

City of San José Department of Housing

Apartment Rent Ordinance

Housing & Community
Development Commission

September 14, 2017



What is the Apartment Rent Ordinance (ARO)?

- Purpose: To promote stability and fairness including
 - Prevention of excessive & unreasonable rent increases
 - Alleviation of undue hardship upon tenants
 - Opportunity for landlords to earn a fair return
- Applies to apartments rented or built before September 7, 1979
 - 44,283 apartments
 - 3,188 owners
- 3 or more apartments

Buildings Not Covered



Single family homes &
second units



Duplexes



Condos for sale



Townhouses

What does the ARO not do?

- Increase the supply of housing
- Solve all of San Jose's affordable housing problems
- Impact the development of market rate units that are not subject to the ARO

Balancing the Concerns

Landlords	Shared	Tenants
<ul style="list-style-type: none">• Economic return on investment - retirement, education, income• Constraint on rent will result in disrepair• Cannot run their business for less than 5%• No incentive to invest and maintain properties	<ul style="list-style-type: none">• Quality of housing• Neighborhood stability	<ul style="list-style-type: none">• Limited wage increases, rent increase every year• Need for stability and predictability• Inability to find replacement/ alternative housing

City Council Actions on the ARO

- **September 7, 1979** – Apartment Rent Ordinance established
- **1985** – Mobilehome Rent Ordinance
 - 75% CPI (3% floor – 7% ceiling)
- **2003** – Noticing requirements extended for no-cause notices
- **May 10, 2016** – 5% no debt service & capital improvements
- **August 30, 2016** – Interim Ordinance Regulations
 - Fair return process
- **April 18, 2017** – Prepare a CPI-U with banking option

	CPI-U	5%
Annual Allowable Increase	✓ 100% Consumer Price Index (CPI-U) (floor 2% - ceiling 5%)	✓ 5% fixed allowable rent increase every 12 months with no banking
Banking	✓ Maximum Allowable Rent	<input checked="" type="checkbox"/> No Banking
Capital Improvement Pass-through	<ul style="list-style-type: none"> ✓ Sustainability, safety, & seismic upgrades (100% for amortization period) ✓ Major System Upgrades that improve Housing Services (100% for amortization period) ✓ Major Maintenance Replacements (50% for amortization period) Sunsets after 5 years 	<ul style="list-style-type: none"> ✓ Sustainability, safety, & seismic upgrades (100% for amortization period) ✓ Major System Upgrades that improve Housing Services (100% for amortization period) <input checked="" type="checkbox"/> No Major Maintenance Replacements
Shared Fees	✓ 50% of shared program fees	<input checked="" type="checkbox"/> No shared program fees
Rent Increase for Additional Occupants	✓ 5% Rent Increase for occupants other than a tenant's spouse or children	<input checked="" type="checkbox"/> No Rent Increase
Rent Registry	✓ Required	✓ Required
Fair Return	✓ Landlord fair return petitions accepted	✓ Landlord fair return petitions accepted
Petition Process	✓ Revised petition process	✓ Revised petition process
Staffing	✓ 22 employees for the program	✓ 21 employees for the program

Policy Consideration – **CPI-U OPTION**

Annual Allowable Increase

Economic Roundtable Study

- Combination of CPI-U annual increase and vacancy decontrol results in a fair return for landlords
- Other CA jurisdictions used a study to determine increased costs for managing rental properties and determined CPI-U was a better alternative

City Auditor's Report

- 5% annual increases exceeds market rents

SPUR's Housing Agenda for San Jose – August 2017

- Santa Clara has seen the largest gap between the growth in its median rent and growth in its median income.

Most Cities use CPI

- **CPI of Other Cities**

City	Yearly Increase
Berkeley	65% of CPI-U
Santa Monica	75% of CPI-U
East Palo Alto	80% of CPI-U
Los Angeles	100% of CPI-U, 3% min, 8% max
West Hollywood	75% of CPI-U
San Francisco	60% of CPI-U, 7% max

- **Pass-through**
- **Vacancy decontrol**

Policy Consideration – 5% OPTION

Annual Allowable Increase

Feedback Received:

- Provides greater rate of return to owners
- Increases are predictable for owners and tenants
- Simple to implement
- 1 fewer staff
- No limiting effect per City Auditor's Report

