this letter because you are listed as the owner of the below property that contains one or more buildings subject to the City's Apartment Rent Ordinance (ARO) under Chapter 17.23 of the San Jose Municipal Code.

Property Address:

Rental properties under the City's ARO are subject to an annual fee based upon the number of rental units. In the previous annual fee payment period, one or more of the rental units in the above listed property was determined to be exempt from the ARO and thus such unit or units were exempt from the annual fees for that year. To request that any unit be exempt, or continue to be exempt this year, at least one of the qualifications detailed under SJMC Section 17.23.400 must be met. Those exemptions are the following:

- Owner occupation of a unit
- Use as a hotel or permitted guest house
- Deed-restricted affordable rental unit for lower income households (SJMC 17.23.110)
- Housing accommodations in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended)
- Fraternity house, sorority house, or in dormitories owned and operated by an institution of higher education, a high school, or an elementary school

Please complete the Annual Request for Fee Exemption form and return the original along with required supporting documents to the City of San José Rent Stabilization Program, 200 E. Santa Clara Street, 12th Floor, San José, CA 95113-1905 or email to RSP@sanjoseca.gov.

The Annual Request for Fee Exemption form will be considered incomplete without the required supporting documentation. The Annual Request for Fee Exemption and supporting documentation is subject to review and approval by the Rent Stabilization Program. Please keep copies for your records.

If you have any questions about exemptions or the process to claim an exemption, please contact us at 408-975-4480 or RSP@sanjoseca.gov.

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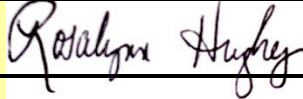
TO: JOE RIOS
CITY AUDITOR

FROM: Erik L. Soliván

SUBJECT: See Below

DATE: October 16, 2024

Approved



Date: 10/16/2024

SUBJECT: RESPONSE TO THE AUDIT OF THE TENANT PROTECTION ORDINANCE: HOUSING SHOULD REFINE ITS FEE CALCULATION PROCESS AND STANDARDIZE PROCEDURES TO IMPROVE PROGRAM ADMINISTRATION

The Administration has reviewed the Audit of the Tenant Protection Ordinance: Housing Should Refine its Fee Calculation Process and Standardize Procedures to Improve Program Administration and agrees with the three findings and 12 recommendations identified in the audit report. The Administration's specific response to each of the City Auditor's recommendations is provided in this response to the audit report, along with target dates for implementation.

BACKGROUND

Following a City Auditor report in 2016 on the Apartment Rent Ordinance (ARO), City Council adopted a suite of ordinances and ordinance amendments aimed at stabilizing renter households, which included the adoption of the Tenant Protection Ordinance (TPO) in 2017. 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 Housing Department's Rent Stabilization Program's (Program) role in implementing the TPO is to educate tenants and property owners about the TPO and ensure compliance with the ordinance.

To cover the costs of implementing the ARO and TPO, the Program charges an annual per-unit fee to property owners of buildings covered by these ordinances. The fee charged to property owners of units covered by the ARO, which applies to residential buildings with three or more rental units built **before** September 7, 1979, covers costs associated with implementing the ARO and TPO for that group of units (ARO Fee). A lower fee (TPO-only Fee) is charged to owners of residential properties with three or more rental units built **after** September 7, 1979, because they are only covered by the

TPO. The TPO-only Fee covers the costs associated with implementing the TPO for the portion of rental units covered only by the TPO.

Each year, as part of the City's budget process, staff conducts an analysis of staff time, administrative costs such as software licenses and mailings, and revenue related to the TPO program to calculate the TPO-only Fee. This process includes:

- 1) Calculating the number of TPO-only units, and
- 2) Assessing the amount of staff time spent on TPO-related tasks for TPO-only units versus units covered by the ARO.

A more in-depth analysis was performed in early 2023, resulting in a better capture of staff time for TPO-only units and a more accurate count of TPO-only units. In addition to the impacts of this analysis, fees across all programs had been suppressed during the COVID-19 pandemic (2020-2022). Due to these two factors, the TPO-only Fee proposed for Fiscal Year 2023-2024 was higher than anticipated. During the City's Fiscal Year 2023-2024 budget process, City Council directed staff to take action to lower the fee increase for Fiscal Year 2023-2024 and requested an audit of the TPO-only Fee calculation.

