

District 1— Vacant
District 3— Barry Del Buono
District 5— Ruben Navarro
District 7— Melissa Medina
District 9— Julie Quinn
Mayor — Nhi Nguyen

(VC) Alex Shoor — District 2
Huy Tran — District 4
Andrea Wheeler — District 6
Lee Thompson — District 8
Michael Fitzgerald — District 10
Martha O’Connell — CAAC-MR
(C) Mike Graves — CAAC ML

*Commissioners are appointed by corresponding Council Members, but do not represent the Council District.

REGULAR MEETING AGENDA

5:45PM

March 8, 2018

San José City Hall
Wing Rooms 118-120

- I. Call to Order & Orders of the Day**
- II. Introductions**
- III. Consent Calendar**
 - A. Approve the Minutes for the Regular Meeting of February 8, 2018
ACTION: Approve the February 8, 2018 action minutes
- IV. Reports and Information Only**
 - A. Chair
 - B. Director
 - C. Council Liasion
- V. Old Business**

None.
- VI. New Business**
 - A. Amendments to the Apartment Rent Ordinance Regarding Utility Pass Throughs to Tenants (R. VanderVeen, Housing Department)**

ACTION: Accept the report on submetering, submetering incentives, and pass throughs of utility costs, including Ratio Utility Billing System (RUBS), and provide recommendations to staff on:

 - a. A proposal to amend the Apartment Rent Ordinance to include the following regarding utility charges:
 - 1) Clarifying that the pass through of utility charges to tenants via RUBS or other unmetered allocations is not allowed.
 - 2) Allow landlords with written utility pass through contracts in place prior to January 1, 2018, to seek a one-time rent increase equal to the lesser of the average monthly charges passed through to the Tenant over the prior twelve-

month period or the 2018 Santa Clara County Multifamily Utility Allowance rates for water, sewer and garbage costs.

- b. A proposal for City Council direction to staff to present the City Manager an amendment to the Regulations describing the limited term one-time rent increase petition process.

**B. Tenant Source of Income Policy
(K. Clements, Housing Department)**

ACTION: Accept the staff report and provide the Housing Department with feedback on the policy framework related to source of income discrimination.

**C. Meeting Adjournment Curfew
(K. Clements, Housing Department)**

ACTION: Discuss the possible establishment of a meeting adjournment curfew for Commission meetings. (No memo)

- VII. Open Forum** (*Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the Commission. Meeting attendees are usually given two (2) minutes to speak on any discussion item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Speakers using a translator will be given twice the time allotted to ensure non-English speakers receive the same opportunity to directly address the Commission.*)

VIII. Meeting Schedule

The next Special meeting will be Thursday, March 22, 2018 at 5:45PM, in the San Jose City Hall Wing Rooms 118-120.

IX. Adjournment

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

You may speak to the Commission about any discussion item that is on the agenda, and you may also speak during Open Fourm on items that are not on the agenda and are within the subject matter jurisdiction of the Commission. Please be advised that, by law, the Commission is unable to discuss or take action on issues presented during Open Forum. Pursuant to Government Code Section 54954.2, no matter shall be acted upon by the Commission unless listed on the agenda, which has been posted not less than 72 hours prior to meeting.

Agendas, Staff Reports and some associated documents for the Commission items may be viewed on the Internet at <http://www.sanjoseca.gov/hcdc>.

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 Office of the City Clerk, 200 East Santa Clara Street, 14th Floor, San José, California 95113, at the same time that the public records are distributed or made available to the legislative body. Any draft resolutions or other items posted on the Internet site or distributed in advance of the commission meeting may not be the final documents approved by the commission. Contact the Office of the City Clerk for the final document.

On occasion the Commission may consider agenda items out of order.

The Housing & Community Development Commission meets every Second Thursday of each month (except for July and December) at 5:45pm, with special meetings as necessary. If you have any questions, please direct them to the Commission staff. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 as soon as possible, but at least three business days before the meeting.

Please direct correspondence and questions to:

City of San José
Attn: Viviane Nguyen
200 East Santa Clara Street, 12th Floor
San José, California 95113
Tel: (408) 975-4462
Email: viviane.nguyen@sanjoseca.gov

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 Viviane Nguyen, Đ.T. 408-975-4462.

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 Shirlee Victorio sa 408-975-2649. Salamat Po.

HOUSING & COMMUNITY DEVELOPMENT COMMISSION

REGULAR MEETING ACTION MINUTES

FEBRUARY 8, 2018

MEMBERS PRESENT: Alex Shoor Chair Pro Tempore
 Lee Thompson Commissioner
 Martha O’Connell Commissioner
 Huy Tran Commissioner
 Andrea Wheeler Commissioner
 Barry Del Buono Commissioner
 Michael Fitzgerald Commissioner
 Julie Quinn Commissioner
 Ruben Navarro Commissioner
 Nhi Nguyen Commissioner

MEMBERS ABSENT: Mike Graves Chair
 Melissa Medina Commissioner

STAFF: Rachel VanderVeen Housing Department
 Robert Lopez Housing Department
 Selena Copeland Housing Department
 Kristen Clements Housing Department

(I) Call to Order/Orders of the Day— Chair Pro Tempore Shoor opened the meeting at 5:47pm.

(II) Introductions—Commissioners, staff, and audience introduced themselves.

(III) Consent Calendar

A. Approve the Minutes for the January 11, 2018 Regular Meeting.

Commissioner Wheeler made the motion to approve the action minutes for the January 11, 2018 regular meeting with a second by Commissioner Thompson. The motion passed unanimously (10-0).

(IV) Reports and Information Only

A. Chair –None

B. Director’s Report –Kristen Clements will be taking Ray Bramson’s place. Ms. Clements announced The Plaza has opened and people are moving in.

C. Council Liaison – None

(V) Old Business - None

DRAFT

(VI) New Business

A. 2017-2018 First and Second Quarterly Report for the Rent Stabilization Program (R. VanderVeen, Housing Department)

ACTION: Informational Only

B. Mobilehome Activity Quarterly Report for the Rent Stabilization Program (R. VanderVeen, Housing Department)

ACTION: Informational Only

C. Amendment to the Tenant Protection Ordinance – Immigration Status (R. VanderVeen, Housing Department)

ACTION: Accept the report and provide recommendations to staff on potentially amending the Tenant Protection Ordinance to include a requirement for compliance with AB 291 which prohibits landlords from threatening notification of their tenants' immigration status to immigration authorities, for the purposes or intent of retaliation, harassment, or intimidation.

Commissioner Wheeler made a motion to accept the report and amend the recommendation to include the additional requirement that staff bring the City Council a full legal analysis of adding the limitation to prevent landlords from sharing immigration status for any purpose with a second by Commissioner Navarro. The motion passed 9-1 by roll call vote.

Yes: Del Buono, Quinn, Tran, Thompson, Shoor, Fitzgerald, Nguyen, Navarro, Wheeler
No: O'Connell

(VII) Open Forum

Susan Price-Jang from PACT commented about the memo from the previous item.

Working Partnerships representative commented that Working Partnerships fully supports 100% rent control and made the point that people are not illegal, but their status may be undocumented.

(VIII) Meeting Schedule

The next regular meeting will be on Thursday, March 8, 2018 at 5:45PM, in the San Jose City Hall Wing Rooms 118-120.

Commissioner Thompson made the motion to add to the March 8th agenda a discussion of setting a hard meeting deadline as well as requesting a list of meeting adjournment times from City staff. The motion passed 9-1 by roll call vote.

Yes: O'Connell, Quinn, Tran, Thompson, Shoor, Fitzgerald, Nguyen, Navarro, Wheeler
No: Del Buono

(IX) Adjournment

Chair Pro Tempore Shoor adjourned the meeting at 7:30 pm.



Memorandum

**TO: HOUSING & COMMUNITY
DEVELOPMENT COMMISSION**

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: March 1, 2018

Approved

Date

**SUBJECT: AMENDMENTS TO THE APARTMENT RENT ORDINANCE
REGARDING UTILITY PASS THROUGH TO TENANTS**

RECOMMENDATION

Accept the report on submetering, submetering incentives, and pass throughs of utility costs, including Ratio Utility Billing System (RUBS), and provide recommendations to staff on:

- a. A proposal to amend the Apartment Rent Ordinance to include the following regarding utility charges:
 - 1) Clarifying that the pass through of utility charges to tenants via RUBS or other unmetered allocations is not allowed.
 - 2) Allow landlords with written utility pass through contracts in place prior to January 1, 2018, to seek a one-time rent increase equal to the lesser of the average monthly charges passed through to the Tenant over the prior twelve-month period or the 2018 Santa Clara County Multifamily Utility Allowance rates for water, sewer and garbage costs.
- b. A proposal for City Council direction to staff to present the City Manager an amendment to the Regulations describing the limited term one-time rent increase petition process.

EXECUTIVE SUMMARY

On November 14, 2017, the City Council discussed whether to include in the Apartment Rent Ordinance to specifically prohibit utility charges including RUBS. City Council engaged in a robust discussion concerning RUBS's potential conservation impacts, alternative utility measuring methods, such as sub-metering, and potential consequences that a RUBS prohibition would have on existing contracts with RUBS provisions. After approving other updates to the Apartment Rent Ordinance (ARO), the City Council directed staff to research the cost of submetering in ARO buildings and incentives for financing submetering. Additionally, City

Council instructed staff to defer the addition of language in the ARO which would clarify that utility pass throughs are prohibited.

Based on City Council's discussions and direction, staff determined that submetering of existing buildings is very costly. There are several programs available to incentivize submetering but they are limited. However, there are other conservation efforts that landlords can utilize to promote conservation in their apartment communities.

Staff also evaluated the application of RUBS in lease agreements. Staff found that RUBS contracts utilize different methodologies. There is an inherent lack of transparency in process and fees can be inappropriately assessed. In addition, there is often no direct correlation between the individual tenant's utility usage and the utility pass through being assessed to a specific apartment. To eliminate these risks to tenant communities, it is recommended that RUBS continue to be disallowed in ARO buildings.

In order to address concerns regarding existing RUBS agreements, staff is proposing a one-time rent increase be put in place to combine rent and utility costs for all tenants. This additional workload was not built into the approved staffing model, but the Housing Department will attempt to address the one-time impact with existing staff.

Finally, an analysis of utility rates over time was completed. This analysis shows that the annual allowable rate of 5% is sufficient to absorb significant increases in utility costs in future years.

BACKGROUND

On November 14, 2017, City Council approved the updated Apartment Rent Ordinance (ARO) (staff report can be viewed here: <https://sanjose.legistar.com/LegislationDetail.aspx?ID=3203596&GUID=895A57AE-CA98-4C2A-9887-0B5DEE306F9E&Options=&Search>) and directed the Housing Department to defer action on Ratio Utility Billing (RUBS) to March 2018. The City Council also directed Staff to return to Council with options for potential action related to RUBS, and with additional information on submeter installations, and potential strategies to incentivize submetering. During the discussion on November 14, the City Council requested staff to develop a transition plan for current RUBS contracts as an option to consider if RUBS is not allowed for properties covered by the ARO in the future.

RUBS in California

A number of states do not allow the use of RUBS to pass through utility costs to tenants. The State of California does not prohibit the use of RUBS. The California Public Utilities Commission (CPUC) has reviewed the issue and ruled that it lacks jurisdiction to regulate landlords' activity regarding utility billing of tenants; however, it affirmed that the regulatory responsibility of utility pass throughs falls within the purview of local rent control authorities.

Most cities with active rent control ordinances do not allow RUBS for apartments covered by rent control. Cities that allow RUBS component, have annual rent increases that are linked to a Consumer Price Index (CPI).

Research published in the *National Multifamily Submetering and Allocation Billing Program Study* funded by the United States Environmental Protection Agency (EPA) in 2004, (<https://library.cee1.org/content/national-multiple-family-submetering-and-allocation-billing-program-study-executive-summary>), asserts that individual meters (submeters) for each apartment that encompass all utilities, as the most effective method of promoting conservation of natural resources. Recognizing the need for water conservation in the state of California, Governor Brown signed SB 7 (**Attachment A**) requiring all new multifamily construction to include submeters effective January 1, 2018. Once submeters are installed, RUBS is no longer allowed (or necessary) for multifamily buildings.

Use of RUBS in San José

The original ARO was intended to regulate rent as a single charge which included the payment for all housing services including utilities. Over the years, a number of landlords have been unbundling the housing services from rent, and charging tenants extra fluctuating monthly charges in addition to rent. Despite the limits in the original ARO on pass throughs and fluctuating increases, this practice persisted. This led to confusion about these limits, so when staff brought the updated ARO to Council, it included a section expressly prohibiting this practice.

Specifically, the ARO defines rent as funds used to pay for housing services. “Housing Services” means those services provided and associated with the use or occupancy of a Rental Unit, including but not limited to repairs, replacement, maintenance, painting, light, heat, water, elevator service, pest control, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, storage, and any other benefits, privileges, or facilities. Moreover, the rent may only be increased once per twelve-month period.

The purposes of the ARO are to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. The Apartment Rent Ordinance recognizes the value of residential rental units as a critical resource amid the continuing shortage of and persistent demand for housing in the City of San José. To further protect tenants from excessive and unreasonable rent increases, the ARO generally limits annual rent increases, requires notices be provided to the City, regulates how much and what types of costs may be passed through to tenants, provides for monitoring rents, and provides for an administrative review process for housing-related disputes.

Staff has raised concerns regarding the impact of the pass through of RUBS and other utility costs on apartment residents. The City Council recognized these concerns and requested that staff continue research in this area to develop a recommendation for their consideration.

ANALYSIS

Staff has completed its research analysis on use of utility pass throughs (including RUBS) in ARO apartments. This memorandum discusses the following areas as they pertain to RUBS.

