



**CITY OF SAN JOSÉ  
HOUSING AND COMMUNITY DEVELOPMENT  
COMMISSION  
SPECIAL MEETING**

**March 21, 2016 AT 5:30 PM  
SAN JOSÉ CITY HALL  
200 E. SANTA CLARA ST.**

**LOCATION: CITY COUNCIL CHAMBERS  
SAN JOSÉ, CA 95113**



Martha O’Connell, Chairperson  
Davlyn Jones, Vice Chair

Commissioners

Michael Fitzgerald	Victoria Johnson	Gary Prideaux
Bob Gill	Melissa Medina	Alex Shoor
Mike Graves	Steven Neff	Lee Thompson

Members of the public who wish to make comments on any item on the Agenda, or any other item related to the Commission's purview, may be given two (2) minutes. Please note that: (1) the Commission will only be able to discuss comments to items on the Agenda; and (2) the time schedule shown below is approximate and intended only to notify the Commission of the approximate amount of time staff expects each item might take, and items may be heard before or after the times shown.

<b>TIME*</b>	<b>AGENDA ITEM</b>
<b>5:30</b>	<b>(a) Call to Order/Orders of the Day</b>
<b>5:35</b>	<b>(b) Introductions</b>
<b>5:40</b>	<b>(c) Chair’s Report (M. O’Connell, Chair)</b>
<b>6:45</b>	<b>(d) Review and discussion of Draft Staff Recommendations for Modifications to the Apartment Rent Ordinance (Housing Staff)</b> ACTION: Possible recommendations to City Council on: <ol style="list-style-type: none"> <li>1. Base the annual increase on 100% of the Consumer Price Index for all Urban Consumers (SF-Oakland-SJ), allow banking, allow for a floor of 2% and a cap of 8%, set the base year rent at January 1, 2015, set the base year for Maintenance of Net Operating Income as 2013.</li> <li>2. Eliminate the Debt-Service Pass-Through</li> <li>3. Adopt the MNOI standard for Capital Improvements and adopt a limited Capital Improvement Incentive Program</li> <li>4. Revise the Notifications Requirements and Amendments to facilitate monitoring and enforcement including increasing staffing levels</li> <li>5. Do not include duplexes</li> <li>6. Do not include income qualification criteria</li> <li>7. Develop an Anti-Retaliation and Protection Ordinance</li> </ol> <b>ATTACHMENT: Draft Staff Recommendations</b>

**8:15 (e) Open Forum**

**8:20 (f) Adjournment**

*\*HCDC meetings start at 5:30 pm. All other times listed for the specific agenda topics are estimates. Actual start times may deviate from the estimate provided.*

**All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the City of San Jose Housing Department, 200 E. Santa Clara St., 12<sup>th</sup> Floor, San Jose, CA 95113 at the same time that the public records are distributed or made available to the legislative body.**

To request an accommodation for this meeting or an alternative format for any related printed materials, please contact Robert Lopez at 408-975-4402 or [Robert.Lopez@sanjoseca.gov](mailto:Robert.Lopez@sanjoseca.gov) or 408-294-9337 (TTY) as soon as possible, but at least three business days before the meeting.

**Para residentes que hablan español:** Si desea mas información, favor de llamar a Theresa Ramos al 408-975-4475.

**Riêng đối với quý vị nói tiếng Việt :** Muốn biết thêm chi-tiết, xin vui lòng tiếp xúc với Therese Tran, Đ.T. 408-793-5349.

**對於說華語的居民:** 請電 408-975-4450 向 Ann Tu 詢問詳細事宜。說粵語的居民則請撥打 408-975-4425 與 Yen Tiet 聯絡。

**Para sa mga residente na ang wika ay tagalog:** Kung kinakailangan pa ninyo ng inpormasyon, tawagan si Arlene Silverio sa 408-793-5542. Salamat Po.

\*\*\*You can access the agenda and all attachments electronically at the Housing & Community Development Commission website at : <http://www.sanjoseca.gov/index.aspx?NID=1262>

# Draft Recommendations for Modifications to the City of San Jose Apartment Rent Ordinance

Released for public comment March 1, 2016

Written comments must be received by 5pm on March 31, 2016

Please email comments to [ann.grabowski@sanjoseca.gov](mailto:ann.grabowski@sanjoseca.gov) or  
send hard copy comments to

Attention: Ann Grabowski, 200 East Santa Clara St., San Jose CA 95113

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## **Purpose of this Document**

The purpose of this document is to provide draft recommendations for public review regarding potential modifications to the City's rental dispute mediation and arbitration ordinance Municipal Code Chapter 17.23, hereforth referred to as the Apartment Rent Ordinance (ARO), as directed by the City Council. These draft recommendations were released on March 1, 2016 and is available for a 30-day public comment period. Written comments are due to City staff by March 31, 2016.

## **Background**

On June 23, 2015, the City Council identified potential modifications to the City's Apartment Rent Ordinance as its second highest policy priority for FY 2015-16.

On September 1, 2015, the City Council approved staff's proposed workplan for this policy priority and provided additional direction to review the following items regarding potential modifications to the ARO, including:

- The annual allowable rent increases;
- The debt-service pass through;
- Revised notification requirements for notices to vacate and rents charged to tenants in properties subject to the ARO;
- Amendments to facilitate monitoring and enforcement of the ARO
- Consideration of a Just Cause Eviction Ordinance
- Evaluation of the Staffing levels to effectively monitor, enforce, and analyze the ARO program;
- Evaluation of the inclusion of duplexes as part of the ARO;
- Exploration of income eligibility criteria for rent-controlled units

To facilitate the process, the City Council directed staff to convene an Advisory Committee composed of tenants, owners, and their advocates to provide input on the Council-directed items. Additionally, the City Council directed staff to initiate a consultant report focused on the economic analysis of the ARO, as well as a demographic analysis of ARO tenants.

## **Process to Date**

Immediately after the September 1, 2015 City Council meeting, a 12-member Advisory Committee composed of six owners/advocates and six tenants/advocates was formed. Between September 30, 2015 and February 17, 2016, ten Committee meetings have been held to discuss the Council-directed items, as well as to receive Committee and public input.