During the past year, the Program has refined its process for calculating TPO-only units and begun implementing measures to capture tasks related to TPO-only units more accurately. Work towards implementing many of the City Auditor's recommendations is already underway. For example, the process and methodology for calculating units were documented during the audit, and Program staff revised and finalized the Program outreach strategy. Going forward, some of the audit recommendations will require cooperation, coordination, and agreement with the Planning, Building, and Code Enforcement Department (PBCE), including streamlining and formalizing processes and communications between the two departments.

RECOMMENDATIONS AND ADMINISTRATION'S RESPONSE

FINDING 1: Housing Should Develop a Standard Roster of TPO Units and Better Document the Fee Calculation Process

Recommendation #1: To improve the efficiency and consistency of the Tenant Protection Ordinance (TPO) fee calculation, the Housing Department should:

- a. Document the methodology for how units are identified as covered by the TPO, if using data from the City's integrated permitting system, or
- b. Develop a database or roster of TPO units based on data from the integrated permitting system or a landlord registry.

Administration's Response: The Administration agrees with this recommendation.

Recommendation #1.a.

Green: This recommendation is partly implemented with the documentation of the process and methodology for determining the unit count of units covered by the TPO but not covered by the ARO. The documentation will be incorporated into the Rent Stabilization Program Manual.

Target Date for Completion: June 30, 2025

Recommendation #1.b.

Green: The Administration will consider and evaluate the implementation of a process where property owners and managers are periodically asked to verify unit information, owner information, and status in a static roster developed from the Multiple Housing roster generated by PBCE's AMANDA system. The roster would also be verified every year during the fee billing process with data pulled from PBCE's AMANDA system. This process will be detailed in the TPO regulations.

Recommendation #2: To better identify properties subject to the Tenant Protection Ordinance and ensure accurate billings, the Housing Department should work with Planning, Building and Code Enforcement to:

- a. Create a process to correct and validate unit counts in the integrated permitting system as necessary based on landlord feedback, and
- b. Ensure the exemption field in the City's integrated permitting system is properly filled in.

Administration's Response: The Administration agrees with this recommendation.

Green: Housing staff will work with PBCE to formalize coordination and procedures concerning the Multiple Housing roster and the process for validating unit counts and applying for exemptions in PBCE's AMANDA system. This will require responsibilities to be clearly laid out and documented between the two departments concerning which staff members are authorized to make changes to fields in PBCE's AMANDA system. As part of this process, regular meetings will be scheduled among key employees in both departments, with sufficient visibility to avoid impacts from staff turnover or reassignment. The implementation of a separate static roster for TPO-only units maintained by the Program, as described in the response to Recommendation #1.b., will provide a method for validating information that may have changed in PBCE's AMANDA system.

Target Date for Completion: June 30, 2025

Recommendation #3: The Housing Department and the City Attorney's Office should clarify the Tenant Protection Ordinance exemptions in the San José Municipal Code and update communications to landlords accordingly.

Administration's Response: The Administration agrees with this recommendation.

Green: The Administration believes clarification of the exemptions to the TPO does not necessitate an amendment to the ordinance and can be clarified through the adoption of TPO regulations. The Administration is currently revising a draft of TPO regulations. The Administration would like to allow for ample time for review and revision of the draft TPO regulations, which must be approved by the City Manager's Office. Program staff will also work on updating the fee exemption request form and related information on the Housing Department website such that what unit uses qualify for an exemption and what documentation is required to request an exemption is made clear.

Target Date for Completion: August 30, 2025

Recommendation #4: To ensure a proper count of Tenant Protection Ordinance (TPO) units and properly exempt hotels and motels from the TPO fee, Housing should remove hotels and motels from their unit count and coordinate with Planning, Building and Code Enforcement to ensure hotels and motels are not billed for the TPO fee.

Administration's Response: The Administration agrees with this recommendation.

Green: In September 2024, Program staff removed all hotels and motels from the TPO-only unit count and roster; and from the list provided to PBCE for billing. Program staff will implement a process for periodically reviewing and verifying hotel/motel use through business licenses and other research. The process for establishing hotel/motel exemptions will also be clarified in the TPO regulations.

Target Date for Completion: Completed on September 10, 2024.