- I. Conservation Efforts in Multifamily Housing
 - A. Perspectives on RUBS impact on conservation
 - B. Research on submetering
 - C. Conservation incentives

- II. Impact of Increased Utility Rates
 - A. Historical data on utility rates
 - B. Potential rate increases

- III. Concerns Regarding RUBS
 - A. Rents in Excess of the 5% annual general increase
 - B. Fluctuating rents
 - C. Lack of transparency
 - D. Spikes in utility costs

- IV. Current Contracts with RUBS Provisions
 - A. Petitions filed regrading utility pass throughs
 - B. Option for transitioning current RUBS contracts

I. Conservation Efforts in Multifamily Housing

A. Perspectives on RUBS Impact on Conservation

Landlords state the utilization of RUBS in multifamily housing results in higher conservation of utilities by tenants. The assertion is that if a tenant reviews a bill for water usage, they are more likely to report a leak and use less water. However, a study sponsored by the EPA in 2004 found that RUBS is not tied to actual usage, and therefore does not motivate tenants to conserve.

Tenants receiving RUBS bills pay utilities based on the number of occupants and/or square footage of their apartment, rather than actual usage. For example, if a tenant actively conserves water while their neighbor chooses to hose off their patio daily, the tenant who is conserving water may pay more for their water, despite using less water.

B. Research on Submetering

Submetering has been proven to be an effective conservation measure as it ties utility usage to the behavior of the specific tenants living in that unit. For this reason, the City Council requested that staff conduct further research on the feasibility of installing sub-meters in existing metered apartment buildings.

Most multifamily buildings covered by the ARO are master-metered for water and sewer. To install submeters in existing buildings, landlords must purchase and install meter systems, which will likely require re-piping an entire building. The estimated cost for this work is summarized in Table 1 below. Based on the research completed, it is not likely landlords will choose to invest in the installation of submeters because the cost exceeds the savings a landlord will experience over time.

Table 1: Estimated Costs for Installing Submeters (per unit cost)

Component	Low	Mid	High
Labor to install meter	\$1,000	\$5,000	\$8,000
Meter	\$100	\$200	\$400
Labor to repair drywall	\$4,090	\$5,440	\$6,790
Drywall Materials	\$580	\$630	\$680
Total Per Unit Cost	\$5,770	\$11,270	\$15,870

Source: Survey of various local plumbers and contractors in San José conducted February 2018

C. Conservation Incentives

Due to the potential financial barriers of submetering installation, the City Council directed staff to conduct research on financial incentives landlords could use to alleviate the costs. Staff identified two programs incentivizing the installation of water meters. Below is a summary of these two programs:

- **Santa Clara Valley Water District** – The Santa Clara Valley Water District offers a Submeter Rebate Program providing a rebate (up to \$150 per installed sub-meter) for multifamily landlords who install submeters in their apartment buildings.
- **City of San José** – On November 14, 2017, City Council approved the Capital Improvement Pass Through Program as a part of the ARO; Appendix B of the Regulations (<http://www.sanjoseca.gov/DocumentCenter/View/73546>) includes a list of specified improvements for the program. In order to utilize the capital pass through provisions, the landlord must petition for and receive an administrative decision authorizing a pass through for any costs to be charged to tenants.

The incentives provided by these two programs are limited. To date, no landlord has submitted a petition under the City's capital improvement program. Staff concluded that the cost to install submeters in existing buildings is so high that the incentive programs do not provide sufficient funding to create a true incentive.

II. *Impact of Increased Utility Rates*

Landlords are concerned about rising utility costs. They have stated that passing on utility costs to tenants shifts the risk of increased utility costs to tenants. The elimination of RUBS removes landlords' ability to shift this risk to tenants.

A. Historical Data on Utility Rates

Staff collected information on historical utility rates to evaluate the impact of increased utility rates over time. Over the last ten years, garbage rates for multifamily buildings increased by an average of 3.8% per year, San José Water Company rates increased an average of 7.3% per year and sewer rates increased by 6.8% per year. The average annual percentage increase of water, sewer, and trash combined is 17.9%. **Attachment B** provides further data from the original sources.

B. Potential Rate Increases

Landlords have stated concerns regarding potential increases in utility costs in future years. Staff has analyzed the impact of potential increases for utilities in future years. Using information from the "San José ARO Study" by Economic Roundtable and public information available, utilities such as water (2.6%) and trash (1.7%) make up a small fraction of operating costs. Increases in these costs have a limited impact on the overall expenses related to ownership of rental property. Generally, a significant increase in a utility cost will be absorbed by a 5% increase in rent. In the event the annual general increase is insufficient to cover an owner's costs, the landlord can file a fair return petition to seek an additional rent increase. Table 2 demonstrates a 25% increase in water costs for an apartment in actual costs versus the 5% rent increase allowable under the ARO.

Table 2: 25% Increase in Water Costs vs. 5% Rent Increase

Current Charges	Amount	Future Charges	Amount
Base Rent	\$1,200	Rent	\$1,200
		5% Rent Increase	\$60
Water Costs	\$70	Water Costs	\$70
		25% Increase	\$17.50
Net Income	\$1,130	Net Income	\$1,172.50

In this example, the net income increased for the apartment while water costs increased by 25%. The 5% annual allowable rate is adequate in covering future increases in utility costs.

III. *Concerns Regarding RUBS*

The intent of the ARO is to charge rent for all housing services related to an apartment. Over time, landlords have itemized housing services and charged tenants separately for items such as

pets, utilities, and parking. The amended ARO provided clarity to tenants and landlords regarding pets and parking. Staff was directed to clarify the use of RUBS to charge tenants for utilities. The following section outlines Staff's concerns regarding the use of RUBS in ARO apartments.

A. Rents in Excess of the 5% Annual General Increase

The annual general increase defined by the ARO is 5%. Tenants who are charged rent and utilities separately may experience a total annual rent increase that is greater than 5%. Petitions filed with the Rent Stabilization Program demonstrate examples of tenants receiving rent increases beyond the allowable 5% rate when rent is combined with utility costs. Separating these charges may potentially mask a rent increase beyond the annual general increase.

B. Fluctuating Rents

The ARO requires that tenants receive one rent increase during a twelve-month period. This feature of the ARO was approved in order to promote housing stability. Charging utilities with RUBS causes costs variation on a monthly basis that are very hard for a tenant to predict. These monthly rent fluctuations, often coupled with rent increases, are not allowable under the ARO.

C. Lack of Transparency

Tenants who are charged utilities by RUBS have limited information on how the pass through amount is determined. Each tenant receives their own bill, without information regarding the amounts paid by other tenants or the total utility bill paid by the landlord for the entire building. Without access to this information, a tenant will not know if the ratios used for their unit are consistent with the assumptions used for other tenants, or if they are being charged for other fees that are not allowed by the ARO. Based on specific RUBS cases reviewed by hearing officers, some landlords currently using RUBS do not make their utility bills available to tenants. This lack of transparency provides opportunity for abuse by landlords to charge excess utility charges to tenants.

D. Spikes in Utility Costs

Utility rates vary over time due to factors such as changes in season or occupancy. Other factors may create spikes in utility costs such as a water leak or excessive usage by one individual. Utility bills generated by RUBS pass on these spikes in costs to tenants. These unanticipated costs may lead a tenant to a situation where they are unable to pay rent resulting in a notice of termination. The intention of the ARO is to protect tenants from sharp rises in rent costs, providing additional stability to families in our community.

IV. Current Contracts with RUBS Provisions**A. Petitions Filed Regarding Utility Pass Throughs**

From 2012 to 2017, 44 petitions were filed with the Rent Stabilization Program regarding illegal rent increases from RUBS pass throughs (summary in **Attachment C**). Hearing officers and Rent Stabilization Program staff addressed these issues due to the inconsistent application of RUBS throughout ARO apartments. Hearing officers have been challenged in determining the application of ARO to these RUBS agreements. Additionally, some of the petitions raised concerns regarding the pass through of additional costs to tenants, such as set-up fees and transaction fees, not allowed by the ARO.

Staff sampled the utility charges passed through using petitions filed with the Housing Department. Table 3 below illustrates the inconsistency in the amounts landlords passed through to tenants.

Table 3: Sample of Utility Charges Passed Through Using Petitions Filed with Housing Department

Address	Monthly RUBS Charge	Monthly Rent
550 Kiely #23	\$64.47	\$1,250
4311 Norwalk #210	\$103.15	\$2,881
1544 Maurice Ln #29	\$109.18	\$2,191
877 S. Winchester Blvd #50	\$152.95	\$2,572

B. Option for Transitioning Current RUBS Contracts

During the discussion of RUBS with the City Council, concerns were raised regarding the treatment of existing RUBS contracts. Although RUBS is not consistent with the ARO, it is evident that many landlords are using RUBS to pass through utility costs to tenants. The City Council asked staff to explore options to consider for dealing with existing contracts.

Staff developed an option for transitioning current RUBS contracts moving forward. A petition process could be developed to allow for a one-time rent increase for landlords to combine rent and utility charges. The utility amounts would be limited to the U.S. Department of Housing and Urban Development Utility Allowances for multifamily housing. **Attachment D** is a summary of those rates. Table 4 demonstrates this example:

Table 4: Utility Amounts Limited to HUD Allowances for Multifamily Housing

Current Contract	Amount	HUD Allowance	One-time Increase	Future Contract	Amount
Rent	\$1,200			Rent	\$1,290
Water	\$52	\$42	\$42	Water	\$0
Sewer	\$38	\$30	\$30	Sewer	\$0
Garbage	\$18	\$30	\$18	Garbage	\$0
Total	\$1,308	\$102	\$90	Total	\$1,290

In this case, the water and sewer rates would be limited to the HUD rates and the garbage rate would be passed through because the rate is less than the HUD limit, resulting in an additional \$90 being added to the base rent for the apartment (\$1,290). In future years, the 5% annual general increase will be calculated using the base rent of \$1,290.

This approach would provide a fair and reasonable solution for landlords and tenants with existing RUBS contracts. The one-time rent increase will minimize the impact to both tenants and landlords. The process will be expedited and transparent for tenants and landlords. If this option were to be approved, it is likely that some tenants will receive overall rent increases in excess of the 5% annual increase approved by City Council.

It should be noted that there will be an additional administrative workload associated with this approach. The staffing plan that was approved by City Council did not contemplate administration of RUBS. While it is difficult to estimate the number of one-time RUBS petitions that may be filed by owners, the Housing Department will seek to utilize budgeted resources to address the additional workload. This may result in reduced services to owners and tenants with respect to other areas of the ARO.

Summary of Analysis / Conclusions

The application of RUBS is not consistent with the ARO. Rent charged to tenants includes utility costs and is limited to an annual general increase of 5%. The use of RUBS to pass through utility costs lacks transparency. It is hard for a tenant to know if what they are being charged is appropriate. In addition, fluctuations in utility usage make it difficult for a tenant to predict their future costs. RUBS is not an incentive for conservation. While utility costs continue to rise, they are a small portion of overall costs and the 5% annual allowable rate is sufficient to cover increases in utility costs. The fair return process is available for landlords if expenses rise significantly compared to the overall revenue received.

Based on the above concerns, staff is recommending to not allow RUBS, or other methodologies, to pass through utility costs in the ARO. The proposed amendment to the Apartment Rent Ordinance is included as **Attachment E**.

To address existing RUBS contracts, staff is recommending regulations be developed to describe an expedited petition process for the allowance of a one-time rent increase under the ARO to

combine rent and utility costs into the base rent for all tenants. Table 5 outlines the framework for this petition process to be summarized in the Regulations:

Table 5: Outline of Framework for Petition Process to be Summarized in Regulations

Program Guideline	Proposal
Petitioner	Landlord
Respondent	Tenant may challenge the amounts paid and authenticity of the agreement
Allowed Utilities	Water, sewer and garbage
Basis	Average utility costs over the prior 12-month period
Limit	HUD Utility Allowance amounts by building type and utility
Petition Period	Must be filed within 90 days of initial rent registration
Required Documents	Written utility agreement signed prior to January 1, 2018, copies of prior 12 months utility bills from the utility company, copies of utilities charged to tenant for prior 12 months, completed petition

Two alternatives to this recommendation were considered and are included in the Alternatives section. The first alternative is to not allow RUBS without introducing a one-time petition process. The second alternative is to allow RUBS in certain conditions. These alternatives were also considered when developing this analysis.

PUBLIC OUTREACH

Staff met with a wide range of stakeholders while developing the amendments to the issue of the RUBS in the Apartment Rent Ordinance and Regulations. With the assistance of the California Apartment Association and the Renters' Coalition, the Housing Department met with property landlords and managers of small properties, large properties, and a variety of tenants and tenant advocates on multiple occasions. Any request made from an individual or group to meet with the Housing Department was held during the public comment period. The public comment files are included as **Attachment F**.

Table 6 is a summary of the perspectives on RUBS in the focus areas:

Table 6: Summary of Stakeholder Perspectives on RUBS

	Tenants Do not to support RUBS	Landlords Support RUBS
Conservation efforts in multifamily housing	<ul style="list-style-type: none"> • There is evidence to support the RUBS does not provide an incentive to tenants to conserve utilities because they cannot control the usage of other tenants. • RUBS removes the incentive to landlords to fix leaks and conserve utilities in common areas. 	<ul style="list-style-type: none"> • RUBS promotes conservation because tenants are more aware of their costs and will be incentivize to monitor their usage. • Tenants are more motivated to quickly report leaks such as a running toilet or a broken sprinkler resulting in lower utility costs for the apartment building.