On January 20, 2016, the preliminary report on the economic and demographic analysis of the ARO and its tenants was released for a 30-day public comment period. Written comments were due to staff by 5pm, February 20, 2016.

Throughout this process, staff have been available for questions and to receive public input on the Council-directed items. All public correspondence, Advisory Committee meeting materials, and the preliminary report are available at the following website: <http://www.sanjoseca.gov/index.aspx?nid=4744>.

## Draft Recommendations

This section provides draft recommendations on each of the Council-directed items. In developing the draft recommendations, staff considered four sources of information: Advisory Committee input, public input, findings from the preliminary report, and staff research and case studies. The recommendations were developed with a key goal of achieving the public policy and purpose as declared in the Ordinance:

“In order to protect the health, safety and welfare of the citizens of San Jose, [this ARO] is a necessary measure designed to alleviate some of the more immediate needs created by San Jose’s housing situation. These needs include but are not limited to the prevention of excessive and unreasonable rent increases, the alleviation of undue hardship upon individual tenants, and the assurance to landlords of a fair and reasonable return on the value of their property”

### **1. Annual Allowable Rent Increase**

#### A. Existing Provision

1. The ARO currently allows owners of rent-stabilized apartments who have not raised rents in the previous 12 months to increase rents up to 8%, and up to 21% if rents have not been raised in more than 24 months.

#### B. Proposed Modifications

1. Base the annual allowable rent increase on 100% of the change in the *Consumer Price Index: All Items – All Urban Consumers (CPI-U)* for the San Francisco – Oakland - San Jose metropolitan area.
2. Allow for the banking of annual rent increases in years when the owner does not raise rents up to the allowable amount.
  - a. Allow for unlimited banking including partial banking.
  - b. Reset the bank upon a voluntary vacancy (ie, when vacancy decontrol occurs). However, in a down market, allow the owner to immediately restart the bank.
  - c. Require tenant notification when an owner banks some or all of an annual increase.
3. Allow for a floor of 2% and a ceiling of 8%. In other words, with regard to the ceiling, any combination of CPI-U, the application of banking (if any), and an approved limited capital improvement pass-through may not cumulatively exceed 8% annually. See Item 3.2 below for more information on the proposed limited capital improvement incentive program.
4. The annual allowable rent increase may applied to the base year rent, which is rent charged by owners as of January 1, 2015. Base rent does not include additional rent amounts, such as those due to the limited capital incentive program or the program fees related to the rental rights & referrals program which administers the ARO.
5. The maintenance of net operating income (MNOI) is a widely used fair return standard in rent regulations. Net operating income is the difference between rental income and operating expenses. Fair return under the MNOI standard is calculated by adjusting the base year net operating income by the increase in the CPI-U. If the allowable annual rent increase does not provide for MNOI, owners may file a fair return petition to the City. For the purposes of MNOI calculations, 2013 will be set as the base year MNOI.

### C. Rationale

1. The existing 8% provision has permitted rent increases well above the rate of inflation and average increases in rents the Bay Area over the last 35 years, and has therefore not been effective in limiting rent increases. (See Appendix, Table 1)
2. The purpose of the annual allowable increase is to allow owners the ability to increase rents based on increases in operating costs and inflation. The CPI-U reflects changes in a substantial portion of operating costs.
3. When the ARO was adopted in 1979, it was during a period of relatively high inflation rates, approximately 8%. However, a fixed-rate was adopted rather than a standard based on inflation rates. Other cities that adopted rent regulations during the same time also began with higher, fixed-rate annual allowable increases. However, soon after, those cities adjusted their programs to link the annual allowable increase to the CPI. The City has not modified its standard since its adoption. (See Appendix, Table 2)
4. The availability of a banking provision: 1) allows owners to “catch up” their rents when there are declines in down markets, and 2) prevents owners from being penalized when they elect not to increase rents even when they are allowed to do so.
5. Vacancy decontrol allows owners to raise rents to market prices for a substantial number of apartments every year. 26% of ARO units are voluntarily vacated annually, and 70% are voluntarily vacated within a four-year period. This allows owners to increase rents to market price and to supersede the ARO limits on rent increases.
6. Owners, especially of small apartment buildings, consistently indicated that – as a matter of their existing business practice – they do not increase rents on an annual basis or that any rent increases are small.
7. The majority of rent stabilization programs have retained their CPI-U standards for allowable annual rent increases.
8. The Courts have consistently upheld MNOI has a legal fair return standard.

### D. Pros of the Proposed Modifications

1. An annual allowable rent increase standard linked to the CPI-U provides a clear, objective and fair basis for rent increases.
2. A floor/ceiling provision provides a downside protection for owners and a upside protection for tenants.

### E. Cons of the Proposed Modifications

1. A rent registry will be required to track the annual allowable rent increases, actual rent increases for every unit, and the banking provision for every unit. The registry will increase the cost of the program.
2. A 2% floor is a disadvantage to tenants when the CPI-U is lower than 2% because it allows owners to bank 2% even when the rate of inflation is lower. This is especially true during periods when the incomes of tenants decline but have no floor to how much incomes can fall.

### F. Alternatives to the Proposed Modifications

1. Maintain the existing 8% fixed rate. Staff does not recommend this alternative as the preliminary report indicates that the existing ARO has not had a limiting effect on rents.
2. Use the fixed rate standard but with a rate other than 8%. Staff does not recommend a fixed rate standard because it does not reflect changes in operating costs or market conditions.
3. Operating cost study. Staff does not recommend the operating cost study model due to complexity and increased staffing needs to implement this model.

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## 2. ***Debt Service Pass-Through***

### A. Existing Provision

1. The ARO currently allows owners to pass up to 80% of their debt-service to ARO tenants.

### B. Proposed Modification

1. Eliminate the debt service pass-through provision for properties that do not have an executed and effective purchase contract by July 1, 2016, and that have not obtained long-term financing by December 31, 2016.