Recommendation #5: To better allocate staff time across the Rent Stabilization Program areas, the Housing Department should assess the most appropriate way to track and estimate staff time spent on different fee programs and formalize related procedures, including supervisory review.

Administration's Response: The Administration agrees with this recommendation.

Green: The Program's leadership is coaching and reminding Program staff about how to properly account for their time on the TPO program versus other programs when filling out their employee timecard. This timekeeping strategy was first implemented at the beginning of Fiscal Year 2023-2024. The audit revealed that not all staff followed the directions to allocate time across programs appropriately on their timecard, and their supervisor did not effectively monitor the entries when conducting timecard reviews and approvals. As part of preparation for the Fiscal Year 2025-2026 City budget process, Program staff is working with the Housing Department's Administrative Division to evaluate the effectiveness of the current strategy and to examine the feasibility of accounting for time spent on the TPO program in ways other than through the City's employee timekeeping system. Specifically, staff will consider capturing time through fields included in the Salesforce database improvements discussed in Recommendation #7 and assigning specific employees to one fee category based on the daily tasks they perform.

Target Date for Completion: April 30, 2025

FINDING 2: Standard Procedures and Data Collection Would Enhance the Tenant Protection Ordinance's Performance Management

Recommendation #6: To standardize service delivery, the Housing Department should update its Rent Stabilization Program Manual to include procedures to guide day-to-day interactions with stakeholders and establish an enforcement process for addressing Tenant Protection Ordinance non-compliance. Additionally, the Department should create a review schedule to ensure procedures continue to align with program needs and practices.

Administration's Response: The Administration agrees with this recommendation.

Green: Program staff is updating the Rent Stabilization Program Manual to better guide staff in managing day-to-day interactions with the public. Program staff has been working on procedures to formalize enforcement steps concerning non-compliance with the TPO. Program staff will also evaluate what provisions should be included in the TPO regulations to support these procedures. An annual review of the Rent Stabilization Program Manual and its procedures will be included in the Rent Stabilization Program work plan discussed in response to Recommendation #8.

Target Date for Completion: March 30, 2025

Recommendation #7: To better track interactions with tenants and landlords, the Housing Department should refine their interaction data collection to label which ordinances are being inquired about, clarify when staff are enforcing ordinances, and eliminate unnecessary data fields.

Administration's Response: The Administration agrees with this recommendation.

Green: Work is already underway with the Information Technology Department (ITD) to revise the fields and data collection in the Salesforce database system that the Program utilizes to track interactions with the public concerning the ordinances. This project is part of overall improvements to capture metrics and outcomes to assess performance across the Program. Detailing what ordinances cover the unit a tenant or property owner/manager is inquiring about is part of this project.

Target Date for Completion: April 30, 2025

Recommendation #8: To better assess performance of Tenant Protection Ordinance activities, the Housing Department should develop individual performance measures for the Tenant Protection Ordinance that are aligned with the overall goals and measures highlighted in the Rent Stabilization Program Strategic Plan.

Administration's Response: The Administration agrees with this recommendation.

Green: Developing performance measures for the TPO is a work plan item included in the Rent Stabilization Program Three-Year Strategic Plan, the City's Housing Element, and the Housing Department Performance Measures. TPO performance measures will be developed by March 2025 and updated annually.

Target Date for Completion: March 30, 2025

Recommendation #9: To better reach tenants and landlords in areas where there is a high risk of evictions, the Housing Department should update the Rent Stabilization Program Community Outreach Plan to detail how staff will identify designated high-risk areas or neighborhoods and develop goals and targets for outreach and education events in such areas. This should also include addressing any language accessibility needs within these communities.

Administration's Response: The Administration agrees with this recommendation.

Green: Historically, the Program's outreach strategy had been to target neighborhoods with tenant households that were lower income, at higher risk of displacement, or with limited English ability or knowledge of government systems to know where to ask about their tenant rights and responsibilities. However, this strategy was not formalized, nor was it data-driven. Prior to and during this audit, Program staff was in the process of developing and refining a robust written outreach strategy that included data-driven and geographic targeting and collaboration with community partners. The Program outreach team also developed tracking and planning tools that set goals for proactive outreach initiatives and different types of engagement. The stated primary goal is to build the trust of the community, which includes language access and culturally appropriate approaches to engagement and presentation. This outreach strategy was finalized in September 2024, and Program staff is implementing the strategy in phases over the next three months. The outreach strategy will be incorporated into the Rent Stabilization Program Manual and work plan.