Current contracts with RUBS provisions

- The RUBS process is not transparent and is susceptible to abuse.
- Contracts passing on utility costs to tenants are not allowable under the ARO
- Marketing rents for apartments with RUBS is more competitive because future tenants generally compare rents, without taking utility costs into consideration.
- Lending institutions value buildings with RUBS with an overall higher value because the building’s utility costs are passed on to tenants.
- Removing utilities from total rents also impacts the value of the building because commercial values are based on net income.
- Properties that use RUBS are worth more than similar properties that roll utilities into rent because of the increase in net operating income.

Responsibility of the burden for utility rates fluctuation

- Shifts the burden of utility costs to tenants
- Inconsistent with Apartment Rent Ordinance which allows only 5% rent increase once every 12 months
- Landlords also benefit financially from using RUBS because they shift the increased costs to the tenants and therefore decreases the financial risk when costs are increasing.
- Expenses that are passed on to tenants increase net income for landlords.

Table 7 and 8 are the list of community meetings to discuss RUBS:

Table 7: Community Meetings

Meeting	Date	Time	Location
Policy Development Community Meeting – Tenant Meeting	February 22, 2018	6:30-8:30 pm	Westminster Presbyterian Church
Policy Development Community Meeting	February 12, 2018	6:30-8:30 pm	Seven Trees Community Center
Housing & Community Development Commission	February 8, 2018	5:45 pm	San José City Hall – Wing Rooms
Policy Development Community Meeting	February 7, 2018	9:00-11:00 am	San José City Hall – Wing Rooms
ARO & TPO Educational Outreach	January 25, 2018	6:30-8:30 pm	Cypress Community Center
ARO & TPO Educational Outreach	January 19, 2018	2:00-4:00 pm	San José City Hall – Wing Rooms
ARO & TPO Educational Outreach	January 10, 2018	9:00-11:00 am	San José City Hall – Wing Rooms

Table 8: Stakeholder Meetings

Stakeholder Meeting		
Stakeholder - Government	Environmental Services Department	February 21, 2018
Stakeholder - Tenants	Renters' Coalition	February 20, 2018
Stakeholder - Landlords	California Apartment Association	February 15, 2018
Stakeholder - Landlords	California Apartment Association	February 12, 2018
Stakeholder - Government	Environmental Services Department	February 12, 2018
Stakeholder - Tenants	Renters' Coalition	February 6, 2018
Stakeholder - Landlords	California Apartment Association	January 29, 2018
Stakeholder - Landlords	California Apartment Association	January 16, 2018
Stakeholder - Tenants	Renters' Coalition	January 10, 2018
Stakeholder - Landlords	California Apartment Association	December 15, 2017
Stakeholder - Tenants	Renters' Coalition	December 13, 2017

POLICY ALTERNATIVES

The following alternatives outline two options for HCDC to consider.

Alternative #1: Utility charges, including RUBS, are not allowed to be passed through to tenants.

Pros: The ARO was written to include all housing services in rent. Tenants would not be impacted by fluctuating utility costs or total rent increases over the 5% annual limit approved by City Council. No additional staff would be needed as the approved staff proposal assumed no RUBS.

Cons: This approach does not address existing utility contracts between landlords and tenants.

Reason for not recommending: City Council directed staff to develop a proposal that would address existing leases with RUBS provisions.

- Alternative #2:** Allow the pass through of utility charges, such as RUBS, providing parameters for the allowable pass through. Parameters would include the following:
- Water, sewer and garbage costs may be passed on to tenants
 - Combined rent and utility costs may not exceed 5% allowable rate
 - Utility costs may not exceed HUD Utility Allowance amounts
 - Landlords will make all utility bills accessible for review by tenants

Pros: Allows landlords to continue using current business practices to charge tenants for utilities.

- Cons:** The complexity of the model leads to the following concerns:
- Lack of transparency of billing to tenants;
 - RUBS does not result in conservation by tenants;
 - Complexity of the model would require the Housing Department to reevaluate its staffing model to ensure ongoing compliance with the model;
 - Lack of understanding by tenants and landlords regarding compliance related to the 5% annual allowable rate and the compliance with the HUD limits;
 - Significant amendments must be made to the ARO, including making changes to the frequency limit of one rent increase for a twelve-month period.

Reason for not recommending: Public input was not supportive of this approach stating the model is too complex for landlords, tenants and staff to understand and implement.

COORDINATION

This memorandum was coordinated with the Office of the City Attorney.

/s/
Jacky Morales-Ferrand
Director of Housing

For questions, please contact Rachel VanderVeen, Program Administrator, at (408) 535-8231.

ATTACHMENTS:

Attachment A – SB 7 Research

Attachment B – Average Utility Costs and Rates Over Time

Attachment C – RUBS Petitions received by the Rent Stabilization Program

Attachment D – U.S. Department of Housing and Urban Development Utility Allowances

Attachment E – Proposed Apartment Rent Ordinance Amendment

Attachment F – Public Comments

**SB-7 Housing: water meters: multiunit structures.** (2015-2016)

SHARE THIS:

**Senate Bill No. 7**

CHAPTER 623

An act to amend Section 1954 of, and to add Chapter 2.5 (commencing with Section 1954.201) to Title 5 of Part 4 of Division 3 of, the Civil Code, to add Section 17922.14 to the Health and Safety Code, and to add Section 517 to, and to add Article 5 (commencing with Section 537) to Chapter 8 of Division 1 of, the Water Code, relating to housing.

[Approved by Governor September 25, 2016. Filed with Secretary of State September 25, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 7, Wolk. Housing: water meters: multiunit structures.

(1) Existing law generally regulates the hiring of dwelling units and, among other things, imposes certain requirements on landlords and tenants. Among these requirements, existing law requires landlords to provide tenants with certain notices or disclosures pertaining to, among other things, pest control and gas meters.

This bill would express the intent of the Legislature to encourage the conservation of water in multifamily residential rental buildings through means either within the landlord's or the tenant's control, and to establish that the practices involving the submetering of dwelling units for water service are just and reasonable, and include appropriate safeguards for both tenants and landlords.

This bill would, if a submeter is used to charge a tenant separately for water service, impose requirements on landlords relating to submetered water service to individual dwelling units. The bill would require a landlord to make certain disclosures to the tenant prior to the execution of the rental agreement, if the landlord intends to charge a tenant separately from rent for water service in a property with submeters. The bill would specify that as part of the monthly bill for water service, a landlord may only bill a tenant for volumetric water usage, as specified, a portion of any recurring fixed charge billed to the property by the water purveyor, as specified, a billing, administrative, or other fee, as prescribed, and a late charge. The bill would specify that payments are required to be due at the same point in each billing cycle, as prescribed, and that each bill must include and separately set forth certain information. The bill would prohibit a landlord from charging certain additional fees. The bill would require a landlord to maintain and make available in writing to a tenant, as specified, the date the submeter was last inspected, tested, and verified, the data used to calculate the tenant's bill, and the location of the submeter. The bill would require a landlord to investigate and, if warranted, rectify certain problems or a submeter reading that indicates constant or abnormal water usage. The bill would permit a landlord to enter a dwelling unit for specified purposes relating to a submeter or water fixture if certain requirements are met. The bill would permit a tenant to be charged late fees, as specified. The bill would provide that these provisions shall become operative on January 1, 2018.

(2) The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building

standard to the California Building Standards Commission for approval and adoption. Existing law creates the Building Standards Administration Special Revolving Fund and requires that funds deposited into the fund be expended, upon appropriation by the Legislature, to carry out specified provisions of law that relate to building standards, with emphasis placed on certain activities relating to green building standards.

This bill would authorize the Department of Housing and Community Development to develop and propose for adoption by the commission building standards that require the installation of water meters or submeters in multiunit residential buildings, as specified. The bill would exempt specified categories of structures from these building standards. This bill would provide that moneys in the fund are available to the department, upon appropriation, for administrative costs associated with the development of building standards that require the installation of water meters or submeters in multiunit residential buildings.

(3) The Water Measurement Law requires every water purveyor to require, as a condition of new water service on and after January 1, 1992, the installation of a water meter to measure water service. That law also requires urban water suppliers to install water meters on specified service connections, and to charge water users based on the actual volume of deliveries as measured by those water meters in accordance with a certain timetable.

This bill would add to the Water Measurement Law the requirement that a water purveyor that provides water service to a newly constructed multiunit residential structure or newly constructed mixed-use residential and commercial structure that submits an application for a water connection after January 1, 2018, measure the quantity of water supplied to each individual dwelling unit as a condition of new water service and permit the measurement to be by individual water meters or submeters, as defined. The bill would require the owner of the structure to install submeters that comply with laws and regulations governing the approval of submeter types or the installation, maintenance, reading, billing, and testing of submeters, including, but not limited to, the California Plumbing Code. The bill would further require installation of submeters to be performed either by contractors licensed by the Contractors' State License Board that employs at least one journey person who meets specified training requirements or by a registered service agency registered with the Department of Food and Agriculture. The bill would exempt certain structures from these requirements. The bill would prohibit a water purveyor from imposing an additional capacity or connection fee or charge for a submeter that is installed by the owner, or his or her agent. The bill would additionally provide that these provisions are intended to preclude the adoption, or preempt the operation, of an ordinance or regulation adopted after January 1, 2013, that regulates submeters, as specified. The bill would provide that these provisions shall become operative on January 1, 2018.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1954 of the Civil Code is amended to read:

1954. (a) A landlord may enter the dwelling unit only in the following cases:

- (1) In case of emergency.
 - (2) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors or to make an inspection pursuant to subdivision (f) of Section 1950.5.
 - (3) When the tenant has abandoned or surrendered the premises.
 - (4) Pursuant to court order.
 - (5) For the purposes set forth in Chapter 2.5 (commencing with Section 1954.201).
- (b) Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours unless the tenant consents to an entry during other than normal business hours at the time of entry.
- (c) The landlord may not abuse the right of access or use it to harass the tenant.
- (d) (1) Except as provided in subdivision (e), or as provided in paragraph (2) or (3), the landlord shall give the tenant reasonable notice in writing of his or her intent to enter and enter only during normal business hours. The notice shall include the date, approximate time, and purpose of the entry. The notice may be personally delivered to the tenant, left with someone of a suitable age and discretion at the premises, or, left on, near, or under the

usual entry door of the premises in a manner in which a reasonable person would discover the notice. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary. The notice may be mailed to the tenant. Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary.

(2) If the purpose of the entry is to exhibit the dwelling unit to prospective or actual purchasers, the notice may be given orally, in person or by telephone, if the landlord or his or her agent has notified the tenant in writing within 120 days of the oral notice that the property is for sale and that the landlord or agent may contact the tenant orally for the purpose described above. Twenty-four hours is presumed reasonable notice in the absence of evidence to the contrary. The notice shall include the date, approximate time, and purpose of the entry. At the time of entry, the landlord or agent shall leave written evidence of the entry inside the unit.

(3) The tenant and the landlord may agree orally to an entry to make agreed repairs or supply agreed services. The agreement shall include the date and approximate time of the entry, which shall be within one week of the agreement. In this case, the landlord is not required to provide the tenant a written notice.

(e) No notice of entry is required under this section:

(1) To respond to an emergency.

(2) If the tenant is present and consents to the entry at the time of entry.

(3) After the tenant has abandoned or surrendered the unit.

SEC. 2. Chapter 2.5 (commencing with Section 1954.201) is added to Title 5 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 2.5. Water Service

1954.201. It is the intent of the Legislature in enacting this chapter to do both of the following:

(a) To encourage the conservation of water in multifamily residential rental buildings through means either within the landlord's or the tenant's control.

(b) To establish that the practices involving the submetering of dwelling units for water service are just and reasonable, and include appropriate safeguards for both tenants and landlords.

1954.202. For the purposes of this chapter:

(a) "Billing agent" means a person or entity who contracts to provide submetering services to a landlord, including billing.

(b) "Landlord" means an owner of residential rental property. "Landlord" does not include a tenant who rents all or a portion of a dwelling unit to subtenants. "Landlord" does not include a common interest development, as defined in Section 4100 of the Civil Code.

(c) "Property" means real property containing two or more dwelling units that is served by a single master meter.

(d) "Ratio utility billing system" means the allocation of water and sewer costs to tenants based on the square footage, occupancy, or other physical factors of a dwelling unit.

(e) "Rental agreement" includes a fixed-term lease.

(f) "Renting" includes leasing, whether on a periodic or fixed-term basis.

(g) "Submeter" means a device that measures water consumption of an individual rental unit within a multiunit residential structure or mixed-use residential and commercial structure, and that is owned and operated by the landlord of the structure or the landlord's agent. As used in this section, "multiunit residential structure" and "mixed-use residential and commercial structure" mean real property containing two or more dwelling units.

(h) "Water service" includes any charges, whether presented for payment on local water purveyor bills, tax bills, or bills from other entities, related to water treatment, distribution, or usage, including, but not limited to, water, sewer, stormwater, and flood control.

(i) "Water purveyor" means a water purveyor as defined in Section 512 of the Water Code.

1954.203. (a) Submeters used to separately bill tenants for water service shall satisfy each of the following requirements:

(1) The submeter shall be inspected, tested, and verified for commercial purposes pursuant to law, including, but not limited to, Section 12500.5 of the Business and Professions Code.

(2) The submeter shall conform to all laws regarding installation, maintenance, repair, and use, including, but not limited to, regulations established pursuant to Section 12107 of the Business and Professions Code.

(3) The submeter shall measure only water that is supplied for the exclusive use of the particular dwelling unit, and only to an area within the exclusive possession and control of the tenant of the dwelling unit.

(4) The submeter shall be capable of being accessed and read by the tenant of the dwelling unit and read by the landlord without entering the dwelling unit. A submeter installed before January 1, 2018, may be read by the landlord after entry into the unit, in accordance with this chapter and Section 1954.

(5) The submeter shall be reinspected and recalibrated within the time limits specified in law or regulation.