### C. Rationale

1. Very few debt-service petitions have been filed (14) with the City relative to the number of sales transactions of ARO apartment buildings (nearly 1,500 transactions since 1990).
2. Fourteen debt-service petitions filed by owners with the City have led to rents increasing between \$200/month and \$480/month. The ability to pass large rent increases through the pass-through can penalize tenants when a unit is sold. (See Appendix – Table 3)
3. The existing debt service pass-through provision allows owners to pass a significant amount of risk and the cost of investment onto renters, which may lead to speculation. Additionally, debt service is an investment cost, not an operating cost. Owners are responsible for conducting due diligence prior to the purchase of an apartment building
4. The Courts have determined that debt service pass-throughs are not necessary to provide a fair return.
5. The existing debt service provision allows rents to be determined by what an owner pays for a property and by the financing mechanism. However, typically, it is the anticipated rents/income that determines the value of an asset and what an investor might pay for an investment, not the other way around.

### D. Pros of the Proposed Modification

1. Eliminating the debt service pass-through provision reduces the incentive of purchasers to speculate and increases the stability of ARO tenants.

### E. Cons of the Proposed Modification

1. Owners have indicated this may make it more difficult to sell an ARO property and that they should be able to pass the cost of their investment onto renters.

### F. Alternatives to the Proposed Modifications

1. Continue to allow the debt service pass-through provision. Staff does not recommend this alternative as the debt service pass-through provision is not consistent with the public purpose of the ARO.



### **3.1) Capital Improvement Pass-Through**

#### **A. Existing Provision**

1. The ARO currently allows owners to pass through capital improvement costs to renters by filing a petition with the City. The costs are amortized over 60 months and become part of the base rent.

#### **B. Proposed Modifications**

1. Under the proposed MNOI standard, reasonable costs for standard capital expenses (such as the repair and replacement of major systems) are considered part of operating costs, and are covered by the increases in rents adjusted by the CPI-U. If the annual allowable rent increase provision is not sufficient to cover operating costs in order to achieve MNOI, the owner may file a fair return petition with the City.
2. The amortized capital expenses become part of the base rent.

#### **C. Rationale**

1. Only one capital improvement pass-through has been filed with the City through the existing ARO program, leading to a 24% annual increase in rents.
2. Cities with an MNOI standard have received few capital improvement petitions, even when the MNOI standard is based on less than 100% of the CPI.
3. Regular tenant turnover and vacancy decontrol, along with the MNOI standard, provides sufficient growth net operating income to pay for operating costs and standard capital expenses. If the cost of these items prevent the ability for an owner to achieve MNOI, the owner may file a fair return petition.
4. Tenants will be able to file a service reduction claim when a owner files a fair return petition.

#### **D. Pros of the Proposed Modifications**

1. The MNOI standard provides a mechanism to cover capital expenses based on a fair return standard used in other jurisdictions with apartment rent regulations, and which has been upheld in the Courts. Unlike the current ARO, which allows capital improvement costs to be passed through to tenants without consideration of net operating income, the MNOI standard for capital improvements aligns capital improvement costs with the ability to pay for them through net operating income.
2. The MNOI standard removes the little-used capital improvement pass-through component of the existing ARO program.

#### **E. Cons of the Proposed Modifications**

1. Depending on the volume of owner petitions, additional staffing may be required to perform the MNOI fair return petitions.

#### **F. Alternatives to the Proposed Modifications**

1. No modifications. Staff does not recommend this alternative as the existing capital improvement program has not been utilized. Additionally, the current capital

improvement pass-through provision could result in a significant monthly increase to the tenant because of its short amortization schedule. Finally, the MNOI standard is sufficient to allow owners to cover the costs of operations and capital improvements. If CPI-U proves insufficient, owners can file a fair return petition under the maintenance of net operating income proves.

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### **3.2) Limited Capital Improvement Incentive Program**

#### **A. Existing Provision**

1. The existing ARO does not have a limited capital improvement incentive program.

#### **B. Proposed Modifications**

1. Provide a limited capital improvement incentive program to cover reasonable costs related to the following specific investment categories: accessibility (ADA) improvements, seismic retrofits, energy related or water conservation improvements, safety and security enhancements.
2. The limited capital improvement incentive program will approve requests through a clear, predictable, and efficient administrative review process.
3. The limited capital improvement cost is amortized based on the capital improvement amortization schedule and is applied equally across all of the units in the building.
4. The limited capital improvement does not become part of the base rent but is an additional rent increase outside of the base rent. Once the cost is completely amortized, the rent is reduced by the same amount as the surcharge.
5. The amount of the limited capital improvement incentive, combined with the annual allowable rent increase and any available banked amount drawn down, may not lead to a total annual increase that exceeds 8% in a given year.

#### **C. Rationale**

1. Providing a limited capital improvement incentive program may incentivize owners to make certain investments that they might not make under the MNOI standard but which may benefit owners, tenants, and the community.
2. The limited capital improvement incentive program may help further certain City goals, such as those related to environmental sustainability and health and safety.

#### **D. Pros of the Proposed Modifications**

1. The program may incentivize certain privately and publicly beneficial investments in apartment buildings that may not otherwise occur.
2. The proposed administrative review process will provide clear, predictable outcomes for owners.
3. The amortized capital improvement cost is removed from a tenant's rent once the improvement is paid for, which increases fairness to the tenant.

#### **E. Cons of the Proposed Modifications**

1. Depending on the volume of owner petitions, additional staffing may be required to perform the administrative review of the limited capital improvement program.
2. Units with a limited capital improvement surcharge will need to be tracked, which will add costs and complexity to the administration of the program.

#### **F. Alternatives to the Proposed Modifications**

1. Continue to allow the current capital improvement pass-through. The current capital improvement pass-through provision could result in a significant monthly increase to the tenant because of its short amortization schedule. Staff does not recommend this alternative as it has not been utilized by owners. The allowable annual rent increase based on inflation allows owners to cover the costs of operations and capital improvements. If CPI-U proves insufficient, owners can file a fair return petition under the maintenance of net operating income proves.