Target Date for Completion: Completed September 30, 2024, with outreach and engagement ongoing.

FINDING 3: Outreach, Education, and Coordination Efforts Should be More Proactive and Data-Driven

Recommendation #10: To better communicate responsibilities under the Tenant Protection Ordinance, the Housing Department should update the Rent Stabilization Program Community Outreach Plan to detail how staff will proactively communicate ordinance information and requirements to landlords.

Administration's Response: The Administration agrees with this recommendation.

Green: Strategies outlined in both the Rent Stabilization Three-Year Strategic Plan and the City's Housing Element address property owner/manager education. The Program includes quarterly and periodic workshops on the ordinances and other relevant rental housing topics. Program staff will partner with non-profit service providers, PBCE's Code Enforcement Division, and other agencies in providing these workshops. The Program's revised website and flyers will be updated to make them more accessible to property owners and managers of various backgrounds. In addition, Program staff will ensure all materials are available in the five most commonly spoken languages in the City and that interpretation services are available upon request for all workshops. The workshops and updates to materials will be incorporated into the Rent Stabilization Program Manual and work plan.

Target Date for Completion: March 30, 2025

Recommendation #11: To ensure landlord compliance with the Tenant Protection Ordinance (TPO), the Housing Department should:

- a. Coordinate with the Department of Planning, Building and Code Enforcement's Multiple Housing Inspection Program to check whether TPO information is posted during routine inspections of multiple housing properties, and
- b. Develop a process to follow up with landlords to determine whether information had been distributed to tenants in accordance with the Municipal Code.

Administration's Response: The Administration agrees with this recommendation.

Recommendation #11.a.

Yellow: Program staff will coordinate with PBCE to develop a process whereby Code Enforcement Inspectors can verify if TPO information is posted in common areas of residential properties. Because some residential properties in the PBCE Multiple Housing Inspection Program, such as deed-restricted affordable properties, are exempt from the TPO and therefore not required to post TPO information, Program staff will evaluate developing a process where property owners/managers self-certify that the TPO information is posted at their residential properties as required.

Target Date for Completion: June 30, 2025

Recommendation #11.b.

Green: Program staff will send a periodic mailer to all property owners/managers of TPO-covered properties reminding them of the posting requirement (posting TPO information in common areas of their residential properties) and enclosing copies of the required TPO posting with the mailing. Program staff will evaluate the costs and feasibility of including this periodic mailer with the annual fee billing cycle mailed out by PBCE each fall versus the costs of coordinating a mailing at some other interval. Such a mailing would be coupled with e-blasts and social media posts by the Housing Department.

Target Date for Completion: September 30, 2025, and ongoing

Recommendation #12: To increase landlord and resident awareness regarding relocation assistance, the Housing Department should work with the Fire Department to develop or update informational materials provided to residents following an incident.

Administration's Response: The Administration agrees with this recommendation.

Green: Before the start of this audit, Program staff were working to improve communication and coordination with the Fire Department. During the audit, Program staff met with Fire Department leadership and discussed how the Fire Department could help provide Program information to tenants and property owners/managers when there is a fire or incident in a multi-family rental unit or building. The Fire Department agreed to update their informational pamphlet that they provide to fire victims, which includes important information about City departments and other agencies that can aid in their recovery. Fire Department staff agreed to include contact information specific to the Program in their revised informational pamphlet. Program staff will follow up periodically with the Fire Department to ensure the appropriate Program information is published.

Target Date for Completion: June 30, 2025

CONCLUSION

The Administration thanks the City Auditor and his staff for the time and dedication to conducting the audit of the TPO program and TPO-only Fee calculation. The audit report's 12 recommendations are consistent with the Administration's goals for the TPO Program implementation and how to better serve tenants and property owners subject to the TPO. The work and analysis performed by City Auditor staff helped the Administration better understand how to improve the complex process of calculating TPO-only unit counts and explore ways to improve the efficiency and accuracy of unit counts. The recommendations included in the audit report align with the goals and objectives of the Rent Stabilization Program's Three-Year Strategic Plan, approved by City Council on September 17, 2024, and will enhance the efforts to implement the Program's Strategic Plan successfully over the next three years.

/s/

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Housing Director

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