(b) This section does not require a water purveyor to assume responsibility for ensuring compliance with any law or regulation governing installation, certification, maintenance, and testing of submeters and associated onsite plumbing.

1954.204. Before executing a rental agreement, a landlord who intends to charge a tenant separately from rent for water service in a property with submeters shall clearly disclose the following information to the tenant, in writing, in at least 10-point type, which may be incorporated into the rental agreement:

(a) That the tenant will be billed for water service separately from the rent.

(b) An estimate of the monthly bill for water service for dwelling units at the property based on either of the following:

(1) The average or median bill for water service for comparative dwelling units at the property over any three of the past six months.

(2) The amount of the bill based upon average indoor water use of a family of four of approximately 200 gallons per day, and including all other monthly charges that will be assessed. Estimates for other gallons per day may also be included. The estimate shall include a statement that the average family of four uses about 200 gallons of water each day.

(c) The due dates and payment procedures for bills for water service.

(d) A mailing address, an email address, and a toll-free telephone number or a local telephone number for the tenant to contact the landlord or billing agent with questions regarding the water service billing and the days and hours for regular telephone service at either number.

(e) That the monthly bill for water service may only include the following charges:

(1) Payment due for the amount of usage as measured by the submeter and charged at allowable rates in accordance with subdivision (a) of Section 1954.205.

(2) Payment of a portion of the fixed fee charged by the water purveyors for water service.

(3) A fee for the landlord's or billing agent's costs in accordance with paragraph (3) of subdivision (a) of Section 1954.205.

(4) Any late fee, with the amounts and times assessed, in compliance with Section 1954.213.

(f) A statement that the tenant shall notify the landlord of any leaks, drips, water fixtures that do not shut off properly, including, but not limited to, a toilet, or other problems with the water system, including, but not limited to, problems with water-saving devices, and that the landlord is required to investigate, and, if necessary, repair these problems within 21 days, otherwise, the water bill will be adjusted pursuant to law.

(g) A mailing address, an email address, and a toll-free telephone number or a local telephone number for the tenant to use to contact the landlord, or an agent of the landlord, to report any leaks, drips, water fixtures that

do not shut off properly, including, but not limited to, a toilet, or other problems with the water system, including, but not limited to, problems with water-saving devices.

(h) A statement that the landlord shall provide any of the following information if asked by the tenant:

(1) The location of the submeter.

(2) The calculations used to determine a monthly bill.

(3) The date the submeter was last certified for use, and the date it is next scheduled for certification, if known.

(i) A statement that if the tenant believes that the submeter reading is inaccurate or the submeter is malfunctioning, the tenant shall first notify the landlord in writing and request an investigation. A tenant shall be provided with notice that if an alleged submeter malfunction is not resolved by the landlord, a tenant may contact the local county sealer and request that the submeter be tested. Contact information for the county sealer shall be included in the disclosure to the tenant.

(j) A statement that this disclosure is only a general overview of the laws regarding submeters and that the laws can be found at Chapter 2.5 (commencing with Section 1954.201) of Title 5 of Part 4 of Division 3 of the Civil Code, available online or at most libraries.

1954.205. (a) As part of the regular bill for water service, a landlord shall only bill a tenant for the following water service:

(1) A charge for volumetric usage, which may be calculated in any the following ways:

(A) The amount shall be calculated by first determining the proportion of the tenant's usage, as shown by the submeter, to the total usage as shown by the water purveyor's billing. The dollar amount billed to the tenant for usage shall be in that same proportion to the dollar amount for usage shown by the water purveyor's billing.

(B) If the water purveyor charges for volumetric usage based on a tiered rate schedule, the landlord may calculate the charge for a tenant's volumetric usage as described in subparagraph (A) or the landlord may instead divide each tier's volume evenly among the number of dwelling units, and the rate applicable to each block shall be applied to the consumption recorded for each dwelling unit.

(C) If the water purveyor charges the property rates on a per-dwelling unit basis, the tenants may be charged at those exact per unit rates.

(2) Any recurring fixed charge for water service billed to the property by the water purveyors that, at the landlord's discretion, shall be calculated by either of the following:

(A) The tenant's proportion of the total fixed charges charged to the property. The tenant's proportion shall be based on the percentage of the tenant's volumetric water use in relation to the total volumetric water use of the entire property, as shown on the property's water bill during that period.

(B) Dividing the total fixed charges charged to the property equally among the total number of residential units and nonresidential units at the property.

(3) A billing, administrative, or other fee for the landlord's and billing agent's costs, which shall be the lesser of an amount not to exceed four dollars and seventy-five cents (\$4.75), as adjusted pursuant to this paragraph or 25 percent of the amount billed pursuant to paragraph (1). Beginning January 1, 2018, the maximum fee authorized by this paragraph may be adjusted each calendar year by the landlord, no higher than a commensurate increase in the Consumer Price Index based on a California fiscal year average for the previous fiscal year, for all urban consumers, as determined by the Department of Finance.

(4) A late charge as assessed pursuant to Section 1954.213.

(b) If a submeter reading for the beginning or end of a billing period is, in good faith, not available, the landlord shall bill the tenant according to Section 1954.212.

(c) This section does not prohibit a landlord or the landlord's billing agent from including any other lawful charges, including, but not limited to, rent, on the same bill.

1954.206. (a) Submeters shall be read within three days of the same point in each billing cycle.

(b) Payments shall be due at the same point in each billing cycle. A tenant may agree in writing to receive a bill electronically. A tenant may rescind authorization for electronic delivery of bills at any time. The landlord shall have 30 days to comply with any change in how a tenant requests to receive a bill. A tenant shall not be required to pay a bill electronically.

(c) A bill shall include and separately set forth the following information:

(1) The submeter reading for the beginning date and ending date of the billing cycle, the dates read, and the indicated consumption as determined by subtracting the amount of the beginning date submeter reading from the amount of the ending date submeter reading. If the unit of measure is in something other than gallons, the indicated consumption shall be expressed in gallons.

(2) The amounts charged pursuant to subdivision (a) of Section 1954.205.

(3) The rate or rates charged for the volumetric charge per unit of measure.

(4) The amount, if any, due from the previous month's bill.

(5) The amount, if any, due from bills prior to the previous month's bill.

(6) The late fee, if any, imposed on amounts specified in paragraph (4) or (5).

(7) The total amount due for the billing period.

(8) The due date for the payment.

(9) If a late fee is charged by the landlord, a statement of when the late fees would apply.

(10) The procedure to contact the landlord or billing agent with questions or concerns regarding the bill. Upon request of the tenant, the landlord or billing agent shall respond in writing to any questions or disputes from the tenant. If a billing agent is used, the name of the billing agent shall be disclosed. The tenant shall be provided a mailing address, email address, and telephone number, which shall be either a toll-free or a local number, and the time of regular telephone hours for contact regarding billing inquiries.

(11) A statement that the landlord or billing agent is not the water purveyor that includes the name of the local water purveyor providing the water service to the master meter.

(12) A mailing address, an email address, and a toll-free telephone number or a local telephone number for the tenant to use to contact the landlord, or an agent of the landlord, to report any leaks, drips, water fixtures that do not shut off properly, including, but not limited to, a toilet, or other problems with the water system, including, but not limited to, problems with water-saving devices.

(d) Notwithstanding paragraphs (4) and (5) of subdivision (c), a separate bill may be provided for past due amounts if past due amounts are not included on the current month's bill.

1954.207. (a) At the beginning of a tenancy, a submeter shall be read after the tenant takes possession. If the regular reading occurs less than five days prior to the tenant taking possession, that reading may be substituted to establish usage. If the submeter is manually read, the first bill may be estimated based on the rate established in subdivision (b) of Section 1954.212.

(b) For a water-service bill at the end of a tenancy, the submeter shall be read within five days, if possible. If the submeter cannot be read within five days at the end of a tenancy, the bill amount for the final month shall be based on the bill amount for the previous month.

(c) The landlord may, at his or her discretion, deduct an unpaid water service bill from the security deposit during or upon termination of a tenancy, if the last water service bill showing the amount due is attached to the documentation required by Section 1950.5.

1954.208. Unless it can be documented that a penalty is primarily the result of a tenant's or tenants' failure to comply with state or local water use regulations or restrictions, or both, regarding wasting of water, a landlord shall not charge, recover, or allow to be charged or recovered, fees incurred by the landlord from the water purveyors, billing agent, or any other person for any deposit, disconnection, reconnection, late payment by the landlord, or any other penalty assessed against the landlord. This section shall not prevent a landlord from charging a tenant for the tenant's late payment of any bill.

1954.209. The landlord shall maintain and make available in writing, at the tenant's written or electronic request, within seven days after the request, the following:

(a) The date the submeter was last inspected, tested, and verified, and the date by which it shall be reinspected, tested, and verified under law, if available. If this information is not available, the landlord shall disclose that the information is not available.

(b) The data used to calculate the tenant's bill, as follows:

(1) The most recent water bill for the property's master water meter showing the recurring fixed charge for water service billed to the property by the water purveyor, and the usage charges for the property, including any tiered amounts.

(2) Any other bills for water service, as defined in subdivision (h) of Section 1954.202, for the property.

(3) The number of dwelling units in the property used in the last billing period to calculate the tenant's water service charges.

(4) If not shown on the bill for the property, the per unit charges for volumetric water usage, including any tiered amounts.

(5) The formula used to calculate the charge for the tenant's volumetric water usage.

(c) The location of the submeter.

1954.210. (a) If a tenant notifies the landlord of, or the landlord otherwise becomes aware of, a leak, a drip, a water fixture that does not shut off properly, including, but not limited to, a toilet, a problem with a water-saving device, or other problem with the water system that causes constant or abnormally high water usage, or a submeter reading indicates constant or abnormal high water usage, the landlord shall have the condition investigated, and, if warranted, rectify the condition.

(b) A tenant shall not remove any water fixtures or water-saving devices that have been installed by the landlord.

(c) If the condition is rectified more than 21 days after the tenant provides notice to the landlord or the landlord otherwise becomes aware of a leak, a drip, a water fixture that does not shut off properly, including, but not limited to, a toilet, a problem with a water-saving device, or other problem with the water system that causes constant or abnormally high water usage, or a submeter reading indicates constant or abnormally high water usage, pursuant to subdivision (a), the tenant's volumetric usage for any month or months that include the period between 21 days after the initial investigation and the repair shall be deemed to be fifteen dollars (\$15) or actual usage, whichever is less. At the landlord's option, if submeter readings are available to determine the usage at a point prior to investigation and a point following repair, usage shall be deemed to be fifty cents (\$0.50) per day for those days between the two submeter readings or actual usage, whichever is less.

(d) If the condition remains unrectified for 180 days after investigation, no further volumetric usage charges may be imposed until the condition is repaired.

(e) If, in order to comply with subdivision (a), the landlord has provided notice pursuant to Section 1954, and the tenant has failed to provide access to the dwelling unit, then the charges shall not be determined pursuant to subdivisions (c) and (d).

(f) If the local water purveyor notifies the landlord of constant or abnormally high water usage at the property, the landlord shall investigate and, if possible, rectify the cause of the high water usage.

1954.211. The landlord may enter a dwelling unit as follows:

(a) For the purpose of installing, repairing, or replacing a submeter, or for the purpose of investigating or rectifying a condition causing constant or abnormally high water usage, as required by subdivision (a) of Section 1954.210, if the requirements of Section 1954 are met.

(b) To read a submeter, if the requirements of this chapter and Section 1954 are met. Notwithstanding paragraph (3) of subdivision (d) of Section 1954, notice shall be given only in writing.

1954.212. (a) If a monthly submeter reading necessary to measure volumetric usage is unavailable, and the tenant has provided access to the submeter, the tenant may be charged 75 percent of the average amount billed for volumetric usage for the last three months for which complete billing information is available. The adjustment shall be disclosed on the bill.

(b) If no complete billing information is available for the prior three months, the volumetric usage charge shall be deemed to be fifty cents (\$0.50) per day that the data is not available.

(c) If monthly submeter readings remain unavailable for more than six months, the volumetric usage charge shall be deemed to be zero for any subsequent month that the data is not available.

1954.213. (a) A tenant may be charged a late fee for any water service bill not paid 25 days after mailing or other transmittal of the bill. If the 25th day falls on a Saturday, Sunday, or holiday, the late fee shall not be imposed until the day after the first business day following the 25th day.

(b) (1) A late fee of up to seven dollars (\$7) may be imposed if any amount of a water service bill remains unpaid after the time described in subdivision (a). A late fee of up to ten dollars (\$10) may be imposed in each subsequent bill if any amount remains unpaid.

(2) The total late fee imposed in any 12-month period upon the amount of a bill that remains unpaid shall not exceed 10 percent of the unpaid amount, exclusive of the administrative fee imposed pursuant to paragraph (3) of subdivision (a) of Section 1954.205 and the late fee imposed pursuant to paragraph (1).

(3) If any partial payments are made, they shall be credited against the bill that has been outstanding the longest.

(c) Notwithstanding subdivision (c) of Section 1954.207, if the water bill remains unpaid for 180 days after the date upon which it is due or the amount of the unpaid water bill equals or exceeds two hundred dollars (\$200), the landlord may terminate the tenancy in accordance with Section 1161 of the Code of Civil Procedure with the service of a three-day notice to perform the conditions or covenants or quit upon the tenant.

(d) Water service charges under this chapter shall not constitute rent.

(e) The water service to a dwelling unit shall not be shut off or otherwise interfered with by the landlord for any reason, including nonpayment of a bill. Notwithstanding the foregoing, a landlord or its agent may shut off water service to a dwelling unit or the property, in order to make repairs, replacements of equipment, or perform other maintenance at the property.

1954.214. This chapter does not preclude or preempt an ordinance or regulation adopted prior to January 1, 2013, that regulates the approval of submeter types or the installation, maintenance, reading, billing, or testing of submeters and associated onsite plumbing.