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**4) Revised notification requirements for notices to vacate and rents charged to tenants in properties subject to the ARO**

**A. Existing Provision**

1. Under the current ARO, an owner may provide a tenant a 60-day no-cause termination notice with an offer to arbitrate, a 90-day notice in a market with a vacancy rate of 3% or higher, and a 120-day notice in a market with a vacancy rate of less than 3%.
2. Under the current ARO, owners do not need to inform new tenants of the rents charged to the previous tenant

**B. Proposed Modifications**

1. No changes proposed to the 60/90/120-day notification requirement, unless owner falls under the Anti-Retaliatory & Protection Ordinance (see item 9 below).
2. Require owners to:
  - a. Provide new tenants a copy of the Ordinance and Frequently Asked Questions sheet.
  - b. Provide new tenants a breakdown of the total rents charged, including the base rent and any additional rent charges outside of the base rent.
  - c. Inform existing tenants annually of the amount of the annual allowable rent increase versus the actual changes in rent (if any).
  - d. Inform tenants of the amount of bank increases available to the owner.
3. Increase the vacancy rate necessary to declare a "tight market" to 5% and review vacancy twice a year.

**C. Rationale**

1. Additional information provided by owners to tenants will increase awareness of and compliance with the provisions of the ARO.
2. In years where owners give little or no rent increases, tenants will be aware of both 1) the benefits of the years of minimal increases and 2) the potential for larger increases in the future due to the banking provision. This will allow tenants to anticipate and to prepare for the potential drawdown of the bank by the owners. The awareness will help minimize the potential rent shock.
3. The 5% standard is one that is commonly used in the industry and by the federal Department of Housing and Urban Development. Most major cities use 5% as the indicator of a tight rental market. Vacancy rates are dynamic and should be reviewed twice a year to ensure that the Ordinance provision is responding to market conditions.

**D. Pros of the Proposed Modifications**

1. Increased information sharing between owners and tenants will increase compliance with the ordinance and provide tenants context about the rent being charged.

**E. Cons of the Proposed Modifications**

1. Additional time and cost to owners to prepare and submit information to tenants.

**F. Alternatives to the Proposed Modifications**

1. No modifications. Staff does not recommend maintaining the existing notification requirements at current levels. The increased sharing of information as proposed above will increase awareness of and compliance with the ARO for both owners and tenants.

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## 5) ***Amendments to facilitate monitoring and enforcement of the ARO***

### A. Existing Provision

1. The current ARO does not provide a mechanism for monitoring or enforcement of the ARO outside of the Administrative Hearing Process.

### B. Proposed Modifications

1. Staff recommends the creation and implement a full rent registry, requiring rent and tenant information, updated whenever the unit turns over. Information to be collected includes address, amount of rent for each unit, information when a new tenant moves into a unit.
2. Add staffing to manage and monitor the registry.
3. Provide outreach, education, training, and technical assistance to facilitate adoption and compliance of rent registry requirements.

### C. Rationale

1. The creation and implementation of a full rent registry will allow staff to proactively monitor and enforce the Ordinance. This allows staff to ensure that tenants are being charged the appropriate amount of rent, that owners are complying with the ordinance, and allows the City to have a real-time understanding of trends in the ARO housing stock.
2. A registry is needed to implement both the banking and the limited capital improvement program.
3. Six of the eight cities with active rent stabilization programming in California use either a rent or unit registry. Three of the six with a registry operate a full rent registry.

### D. Pros of the Proposed Modifications

1. A full rent registry will provide staff with more up-to-date information than a unit registry, which would not capture real-time rent information.
2. A rent registry facilitates monitoring and compliance with the Ordinance, and empowers residents and owners to know and understand their rights and responsibilities under the Ordinance.
3. A rent registry will create a local data set for the ARO housing stock, which can inform future policy making.

### E. Cons of the Proposed Modifications

1. Administration of a rent registry is more costly and complex than annual unit registry or no registry.

### F. Alternatives to the Proposed Modifications

1. No modifications. Staff does not recommend this alternative. The legitimacy of the tenant protections provided under the Ordinance will be in question if staff does not have the ability to monitor, enforce, or create a local data set to inform future policymaking.
2. Implement an annual unit registry. Define what a unit registry is. And how it is different. Staff does not recommend this alternative.

## 6) *Evaluation of the Staffing levels to effectively monitor, enforce, and analyze the ARO program*

### A. Existing Staffing Level

1. The Rental Rights and Referral Program currently staffs 1.5 full time equivalents (FTE) to administer the ARO. Administration of the program includes: receiving and responding to all customer interactions; receiving, reviewing, and processing owner/tenant petitions; administering the mediation and arbitration hearing process, including coordination with the Administrative Hearing Officers; and all other day-to-day tasks.
2. The current ARO is a complaint-driven program and does not include any proactive monitoring and enforcement for program compliance. Periodic analysis of the number, types, and outcomes of petitions filed is performed for internal purposes.
3. Currently, the RRRP staffing level equates to 1 FTE overseeing approximately 29,500 ARO apartments (1:29,500 ratio). This staffing ratio is significantly lower than other cities with more robust apartment rent stabilization programs that include a registry program and just/good cause, which have staffing ratios between 1:1,250 (1 FTE overseeing 1,250 units) and 1:5,490 (1 FTE overseeing 5,490 units). (See Appendix – Table 4)
4. The ARO program is a 100% cost-recovery program. Current ARO program fees equals \$12.25/unit/annually, or \$1.06/unit/month. The fees in other cities with more robust programs range from \$2.04/unit/month to \$19.50/unit/month.

### B. Proposed Modifications

1. Based on the staff's recommendations to include a rent registry and an Anti-Retaliation and Protection Ordinance, staff estimates a total of 15 to 30 FTE's would be required to administer the modified program at full implementation, depending on the program model selected. Staffing would include humans resources for: day-to-day administration; monitoring; compliance and enforcement; outreach and education, technical assistance; investigation and litigation, inspectors, etc. Currently, the ARO program lacks the infrastructure and staffing to perform any of the desired monitoring, enforcement, and analysis of the program.
2. Preliminary estimates of program cost for a modified ARO ranges between \$3.2 million and \$4.5 million. This would increase the cost of the ARO program, resulting in annual fees of approximately \$73 to \$102 annually, or monthly per unit fees of \$6.09 to \$8.52. The final staffing level and cost will be determined by the program model approved by the City Council. For example, registries have different levels of detail (ie, rent registries provide more detail than unit registries), which impacts staffing levels. Additionally, the availability of a good cause ordinance typically reduces staffing needs because it places some of the responsibility of program enforcement onto tenants. Having no or limited just/good cause would likely increase staffing levels, as the City staff would be the primary enforcement mechanism.
3. Allow owners to pass up to 50% of the annual fees to tenants. The pass-through of the program cost is not part of the base rent.
4. Fund an anti-retaliatory clinic.