Policy Consideration – Annual Allowable Increase

Feedback Received

With 5%

- Flat 5% is simple and straight forward, easier for both landlords & tenants to understand
- Year over year 5% rent increases may lead to displacement for tenants who can no longer afford to pay their rent

With CPI-U

- CPI-U is a familiar, reliable, and accessible source of data
- Using CPI-U as a growth rate for rents constrains growth in revenue over time

Policy Consideration – CPI-U

Banking

Maximum Allowable Rent (MAR)

Example: Original lease amount is \$1,500

Year	CPI-U	Additional Increase	Maximum Allowable Rent	Actual Rent Charged
1	2 %	\$ 30	\$ 1,530	\$ 1,530
2	3 %	\$ 46	\$ 1,576	\$ 1,530
3	2 %	\$ 32	\$ 1,608	\$ 1,500
4	3.5 %	\$ 56	\$ 1,664	\$ 1,650
5	1 %	\$ 17	\$ 1,697	\$ 1,697

*Floor is 2% = \$ 33

Policy Consideration – CPI-U Banking

Standard Banking

Example: Original lease amount is \$1,500

Year	CPI-U	% Used	Bank Balance	Additional Increase	Rent Charged
1	2 %	0 %	2 %	\$ 0	\$ 1,500
2	3 %	0 %	5 %	\$ 0	\$ 1,500
3	2 %	2 %	5 %	\$ 30	\$ 1,530
4	3.5 %	8 %	0.5 % *Ceiling is 8 %	\$ 122	\$ 1,652
5	1 %	2 %	2.5 %	\$ 41	\$ 1,693

*Floor is 2%

Policy Consideration – Banking

Feedback Received

No Banking with 5%

- No banking requires less administrative costs.
- If no banking is allowed, landlords will more likely raise rent every year.

With Banking with CPI-U

- Availability of a banking provision allows landlords to “catch up” their rents when there are declines in down markets.
- MAR is simple to implement.
- Tenants may face the potential for larger increases in the future if landlords exercise the banking provision.

Policy Consideration – Capital Improvements Pass-through

- Create a capital improvement program allowing the pass-through of costs to tenants
- Three types of improvements:
 - a. Sustainability, Safety, & Seismic upgrades**
(100% for amortization period)
 - b. Major System Upgrades that Improve Housing Services**
(100% for amortization period)
 - c. Major Maintenance Replacements**
(50% for amortization period)
Sunsets after 5 years

Policy Consideration – Capital Improvement Pass-through

Feedback Received

No “Major Maintenance Replacements” with 5%

- More simple record keeping for the landlords without the calculations of a 50% pass-through limitation.
- Landlords would be able to increase rents up to 5% annually without making any investment in the apartment building.

“Major Maintenance Replacements” with CPI-U

- Maintenance to upkeep the aging apartments would be incentivized.
- “Major maintenance replacements” should not be used as an alternative to routine maintenance and replacements.

Capital Improvements Pass-through

- Allow pass-through amount to be part of the rent.

Policy Consideration – CPI-U Program Fees

50% of shared program fees would be allowed

Fees	Landlord's Share	Tenant's Share
\$ 100	\$ 50	\$ 50

Policy Consideration – Program Fees

Feedback Received

No shared program fees with 5%

- A 5% annual increase would be sufficient to cover the costs to administer the ARO.
- Landlords would bear the burden of the administrative fees.

50% shared program fees with CPI-U

- Landlords would be able to share the burden of the administrative costs with tenants who also benefit from the program.
- Tenants would experience an additional burden of the program fees.

Policy Consideration – CPI-U

Additional Occupants

Joint Petition agreed by both tenant and landlord: 5% Rent Increase for occupants ***other*** than a tenant's spouse or children

Additional Occupant(s)	Current Rent	Additional % Increase	Additional \$ Increase	New Rent*
1	\$ 1,500	5 %	\$ 75	\$ 1,575
2	\$ 1,500	10 %	\$ 150	\$ 1,650

**This additional rent increase is added to the Annual Allowable Increase.*

Policy Consideration – Additional Occupants

Feedback Received

No rent increase with 5%

- Landlords would not have to address the additional costs of more occupants in terms of “wear and tear.”
- Landlords would not have the flexibility to charge for additional occupants.

5% for occupants other than a tenant’s spouse or children with CPI-U

- Tenants and landlords would be able to benefit from having an additional occupant.
- Landlords would have to constantly monitor the occupancy standards.