1954.215. The rights or obligations established under this chapter shall not be waived. Any purported waiver is void.

1954.216. (a) This chapter applies to the following:

(1) All dwelling units offered for rent or rented in a building where submeters were required to be installed pursuant to a building standard adopted in accordance with Section 17922.14 of the Health and Safety Code.

(2) All dwelling units where submeters are used to charge a tenant separately for water service.

(b) Nothing in this chapter shall be construed to apply to any dwelling units other than those described in subdivision (a).

(c) Nothing in this chapter shall be construed to apply or create a public policy or requirement that favors or disfavors the use of a ratio utility billing system.

1954.217. A submetering system that measures only a portion of a dwelling unit's water usage, including, but not limited to, a system that measures only hot water usage, shall not be subject to this chapter if the system was first put in service before January 1, 2018.

1954.218. This chapter shall become operative on January 1, 2018.

1954.219. Any property that is required to install individual submeters pursuant to Article 5 (commencing with Section 537) of Chapter 8 of Division 1 of the Water Code shall at all times be required to bill residents for water service pursuant to this chapter.

SEC. 3. Section 17922.14 is added to the Health and Safety Code, to read:

17922.14. (a) (1) During the next regularly scheduled triennial code cycle that commences on or after January 1, 2018, or during a subsequent code adoption cycle, the department shall develop and propose for adoption by the California Building Standards Commission, pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5, building standards requiring the installation of water meters or submeters in newly constructed multiunit residential structures or mixed-use residential and commercial structures, as those terms are defined in Section 517 of the Water Code. These standards shall conform to Article 5 (commencing with Section 537) of Chapter 8 of Division 1 of the Water Code.

(b) The proposed standards shall require the installation of water meters or submeters in newly constructed multiunit residential structures and mixed-use residential and commercial structures only for residential dwelling units within those structures, but shall not require installation in units within those structures that are used only for commercial purposes.

(c) (1) The department shall determine whether and under what circumstances the installation of water meters or submeters is infeasible and include in the building standards proposed in subdivision (a) the appropriate provision for exemption from this requirement. The department may consider whether there are any issues specific to high-rise structures that would require an exemption from the requirement for the installation of water meters or submeters.

(2) The following categories of structures shall be exempt from the building standards established pursuant to subdivision (a):

(A) Long-term health care facilities, as defined in Section 1418.

(B) Low-income housing. For the purposes of this subparagraph, "low-income housing" means a residential building that is financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or federal, state, or local loans or grants, for which rents charged to lower income households do not exceed rents prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance, and for which not less than 90 percent of the dwelling units within the building are designated for occupancy by lower income households. As used in this subparagraph, "lower income households" has the same meaning as defined in Section 50079.5.

(C) Residential care facilities for the elderly, as defined in subdivision (k) of Section 1569.2.

(D) Housing at a place of education, as defined in Section 202 of the California Building Standards Code (Title 24 of the California Code of Regulations).

(E) Time-share property, as defined in subdivision (aa) of Section 11212 of the Business and Professions Code.

(d) Moneys in the Building Standards Administration Special Revolving Fund established pursuant to Section 18931.7 shall be available, upon appropriation by the Legislature, for the department's administrative costs associated with the development of building standards in accordance with this section.

SEC. 4. Section 517 is added to the Water Code, to read:

517. "Submeter" means a device that measures water consumption of an individual rental unit within a multiunit residential structure or mixed-use residential and commercial structure, and that is owned and operated by the owner of the structure or the owner's agent. As used in this section, "multiunit residential structure" and "mixed-use residential and commercial structure" mean real property containing two or more dwelling units.

SEC. 5. Article 5 (commencing with Section 537) is added to Chapter 8 of Division 1 of the Water Code, to read:

Article 5. Multiunit Structures

537. (a) The structures in all of the following categories shall be exempt from this article:

(1) Low-income housing. For purposes of this paragraph, "low-income housing" means a residential building financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants, for which the rents of the occupants in lower income households, as defined in Section 50079.5 of the Health and Safety Code, do not exceed rents prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance, and for which not less than 90 percent of the dwelling units within the building are designated for occupancy by lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Housing at a place of education, as defined in Section 202 of the California Building Standards Code (Title 24 of the California Code of Regulations).

(3) Long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(4) Time-share property, as defined in subdivision (aa) of Section 11212 of the Business and Professions Code.

(5) Residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(b) A submeter used to measure water supplied to an individual residential unit that is required pursuant to this chapter shall be of a type approved pursuant to Section 12500.5 of the Business and Professions Code, and shall be installed and operated in compliance with regulations established pursuant to Section 12107 of the Business and Professions Code.

537.1. (a) Each water purveyor that sells, leases, rents, furnishes, or delivers water service to a newly constructed multiunit residential structure or newly constructed mixed-use residential and commercial structure for which an application for a water connection, or more than one connection, is submitted after January 1, 2018, shall require a measurement of the quantity of water supplied to each individual residential dwelling unit as a condition of new water service. The measurement may be by individual water meters or submeters.

(b) Unless the water purveyor or local government is operating under an ordinance or regulation requiring individual metering, the owner shall be required to install and read submeters, unless the water purveyor agrees to install and read individual meters.

(c) (1) The owner of the structure shall install submeters that comply with all laws and regulations governing the approval of submeter types or the installation, maintenance, reading, billing, and testing of submeters, including, but not limited to, the California Plumbing Code.

(2) This subdivision does not require a water purveyor to fund or assume responsibility for ensuring compliance with any law or regulation governing the approval of submeter types or the installation, maintenance, reading, billing, and testing of submeters and associated onsite plumbing.

(3) Installation of submeters shall be performed by one of the following:

(A) A contractor licensed by the Contractors' State License Board who employs at least one journey person who has graduated from a state-approved apprenticeship program.

(B) A registered service agency that has registered with the Department of Food and Agriculture.

(d) A water purveyor shall not impose an additional capacity or connection fee or charge for a submeter that is installed by the owner, or his or her agent.

(e) This section shall remain operative until the date on which the California Building Standards Commission includes standards in the California Building Standards Code that conform to this article.

537.2. (a) A final occupancy permit for a building shall not be denied by a local building official if water submeters or meters have not been installed for each residential unit as required by this chapter if the building owner can demonstrate either of the following:

(1) Water submeters have been ordered and were delayed by the manufacturer.

(2) Water submeters for the building were submitted to a county sealer and are awaiting approval for use.

(b) After issuance of the occupancy permit, the owner shall demonstrate that the submeters are installed in the building within 120 days of approval by the county sealer.

537.3. (a) This article does not preclude or preempt an ordinance or regulation that regulates the approval of submeter types or the installation, maintenance, reading, billing, or testing of submeters and associated onsite plumbing if the ordinance or regulation was adopted prior to January 1, 2013.

(b) It is the intent of the Legislature to preclude the adoption, and preempt the operation, of an ordinance or regulation adopted after January 1, 2013, that regulates the types of approved submeters, their installation, maintenance, reading, billing, and testing, and associated onsite plumbing.

(c) This article does not restrict the existing authority of a water purveyor, city, county, city and county, or other local agency to adopt and implement a program to promote water conservation that includes the installation of water meters and submeters, as required pursuant to subdivision (a) of Section 537.1, if the program is at least as stringent as the requirements of this article.

537.4. It is the intent of the Legislature that this article should not be construed to impose costs on any local government agency, except to the extent that the local government agency is a water purveyor.

537.5. This article shall become operative on January 1, 2018.

Average Utility Costs and Rates Over Time

History of Recycle Plus Rate Increases			
Fiscal Year	Multi-Family Dwelling %	Multi-Family Dwelling \$	Comments
FY 98-99	3.0%	\$121.94	effective 7/98
FY 99-00	0.0%	\$121.94	
FY 00-01	0.0%	\$121.94	
FY 01-02	0.0%	\$121.94	
FY 02-03	4.0%	\$126.82	effective 2/03
FY 03-04	9.0%	\$138.23	effective 7/03
FY 04-05	9.0%	\$150.67	effective 8/04
FY 05-06	2.0%	\$153.68	effective 4/06
FY 06-07	5.0%	\$158.29	effective 8/06
FY 07-08	4.0%	\$164.62	Transition to current haulers
FY 08-09	8.0%	\$177.79	effective 7/08
FY 09-10	4.0%	\$184.90	effective 7/09
FY 10-11	0.0%	\$184.90	
FY 11-12	9.0%	\$201.54	SFD effective 8/11; MFD effective 7/11
FY 12-13	0.0%	\$201.54	
FY 13-14	0.0%	\$201.54	
FY 14-15	5.0%	\$211.61	
FY 15-16	5.0%	\$222.19	effective 7/15, 1% of SFD for large item
FY 16-17	2.5%	\$227.74	effective July 1, 2016
FY 17-18	4.5%	\$237.99	effective July 1, 2017
15-Year Average	4.5%		2003-2004 thru 2017-2018
10-Year Average	3.8%		2008-2009 thru 2017-2018

Multi-Family Dwelling - based on cost of 3 cu-yd garbage bin collected 1x/week

Potable Water Rates and Charges						
Year	San José Municipal Water	% Increase	San José Water Company	% Increase	Great Oaks Water Company	% Increase
2010	\$ 42.02		\$ 53.66		\$ 37.59	
2011	\$ 43.60	3.8%	\$ 54.32	1.2%	\$ 37.44	-0.4%
2012	\$ 46.17	5.9%	\$ 60.20	10.8%	\$ 35.58	-5.0%
2013	\$ 50.55	9.5%	\$ 63.20	5.0%	\$ 35.58	0.0%
2014	\$ 54.59	8.0%	\$ 69.00	9.2%	\$ 50.71	42.5%
2015	\$ 60.86	11.5%	\$ 83.86	21.5%	\$ 55.52	9.5%
2016	\$ 77.36	27.1%	\$ 106.02	26.4%	\$ 56.19	1.2%
2017	\$ 79.50	2.8%	\$ 113.73	7.3%	\$ 59.71	6.3%

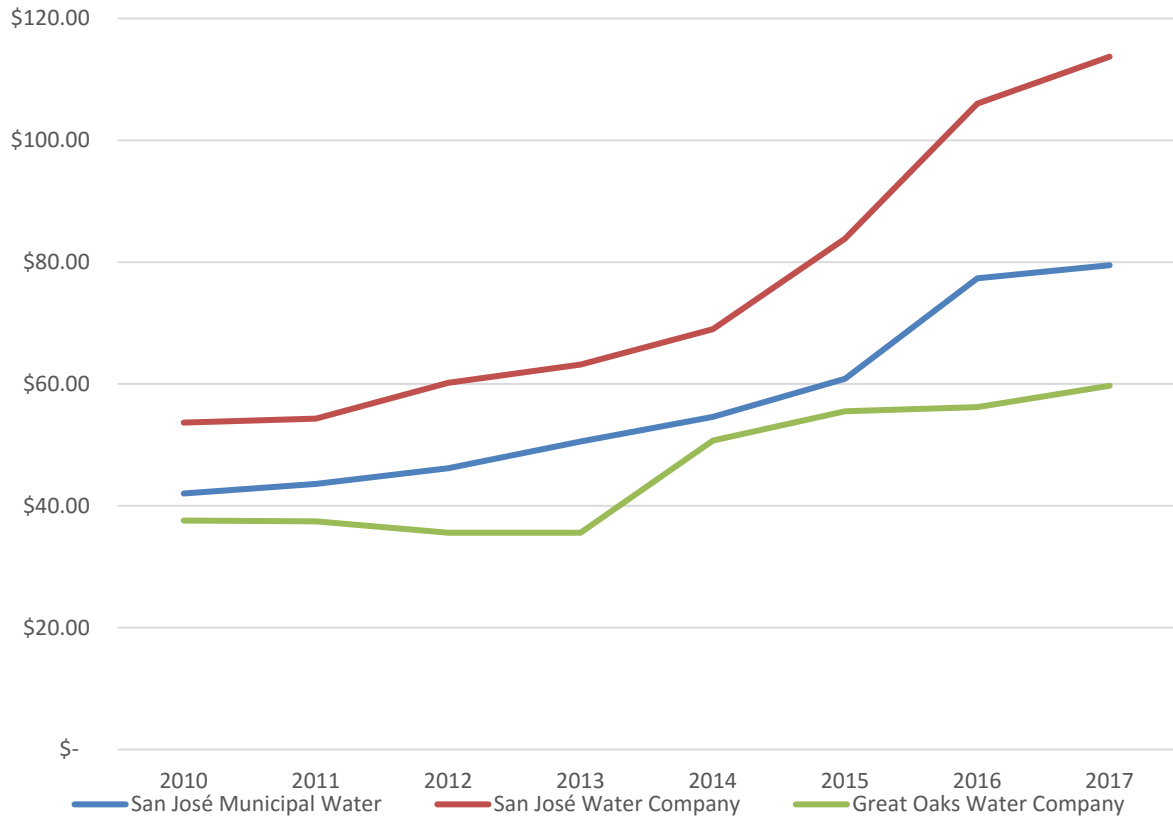
* Reflects rates as calculated in April/May of given year

** Rate based on Monthly: 15 HCF usage Meter size: 3/4 inch

*** HCF = hundred cubic feet; 1 HCF = 748 gallons

Average Utility Costs and Rates Over Time

Potable Water Rates and Charges from 2010-2017



Ratio Utility Billing System (RUBS) Petitions Received by the Rent Stabilization Program 2012-2017