### C. Rationale

1. The current ARO is significantly understaffed. It currently has no proactive monitoring and enforcement capacity. The lack of these programmatic elements and staff resources make it impossible to determine if owners are complying with the ARO.



2. The proposed enhanced ARO program would benefit the 115,000 renters living in ARO apartments as well as the thousands of apartment owners through increased information, education, monitoring, compliance, and enforcement, while total programmatic costs would comprise only 0.001% of the City's budget.

D. Pros of the Proposed Modifications

1. The proposed modifications will allow the City to proactively monitor, analyze, educate and enforce the ARO. This will facilitate the ability of the program to meet its intended public purposes.

E. Cons of the Proposed Modifications

1. The proposed modifications will increase the cost of administering the program.

F. Alternatives to the Proposed Modifications

1. Do not increase or minimize the increase of staffing levels. Staff does not recommend maintaining current staffing levels. Additional staffing is needed to implement proposed recommendations to facilitate monitoring, enforcement, and analysis of a more effective, modified ARO program.

**7) Evaluation of the inclusion of duplexes as part of the ARO**

A. Existing Provision

1. The current ARO does not apply to duplexes.

B. Proposed Modifications

1. No modifications proposed. Do not include duplexes under the provisions of the ARO.

C. Rationale

1. Potential modifications to the ARO will fully occupy staff resources to implement the program even without the addition of duplexes.
2. Owners of duplexes may not be familiar with the ARO. Bringing them into compliance with the ARO will be challenging and time intensive.

D. Pros of Not Modifying the Ordinance to Include Duplexes

1. Fewer apartments and owners will need to be monitored for compliance with the ARO.
2. Limited staff resources will not need to be spent on bringing a new group of apartment owners into compliance.

E. Cons of Not Modifying the Ordinance to Include Duplexes the Proposed Modifications

1. The potential for increasing the supply of rent-stabilized apartments by over 10,000 units will not be realized.

**8) Exploration of income eligibility criteria for rent-controlled units**

A. Intent

1. The intent of the Council direction to explore an income eligibility criteria for the ARO is to ensure that rent-stabilized apartments are being occupied by households who need them most, namely, lower-income households. Much like for deed-restricted affordable housing, an income qualification criteria would mean that ARO units could only be rented to households who make less than a certain income. It was NOT the intent of the Council for staff to explore the potential to remove apartments from the ARO if they are occupied by higher-income households whose earnings exceed a certain threshold.

B. Existing Provision

1. The current ARO does not contain an income qualification criteria provision.

C. Proposed Modifications

1. Staff does not recommend developing an income qualification criteria for ARO units.

D. Rationale

1. Unlike deed-restricted affordable housing, ARO apartment owners are not receiving a public subsidy that would allow income criteria to be placed on the units.
2. No city in the country has an income qualification criteria as defined above.

E. Pros of Not Modifying the Ordinance to Include Income Qualifications

1. An income qualification criteria cannot be placed on ARO units because there is no public subsidy provided to apartment owners.
2. Owners provided input that they do not support an income qualification criteria because it would limit potential renters and increase compliance requirements.
3. Tenants provided input that they do not support an income qualification criteria because it would penalize renters if their incomes were to increase.

F. Cons of Not Modifying the Ordinance to Include Income Qualifications

1. An income qualification criteria cannot be placed on ARO units because there is no public subsidy provided to apartment owners.

## 9) *Consideration of a Good Cause Eviction Ordinance*

### A. Existing Provision

1. State law currently provides for the ability of apartment owners to terminate a renter's tenancy without providing cause. Under the Ordinance, an owner may provide a tenant a 60-day no-cause termination notice with an offer to arbitrate, a 90-day notice in a market with a vacancy rate of 3% or higher, and a 120-day notice in a market with a vacancy rate of less than 3%.

### B. Proposed Modifications

1. Staff recommends the creation of an Anti-Retaliation & Protection Ordinance (ARPO) as a separate but companion program to the ARO. The purpose of the ARPO would be to provide a tool for tenants to file legitimate code violation issues without fear of retaliation from owners.
2. Before a eviction notice is received, the tenant must have notified the owner, in writing, of the issue and seek a resolution before contacting the City. If the owners is not responsive, then the tenant may notify the City and provide evidence that they first sought a resolution with the owner. The City will notify the owner of the tenant complaint and will inspect the reported code violation. If the City substantiates the violation, the owner will be required to correct the violation within an specific period of time. Additionally, the owner will be placed under Good cause provisions for two years.
3. Owners may challenge the tenant's petition that they were contact by the tenant or that they were unresponsive to the tenant complaint. In this situation, an administrative hearing will be held to resolve the dispute. If the tenant petition to the City is upheld, the owner will be required to correct the violation and will be placed under Just/Good Cause provisions for two years.
4. After two years, the owners will be removed from the Good Cause provisions.
5. Only certain code violations will qualify for the ARPO program.
6. This provision doesn't apply if the eviction is for good cause.
7. The anti-retaliation ordinance is not applicable if the condition from which the complaint or action arose was caused by the tenant, a member of the tenant's household, or a guest of the tenant.
8. Create an enhance meditation program that facilitates voluntary agreements and conflict resolution between owners and tenants, as well as between tenants and tenants.