Policy Consideration – Ratio Utility Billing Systems (RUBS)

Draft ordinance recommends no RUBS pass-through

Feedback Received

No RUBS

- Causes frequent rent increases
- Limited transparency to the actual utility costs
- Utility payments for common areas are difficult to track

Allow RUBS

- Encourages conservation
- Increases in utility costs (i.e. water, electricity)
- Alleviates the burden for landlords to pay additional utility costs

Policy Consideration – Rent Registry

- Submit registration for each Rent Stabilized Unit
- Registration will include the following:

Public Facing

- ✓ Address of unit
- ✓ Occupancy status of unit
- ✓ Rent charged
- ✓ Rent charged in the Base Year (2014)

Internal

- ✓ Landlord's name and address
- ✓ Date occupied

Policy Consideration – Petition Process

Tenant Petitions		Landlord Petitions		Joint Petitions
Chapter 6	Chapter 7	Chapter 8	Chapter 9	Chapter 10
Improper Rent, Improper Pass-Through; or Violation of ARO	Housing Service Reductions or Housing Code Violations	Fair Return	Specified Capital Improvements	Requests for Additional Housing Services
Petition & Response	Petition & Response	Petition & Response	Petition	Petition & Response
	Voluntary Mediation (Optional)	Pre-Hearing Meeting (Optional)		
Petition Examiner Provides Administrative Decision	Hearing: Hearing Officer provides Hearing Decision	Hearing: Hearing Officer Provides Hearing Decision	Petition Examiner Provides Administrative Decision	Form Review and Approval/Denial
Appeal Administrative Decision to Director	Appeal Hearing Decision to Director	Appeal Hearing Decision to Director	Appeal Administrative Decision in Hearing; Hearing Officer Provides Final Decision	