Month/ Year	# Units Petitioning	Summary
March 2015	3	Mediation: Landlord agreed in Voluntary Agreement to give a full refund of all moneys paid to the Multifamily Utility Company for pass-through of utilities for 2 of the units. No further bills will be charged or sent to all 3 units.
April 2015	3 (separate outcomes)	<p>Mediation, 1st unit: Landlord agreed in Voluntary Agreement to reimburse tenant \$995.46 and to reverse any utility charges through April 2015.</p> <p>2nd unit: In a Voluntary Agreement, “this agreement is in full settlement of all claims of Tenants against Landlord related to prior utility billing and past rent increases. Tenants waive all claims and forever release landlord... from any and all liability relating to the utility billing and rent increases issued prior to the execution of this Agreement.”</p> <p>3rd unit: In a decision, it was found that petition was not filed in a timely manner, as it was filed after the effective date of the increase.</p>
December 2016 (mediation)	1	<p>Mediation: In a decision, it was found that the Landlord must refund all of the money they paid for such bills, which was a total of \$978.01 from the receipt of fifteen different billing statements from Multifamily Utility Company.</p> <p>Arbitration: In a Voluntary Agreement, it was agreed that there will be no utility bill through July 31, 2017. Utilities, starting on August 1, 2017 shall not exceed \$79.10 per month until the next anniversary date, which is August 1, 2018. The landlord will credit the Tenant \$978.01 for the month of March 2017 for prior utilities paid.</p>
February 2017 (arbitration)		
April 2016 (1 st mediation)	1	1st Mediation: In a mediation decision, it was determined that the petitioners can appeal the intended change to the method of calculating the monthly utility bill. The petitioners did appeal.
May 2017 (arbitration)		Arbitration: In a decision, the tenants were awarded the sum of \$1801.25 as a rent credit for utility pass-through and other charges. In addition, they were also credited the monies paid for the months of February and March of 2016.
May 2017 (2 nd mediation)		2nd Mediation: The Landlord did not violate the San Jose Municipal Code by charging the Tenants for water, sewer, gas and trash. These charges were not for penalties for excessive water usage so the Landlord did not have to comply with the requirements of Section 17.23.205. The monthly charges of \$103.75 never fluctuated and began when the Tenants first

**Utility Billing Petitions from 2012-2017
Submitted to the Rental Rights and Referrals Program**

moved in. The Landlord may continue to bill the Tenants for these utility charges, providing that the amount does not exceed \$103.75.

November 2016	1	Mediation: Landlord agreed in a Voluntary Agreement to refund the tenant \$2,351.46 for utility pass-through.
November 2016	4	Mediation: In a Voluntary Agreement parties agreed that all monies paid for utilities paid to UtilitySmart will be refunded and the tenants will no longer have to pay the bills.
January 2017 (mediation)	13 (9 pending hearing due to a lack of utility billing documents)	Mediation: All monies paid to UtilitySmart Arbitration: Pending decision
February 2017 (mediation)		Mediation: All monies paid to UtilitySmart Arbitration: Pending decision
September 2015 (mediation)	1	Mediation: The mediator determined that the landlord violated the ARO for trying to pass through utility charges to the tenant, and also cannot charge for utilities as proposed under the Utility Addendum from 6/18/15.
October 2015 (arbitration)		Arbitration: The arbitrator determined that the utility pass-through was a rent increase and subsequent increases must be disallowed.
February 2017 (mediation)	4	Mediation: 1 st unit: Landlord will refund \$739.71 to one tenant no later than 4/15/17. Remaining units: All moneys paid to NWP, through rent credit Arbitration: Pending decision
February 2017	1	Mediation: In a decision, it was found that the total amount of rent via utility payments overcharged and paid is \$1,922.09. The tenant may receive a rent credit for this.
March 2017 (mediation)	2	Mediation: In a decision, it was found that the total amount of rent via utility payments overcharged and paid is \$1,922.09. The tenant may receive a rent credit for this.
March 2017	1	Mediation: In a decision, it was found that the Landlord violated the San Jose Municipal Code by having the Tenant pay for the water, trash and sewer bills that were issued to the Landlord. The Landlord must refund to the Tenant \$2,792.72 and may not pass through charges for water, trash and sewer charges to this Tenant in the future.

Total petitioning units 44

U.S. Department of Housing and Urban Development Utility Allowances
 2018 Utility Allowances Schedule - Effective 10/01/2017
 Locality: Santa Clara County; San José

Unit Type: Low-Rise and High-Rise

Description: Multifamily apartment buildings of five or more units; includes buildings of five stories or more with elevators

UTILITY OR SERVICE	Monthly Dollar Allowances; Number of Bedrooms			
	0 BR	1 BR	2 BR	3 BR
Water	26	31	42	59
Sewer	30	30	30	30
Trash Collection	30	30	30	60

Source: Santa Clara County Housing Authority, "Voucher Payment Standard, FMR & Utility Allowance"
https://www.scchousingauthority.org/assets/1/6/2018_UA_Schedule_.pdf

Proposed Apartment Rent Ordinance Amendment

17.23.315 Limits on All Fees and Pass Through Charges

- A. Limitation on Pass Through Charges. No pass through of charges to Tenants is authorized except as expressly provided in this Chapter. Without altering the generality of the foregoing sentence, no charges for utility services (such as electricity, natural gas, telephone, water, waste water, sewer and refuse or waste management services) may be passed through to Tenants by Landlord. No charges may be passed through that are assigned to Tenants by virtue of ratio utility billing or similar unmetered allocation arrangements. This section is not intended to prohibit the government entity or nonprofit administering the voucher from imposing conditions based on regulations with respect to utility payments on Rental Voucher Units.
1. Existing Agreements. Existing rental agreement provisions for payment or pass through of utility service or similar charges or for ratio utility billing to the Tenant (“Passthrough Agreements”) are void.
 2. Landlord Petition for One-time Offset Increase. If a Landlord has a written Passthrough Agreement executed by the existing Tenant prior to January 1, 2018, the Landlord may file a petition with the City at or prior to the initial registration of the unit for a one-time increase in rent (“Offset Increase”) which increase, if awarded, shall not be subject to the one (1) increase in any twelve (12) month period limitation in Section 17.23.310. The petition process shall be in accordance with the Regulations.
 3. If the pass through or Passthrough Agreement has been the subject of a Hearing Officer Decision or Voluntary Agreement that disallowed the pass through, no Offset Increase is allowed. If the unit is a Rental Voucher Unit no Offset Increase is allowed.
 4. The Offset Increase amount will be the lesser of: (i) the average of the monthly charges paid by the Tenant in 2017 under the Pass Through Agreement or (ii) \$86 for a studio, \$91 for a one-bedroom, \$102 for a two-bedroom and \$149 for a three bedroom.
 5. The Petition for One-Time Offset Increase can be challenged by the Tenant as provided in the Regulations.

Apartment Rent Ordinance
Tenant Protection Ordinance
Ellis Act Ordinance
Source of Income Policy

City of San José – Department of Housing

Public Comments Received as of February 2, 2018

Policy Development Meeting Series

February 7, 2018 to February 22, 2018

Dot Activity for Public Comments

ARO #1: If Ratio Utility Billing is not allowed under the updated Apartment Rent Ordinance: How should ratio utility billing be phased out? Select one.

	Tenant	Landlord
Effective immediately	29	
All RUBS contracts sunset after one year		
All RUBS contracts sunset after two years		3
No new RUBS contracts; existing contracts remain in place		1
Provide a one-time rent increase to combine rent with utility costs		4
Other ideas? Post it!		Have City provide interest-free or grant financing for landlords to meter individually

ARO #2: If ratio utility billing is allowed and parameters are developed, which items should be included? Select all that apply.

	Tenant	Landlord
Cap for the maximum charged per month		
Utility costs included are all unmetered utilities including water, garbage and sewer	1	7
Common area costs are not charged to tenants		4
All utility bills are available for review by tenants	1	4
No RUBS allowed	34	
Other ideas? Post it!		

TPO #1: Should a new just cause reason be added to the Tenant Protection Ordinance for criminal activity?

	Tenant	Landlord
Yes		6
No	22	

TPO #2: Do you think a criminal conviction would be necessary as a basis for an eviction?

	Tenant	Landlord
Yes	3	
No	9	

Other	It has nothing to do with housing. The judicial system can take care of itself. Don't need vigilantes.	
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TPO #3: If yes, what documentation should be necessary for criminal activity? Please select all that apply.

	Tenant	Landlord
Property manager testimony		4
Police report		
Conviction of a crime		5
Photo or video evidence		7
Other		

TPO #4: If yes, what types of crime could result in an eviction? Please select all that apply.

	Tenant	Landlord
Embezzlement		
Shoplifting		1
Drug crime	3	5
Violent crime	2	6
Traffic Crime	1	
Other	14: This should not be added to ordinance	Any 1

TPO #5: If yes, a crime committed in which of the following areas could result in an eviction? Please select all that apply.

	Tenant	Landlord
In the apartment	3	
On the rental property		5
1,000-foot radius around the rental property		
Anywhere	1	5
Other	11: None of the above	

Ellis #1: How many of the new apartments should be covered by the Apartment Rent Ordinance? Select one.

	Tenant	Landlord
All new apartments	16	
All new apartments are re-controlled, with some apartments limited to 5% and the other apartments limited to 10% rent increase		1

Two times the number of apartments destroyed are covered		1
The number of apartments destroyed are covered		4
If the new building includes 20% affordable units, the entire building would be exempt from rent control	9	
Other	<ul style="list-style-type: none"> • Define what type of affordable • Why not more than 20% • Affordable should be for low income, very low income • At least 50% should be affordable 	None

Source of Income #1: Have you or someone you know had trouble finding a landlord who will accept housing vouchers or other forms of housing subsidies such as security deposit assistance?

	Tenant	Landlord
Yes	23	5
No		

Source of Income #2: If the City were to create a “source of income” ordinance, what housing units should it apply to? Select all that apply.

	Tenant	Landlord
Single-family homes		
Duplexes		
Secondary dwelling units		
Bedrooms for rent		
All rental housing	22	3
None – there should not be an SOI ordinance		6
Other ideas? Post it!	All the city geniuses never ask how the unhoused people for any input over the ideas they always try to lend from their cities’ comfortable position. I’m so sick of working within this system and	

switching back and forth on policies and being discriminated against. Let's build our own community.

2-7-18 Public Meeting Comments Summary

Criminal Activity

- The Housing Dept. should take more active of a role to regarding neighborhood issues. Recent shooting in the Cadillac neighborhood. How can Housing assist landlords in these type of situations? TPO makes addressing crime more challenging.
- “Responsible Landlord Engagement Initiative (RLEI)” available for landlords that are fearful of retaliation.
- “Crime Free” is an approach used by many other cities. Why not try crime free in San Jose?
- When did the City Council discuss crime free housing?
- What proof is required by landlord for the 12 Just Cause?

RUBs

- Master metered electricity and gas – all references to RUBs assume landlords are only using RUBs for water, sewer and garbage. Landlords of older buildings also allocate gas and electric.
- Idea: Certified RUBs provider.
- Idea: Create parameters for monthly fluctuations in RUBs charges.
- Cost of submetering for water is prohibitive. Landlords have called contractors and they are either not willing to bid because they often to not get the work because the cost is so high.
- A landlord stated when the tenants have to pay for the water bill, they are more likely to inform the landlord of a leak so they problem gets resolved much faster, he has had tenants use a vice-grip with a leaky faucet and paid additional water and repair costs from the neglect.

Ellis Act

- One for one seemed common practice – what do other cities do?

Source of Income

- A landlord mentioned that he is working with a Section 8 tenant and it has taken 2 to 3 weeks for a deposit and rent, if the program was faster with onboarding he would consider more often.
- Another landlord mentioned he does not have the time to accommodate the additional work required for Section 8 tenants and felt that the word “discriminating” should not be used regarding landlords screening process.
- Participant mentioned if more landlords knew that they could get closer to market rate for their ARO rental units, they might be more willing to take on the programs.

2-12-18 Public Comments Summary

Tenant Protection Ordinance

- If there is 1 issue, having a gun, would landlord and other tenant want that person with the conviction still living in the unit? Would this be a material lease violation?
- Material violation - what is an example or designate an issue that is material? Example, starting a fire in a backyard. Does lease must specify "criminal activity" or "fire" in the lease?
- If someone is arrested for domestic violence, can a landlord serve a notice?
- What is the City of San Jose's position on criminal activity? Tolerant or zero? 3 day notice? not required and go directly to evict?
- The warning is significant, should a 3 day notice still be allowed or evict right after the 1 instance?
- Someone (for example, son or daughter) can be evicted for a conviction and automatically move in with his mom without approval from the landlord, they/tenant are protected. The roommate clause allows for harboring of criminals.
- Landlord should be able to do a review to be aware of a conviction and maximum number of tenants move in? Landlords need some type of help with this issue/check.

Apartment Rent Ordinance

- Some landlord also do their own RUBs, not only just 3rd parties doing to calculations.
- There should be a RUBS allowed option for consideration by the City Council.
- Will electricity be considered a part of RUBS - all utilities should be considered?
- HUD utility rates, how do they factor or calculate? HUD rates should be removed because nobody can determine their factor.
- What about an alternative for a landlord to charge an additional 1% in rent if their building is master metered, similar to LA?
- Landlord feels is RUBS is not allowed, an angry tenant will leave the water running so landlord must pay bill and lose money, no conservation.
- If you remove storage and lose rent, will the rent ever be increased or will it be lost income going forward?

Ellis Act

- Will there be a separate outreach for Ellis Act with developers? This issue is less significant for ARO property owners.
- How is relocation defined or determined? Chart available for calculation per number of bedrooms, how was the cost determined?
- Regarding which units are covered by the Ellis Act, why 1979 when 1985 is when Ellis went into effect?