### C. Rationale

1. Based on the input received, staff believes that most owners and tenants are good actors. Most owners do not want to remove good tenants and actively work to comply with the provisions of the ARO to minimize tenant turnover and vacancies.
2. San Jose's provision that does not allow vacancy decontrol unless a tenant voluntarily vacates a unit removes the economic incentive that a landlord may have to terminate a lease in order to increase the rent.
3. However, there are some bad actors. As such, instad of a comprehensive Good Cause program, implent a "limited" Good Cause program in the form of the proposed Anit-Retliatory & Protection Ordinance.

4. Tenants and advocates have provided testimony that tenants will live in substandard housing conditions out of fear of retaliation.
5. However, most of the tenant petitions filed with the City include either a code violation or serviced reduction claim in conjunction with an excessive rent increase complaint.
6. ARPO would require that tenants take responsibility for their living situation and to work collaboratively with owners to proactively address issues before filing a complaint with the City. Failure on the part of the tenant to first work with the owner will nullify the tenant's complaint.

D. Pros of the Proposed Modifications

1. ARPO balances the need to protect tenants from retaliation by owners regarding complaints of emergency or substandard living conditions, while not impacting good owners who are responsive to tenant issues.

E. Cons of the Proposed Modifications

1. ARPO will likely require more staffing than a full Good Cause program (as it is currently with the ARO).
2. The Anti-Retaliation Ordinance does not provide full protection to all tenants. Good Cause should not be seen as a "punishment" for bad landlords but instead should be viewed as essential to providing full protection to tenants to stabilize their living situations.
3. The majority of cities that have an effective rent stabilization program provide Good Cause protection to all tenants.

F. Alternatives to the Proposed Modifications

1. No modifications. Staff does not recommend this alternative. Based on the input received and staff's research and case studies, a rent-stabilized program without strong tenant protection measures renders the program less effective for stabilizing the living situation of tenants.
2. Implement full Good Cause. Staff does not recommend this alternative. Based on the input received, staff believes that most owners and tenants are good actors who do not need the provisions of a full Just/Good Cause program to incentivize or regulate behavior. However, some are not good actors. ARPO would be applied in a limited manner to address the behavior of bad actors while allowing good actors to conduct their business as they normally would.

**10) Other**

- A. Create an Ellis Act Ordinance to address the process to be followed for ARO apartments to be removed from the rental business.
- B. Update the City's demolition ordinance to address the demolition of ARO apartments.
- C. Update the City's condo conversion ordinance to address the conversion of ARO apartments.
- D. Create an urgency ordinance that provides a temporary pause in rent increases.

**Attachments:**

- 1) Table 1: Annual Rent Increases Allowed under San Jose Ordinance compared with increases in the San Francisco-Oakland-San Jose CSA CPI Rent Index, and San Francisco-Oakland-San Jose CPI All Items for Urban Consumers Index
- 2) Table 2: Allowable Annual Rent Increases under Rent Stabilization Ordinances
- 3) Table 3: Cost Pass-Through Petitions
- 4) Table 3: Overview of California Cities with Active Rent Stabilization Programs

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**Table 1**

**Annual Rent Increases Allowed under San José ordinance  
Compared with Increases in the CPI-U All Items and the  
San Francisco-Oakland-San José CSA CPI Rent Index**

	<i>SF-Oak-SJ CPI Rent Index</i>	<i>San José Annual Allowable Increase</i>	<i>SF-Oak-SJ CPI-U All Items</i>
1980	12.69%	8%	15.1%
1981	10.20%	8%	12.9%
1982	9.6%	8%	7.5%
1983	9.9%	8%	0.8%
1984	8.4%	8%	5.7%
1985	8.1%	8%	4.2%
1986	8.3%	8%	3.0%
1987	4.6%	8%	3.4%
1988	4.3%	8%	4.4%
1989	3.9%	8%	4.9%
1990	4.7%	8%	4.5%
1991	3.6%	8%	4.4%
1992	2.4%	8%	3.3%
1993	2.7%	8%	2.7%
1994	1.9%	8%	1.6%
1995	1.5%	8%	2.0%
1996	2.6%	8%	2.3%
1997	6.1%	8%	3.4%
1998	7.8%	8%	3.2%
1999	7.0%	8%	4.2%
2000	7.0%	8%	4.5%
2001	10.6%	8%	5.4%
2002	3.8%	8%	1.6%
2003	0.1%	8%	1.8%
2004	-0.2%	8%	1.2%
2005	0.3%	8%	2.0%
2006	1.5%	8%	3.2%
2007	3.9%	8%	3.3%
2008	4.1%	8%	3.1%
2009	3.2%	8%	0.7%
2010	-0.1%	8%	1.4%
2011	2.3%	8%	2.6%
2012	4.1%	8%	2.7%
2013	4.5%	8%	2.2%
2014	5.5%	8%	2.8%