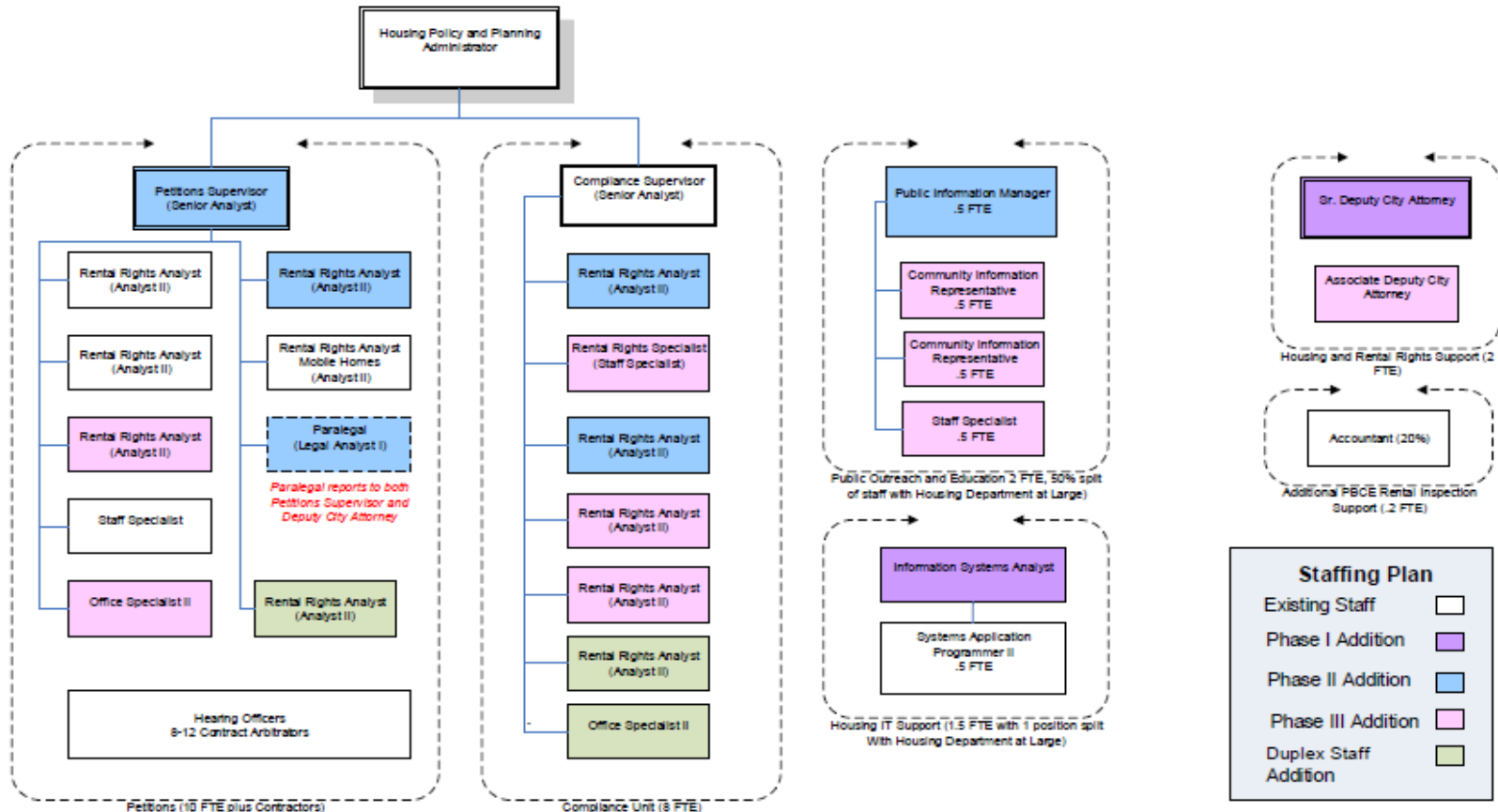
Policy Consideration – Duplexes

There are approximately 11,000 duplex units in the City of San José

Feedback Received:

- Duplexes are an entrance into the housing market for smaller landlords
- Outreach has not included duplex owners

Policy Consideration – Staffing



Policy Consideration – Staffing

Phase	# of Staff	Total Cost	Fee
Current	6.0 FTE 0.7 FTE (Support)	\$ 1,345,321	\$ 30.30
Phase I additions	2.0 FTE	\$ 1,345,321	\$ 30.30
Phase 2 additions	5.5 FTE	\$ 2,486,570	\$ 56.00
Phase 3 additions	7.5 FTE	\$ 3,526,996	\$ 79.50

Policy Consideration – Staffing

Staffing Impacts with 5%

- Lower rates of landlord petitions filed due to more flexibility with 5% annual rent increases.
- 21.0 FTE – One Analyst position from the Petition Unit may not be necessary due to the lower rate of petitions filed.

Staffing Impacts with CPI-U

- Higher rate of tenant's petitions filed due to the limiting effect of the annual allowable increase.
- 22.0 FTE – Full staffing will be required for the Petition Unit and Compliance Unit.

Preview of policy changes

Annual Allowable Increase - Floor & Ceiling

Change range from 2% - 5% to 2% - 8%

Tenant Buy out

Add buy out provision that can satisfy the voluntary vacancy

Section 8

Allow landlords to raise the rents by Housing Authority's standards

Tenant Protection Ordinance

Restrict occupancy limits and relationships allowed

- **Occupancy Standard:** two per bedroom plus one (studio = two)
- **Relationships Allowed:** spouse, domestic partner, children, foster children, parents

Timeline

Meeting	Topic	Time	Location
September 14, 2017	Housing & Community Development Commission	5:45 PM	San José City Hall Wing Rooms
September 22, 2017	End of 30-day review period for draft ARO extended from September 15, 2017 to September 22, 2017.	5:00 PM	
October 5, 2017 or October 18, 2017	Housing & Community Development Commission – Special Meeting	5:45 PM	San José City Council Chambers
September 22 – October 2017	<i>Staff will consider revisions & prepare final draft for Council action</i>		
November 14, 2017	City Council Meeting	TBD	San José City Hall

Recommendations

Initial review and discussion of Draft Apartment Rent Ordinance and Regulations, Staffing Plan and Fee Analysis, and additional items.

Accept staff report and provide recommendations to Staff on:

1. New Apartment Rent Ordinance (ARO) and Regulations including consideration of Option A (CPI based rent increases and other provisions) vs. Option B (maximum 5% rent increases and other provisions)
2. Staffing Plan and Fee Analysis
3. Additional items not currently included in the ARO
 - a. Adding Duplexes to the ARO
 - b. Adding a one-year lease requirement to the ARO
 - c. Establishing a separate voluntary mediation program