Source of Income

- What is the Housing Department's position on Source of Income, is it neutral or direction to create an Ordinance? Housing will be bringing a framework to Council and wait for direction.
- Given a mandate, the Housing Department's position does not appear neutral.
- What is the reason for the source of income policy issue? City Council asked Housing to explore.
- Source of Income issue is not Section 8 voucher holders, instead the deterrence for landlords is the logistics, time, and cost for using Section 8. Housing is painting the wrong picture about landlords.
- A landlord indicated never used Section 8 because the heard the program was a zoo and has created more problems, does not believe in program.

2-12-18 Public Comments Summary

- Had a Section 8 tenant, has lost thousands of dollars, many lawsuits, and they know how to gain the system.

General questions

- What is the definition of Affordable Housing? Is there special funding for developers if they build Affordable Housing?
- Is there a special property tax relief for Affordable Housing?
- Public Notice is done through ARO; would landlords be notified for specifically for Ellis Outreach?
- Participant feels their input falls on deaf ears, rules appear to be protecting tenants, not landlords.
- Landlords do not want to file a Capital Improvement petition, does not want to ask Housing an allowance to increase rents.

2-22-18 Tenant Input Public Comments Meeting

ARO - RUBS

- PG&E approx. \$28 per month
- PG&E \$70 per month, lights never turn off in common area
- PG&E approx. \$120 per month due to mold problem and leaving on fans
- PG&E approx. \$70 per month to \$150, summer to winter
- Pays water or garbage, other than electricity
- Pays water, sewer, and trash, rent, and split with all water, sewer, and trash and a service charge
- Rent and split with all water, sewer, and trash
- \$50 for water, \$40 PG&E
- Rent and water, sewer, and trash
- Has sat through several cases and RUBS is illegal and a violation of the ordinance, Council is considering it legal, should put in a complaint right now, will automatically get changed. Problem with RUBS, tenant pays more, landlord can make it more complicated and to track what is being paid for utilities. File a petition if paying RUBS.
- Prefer separate rent from utilities, due to utilities being varied
- Don't want to pay for others' utilities and know what utilities you are using, keep rent separate, landlords make it sound like they are getting a better deal having it combined rent/utilities and misleading.
- What happens when there are fines for excessive usage, landlords will be able to shift the costs to tenants? During last drought, scare notices were sent out for excessive usage, they did not bill.
- If there's broken pipes or irrigation and does not get fixed, they will pass that on to tenants.
- How does the RUBS get calculated with the 5% increase factor?
- Landlord/management prefer not to pay additionally on rent, has been told that they have attorneys and RUBS is legal. 3 day notice to pay rent or quit only includes rent, does not include utilities/RUBS.

TPO – Criminal Activity - Nuisance

- Neighbor that made noise and she got a lease violation for putting a note on the neighbor's door.
- HUD came out with a ruling in 2006 to circumvent the prior law. Why are they playing around with the wording now?
- Landlord has gardeners showing up at 7am making loud noises and that should be seen as a crime.
- Actual conviction or proof of the crime, otherwise should be considered discrimination.
- How would a landlord or tenant even know if their neighbor committed a crime?
- Crime should not be allowed anywhere for eviction.
- Neighbor had an issue with wildlife and feared retaliation. Finally called the police and not escalating.
- Biggest issue, landlords not evicting tenants that disturb other tenants. City not holding landlord accountable for multiple issues.

2-22-18 Tenant Input Public Comments Meeting

Ellis Act

- Not enough resources available for a tenants to move or relocated while development of property.
- Better option is for lower rents for low income tenants.
- Tenant moved to affordable housing, not able to find affordable housing with good paying job.
- Tenant in affordable housing got an increase of \$250 this year, should not be considered affordable.
- It should be very expensive to evict tenants living in ARO units.

Source of Income

- Large percentage of attendees have seen ads posting that states no Section 8, had difficulty finding housing.
- Tenant's rent kept increasing until the amount was not covered under Section 8. Once tenant left, the rent had decreased for following tenant.
- Need an ordinance like this to assist and prevent homelessness.
- How long will it take for the Rent Registry to provide analysis for these types of issues?

* The wording that is currently used in one item that the City Council directed the Housing Dept. to follow up on re. amendments to the ARO, "Direction to develop an Ordinance disallowing sources of income discrimination," is incorrect. The wording, "source of income" needs to be changed. Tenants that have a subsidy have income from a variety of places, not all the same. We are not discriminated against because of where our income comes from, it's because we have a subsidy for part of the rent. Owners don't want it. Our subsidy is not income paid to us (tenants) it is paid to apt. owners. "They don't want to rent to low-income tenants."

Nguyen, Viviane

From: Nguyen, Viviane
Sent: Tuesday, February 20, 2018 11:08 AM
To: Nguyen, Viviane
Subject: RE: Comments on the mtg held 2/12/18

From: [REDACTED]
Sent: Friday, February 16, 2018 4:08:17 PM
To: RSP
Subject: Fwd: Comments on the mtg held 2/12/18

-----Original Message-----

From: seigitado <[REDACTED]>
To: rsp <rsp@sanjose.gov>
Cc: ireneken <[REDACTED]>; jeff <[REDACTED]>; yzhao1017 <[REDACTED]>; cherylxoo <[REDACTED]>
Sent: Wed, Feb 14, 2018 10:39 pm
Subject: Comments on the mtg held 2/12/18

Following are my comments on items discussed at the meeting held at the 7 trees community on 2.12.18 and a few more.

TPO:

1. Rachel said that "Material" violations are subject to termination based on 1 time occurrence. Definition of "Material" violation is not clear to me
2. Criminal activities should be a separately listed "cause" for eviction. One time occurrence should qualify for "cause" eviction. Consequence of criminal activities will deter thoughts of such activities from the tenants. Housing and the city should adopt a zero tolerance to any criminal activities, Is Housing interested in abating crime and slum conditions in San Jose rentals?
3. Only tenant who is guilty of criminal activity should be evicted; not the entire tenant(s) occupying the unit legally.
3. Tenants who are evicted due to criminal activities should not be automatically allowed to be an occupant to a related tenant renting another unit or apt.

RUBS:

1. All utilities should be included which are water, gas, electricity, and sewer.
2. Tenants pay utilities if the units are metered for the utilities If not metered, it is unfair and discriminatory to impose financial burden solely on the provider for the tenants entire usage of the utilities. Just because master metered utilities may be more difficult to administer, RUBS should not be eliminated to dodge the problem.

SOURCE of INCOME;

1. Speaking for myself but I feel others share the same thought. Housing providers are not reluctant to accept section 8 applicants. The reluctance is from the onerous policies associated with renting to them. I would like to see a policy that states that if the Section 8 renters do not adhere to the rental agreement then they can be evicted and any damages caused by the tenants will be paid by the city and that the tenant loses all future vouchers for rental assistance. Housing annual inspection of the unit should not be necessary.

RENT REGISTRY(RR)

1. RR is an egregious invasion of privacy of a private business which is not receiving any assistance or benefits from the City. Why does Housing want the entire rental financial data of

- a Housing provider visible to everyone? To what end is such information necessary? Housing providers do not need City assistance to advertise vacancy.
2. Why should only the rent controlled housing providers be burdened with the cost associated with RR?

HOUSING SERVICES;

1. Additional services, like storage for example, are allowed one time charge of \$50.00. Yet when services are reduced the monthly rent is subject to reduction. So if the Housing providers gets a one time charge of \$50 for storage and then they remove the storage the MONTHLY rent is reduced by the removal of that storage. I fail to see the fairness and logic of this.

Let's all direct our resources and effort toward solving rental shortage for low income family: not to add more and more control on those Housing providers that already serve the lower tiered income families. More controls will not solve shortage!

Respectfully submitted for your consideration.

Seigi Tadokoro, San Jose Rent controlled Housing provider.



Memorandum

TO: HOUSING AND COMMUNITY
DEVELOPMENT COMMISSION

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: March 1, 2018

Approved

Date

SUBJECT: TENANT SOURCE OF INCOME POLICY

RECOMMENDATION

Accept the staff report and provide the Housing Department with feedback on the policy framework related to source of income discrimination.

OUTCOME

This report explores the feasibility of creating a source of income ordinance. It summarizes how other localities have addressed their rental market's lack of acceptance of rental subsidies. It also recommends a policy and implementation framework for consideration in San José.

BACKGROUND

The federal Housing Choice Voucher program (HCV), commonly referred to as Section 8, provides rental subsidies so that low-income tenants can afford to rent privately owned apartments. The Santa Clara County Housing Authority (SCCHA) manages the City of San José Housing Authority's HCV program. Under HCV, voucher holders pay 30-32% of their gross income toward rent, and SCCHA pays a property owner the difference between the renters' payment and the SCCHA-approved market rent. The City and the County of Santa Clara also offer rental voucher subsidies to extremely low-income residents with rules similar to the HCV program.

Unfortunately, voucher holders across the U.S. are having trouble finding landlords who will accept HCVs. The issue is serious enough that over 42 jurisdictions nationwide have adopted policies or ordinances relating to this issue.¹ These major cities include San Francisco, Seattle,

¹ <https://affordablehousingonline.com/source-of-income-antidiscrimination-laws> accessed on 2/25/18.

Minneapolis, Philadelphia, and New York City. California law prohibits discrimination based on source of income. However, California courts have held that California's source of income discrimination law does not apply to HCVs or other similar rental subsidies. This has left many rental subsidies holders vulnerable to discrimination.

Many apartment owners choose not to participate in HCV and in other rental subsidy programs for a variety of reasons. A landlord's rejection of applicants possessing vouchers constitutes rejection based on applicants' source of income. In fact, many voucher holders are rejected before they apply for housing, as numerous property managers advertise that they will not accept applications from Section 8 tenants. This explicit rejection of voucher holders due to their source of income makes it even more difficult for those people to find apartments, given San José's extremely competitive rental market.

In order to address this issue, a number of jurisdictions in California, including Santa Clara County, San Francisco, Mill Valley, East Palo Alto, Corte Madera, Marin County, and Santa Monica, have adopted source of income anti-discrimination ordinances. These ordinances prohibit owners from using HCVs and other tenant-based subsidies as the grounds for rejecting or refusing an applicant.

City Council Direction

In June 2015, the City Council included a source of income ordinance in its priority setting session, and requested that staff work on this issue. On September 1, 2015, the City Council accepted staff's recommendation that work on a source of income ordinance be delayed given the City of Santa Monica's source of income ordinance was being challenged in court. On January 30, 2017, the Los Angeles County Superior Court upheld the Santa Monica law.

On April 25, 2017, the City Council adopted the HUD Analysis of Impediments (AI). This report, required by the federal government, describes the City's fair housing needs and strategies to address those needs. On page 97, the AI indicates there have been challenges in finding suitable apartments for Rental Assistance Voucher Holders. On page 22, public outreach results echo this sentiment. Finally, page 106 of the AI states that City will explore the feasibility of a source of income discrimination protection, as moved by City Council per a memorandum dated April 21, 2017. Staff has interpreted this to include the following:

- Analysis of online advertisements that bar tenants with subsidies from applying;
- Stakeholder feedback on why more vouchers are not being accepted;
- Evaluation of source of income policies and ordinances in California;
- A draft policy framework with the following objectives:
 - Ensure that all persons with the ability to pay for housing are considered for housing, regardless of whether they receive a housing subsidy or housing assistance of any kind.
 - Increase the number of voucher holders accepted into apartments.

On March 25, 2017, the Santa Clara County Board of Supervisors adopted ordinance number NS-507.1 to “ensure that all persons with the ability to pay for housing are considered for housing, regardless of whether they receive a housing subsidy or housing assistance of any kind.” The ordinance applies to unincorporated areas under the County’s jurisdiction, and prohibits landlords from:

- Rejecting, refusing to consider, terminating tenancy, conditioning, or creating different standards for renters with vouchers;
- Considering rental voucher income differently than other income in financial standards;
- Refusing or restricting facilities, services, repairs, or improvements for current or prospective renters; and,
- Advertising or communicating limitations or discrimination based on voucher possession.

The full text of this ordinance is attached as **Attachment A**.

ANALYSIS

The following analysis provides an overview on the HCV program, information on who uses these vouchers, the extent that landlords refuse to accept applications from HCV tenants, analysis of stakeholder input, and a draft policy framework.

Overview and Demographics

The San José Metro Area (which includes Santa Clara and San Benito Counties) is the second most expensive rental and homeownership market in the Country². Demand for the HCV program in Santa Clara County is extremely high. The current waitlist originated in 2006 with 50,000 applicants and now has approximately 5,100 applicants. Because of the administrative burden to maintain the list, which includes tracking the status and address of each household, the list has been mostly closed since this date. The need for housing assistance is arguably greater than ever, yet an estimated 680 HCV holders are currently searching for apartments in Santa Clara County.³ Tenants who cannot find an apartment in the required period of time (six months, with a possibility of a three months extension) face losing their voucher and possible homelessness, with no possibility of applying for new vouchers as waiting lists are closed.

By the federal program’s design, HCV encourages local housing authorities to prioritize renters who are vulnerable and in need of housing assistance. This is true for the approximately 11,796 HCV recipients are renting in San José. As compared to the average population, voucher holders in San José are more likely to have special needs, to possess disabilities, and to have experienced homelessness. Of these clients, 50% are disabled heads of household, 25% are families with a

² National Housing Conference, Paycheck to Paycheck Report for 2017; <https://www.nhc.org/publication/paycheck-to-paycheck-2017/>

³ As of February 15, 2018,

person with disabilities who is not the head of household, 24% are female heads of households, 13% are families with minor children, and 8% are formerly homeless.

HCV recipients are also more likely than San José's overall population to be people of color and to pay a high percentage of their income on housing costs. The following table compares the racial breakdown of HCV recipients in San José with that of total rental households with severe housing cost burden, and then with overall households in San José. The table shows that Asian, Latino, Black, and American Indian households are overrepresented in the pool of San José HCV holders. White and Native Hawaiian/Pacific Islander households are underrepresented in the pool of HCV holders. For severe housing cost burden, Latino, Black, American Indian/Alaska Native, and Native Hawaiian/Pacific Islander households are overrepresented while White and Asian households are underrepresented.