**Table 2****Allowable Annual Rent Increases under Rent Stabilization Ordinances**

	San José	San Francisco	Los Angeles	Oakland	Berkeley	Santa Monica	Hayward	West Hollywood	Beverly Hills	East Palo Alto	Los Gatos
Year	(spaces for years preceding the adoption of an ordinance are noted with a dash mark)										
1979	8.0%	-	-	-	-7.20%	-	-	-	-	-	
1980	8.0%	-	7.0%	10.0%	5.0%	6.5%	-	-	-	-	70% CPI
1981	8.0%	-	7.0%	10.0%	5.0%	5.5%	-	-	-	-	70% CPI
1982	8.0%	7.0%	7.0%	10.0%	9.0%	5.5%	-	-	-	-	70% CPI
1983	8.0%	7.0%	7.0%	10.0%	4.7%	4.5%	-	-	-	-	5.0%
1984	8.0%	4.0%	7.0%	8.0%	0.0%	4.0%	-	-	-	-	5.0%
1985	8.0%	4.0%	4.0%	8.0%	2.0%	3.0%	-	3.0%	7.0%	-	5.0%
1986	8.0%	4.0%	5.0%	8.0%	3%+ \$2.50	2.5%	-	2.5%	10.0%	2.7%	5.0%
1987	8.0%	4.0%	4.0%	6.0%	3.5%	4.0%	5.0%	3.5%	5.0%	0.4%	5.0%
1988	8.0%	4.0%	4.0%	6.0%	\$25.00	3.0%	5.0%	3.2%	10.0%	3.4%	5.0%
1989	8.0%	4.0%	5.0%	6.0%	3.0%	3.0%	5.0%	3.7%	10.0%	4.9%	5.0%
1990	8.0%	4.0%	5.0%	6.0%	4%/\$1 7 min	6.0%	5.0%	3.7%	10.0%	4.9%	5.0%
1991	8.0%	4.0%	5.0%	6.0%	4% + 45% of 1980 rent	3.5%	5.0%	3.5%	10.0%	3.9%	5.0%
1992	8.0%	4.0%	5.0%	6.0%	\$26.00	3.0%	5.0%	2.7%	10.0%	2.3%	5.0%
1993	8.0%	1.9%	3.0%	6.0%	\$20.00	3.0%	5.0%	2.0%	10.0%	3.3%	5.0%
1994	8.0%	1.3%	3.0%	6.0%	\$18.00	2.0%	5.0%	0.7%	10.0%	1.0%	5.0%
1995	8.0%	1.1%	3.0%	3.0%	1.5%	1.5%	5.0%	1.7%	10.0%	1.4%	5.0%
1996	8.0%	1.0%	3.0%	3.0%	1.0%	1.6%	5.0%	1.2%	10.0%	1.8%	5.0%
1997	8.0%	1.8%	3.0%	3.0%	1.1%	2.0%	5.0%	1.0%	10.0%	5.6%	5.0%
1998	8.0%	2.2%	3.0%	3.0%	0.8%	1.0%	5.0%	1.2%	10.0%	7.1%	5.0%
1999	8.0%	1.7%	3.0%	3.0%	1.0%	1.0%	5.0%	1.7%	10.0%	2.3%	5.0%



	San José	San Francisco	Los Angeles	Oakland	Berkeley	Santa Monica	Hayward	West Hollywood	Beverly Hills	East Palo Alto	Los Gatos
<b>2000</b>	8.0%	2.9%	3.0%	3.0%	\$6.00	3.0%	5.0%	2.2%	10.0%	6.3%	5.0%
<b>2001</b>	8.0%	2.8%	3.0%	3.0%	\$10.00	4.2%	5.0%	2.7%	10.0%	5.8%	5.0%
<b>2002</b>	8.0%	2.8%	3.0%	0.6%	3.5%	\$11	5.0%	2.2%	10.0%	2.1%	5.0%
<b>2003</b>	8.0%	0.8%	3.0%	3.6%	0.0%	3.0%	5.0%	1.5%	10.0%	2.2%	5.0%
<b>2004</b>	8.0%	0.6%	3.0%	0.7%	1.5%	1.3%	5.0%	2.7%	10.0%	0.5%	5.0%
<b>2005</b>	8.0%	1.2%	3.0%	1.9%	0.9%	3.0%	5.0%	3.2%	10.0%	2.1%	5.0%
<b>2006</b>	8.0%	1.7%	4.0%	3.3%	0.7%	4.0%	5.0%	4.0%	10.0%	2.4%	5.0%
<b>2007</b>	8.0%	1.5%	5.0%	3.3%	2.6%	2.3%	5.0%	2.2%	10.0%	3.2%	5.0%
<b>2008</b>	8.0%	2.0%	3.0%	3.2%	2.2%	2.7%	5.0%	2.7%	10.0%	3.3%	5.0%
<b>2009</b>	8.0%	2.2%	4.0%	0.7%	2.7%	1.0%	5.0%	0.0%	10.0%		5.0%
<b>2010</b>	8.0%	0.1%	3.0%	2.7%	0.1%	2.0%	5.0%	1.2%	10.0%	0.0%	5.0%
<b>2011</b>	8.0%	0.5%	3.0%	2.0%	0.7%	3.2%	5.0%	2.2%	10.0%	1.4%	5.0%
<b>2012</b>	8.0%	1.9%	3.0%	3.0%	1.6%	1.5%	5.0%	1.2%	10.0%	2.4%	5.0%
<b>2013</b>	8.0%	1.9%	3.0%	2.1%	1.7%	1.0%	5.0%	0.7%	10.0%	2.0%	5.0%
<b>2014</b>	8.0%	1.0%	3.0%	1.9%	1.7%	0.8%	5.0%	1.2%	10.0%	2.0%	5.0%
<b>2015</b>	8.0%	1.9%	3.0%	1.7%	2.0%	0.4%	5.0%	0.7%	10.0%	2.0%	5.0%

Note: Additional allowable rent adjustments for master-metered buildings are not included. Cities using CPI standard may have differing allowable annual increases in the same year due to differing anniversary dates for measuring CPI increases.