This data indicates that these households are disproportionately represented in the HCV population. This means that discrimination on the basis of Section 8 has a disproportionate impact on communities of color who are overrepresented in the voucher population.

Racial Composition of San José Households with Housing Choice Vouchers

Race (based on Head of Household)	Households with HC Vouchers	%	Renter Households - Severe Housing Cost Burden⁴	%	All Households	%
Asian	5,020	43%	36,680	28%	96,340	31%
White Hispanic or Latino	3,234	27%	46,610	35%	78,100	25%
White Not Hispanic or Latino	1,662	14%	37,910	29%	116,760	38%
Black	1,649	14%	6,625	5%	10,345	3%
American Indian/Alaska Native	191	2%	535	0%	890	0%
Native Hawaiian/ Pacific Islander	40	0%	650	0%	985	0%
Other	N/A	N/A	3,225	2%	7,165	2%
Total San José Households with Vouchers	11,796		132,235		310,585	

⁴ HUD defines 'severe cost burden' as paying more than 50% of income on housing costs.

Survey of Apartment Listing Advertisements

The Housing Department conducted its own research to assess the extent to which San José properties deny voucher holders the opportunity to apply. Staff tracked all San José apartment rental listings on Craigslist and Apartments.com for four weeks between July and August of 2017. Staff tracked a total of 559 listings during this period and found that 26.7% of listings explicitly stated “no section 8.” To further clarify, staff posed as voucher holders and called properties that didn’t mention Section 8 in their advertisement to ask if the listings were available to Section 8 holders. Of those properties, 39.4% said verbally that they would not accept Section 8. In total, 66% of apartment listings indicated they would *not* accept vouchers. In addition, 29% of properties were unreachable on the phone. Therefore, only 5% of properties indicated they *would* accept Section 8 when asked by a theoretical applicant holding a voucher. These survey findings support the assertion that a significant number of properties in San José have chosen not to accept HCVs.

Stakeholder Input

Housing Department staff conducted a number of community meetings involving property owners and renters that discussed source of income policy. The specific dates and locations of these meetings can be found in the Public Outreach Section of this memorandum. Representative comments are below.

Landlords indicated various reasons why they chose not to participate in the HCV program. A primary reason stated was that they did not want to deal with the administrative burden of joining the program, such as getting properties inspected, and waiting for voucher payments to be received. One participant mentioned that if more landlords knew they could get close to market rents, they might be more willing to participate. Another landlord felt that the word “discrimination” should not be used with regards to this issue, as negative connotations of unjust discrimination based on race or income are not necessarily apt if one simply chooses not to want to join a program. Other comments focused on negative perceptions about and/or negative past experiences with HCV tenants. Some believed that such tenants with vouchers were more likely to damage apartments, while other landlords stated a reluctance to rent to people of certain races or income levels.

Landlords were wary of a source of income ordinance, noting that that ongoing education is critical if a new policy were to go into place, and that penalties should not be too severe especially for first offenses. They also mentioned that it would be helpful for SCCHA to conduct more outreach to landlords to explain the program and the rents that can be charged, and to improve the experience of landlords in the HCV program in order to attract more landlords to the program.

Tenant stakeholders indicated they had personally experienced or knew others who had difficulty finding a landlord who would accept vouchers. Tenants indicated that it was common for landlords to advertise “no section 8” in their listings. They strongly supported the creation of a

source of income ordinance in San José. Most indicated it should apply to all rental units to maximize the chances that tenants can utilize their vouchers. Stakeholders also expressed the desire to prevent a landlord's exit from the HCV program from permitting a just cause eviction of a voucher-holding tenant for non-payment.

Anti-discrimination Policies

It is important to place source of income discrimination into a larger human rights context, as do many large cities that employ much broader anti-discrimination policies. New York, Chicago, Dallas, San Francisco, Seattle, Philadelphia, and other cities have adopted local civil rights, anti-discrimination, and/or fair housing ordinances. Some of these cities operate human rights commissions to address a range of discriminatory actions relating to employment, housing, public accommodations, contracting practices, and more. San Francisco's human rights commission also offers technical assistance, information, and referrals to community groups, businesses, and government agencies.

Cities often implement these ordinances because some classes are not protected at the federal level such as sexual orientation. State and federal agencies often have a much larger volume of complaints and therefore a complaint at the state or federal level can be time consuming. Local cities are generally able to process complaints more promptly and can be less intimidating. Residents have a choice of jurisdiction under which they may file.

Therefore, as a large city, it would be appropriate and consistent with other large cities for San José to develop anti-discrimination policies, including a source of income ordinance. It could be argued that the City has an obligation to address these types of issues similarly to similarly-situated large cities. In the future, the City Council may wish to explore a broader anti-discrimination platform.

Draft Policy Framework

The Housing Department evaluated source of income policies from Marin County, Mill Valley, Corte Madera, San Francisco, East Palo Alto, Foster City, Santa Clara County, and Santa Monica. These policies were enacted over the past 20 years and vary in their objectives and their enforcement. The following section considers these ordinances and proposes a draft policy framework for San José.

A. Source of Income Policy Objectives

1. Encourage owners to fairly consider prospective tenants with housing subsidies.
2. Decrease the time it takes for voucher holders to find housing.
3. Decrease the likelihood that tenants with housing subsidies are displaced from San José.
4. Encourage, but not require, participation of apartment owners in HCV and other voucher programs.

- B. Define tenant subsidies as a source of income:** As noted above, California Source of Income law does not protect HCV holders and other rental subsidy holders from discrimination based on their source of income. As it stands, rental-subsidy holders, specifically HCV holders, are being turned away before they can even submit their application. Staff recommends defining the possession of rental subsidies as an ineligible reason to disqualify a prospective tenant. To be clear staff is not recommending that landlords be required to accept tenant based rental subsidies, but instead that a landlord must use other lawful criteria to select a tenant.
- C. Advertising:** As noted above, it is clear some San José landlords use advertisements to deny tenants with housing subsidies the opportunity to apply for units on the private market. Staff recommends the prohibition of all forms of advertisements or statements that explicitly discourage prospective tenants with housing subsidies from applying to rent a given unit.
- D. Applicability:** In some cities the source of income ordinance does not apply to single family homes, secondary dwelling units, duplexes or even small apartment buildings. Other ordinances exempt units where the owner shares either a kitchen or bathroom facility with the tenant. Staff recommends that a source of income ordinance apply to all rental housing to maximize its effectiveness and to ensure that larger households seeking to rent a single family home are protected.
- E. Enforcement – Publicly-initiated:** The type of enforcement varies between cities. Some allow for civil actions to collect damages and lawyer fees, and some allow for misdemeanor charges. Staff recommends that the City dedicate a staff position to coordinate closely with SCCHA, conduct ongoing outreach and education for apartment owners, and evaluate complaints relating to discriminatory advertisements. The Housing Department would issue a warning on the first offense relating to advertisements and then would issue administrative citations with increasing fines for subsequent advertisement-related offenses.
- F. Enforcement – Privately-initiated:** Some cities allow for complainants or certain representatives such as legal advocates to file civil actions against landlords who violate the jurisdiction's source of income ordinance. Staff recommends that the ordinance allow for privately-initiated actions be authorized for violation of the ordinance.
- G. Education and Outreach:** Landlords indicated that improved outreach and education might convince some landlords to accept tenants with housing subsidies. Staff recommends closer coordination with the Housing Authority and the Apartment Association to identify barriers and to conduct outreach to apartment owners to increase apartment owner participation in tenant based subsidy programs.

EVALUATION AND FOLLOW-UP

After receiving comments from HCDC, the Housing Department intends to bring this draft policy framework to City Council on April 24, 2018, for direction on crafting a source of income ordinance. If the City Council directs staff to develop an ordinance, staff intends to bring an ordinance back for consideration in Summer 2018.

PUBLIC OUTREACH

The Housing Department conducted the following outreach. A summary of the feedback received is included in the analysis section of this memorandum.

- February 6, 2018: Stakeholder Meeting: Renter's Coalition
- February 7, 2018: Public Meeting #1: City Hall
- February 12, 2018: Public Meeting #2: Seven Trees Community Center
- February 15, 2018: Stakeholder Meeting: California Apartment Association
- February 22, 2018: Stakeholder Meeting: Tenants

COST IMPLICATIONS

If the City Council directs staff to create a draft ordinance, the Housing Department's recommendation would include the addition of one staff person to be funded for two years by the City's Housing Authority Litigation Award funds. Staff would work with the Budget Office to integrate this request into the City Council action for ordinance approval.

COORDINATION

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

/s/
Jacky Morales-Ferrand
Director, Department of Housing

For questions, please contact Kristen Clements, Division Manager, at (408) 535-8236.

Attachment A: Santa Clara County Source of Income Ordinance

ORDINANCE NO. NS-507.1

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADDING DIVISION B37 RELATING TO AFFORDABLE HOUSING TO THE
COUNTY OF SANTA CLARA ORDINANCE CODE**

Summary

This Ordinance adds Division B37 relating to Affordable Housing to the County of Santa Clara Ordinance Code to address the severe housing crisis in Santa Clara County.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

Division 37 of Title B of the Ordinance Code of the County of Santa Clara relating to Affordable Housing is hereby added to the Ordinance Code to be titled and to read as follows:

**Division B37
AFFORDABLE HOUSING**

Sec. B37-1. Purpose and intent.

In enacting this Division, the Board of Supervisors intends to redress the severe housing crisis in Santa Clara County, which leaves thousands of County residents without homes or without secure housing. This Division is intended to help alleviate the housing crisis by ensuring that all persons with the ability to pay for housing are considered for housing, regardless of whether they receive a housing subsidy or housing assistance of any kind.

Sec. B37-2. Prohibited activity.

It is unlawful for any person to do any of the following as wholly or partially based on receipt of housing assistance:

- (a) To interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property, including, but not limited to, the rental thereof; to require different terms for such transaction; or falsely to represent that an interest in real property is not available for transaction;

- (b) To include in the terms or conditions of a transaction in real property any clause, condition, or restriction;
- (c) To refuse or restrict facilities, services, repairs or improvements for any current or prospective tenant or lessee;
- (d) To make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement, or advertisement with respect to a transaction in real property, or with respect to financing related to any such transaction, that unlawfully indicates preference, limitation, or discrimination based on receipt of housing assistance;
- (e) To use a financial or income standard for rental housing that privileges income earned directly by the tenant or prospective tenant, or rental payments made directly by the tenant or prospective tenant over housing assistance, or that discounts or discriminates against housing assistance payments.

Sec. B37-3. Definitions.

For purposes of this Division, “housing assistance” includes all housing and rental assistance programs, homeless assistance programs, security deposit assistance programs, and housing subsidy programs.

For purposes of this Division, “person” means any individual, firm, corporation, or other organization or group of persons however organized.

Sec. B37-4. Exception.

Nothing in this Division shall be construed to apply to the rental or leasing of a dwelling unit that is occupied by its owner or members of his or her family and that has no more than a single roomer or boarder.

Sec. B37-5. Civil enforcement action.

A civil action to enforce the provisions of this Division may be filed by any aggrieved person, by the County Counsel, or by any person or entity that will fairly and adequately represent the interests of that person or a protected class.

Sec. B37-6. Civil injunctive relief.

Any person who commits, or proposes to commit, an act in violation of this Division may be enjoined therefrom by any court of competent jurisdiction.

Sec. B37-7. Civil liability.

Any person who violates any provision of this Division or who aids in the violation of any provision of this Division shall be liable for mandatory damages of three times the amount of one month's rent that the landlord charges for the unit in question. All damages shall be awarded to the person whose rights were violated. The court may also award punitive damages in an amount of not less than \$200.00 and not more than \$400.00 per violation, as well as attorneys' fees and costs. In any action brought by the County Counsel, all damages and attorneys' fees and costs, shall be awarded to the County and deposited in the County Treasury.

Sec. B37-8. Separate civil liability for each violation.

Any person who violates any provision of this Division or who aids in the violation of any provision of this Division shall be liable for a separate civil violation for each provision of this Division that he or she violates, and for each instance in which he or she violates a provision of this Division.

Sec. B37-9. Criminal enforcement and liability.

Any person who violates any provision of this Division or who aids in the violation of any provision of this Division shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than \$1,000.00, or by imprisonment in the county jail for a period not exceeding six months, or both.

Sec. B37-10. Statute of limitations.

Any actions filed pursuant to this Division must be filed within two years of the alleged violation.

Sec. B37-11. Severability.

The provisions of this Division are severable. If any provision of this Division or any application of any provision of this Division is found invalid, the remainder of the Division, including the application of such provision to other persons or circumstances,

shall not be affected thereby and the remainder of the Division shall continue in full force and effect.

Sec. B37-12. No conflict with state or federal law.

Nothing in this Division shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law. Nothing in this Division shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

Sec. B37-13. Effective date.

This division shall become effective on January 1, 2018.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on APR 25 2017 by the following vote:

AYES: ~~CHAVEZ. CORTESE. SIMITIAN. WASSERMAN. YEAGER~~

NOES: ~~WASSERMAN~~

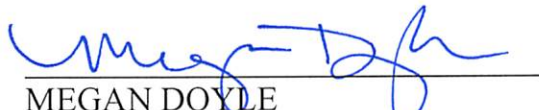
ABSENT: ~~NONE~~

ABSTAIN: ~~NONE~~



DAVE CORTESE, President
Board of Supervisors

ATTEST:



MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY



JAMES R. WILLIAMS
County Counsel

1483638