**Table 3**

**Cost Pass-Through Petitions filed with CSJ - Housing**

Sale Date	Council District	Property Address	Units	Units Served Notice of Rent Increase	Tenants Petitions Filed	Average Rent	Cost-Justified Rent Increase	Proposed Monthly Rent	Percentage Increase - Proposed	Hearing Officer - Approved Rent	Hearing Officer approved rent increase (K-G)	Percentage Increase - Actual
<b>DEBT SERVICE PETITIONS</b>												
2008	3	475 E. William St.	8	2	2	\$614	\$481.43	\$1,095.00	78%	\$1,095.00	\$481.00	78%
2013	3	515 E. William St*	12	12	11	\$ 902.00	\$ 341.00	\$ 1,243.00	37.80%	\$ 1,202.00	\$300.00	33.00%
2014	6	51 Glen Eyrie	24	17	3	\$ 1,120.00	\$ 287.00	\$ 1,407.00	25.63%	\$ 1,209.00	\$89.00	8.00%
2014	3	427 S. 3rd St	6	6	6	\$ 598.00	\$ 617.00	\$ 1,017.00	103.18%	\$ 976.00	\$378.00	65.00%
2014	3	524 S. 9th St **	25	1	1	\$ 675.00	\$ 238.00	\$ 935.00	34.15%	\$ 789.00	\$114.00	17.00%
2014	3	561 S. 7th St	6	4	2	\$ 1,298.00	\$ 478.00	\$ 1,776.00	37.00%	\$ 1,507.00	\$209.00	16.00%
2014	3	710 N. 2nd St	4	4	4	\$ 1,191.00	\$ 512.00	\$ 1,703.00	42.99%	\$ 1,599.00	\$408.00	34.00%
2014	6	2129 Randolph Ave	6	4	1	\$ 871.00	\$ 304.00	\$ 1,175.00	34.90%	\$ 935.00	\$64.00	7.00%
2015	3	232 S. 10th St	8	7	5	\$ 946.00	\$ 328.00	\$ 1,750.00	29.50%	\$ 1,139.00	\$193.00	21.00%
2015	3	550 S. 4th St	7	4	1	\$ 881.00	\$ 357.00	\$ 1,238.00	40.52%	\$ 1,216.00	\$335.00	30.00%
2015	3	620 S. 7th St	6	5	1	\$ 1,198.00	\$ 446.00	\$ 1,644.00	37.23%	\$ 1,525.00	\$327.00	27.00%
2015	1	1195 Weyburn Ave	4	4	4	\$ 1,700.00	\$ 892.00	\$ 2,592.00	52.47%	\$ 1,955.00	\$255.00	15.00%
2015	1	1211 Weyburn Ave	4	1	1	\$ 1,920.00	\$ 892.00	\$ 2,812.00	46.46%	\$ 2,150.00	\$230.00	12.00%
2015	1	4094 Hamilton Ave	4	1	1	\$ 2,295.00	\$ 500.00	\$ 2,795.00	21.79%	\$ 2,600.00	\$305.00	17.00%
		<b>Totals/Averages</b>	<b>124</b>	<b>72</b>	<b>43</b>	<b>\$ 1,157.79</b>	<b>\$ 476.67</b>	<b>\$ 1,655.86</b>	<b>44.43%</b>	<b>\$ 1,356.79</b>	<b>\$199.00</b>	<b>27.00%</b>
<b>CAPITAL IMPROVEMENT PETITIONS</b>												
1		3900 Moorpark Ave	174	123	0	\$ 1,400.00	\$ 246.00	\$ 1,646.00	<i>Withdrawn by Owner</i>			
1		1350 Impala Drive	4	4	3	\$ 1,890.00	\$ 540.00	\$ 2,430.00	28.57%	\$ 2,350.00		24.00%
		<b>Totals/Averages</b>	<b>178</b>		<b>3</b>	<b>\$ 1,645.00</b>	<b>\$ 393.00</b>	<b>\$ 2,430.00</b>	<b>28.57%</b>	<b>\$ 2,350.00</b>		<b>24.00%</b>

\*Officer believes that a pass through of \$341.20 increase is not in keeping with the balance sought between the rights of tenants and landlord expressed in Ord. 17.23.020 (Policy and purposes declaration) and Ord.17.23.460 (Quality of Rental Units). Therefore, the Hearing Officer will reduce the increase in debt service pass through to \$300.00 a month, retroactive to the effective date of the Notice of Rent Increase.

\*\*Per testimony and evidence presented at the hearing, Officer finds that the proposed rent increase for unit #23B is reasonable under the circumstances. The monthly rent for unit #23B may be raised by a maximum of \$114.00 per month, for a potential maximum monthly amount of \$789.00. This rent increase will take effect 2/1/2015.

**Table 4**

**Overview of California Cities with Active Rent Stabilization Programs**

	Berkeley	Santa Monica	East Palo Alto	Los Angeles	Oakland	West Hollywood	San Jose	San Francisco
<b>Population (2014)</b>	118,853	92,987	29,530	3,928,864	413,775	35,883	1,015,785	852,469
<b>Number of Units</b>	20,000	28,069	2,500	600,000	66,000	16,895	44,300	173,000
<b>Type of Ordinance</b>	Rent Stabilization and Just Cause for Eviction	Rent Stabilization and Just Cause for Eviction	Rent Stabilization and Just Cause for Eviction	Rent Stabilization and Just Cause for Eviction	Rent Stabilization and Just Cause for Eviction	Rent Stabilization and Just Cause for Eviction	Mediation & Arbitration Ordinance	Rent Stabilization and Just Cause for Eviction
<b>Annual Allowable Increase</b>	65% of CPI-U	75% of CPI-U	80% of CPI	100% CPI-U (3-8%)	100% of avg. CPI-U and CPI Rent	75% of CPI-U	8%	60% of CPI-U
<b>Registration System</b>								
Type of System	Rent Registration	Rent Registration	Rent Registration	Unit Registration	Unit Registration	Unit Registration	No Registration	No Registration; Collect information from petition filings
<b>Dispute Resolution Process</b>								
Mediation Services	In house	In house	Contracted	In house		In house	In house counseling	Provided
Decision Making Body	Elected Rent Board	Elected Rent Board	Rent Board	Rent Board		Rent Board	Hearing Officer	Rent Board
Appeals	Superior Court	Superior Court	Superior Court	Superior Court		Superior Court	Superior Court	Superior Court
<b>Staffing</b>								
Budgeted FTEs	22.1	25.9	2	105	20.41	8.5	1.5	31.51
Program Administration FTEs	22.1	25.9	2	80	11	8.5	1.5	31.51
Contracted Services			Mediation and Hearing Officers	Hearing Officers			Hearing Officers	IT and Outreach
Budget	\$4.5M	\$4.75M	\$430k	\$24M	\$2.95M	\$1.9M		\$6,942,409
Annual Per-Unit Fee	\$213	\$174.96	\$234	\$24.51	\$30	\$120	\$12.75	\$36.00
Fee Cost per Unit per Month	\$17.75	\$14.58	\$19.50	\$2.04	\$2.50	\$10.00	\$1.06	\$3.00
Fee Pass Through	Certain Units	50%	50%	50%		50%	No	
Monthly Fee Pass Through	\$8.87	\$7.29	\$9.75	\$1.02		\$5		
Number of units per staff	905	1,084	1,250	7,500	6,000	1,988	29,533	5,490
Staff per 1,000 Units	1.1	0.92	0.8	0.17	0.31	0.5	0.03	0.18
Other				Possibly moving to rent registration system				